

EL300

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

Questions on response form:



Form DL2 SRP. A revised public document. E-mail:

g. I do NOT have any direct or indirect links to or receive funding from the tobacco industry.

I am, however, concerned that this question (g), relating to vested and conflict of interest, is limited only to the tobacco industry, thereby fostering the false perception that only the tobacco industry are capable of lying, cheating and deceiving the public for personal or corporate gain. This question should also apply to links with the pharmaceutical industry (arguably the current main beneficiary of any tobacco control measures) or other polluting industry (that also benefit from public ill health being blamed on tobacco and diverted away from their contribution to public ill health). Indeed this question of funding should be asked of ALL those who respond, including those submitted by government funded and tobacco CONTROL industry funded lobby groups/fake charities, at what actual and opportunity cost. The question indicates an in-built bias from the outset and alludes to the true value of this consultation as it relates to the public and impartiality. One might even suggest that the result of this consultation may well have been determined from the outset.

Unfortunately, I have a similarly cynical view of the Chantier review and its limited terms of reference. I know of no one who was aware of the relevant issues, who could not accurately foresee the outcome of this review almost from its inception.

As we know, there has already been one public consultation about the plain packs issue and despite the £million public sector campaign to promote it, the public overwhelmingly rejected it. They spoke clearly and unequivocally, leaving no room for doubt. The 'evidence' produced by the tobacco control industry to support the case for plain packs would have been laughable if the widespread adverse implications were not so serious. Yet here we are with another 'public consultation', 'seeking new, or additional, information relevant to standardised packaging that has arisen since the 2012 consultation'. In other words, the first 'public consultation' did not accord with what the anti-smoker industry desired, so there must be another and no doubt, if this does not accord, then another and another. Alternatively it will just be totally ignored, cynically claimed to be supported by 'overwhelming evidence' and have 'widespread public consent'. The legislation, already prepared, will merely be imposed regardless. I find it almost unbelievable that intelligent politicians would allow themselves to be railroaded by the anti-smoker industry into passing legislation that clearly is NOT going to benefit anyone other than criminal smuggling/counterfeit tobacco enterprises, pharmaceutical/polluting industry corporate profits, and anti-smoker activist bulging purses and egos. Sadly, indications suggest this outcome appears to be inevitable.

The consultation requests any new evidence/information since 2012, but is not concerned with the old infrastructure on which the whole anti-smoker agenda is based upon. The public and indeed the consultation are expected to accept as undisputed fact, such UNPROVEN assumptions as in Policy objectives 3.1. I totally reject these Anti-smoker

assumptions (propaganda slogans) in their entirety! All of these hyperbolic claims of smoking deaths and injury are based upon and extrapolated from inexact correlational epidemiological and statistical study that have their roots in early-mid C20th 'science'. Hindsight has shown these claims to be erroneous.

As smoking prevalence has reduced, so-called 'smoker related' illness has increased, mainly in non smokers; Countries with high smoking prevalence tend to have LESS so-called 'smoker related' illness. Those anti-smoker 'adjusted' statistics that suggest so-called smoker related illness has reduced in line with the reduction in smoking in some countries, ALSO show a similar reduction in those countries where smoking prevalence has remained the same or increased over the same time period (eg. Ukraine/Russia). The 'science' that claims Second hand smoke is harmful to others has been examined by numerous astute parties and found also to be erroneous, yet still we find 'experts' refusing to acknowledge this fact - clear cases of those who are paid to not acknowledge those facts or have burned their bridges leaving no room to back-pedal.

No one has been 'saved' by the anti-smoker campaign! in fact it could be argued that it is the antismoking prohibition agenda itself that is responsible for many deaths and injury that could have been avoided if only it had been 'nipped in the bud' earlier. The funding that the tobacco prohibition movement has attracted over many years is substantial and could have been put to much better use in research to find real causes and cures for the benefit of all, rather than used to sate the blinkered desires of a few.

I attach a copy of my 2013 response to the Scottish consultation on the proposed prohibition of smoking in cars containing children, that includes a more detailed and referenced evaluation of the problems relating to the anti-smoker agenda and ask that it be included as part my response to this consultation. The underlying issues/factors are exactly the same for both consultations. The fundamental issue is NOT whether plain packs will or will not prevent children from smoking but whether plain packs legislation together with other coercive anti-smoker legislation will do much more harm than good.

I sincerely believe it will cause much harm and I also believe that the present extortionate level of tobacco taxation coupled with the ease in which to copy plain pack designs will see an increase in illegal activity to fill a supply/demand gap. Criminal enterprise will not differentiate between adults and children - profit is profit for organized crime! This is not a matter of science but use of rational common sense and the ability to look to historical precedent.

Perpetuating the myth that a smoke prohibited world would be the zenith of health initiatives that may prevent those children from contracting serious illness later in life is a deluded 'tilting at windmills' - it will NOT. It will however continue to divert funding away from impartial science that would seek to discover ways and means to prevent illness.

On a wider note, the public may well be concerned about corruption, the wholesale loss of sovereignty to the EU, the dire state of economy, unemployment, uncontrolled immigration, our failing health service, and any number of other problem issues that appear to be increasingly unaffected by government action, but these are only side issues to a much greater problem and one that permeates all others.

The government, and the political class in general, have stopped listening to the public and taken on the role of rulers who-must-be-obeyed, particularly relating to 'public health' matters.

They appear to believe that a few 'experts' can act almost as sole proxy voice for the public who in turn are apparently seen as infinitely malleable to government will, using 'spin', 'nudges' and coercion! The government have, over recent months, wondered (apparently!) why support for UKIP has ballooned and support for all three main parties has waned to such a degree. This subject is one of the main examples that demonstrate why!



E L301



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):

Leeds Tobacco Control Management Group

Name of person providing submission (required):

[Redacted]

Job Title (required):

[Redacted]

(required):

Public Health, Leeds City Council, Technorth, 9 Harrogate Road, Leeds, LS7 3NB

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?

We are satisfied that the Chantler review has taken a pragmatic stance given the available information and believe that the review has presented a compelling case for the introduction of standardised packaging for tobacco products.

Sir Cyril Chantler states: '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'

The review considers the potential impact of standardised packaging and it is acknowledged that this should be introduced as an element of a comprehensive approach to tackling tobacco use in England, which should continue to be supported and complemented by actions at national, regional and local level. This is consistent with previous national and indeed our own local tobacco control strategies and widely accepted as the best practice approach to tackling tobacco use.

In Leeds, the partners within the tobacco control alliance have delivered, since 1998 a comprehensive programme of activity to tackle tobacco use across the city. We recognise the importance of national 'public health' policy to enable us to sustain and indeed improve upon the downward trend of smoking prevalence in the city which we have seen drop by over 7% in the last 8 years.

However, this is a trend which is becoming increasingly more challenging to sustain, which is also the experience of other areas across the country. Sir Cyril Chantler's review has, in our opinion, provided the evidence and by reflecting on the situation following introduction of plain packaging in Australia, presented a clear and rational argument to support the introduction of standardised packaging as an additional intervention in our 'armoury'.

Standardised packaging will undoubtedly support local efforts to reduce the number of young people who smoke, removing one of the few remaining opportunities the tobacco has to market their products to young people, and we found it particularly telling that Japan Tobacco International attempted to sue the Australian Government, following the introduction of plain packaging for essentially removing its 'mobile billboard'

We are pleased to note within the report that consideration has been given to behaviour change theory and whilst the report was unable to categorically conclude that plain packaging would lead to a change in smoking behaviour, the report highlights behaviour change theory demonstrates that intention to change is strengthened with the denormalisation of a behaviour and increased awareness of health risks leading to a change in attitudes which are likely outcomes of

standardised packaging, all of which were highlighted as likely outcomes following introduction of standardised packaging.

We would support the introduction of standardised packaging to coincide with measures in the European Tobacco Product's Directive in April 2016 which is likely to have greatest effect and realise the greatest benefits to public health.

In addition to the Chantler report, we are also pleased to note the positive response from Jane Ellison MP - minister for Public Health who stated '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'

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?

There are a number of aspects that have been raised by both Sir Cyril Chantler and Professor David Hammond in his report for the Irish Department of Health. The Hammond report themed the 75 studies that were reviewed for the report and we would like to provide anecdotal evidence to support some of those themes from our own observations from discussions with users of the smoking service and with young people.

One of the themes brought out in the Hammond report and the Chantler review was that of the perceptions of risk: Many users of the smoking service in Leeds, as part of their attempt to reduce / cut down on their smoking, change cigarette type to one which they believe is a safer, less toxic product. When asked why they felt these products were less harmful, the majority of service users claim that the packaging e.g. lighter colours, primarily white packaging, denote a product which is 'low tar' and better than higher tar alternatives. It is interesting that these products are not labeled as such and indeed have not been for a number of years yet this perception of a 'safer' cigarette is reinforced as a result of the packaging. This is consistent with the findings of the Hammond report.

The design of packaging clearly influences choice and interestingly ease of not being detected as a smoker. In 2012 we took a range of cigarette packs and asked young people aged 13-16 what, if anything they felt was appealing about the packs. Groups of young people were attracted to particular brands as a result of their packaging as oppose to the content. Teenage girls particularly liked the packaging of the 'slim' cigarettes, stating they looked like a bottle of perfume so were not easily recognisable if parents saw them. The males were attracted to packaging which 'looked cool', particularly the silver shoulder box hinge lid which matched the 'Zippo'

lighter design. One 'slide' package was seen to be useful as cannabis could be stored behind the cigarettes and could not be detected if the packet was opened.

Australian evidence:

Australia introduced plain packaging in 2012 as part of a comprehensive programme to tackle tobacco and whilst there is little current evidence to demonstrate the impact on the rate of uptake of smoking, the national survey of tobacco use has demonstrated a marked drop in prevalence from 15.1% to 12.8%. Whilst this cannot be attributed exclusively to plain packaging, the blend of interventions (including point of sale retail displays and media campaigns) have resulted in the most rapid decline since the introduction of the survey in 1991. Interestingly the period following the introduction of plain packaging has clearly prompted a certain cohort of smokers to consider quitting as seen by the increased use of the national quit line.

In addition to the research included within the Hammond report, Public Health England has conducted a recent search of the evidence from 2012 which continues to strengthen the rationale for the introduction of standardised packaging. This is being presented within PHE's consultation response so we will not outline the detail here.

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?

Whilst we welcome the draft regulations, we would like to see the inclusion of 'specialist tobacco products' such as cigars and cigarillos, as exclusion could suggest these products are exempt as they are a 'healthier' options.

We would also recommend careful monitoring of the sales of smokeless and other niche tobacco products, to ensure the market share of such products is not increasing, particularly as products such as shisha appear to be increasing in popularity amongst young people. There is also an existing perception amongst current users that smokeless tobacco products are a safe form of tobacco use, and therefore a risk that usage of these products could extend beyond the current cultural groups.

Dimensions of packs: Evidence suggests that females are attracted to 'slim' packaging which are also perceived to be 'safer'; Australian legislation has standardised the pack dimensions which remove the opportunity for the tobacco industry to market these types of cigarettes, we would therefore recommend that this restriction is also included within the regulations to prevent manufacturers marketing a product which is potentially appealing to the female market and may be effective in

preventing any attempt to circumvent the intent of the regulations by introducing a 'branding' opportunity

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?

Recent data from the Australian Treasury indicates that sales of tobacco fell by 3.4% within the year following the introduction of standardised packaging. Whilst this cannot be attributed to standardised packaging alone, the observations and conclusions within the Chantier review strongly suggest an effect.

Public Health England has calculated the national impact of a similar reduction in sales in England and has suggested a financial saving of over £500 million nationally. As the majority percentage of sales goes to the tobacco industry and the exchequer, the money not spent on the purchase of cigarettes would be retained in the local economy.

PHE also suggest that the saving is most likely to be concentrated in the areas of greatest deprivation, this would clearly have a positive impact on reducing health inequalities.

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

EL 302



Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
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Riaghaltas na h-Alba



Department of
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b. Please provide your details and contact information:

Name of respondent (required)

[Redacted]

Address of respondent (required):

Wallasey Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Contact email address (required):

[Redacted]

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):

Job Title (required):

Contact address of organisation (required):

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?

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- 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?

I 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

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."

A report by Professor David Hammond for the Irish Department of Health backs up Sir Cyril Chantler's view. He concluded that,

"Overall, the existing evidence on plain (standardised) packaging supports four primary conclusions:

- 1) Plain packaging will reduce smoking initiation among youth and young adults.
- 2) Plain packaging will promote smoking cessation among established smokers.
- 3) Plain packaging will support former smokers to remain abstinent.
- 4) Plain packaging will help to denormalise tobacco use."

I 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.

I 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.

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?

Smoking is the single largest cause of health inequalities in Wirral. Reducing smoking in deprived populations through pricing, national policy measures, changing social norms and supporting people to quit, will significantly reduce health and social inequalities.

Smoking prevalence in Wirral is 23%, compared to 21% nationally. In deprived areas, prevalence is more like 35%. Around 1 in 8 pregnant women in Wirral were still smoking at the time of delivery in 2011 (13.2%).

The cost of smoking to the Wirral economy was estimated to be £95m in 2012. It is estimated that Wirral smokers paid c. £78million in duty on cigarettes over the same period, so it is a myth that smokers pay for the consequences of their habit. nationally).

The potential impacts of reduced smoking rates across the life course were outlined in the Marmot review 'Fair Society, Healthy Lives' and included improvements in:

- Child development: Sudden Infant Death Syndrome (SIDS) and other childhood illnesses such as asthma and otitis media (glue ear) are associated with parental smoking. Children of smokers are more likely to smoke themselves, so parents quitting smoking breaks that link as well as providing immediate benefits to their child's health.
- Schooling: Children of smokers are more likely to miss school through sickness and can teenagers who leaving school premises to smoke create an extra burden on teacher time, reducing smoking prevalence would help. Nine out of ten of smokers start before the age of 18.

- Employment: Smoking interventions benefit employers and employees through improved productivity, reduced absenteeism caused by smoking related diseases and reduced fire risk.

- Income and benefits: Smoking affects people's income due to money spent on cigarettes and lost income (smokers are more likely to be ill and off work). Up to 15% of the disposable income of smokers is spent on tobacco, so helping people to quit will ease financial pressures.

Support for standardised packaging is at an all-time high with 64% of people in the North West in favour and only 10% opposing. 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. Our experience of talking to smokers on this issue suggests most people that smoke are very keen for their children not to start.

81% of young people in the North West think that the Government should do more to tackle smoking.

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 welcome the regulations and feel they are well drafted, which I consider, with only minor changes, to be fit for purpose. The changes I recommend are set out below.

The draft regulations apply only to cigarettes and hand rolling tobacco which can be used after retail sale for making cigarettes. In our response to the original consultation on standardised packaging, TFF said "all tobacco products should be treated in the same way to protect the health of ALL communities" and our view has not changed. We believe that the regulations should apply to all tobacco products, including pipe tobacco, cigars, cigarillos, blunts and other niche products and shisha. The latter in particular is of increasing attractiveness to young people, with 20% of 14 to 17 year olds reporting trying it in the Trading Standards North West Survey of 18,000 young people in Spring 2013.

The draft regulations do not propose any requirement relating to the size or length of cigarettes. Slim cigarettes could potentially be re-positioned as cigarillos thereby avoiding any need to comply with the regulations as currently drafted. I would recommend stipulating a minimum size of cigarettes.

The draft regulations do not propose requirements relating to the size of cigarette packets. I recommend that as in Australia, the regulations specify the dimensions of

the pack to prevent manufacturers using this as a method of differentiation. While this differentiation may be pleasing to manufacturers, it is likely to cause difficulty for retailers in stocking products also.

The draft regulations at 10.3 (e) prohibits packaging that resembles a food or cosmetic container. This could lead to confusion as many perfume products for example, are packaged in cuboid boxes. Specifying the dimensions of the pack would remove the need for this clause.

Regulation 4(7) with regards to pack quantity, while prohibiting packs containing less than 20 cigarettes allows manufacturers to compete on number by including more than 20 cigarettes. One way of preventing this would be by mandating that packs 'must contain 20 cigarettes' to prohibit additional cigarettes being included as a promotional tool

The requirements only apply to tobacco packaging at retail level. We feel it would be preferable to apply also in warehouses to reduce confusion over definitions of warehouses or in those premises where retail and wholesale sales are carried out.

The effect of Regulation 2(6) and (7) appears to be that a distance retail sale from outside the UK to a UK consumer is to be treated as it if were a supply in the UK. The business would therefore commit an offence. How would this be enforced by local TS Officers across international borders?

Regulation 23(2) provides the penalty of imprisonment on summary conviction to be half that for offences under the Consumer Protection Act 1987. The Act deals with offences in relation to consumer goods that are usually unsafe because of design or production defects rather than being unsafe because of their very nature, whereas the Regulations deal with offences in relation to goods that when used as intended by the manufacturers, are lethal. Not all toys or electrical goods etc are unsafe, all cigarettes are. It therefore seems inequitable that the penalty for the supplier of an unsafe toy is double that of the supplier of non-compliant cigarettes.

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 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.

I 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.

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. As shown in table 8 of the IA this did not lead to an increase in cross border shopping. Indeed both cross border shopping and illicit trade declined over the period between introduction and full implementation from October 2008 to September 2010. As the IA acknowledges this is because the greatest influence on cross border shopping is down to external factors such as the £/€ exchange rate and the number of passenger journeys and therefore, just as with graphic warnings, standardised packaging is unlikely to have a significant impact.

I 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".

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.

In point 160 of the IA it is accepted that the theory of consumer surplus is more difficult to apply both 'in principle and practice' to an addictive product like tobacco. The rationale for including "lost consumer surplus" as a potential cost of standardised packaging does not stand up to scrutiny. 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 any case 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.

The benefits of introducing standardised packaging identified in the impact assessment far outweigh the costs, many of which can be quantified at North West level:

oOverall, the main smoking related diseases are conservatively estimated to cost the NHS across the North West £397 million per year.

- o The cost of smoking-related early deaths in the North West alone is calculated to be more than £602 million per year.
- o An additional £367 million is lost to the regional economy each year through increased levels of absence from work from smokers compared to their non-smoking counterparts.

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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- 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

EL303

[REDACTED]

From: [REDACTED]
Sent: 07 August 2014 16:56
To: [REDACTED]
Cc: [REDACTED]
Subject: ITPAC Consultation Submission
Attachments: ITPAC Consultation Submission.docx

Dear Sirs,

Please find attached the ITPAC Consultation Submission on UK standardised packaging of tobacco products.

Heintz van Landewyck is a Member of ITPAC and we entirely agree with this submission.

Kind regards,

[REDACTED]

*Secrétaire Général
Directeur des Ressources Humaines*



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31, Rue de Hollerich
L-1741 Luxembourg
B.P. 2202 L-1022 Luxembourg

[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.

President is:
[REDACTED]

Imported Tobacco Products Advisory Council,
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

2.

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.

EL304



Canadian
Manufacturers &
Exporters

Manufacturers et
Exportateurs du
Canada

August 6, 2014

Department of Health
Standardised Packaging Tobacco Consultations
PO Box 1126
Canterbury
Ct19NB

To whom it may concern:

Canadian Manufacturers & Exporters (CME) is Canada's largest trade and industry association, and the voice of manufacturing and global business in Canada. Collectively, CME's membership network accounts for an estimated 82 per cent of Canadian manufacturing production and 90 per cent of all goods and services exports.

CME has expressed concern in the past, and continues to voice our concern, about the plans of various jurisdictions to implement plain packaging policies for tobacco. CME believes that countries should oppose these policies for the following reasons:

Protection of IP – Businesses spend large sums of money to develop and market their brand. The success of a brand is built on using its trademarks to promote and differentiate its products from competitors. By encroaching on trademarks or eliminating them altogether, governments are attacking a tangible corporate asset. Other products, including alcohol and certain food products, are already being targeted internationally for stricter regulatory controls that could ultimately include plain packaging requirements. It is essential that the expropriation of trademarks not be seen as a legitimate tool of public policy.

Integrity of International trade law – If a trademark is validly registered, and the product is lawfully available in a country, international trade law clearly prevents a country from encumbering or prohibiting its use on products. Limiting such arbitrary and heavy-handed measures is the main purpose of the international trade agreements that lie at the heart of the global trading system.

Plain packaging is counterproductive - Plain packaging makes the detection of counterfeits more difficult and reduces the costs to counterfeiters, who do not need to replicate expensive and complex labels. Any country that is concerned about counterfeit tobacco products, should oppose plain packaging for this reason alone.

CME understands governments' public health concerns about tobacco products. We strongly believe that consumers must be informed about risks associated with the use of those products. However, the elimination of trademarks is not required to meet that goal, and may in fact run counter to it. Measures taken by governments should be proportionate, evidence-based and effective in achieving a specific purpose.

Sincerely,

A large black rectangular redaction box covering the signature area of the letter.

President & CEO

EL 305

IGNIS

arken
DESIGN & BRAND STRATEGY

AOP

Brandwidth[®]

closer


David Forrest Design

DesignBridge

IGNIS

Life

LMC Design

nude

path
DESIGN & BRAND STRATEGY

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TEQUILA
INTERNATIONAL

7th August 2014

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

Design sector's response to Consultation of the Introduction of regulations for standardised packaging of tobacco products

We are writing as a group of UK businesses to express, once again, our opposition to plain packaging and to contribute to the Consultation on Standardised Packaging of Tobacco Products. As a group of Agencies we make a valuable and important contribution to the UK economy in terms of the employment of highly skilled people, in generating profit and tax revenues, and pioneering design solutions through creativity and innovation that is admired the world over.

Our companies provide creative design services to a range of companies including Japan Tobacco International (JTI) in the UK, and we are extremely concerned about the impact of the proposed legislation, which will restrict companies from branding a legally manufactured product, and its ramifications for other goods, such as alcohol or certain foodstuffs. Branding is an important element in providing consumers with choice in a free and competitive market. The protection of IP is of paramount importance in our industry and concerns have been expressed by a number of manufacturers outside the tobacco sector. The introduction of such restrictions on tobacco packaging would inevitably add to the calls for similar censorship in other consumer goods categories, and we understand that Mars, a leading manufacturer of global brands, contributed to the Consultation in 2012 to express concern in this regard.

Plain packaging will harm Britain's competitiveness and have implications for businesses such as ours, which create wealth for the UK economy through IP, brands and trademarks. Unsurprisingly, the CBI, British Brands Group and our industry bodies, such as the IPA, are all opposed to the measure.

Since our last submission and the Chantler report, the latest assessment(s) of the efficacy of plain packaging for tobacco products in Australia unequivocally demonstrates that it has had no impact upon smoking incidence, either overall or amongst minors (aged 14-17 years). Indeed, quite the converse, legal tobacco sales which had been in long term decline actually rose by some 59 million sticks in the first year plain packaging was introduced, and seizures of counterfeit tobacco products more than doubled. In other words whilst there is absolutely no evidence to support the notion that plain packaging will have a negative influence on tobacco consumption, there are clear indications that it may indeed have unwelcome associated consequences.

Restricting legitimate manufacturers of tobacco will inevitably lead to a boost across the black market in counterfeit tobacco which already accounts for 16% of cigarettes and 44% of hand-rolling tobacco. Illicit tobacco jeopardises the livelihood of thousands of independent traders, and the criminals who run this black market are not concerned about what they sell or the age of the people to whom they sell. Plain packaging threatens trade, jobs and tax revenue as well as the health of the young people it purports to protect.

Since the last consultation, data from Australia suggests that whilst consumption of cigarettes in the year to July 2013 remained at the same level as in 2012, the proportion of illicit cigarettes had increased substantially. This is corroborated by the most recent Annual Report of Australia's Customs and Border Protection Service, which indicates that the number of illicit cigarettes entering Australia has indeed risen dramatically in the past three years.

Moreover, Australia is subject to a challenge at the WTO and, if upheld, this will prove extremely damaging to the economy of that country. Furthermore, we understand that the proposed introduction in Ireland has now been challenged by Portugal and Slovakia with a detailed opinion. Given the likelihood of similar challenges to any UK introduction, and as BNP Paribas has estimated the cost of a successful lawsuit at £11bn, we feel strongly that it would be prudent at least to wait for the determination of any challenge before considering the introduction of plain packaging here.

We believe it is right for regulators to consider and introduce measures to discourage young people from smoking. The EU Tobacco Products Directive will change the UK tobacco market by enlarging health warnings, standardising pack shapes and opening mechanisms, banning menthol and other flavourings, and banning all packs of fewer than 20 cigarettes and less than 30g of rolling tobacco.

In conclusion, the introduction of standardised packaging would cause serious damage to the UK economy at a critical time for British business. It would have an enormous, detrimental impact on the creative industry and a disproportionate impact on Britain, which leads the world in this field. As a group of Agencies, we employ several hundred people and should these proposals be brought into law, it could lead to the redundancy of highly skilled and talented staff; indeed, in some cases it could threaten our very existence.

We urge you to protect the creative industry, the UK economy, and young people from the threats posed by these ill thought out proposals.



Managing Director, Ignis Ltd

On behalf of the undersigned

arken

creators of award winning p-o-p

[REDACTED], Director of Business Development, Arken



[REDACTED], Managing Director, AOP of Presentation

Brandwidth®

[REDACTED], Board Director, Brandwidth



[REDACTED], Director, Closier



David Jones Design

[REDACTED], Director, David Jones Design

DesignBridge

[REDACTED], Business Development Board Director, Design Bridge

IGNIS

[REDACTED], Director, Ignis Ltd



[REDACTED], Managing Director, Life Integrated



[REDACTED] Managing Director, LMC Design

nude

[REDACTED] Creative Partner, Nude

path
EXPLORE DESIGN REALISE

[REDACTED] Director, Path

SAA

[REDACTED] Creative Director, SAA

TEQUILA
INTERNATIONAL

[REDACTED] Global Operations Director, Tequila

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

Public Health, Norfolk County Council have recently held a Tobacco Control Conference, the purpose of this being to present an updated health needs assessment and recruit members for the rejuvenated Norfolk Tobacco Control Alliance. The Tobacco Control Alliance is supported by the Norfolk County Council and is chaired by the Chair of the Communities Committee. Going forward the Alliance will have membership from a variety of organisations including the Fire Service, Police and the University of East Anglia.

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

The Tobacco Control Conference held by Norfolk County Council Public Health reinforced the point that preventing new recruits by "turning off the tap" is essential. We feel that the introduction of standardised packaging would assist this proposal, as young people are influenced by branding and once exposed to the packaging maybe more susceptible to be recruited as a smoker.

The cigarette packaging is not necessarily designed to target young people or children but is set to appeal to young adults. Young people are shown to have a strong affinity to branding which can play into desiring admiration from their older peers and associating certain brands with identity and image. ¹ Branding also plays a part in young people overestimating the number of their peers who smoke as they believe the majority do smoke. It is felt that with the implementation of standardised packaging, the branding association, possibly the social norms around smoking and the belief that certain brands are healthier than others will be removed.

With the short time span before the 2015 general elections we are keen for the Regulations on Standardised Packaging to go before parliament for discussion and agreement.

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

A frequent argument which has been vocalised by the Tobacco Industry within the KMPG report is that standardised plain packaging will increase illicit tobacco products into the market and consumers will be duped into buying them. The reasoning being that:

- standardised packets will be easier to duplicate and forge for illicit tobacco sales
- the numbering codes will be easily copied

Evidence from the Australian Government has found that this was not the case in Australia, with no indication of an increase in illicit tobacco production and very small quantities of any illicit cigarettes being found.

Illicit tobacco is cheap and easy to produce and clearly avoids taxation. The average price of illicit tobacco can range from £2.50-£3.50, which is more attractive to deprived populations and young people.. This is a key concern for Norfolk as the cost of legal tobacco is

increasing and consumers are likely to opt for a cheaper option which may be illicit. Illicit tobacco does not conform to the same regulations or safety measures in place and have been the result of numerous house fires around the country. These house fires caused by smoking, adds to the overall cost of smoking which in Norfolk is approximately £8.6 million each year.² We believe that implementing the standardised packaging along with vigorous enforcement strategies would assist a reduction in the number of young recruits, assist tackling the illicit tobacco market in Norfolk and reduce the wider effects.

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?

Norfolk County Council Public Health welcomes the draft regulations, but believes that it should specify the size of cigarettes or tobacco packets. This would mean that there is no opportunity to differentiate between different brands and so would truly ensure that packaging is standardised.¹

We notice that specialist tobacco products such as cigars are exempt from the standardised packaging regulations. We feel that the regulations should apply to these products as well as it gives the impression and possibly interpretation that they are not as harmful to health as other tobacco products.¹

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?

We do not agree with the statement made that there are "possible losses from a potential increase in consumption of illicit product and/or product legitimately bought outside the UK"³ As previously stated in Australia there appears to be no increase in the quantity or use of illicit tobacco and with the numbering codes counterfeit or illicit tobacco should be easier to identify.

Before the Standardised packaging is introduced there are a number of actions which need be considered:

- A mass media campaign before and at the time standardised packaging comes into effect, raising awareness within retailers and the public. It would be worthwhile to highlight how to recognise legal tobacco against illicit tobacco, although those purchasing illicit tobacco are often aware of what they are buying.
- With illicit tobacco in mind, enforcement from trading standards and HRMC is important – it is anticipated that in Norfolk the illicit tobacco projects can be discussed in a multi-agency environment i.e. the Norfolk Tobacco Alliance.
- With the proposal that standardised packaging will encourage smokers to quit, it would be important for commissioners to look at the stop smoking services and the resource available.

Conclusion

Public Health Norfolk County Council and the Norfolk Tobacco Control Alliance supports standardised packaging with the idea that it will contribute to reducing tobacco related harm. Evidence from the YouGov survey highlighted that the majority of the public support standardised packaging. Smokers are more likely to be supportive and believe the standardised packaging is effective if it appears less attractive to children and young people – if these conditions can be guaranteed then around 64% of smokers would support the introduction.⁴

Evidence has shown that comparing current branding to standardised branding reduces the appeal of smoking especially to young people and improves effectiveness of health warnings.⁴ We feel that the implementation of standardised packaging would assist the current reducing smoking prevalence and prevent recruitment of young smokers. With the short time scale to the General Election, if this opportunity for parliament to vote is missed we feel this could give the impression that there are external influences from the tobacco industry and this could affect progression in tobacco control.

- 1- Standardised packaging of tobacco products: Draft Regulations. Accessed at <https://www.gov.uk/government/consultations/standardised-packaging-of-tobacco-products-draft-regulations> on 24/07/14
- 2- ASH -The Cost of Local Tobacco Control – (2012) accessed at ash.org.uk/localtoolkit/docs/Reckoner.xls
- 3- Standardised packaging of tobacco products: Draft Regulations – impact assessment. Accessed at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323518/impact_assessment.pdf on 24/07/14
- 4- ASH – Public support for putting tobacco products in plain packaging, 2011. Accessed at http://www.ash.org.uk/files/documents/ASH_765.pdf on 24/07/14

EL 307

PROMARCA

7th August, 2014

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

TobaccoPackaging@dh.gsi.gov.uk

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

Dear Sir or Madam,

Promarca, founded in 1929, is the Swiss Association of branded goods. We are based in Bern, Switzerland, and represent some 100 companies of the consumer goods sector, which generate over 12 billion Swiss Francs of turnover and provide more than 17'000 (full-time equivalents) jobs. The member companies of the Association are Swiss or international companies with an affiliate in Switzerland. We are following regulatory developments in Switzerland but also within Europe, because most of our members are active on the Swiss as well as on the European market including the UK.

We clearly support the principles of the free market and work towards preserving the importance of brand protection and brand freedom. It certainly is a legitimate question to ask, whether there is evidence to demonstrate that a standardised packaging of tobacco products would have an additional public health benefit over and above existing tobacco control initiatives. Though we fully understand the permanent aspiration of governments to improve public health, we still do not think that standardized packaging will resolve this kind of issue.

Considering the existing multiple regulations for tobacco products in Switzerland as well as the new European Tobacco Products Directive - which foresees larger graphic health warning labels - we believe that an extreme regulation such as standardised

Schweizerischer Markenartikelverband
Union suisse de l'article de marque

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packaging would just be to the detriment of the basic interest of both the consumer, as well as of the entire tobacco supply chain (manufacturers and retailers alike).

First of all, the registration and the use of a trademark on the packaging of a product have always constituted the very essence of a trademark right. The introduction of plain packaging for tobacco products would question well established principles of free market of legitimate products. The draft legislation currently under consultation may allow for registration of trademark, but would eliminate the right to use of trademarks in relation to tobacco products, constituting a violation of trademark rights protected by European and International law. Such a measure may have violated obligations not to unjustifiably deny the use of trademarks under the WIPO's Paris Convention for the protection of industrial property and the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Regulations – even if limited to a specific sector – always pose serious threats to the business community. Not only because intellectual property rights are a crucial aspect of the global economy and are key to a future innovation-based economy, but also because considering the actual strict regulations for tobacco products, further packaging limitation would not add any additional benefits for the consumer, which is already informed about the risks taken when using tobacco products. Let's resume:

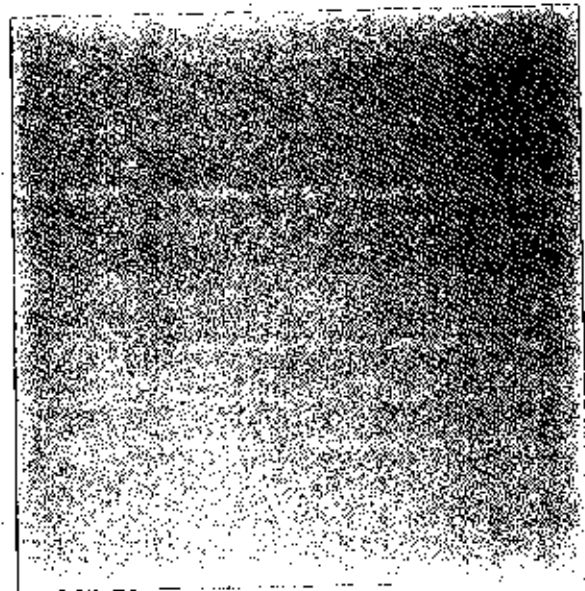
- The introduction of standardized packaging of tobacco products would prohibit the use of the trade mark on the product. Considering the fact that the function of branding is to inform, reassure and in the end protect the consumer – who expects a given quality and compliance from a given brand – standardized packaging would generate more confusion than anything else. A brand must remain clear, visible and recognizable on the product and the space allocated for this to tobacco products has already been reduced to a minimum.
- Furthermore, standardized packaging can be more easily copied. This would make counterfeiting and smuggling more attractive to criminals who would immediately take advantage of this new opportunity to increase this kind of activities. The risk for consumers to unknowingly buy illicitly traded products would increase and this would certainly not contribute to better health of the consumer, knowing that toxic additives can easily be found in counterfeited tobacco products.

- Lastly, the latest data from the *Australian Institute of Health and Welfare*¹ indicate a gradual declining trend in consumption for more than a decade without implementing such extreme regulatory measure. More worrisome, youth smoking (12 – 17-years) has actually *increased* between 2010 and 2013 from 2.5 to 3.4 percent despite the introduction of plain packaging². We therefore cannot think of any legitimate reason to implement a further restriction.

Empowering the consumer to make his/her choice and informing the consumer about risks, but still with the relevant branding information, which stands for given quality and compliance, are elements to be primarily considered.

Improving public health is a holistic project which cannot be solved by standardized packaging.

We shall be grateful for your supporting our input. And please do not hesitate to contact us, if there is any further information you need.



¹ <http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/2013/tobacco/>

² <http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/2013/data-and-references/> - Supplementary tables - Table 3: Tobacco status, people aged 12 years or older, by age, 2001 to 2013 (per cent)

EL 308

From:

Sent:

To:

Cc:

Subject:

Attachments:

07 August 2014 11:34

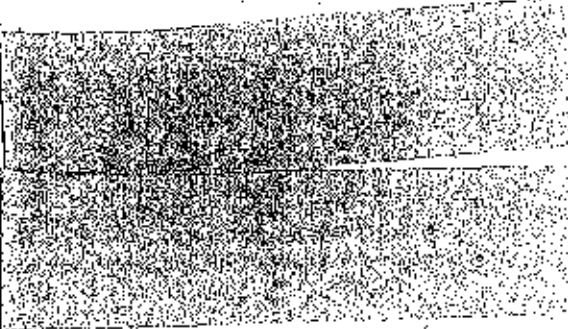
Dear Sir/ Madam

I am writing in response to the above

Stockport Council and Stockport Clinical Commissioning Group supports the principle of the introduction of standardised packaging of Tobacco products and submitted responses in favour of it in an earlier consultation in July 2012. At the Council meeting held on 5th July 2012, Stockport Council adopted a resolution in relation to the protection of children from tobacco marketing and the consultation on standardised packaging of tobacco products. I attach the councils' submission to the earlier consultation which we note was not included in your publication of the consultation responses.

The Director of Public Health [REDACTED] endorses the submission to this consultation from Tobacco Free Futures.

Yours Sincerely



The way we all register to vote is changing. Look out for your letter that will tell you more. Your vote matters, make sure you're in.

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STOCKPORT

METROPOLITAN BOROUGH COUNCIL

Democratic Governance
Town Hall, Stockport SK1 3XB

Direct Line: 0161 - 474 3201
Fax: 0161 - 474 3240

Andrew Lansley CBE MP
Secretary of State for Health
Department of Health
Richmond House
79 Whitehall
London SW1A 2NS

Date: 10 August 2012
My ref: JV
Your ref:

Dear Mr Lansley

At the Council Meeting held on 5 July 2012, Stockport Council adopted the following resolution in relation to the protection of children from tobacco marketing and the consultation on standardised packaging of tobacco products:-

"This Council notes:-

- *That smoking tobacco can cause serious and fatal disease, and that the only way to avoid the risks is not to smoke.*
- *That smoking is an addiction of childhood, with the vast majority of smokers starting before they are 18 years old.*
- *That 486 people in Stockport die from a smoking related disease every year.*
- *That with advertising bans in place, tobacco manufacturers have increasingly focused on packaging design to make their products more appealing.*
- *That published, peer reviewed scientific research is clear that plain packs are less attractive, especially to young people, strengthen the impact of health warnings, and make packs less misleading to consumers.*

This Council believes:

- *That it is the responsibility of all levels of government to try to ensure good public health in the population.*

Following a thorough discussion and the unanimous recommendation of the Health Scrutiny Committee on 12 June 2012, this Council resolves:

- *To request the Chief Executive to write the Secretary of State for Health, expressing these views and asking him to bring forward legislation to introduce standardised*



packaging of tobacco products to protect children and young people from tobacco marketing.

- To continue to promote good health in our borough, to support the reduction of local rates of smoking, and to protect children and adults from tobacco harm."

The Stockport Health Scrutiny Committee had also considered the matter at the meeting on 12 June 2012, the minute extract for which is below:-

[REDACTED] and [REDACTED] from SK Youth, accompanied by [REDACTED] Service Director (Transformation & Commissioning) and Mary Brookes (Public Health Advisor), attended the meeting to report on debates held by SK Youth on the issue of tobacco advertising and packaging. Examples of packaging were provided for the Scrutiny Committee. Members commented on the wide-variety of packaging and the attractiveness of some of the examples.

The following issues were raised/ comments made:-

- Those involved in the discussions at SK Youth had reached a consensus that standardised/ plain packaging would make tobacco products less appealing but considered a number of other factors as being of importance, including peer pressure, cost and the desire of smokers to want to stop smoking. Young women involved in the discussions had been more affected by the differences in the packaging.
- Using anger at the damaging being caused to smokers by tobacco products had been successful in California which could be used with young people in the UK.
- The use of graphic images on tobacco products were often effective, although these needed to be more targeted for young people. There was a danger that overexposure to these images would lead to people becoming desensitised to them.
- It was important to ensure that anti-smoking campaigns focussed on those who were most vulnerable, who were often those from the most disadvantaged background, and the messages most often employed did not necessarily chime with these groups.
- There was national research which suggested that plain packaging would be effective at discouraging young people from smoking.

The Chair referred to the proposed Council Motion included in the AGMA report and invited members to support the motion when put to the Council Meeting.

RESOLVED – (1) That Jake Mairs, Harry Lewis and Tom Stoppard be thanked for their attendance and input.

(2) That this Scrutiny Committee endorses the proposals from the AGMA Health Commission in relation to standardised packaging for tobacco products and recommends that the Council Meeting adopts the proposed motion in order to promote good health for Stockport residents and for young people in particular."

The Stockport Children's Trust Board considered the matter at the meeting on 18 June 2012, the minute extract for which is below:-

[REDACTED] submitted a report (copies of which had been circulated)

proving a summary of the consultation on the standardised packaging of tobacco products that was launched on 16 April 2012.

The following key issues were highlighted:-

- Cigarette packages often targeted young people. A focus group with SK Youth held on 15 May 2012 stated that if the packaging was less attractive they may be less likely to purchase the cigarettes. They also noted that plain packaging may discourage new smokers.
- The members of the Children's Trust Board were invited to sign up to the Plain Packs Protect campaign. The Plain Packs Protect campaign supported the use of standardised packaging with only the name of the brand and a health warning.

The following comments were made/issues raised:-


- It was confirmed that schools across the borough had been made aware of the Plain Packs Protect campaign.
- It was noted that roll-up cigarettes could also be included in the campaign.
- New smokers and current smokers were two very different targets for this campaign. It was noted that young people often tried other people's cigarettes when they were starting to smoke so had perhaps had already chosen a brand before they got to any shop thereby lessening the impact of the campaign.

RESOLVED - (1) That the report be noted.

(2) That the Children's Trust Board formally supports the Plain Packs Protect campaign and that this be reported in the Consultation response."

I should be grateful if you could give consideration to the views expressed in this letter as part of the consultation on Standardised Packaging of Tobacco products.

Yours sincerely


for Service Director (Legal and Democratic Services)

EL309



3 - Towns Partnership

3 Towns Partnership
Durham County Council
Crook Civic Centre
Crook
Co Durham
DL15 9ES

Tel: 03000 267 540

Email:

threetownsaap@durham.gov.uk

www.durham.gov.uk/3townsaap

7 August 2014

Dear Consultation Team

I am writing on behalf of the 3 Towns Area Action Partnership Board

Area Action Partnerships are a way of involving local people and organizations in the work of the County Council, Parish Councils, Housing, Health, Police and Emergency services, local businesses and the Voluntary and Community sector, placing local people at the heart of local decision making. Health and Wellbeing and Children and Young People have consistently been voted as top priorities for the area over the last 5 Years, the 3 Towns Partnership are committed to improving people's health through supporting evidence based tobacco control to reduce smoking prevalence and particularly supporting the implementation of legislation that will impact on reducing the uptake of smoking in young people.

We welcome the findings of the Chanter Review; particularly the impact that standardised tobacco packaging could have on uptake of smoking among young people.

Smoking is the leading cause of health inequalities. The richest smokers die earlier than the poorest non-smokers as found in Gruer et al (2009) who concluded that the scope for reducing health inequalities related to social position is limited unless many smokers in lower social positions stop smoking.

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, of which approximately 820 deaths are in County Durham.

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.

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.

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 and that smokers are less willing to display their packs in public or to smoke in outdoor public places particularly where children are present.

Figures released by the Australian government in July have shown adult smoking rates have fallen by a massive 15% since December 2012 when standardised packaging was introduced. Before its implementation, daily smoking prevalence stood at 15.1% and has now fallen to 12.8%. The 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.

We therefore encourage the Government to act quickly 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.

Yours faithfully



Area Action Partnership Coordinator

EL310



International Trade Hub, 51 Kenilworth Drive, Oadby, Leicester LE2 5LY, United Kingdom
Tel: +44 (0) 116 319 7413 Fax: +44 (0) 116 230 2045 Email: info@nabauk.org

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

6 August 2014

To Whomever it may Concern

I am writing in response to the Department of Health consultation on the plain packaging of tobacco products.

Our Organisation

The National Asian Business Association (NABA) strives to facilitate improvements in the business competitiveness of its members through being locally sensitive and both nationally and internationally aware.

Specifically NABA aims:

- To continually monitor the needs of its members and the broader business community and effectively respond to the changing needs of its members which the business environment generates;
- To effectively represent its members at all levels within the business community by actively driving forward relevant business issues and seeking clarification of issues which may, do or will affect its members;
- To actively seek partnerships with other organisations which can assist in the attainment of NABA's mission;
- To communicate and inform members of issues and initiatives which can assist in the better management of their operations; and
- To facilitate opportunities where effective networking can occur for its members.

NABA works alongside a wide range of organisations in order to protect and enhance the interests of the 60,000 members which it represents. This is especially important when the livelihoods of our hard working members are threatened. We have a broad range of members which includes both retailers who sell tobacco as well as tobacco manufacturers, but at no time have we received any financial support for lobbying activities.

Our Concerns

NABA and the 60,000 members which it represents have some key concerns regarding the Government's preferred 'Option 2' (the plain packaging of tobacco products); the evidence base on which that preference has been made and also lack of sufficient evidential support cited in the Impact Assessment with regard to the impact on retailers.

The current consultation specifically asks four questions which I will deal with in turn based on the feedback of our members.



Report of the Chantler Review

We note that the independent review, undertaken by Sir Cyril Chantler, was asked to report to the Government on the question "as to whether or not the introduction of standardised packaging is likely to have an effect on public health... in particular in relation to the health of children."

On that question, Chantler came to the conclusion "that the introduction of standardised packaging... would be very likely over time to contribute to a modest but important reduction in smoking prevalence especially in children and young adults."

Chantler's conclusion is markedly different from the conclusion the Government comes to in the Impact Assessment where it states that "Option 2 is preferred in view of the possibility of very substantial health gains that it offers". This is one of several points where the Department of Health seems to overstate or ignore the expert report it commissioned.

However, there appears to be one point of consistency between the Chantler Review and the Government.

As I understand it, the Chantler Review actually took the time to visit Australia. My members would like to know why first the Review and now the Department has failed to take account of the many existing real world studies showing peoples behavioural changes and instead favours reports and studies that only measure people's intended actions.

Smoking rates in Australia have remained consistent with pre-plain packaging levels and youth smoking rates have continued to decline in line with pre-plain packaging levels. On both counts, it is reasonable to assume that plain packaging has had no impact on youth or adult smoking prevalence.

Instead, the Chantler Review is heavily reliant on the Stirling Review. But this is research that Chantler described as "speculative" and of "weak predictive validity" and which the Government has previously failed to accept as part of the 2012 consultation. I am at a loss to explain to my members why the evidence appears to have been selected in this way.

Further Evidence

One additional piece of evidence that I would like to draw your attention to - central to the concerns of my members - is the Roy Morgan study of Australasian Association of Convenience Stores (AACS) members. Returning to my point on real world evidence, this study is the most comprehensive assessment of the retail impacts of plain packaging. The study is conducted amongst 450 retail outlets across Australia; this research has been regularly updated since the introduction of plain packaging (with the latest carried out in September 2013) and includes the following results¹:

- Two-thirds of small retailers claim plain packaging has negatively impacted their business.
- 78% experienced an increase in the time taken to serve adult smoker customers and 62% report additional time is spent communicating with these customers about tobacco products.
- 62% of small retailers have faced increased frustration from adult smoker customers and 65% have seen an increase in the frequency of staff giving the wrong products to customers (primarily due to difficulty in recognising/distinguishing between brands).

¹ <http://www.aacs.org.au/wp-content/uploads/2013/10/Impact-of-Plain-Packaging-on-Small-Retailers-W2-Final-Report.pdf>

- 34% of retailers have experienced increased frequency of attempted product returns predominantly due to customers being given a product they did not ask for.
- 44% of small retailers consider that plain packaging has negatively affected the level of service they are able to provide to their non-tobacco customers.

This is a very different picture to that suggested by Government – and one rooted in reality.

Taking these points into account, the Impact Assessment fails to take into account any of the costs seen in Australia, such as:

- o stock control difficulties,
- o an increase in incorrect orders and giving the wrong product,
- o increased customer frustration,
- o additional staff training costs.

I fear these experiences will be replicated here in the UK, with plain packaging increasing stock management and serving times, incurring additional costs to retailers and resulting in security issues and an increase in shoplifting as more time is spent trying to find the right product rather than watching the shop floor.

Therefore, my members feel it is reasonable – as the Regulatory Policy Committee have asked – that the Government undertake more work on the assessments and estimates made in this area. As it stands the Impact Assessment is deficient and my members are aware of that fact.

The patronising suggestion in paragraph 112 of the Impact Assessment that businesses - already facing a number of challenges - simply "*need to be planning their future business strategies, considering diversifying...*" and "*small retailers...in order to thrive in this changing world, 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. Our assumption is that standardised packaging will not add greatly to these needs for future-proofing.*" has equally not gone unnoticed – particularly as we approach an election year.

This government has pledged to reduce the burden on small businesses, why is it increasing it instead?

NABA is concerned that by making every pack virtually identical, plain packaging could make cigarettes easier to counterfeit and consequently lead to a growth in the illicit trade. This is not to mention the likely increase in smuggled branded cigarettes which will put extra pressure on HM Revenue and Customs officers. Any type of illicit trade, whether counterfeit or contraband, deprives responsible retailers of much needed revenue and only benefits criminal gangs who do not care about selling cigarettes to children. The illicit trade in tobacco also deprives the Government of much needed revenues, currently costing Treasury billions every year, and our members tell us they already see the situation getting worse.

As such, one further piece of evidence that should be taken into account is the KPMG report from October 2013, *Illicit tobacco in Australia*. KPMG found that the illicit market has risen from 11.8% in June 2012 to 13.3% in June 2013. Obviously this covers the period of the introduction of plain packaging. The cost to the Australian Government in lost excise revenue is up to AUD\$1bn.

Importantly, the KPMG study, *Illicit Tobacco in Australia* also found consumption of tobacco as a whole has not decreased. This was the first time since 2009 that consumption did not decline year over year. Surely this isn't a coincidence?

Further work that may benefit the Impact Assessment

My members are concerned as to your estimation with regard to the reduction in transaction times and associated cost savings. It appears to me that these estimations are short sighted and based on small scale studies which are geographically restricted.

As such, I am not sure why this has become the preferred measure, versus the Roy Morgan study (see above and footnote) which has been consistently updated and is representative of the whole of Australia?

At the very least I would have thought the Department should factor in the results of the Roy Morgan study in order to ensure that there is no possibility of bias in the conclusion. With that study indicating transaction times have increased since the introduction of plain packaging in Australia, it is unclear why the opposite would be the case in the UK context.

Conclusion

Smoking is harmful and should not be encouraged but tobacco is a legal product that accounts for approximately 20% of sales for retailers. This figure can be as high as 40% for some retail stores. There are around 50,000 small newsagents and retailers across Britain working, on average, 16 hours a day to service their communities. Between them they serve over 5 million customers a day. There is much evidence to suggest that many non-tobacco sales are in fact additional purchases made by adult smokers coming in store to buy tobacco. NABA believe that plain packaging is neither proportionate nor is there strong evidence that it will reduce smoking rates or prevent youth smoking.

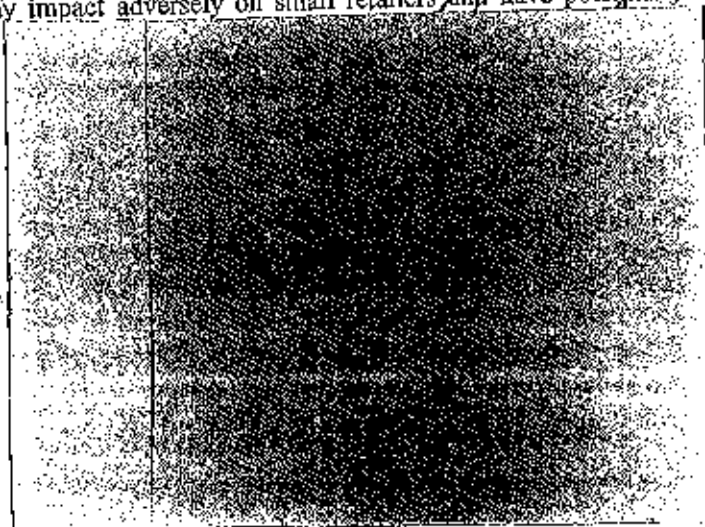
It is for that reason that the previous Labour Government rejected plain packaging; that this Government rightly said it would wait for evidence from Australia and why, on this occasion, Government should echo that conclusion.

Sound policy should always be based on evidence, not guesswork.

We are surprised that the Government failed to assess other potential measures such as enhanced youth smoking prevention programmes in order to achieve its aim of stopping children from taking up smoking. Evidence from other countries, such as Germany, with far less stringent regulatory environments shows they can have a real impact at a fraction of the cost of this

At the very least we would urge the Government to observe the outcomes of regulations such as the display ban, the Tobacco Products Directive before rushing to introduce plain packaging legislation in the UK which may impact adversely on small retailers and have potentially damaging unintended consequences.

I remain



EL311



Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
Government
Riaghaltas na h-Alba



Department of
**Health, Social Services
and Public Safety**
www.dhssps.ni.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):

[Redacted]

Contact address of organisation (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:

This is a joint response between Trading Standards and Public Health. For queries relating to the Trading Standards enforcement, please contact Julie Chambers, Hampshire County Council Trading Standards Manager.

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 key findings from the review, expressed by Sir Cyril Chantler, are: "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 would support any tobacco control intervention which helps to reduce the uptake of smoking amongst young people and reduce overall smoking prevalence.

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?

1. The EU Tobacco Products Directive, which includes updated larger health warnings and graphic warnings on the front of the packs, is being implemented in May 2016. We suggest that implementation of standardised packaging regulations occurs at the same time.

2. Since the introduction of standardised packaging in Australia, the total consumption of tobacco and cigarettes in the first quarter of 2014 was the lowest ever recorded, as measured by estimated expenditure on tobacco products (figures from the Australian Government's Department of Health):

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

Duty received on tobacco products (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when tobacco plain packaging was introduced (Tobacco facts and figures: Australian Department of Health, 19 June 2014).

3. 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 (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)

4. Typically the tobacco industry argue that to standardise packaging will lead to an increase in illicit tobacco trade, but, since the 2012 consultation the evidence

published suggests this is incorrect. All the anti-smuggling devices that are present now will be present in standardised packs.

5. If the UK is the first country in Europe to adopt standardised packaging, it will be much easier to identify illicit packs.

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?

It is noted that local Authority Trading Standards will have the enforcement responsibility which would fit with other enforcement responsibilities.

Trading Standards take a lead in respect of age restricted sales of tobacco, and, from this perspective only it may not be necessary to include cigars and cigarillos as existing evidence indicates that there is a low take up in this area by children. From the perspective of reducing the overall take up of smoking this would be beneficial. Therefore, we believe the regulations are fit for purpose, however, they should cover all tobacco products including cigars and cigarillos. If they are excluded from the regulations, it may give the appearance they are less harmful to health. We would also suggest that the size and shape of cigarettes and packs be included in the regulations, to ensure that no branding element is introduced, for example through "slim" cigarettes.

We do not agree that the minimum amount of HRT should be 30 grams. It's currently 25 grams and don't see the need to increase this.

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 tobacco industry argument that standardised packaging will cost small businesses have proven to be false by the evidence in Australia.

The tobacco industry Intellectual Property Rights argument may not be successful if pursued in court. On 15 August 2012, the High Court in Australia ruled that, 'standardised packaging did not represent an "acquisition of property" by the government, from which they could benefit.'

The tobacco industry 'The nanny state is going too far' argument does not hold weight – tobacco is the only product that kills 1 out of 2 of its lifelong users when used exactly as directed.

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

EL312



Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
Government
Riaghaltas na h-Alba



Department of
Health, Social Service
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):

Job Title (required):

Tobacco Control Lead

Contact address of organisation (required):

Wiltshire Council County Hall Bythesea Road Trowbridge Wiltshire BA14 8JN

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:

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:

Trading standards officers have counterfeit products verified by Tobacco Company

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?

Wiltshire Council's priorities are to:

- protect those who are most vulnerable
- boost the local economy; and,
- bring communities together to enable and support them to do more for themselves

These priorities will help to deliver our vision to create stronger and more resilient communities and make Wiltshire an even better place to live, work and visit.

Every year, 650 people will die in Wiltshire from an addiction that can be treated. We know that the impact of smoking tobacco reaches beyond individuals, to their families and communities and the Council is committed to reduce the impact of smoking in Wiltshire.

We support the Responses that Action on Smoking and Health (ASH) has made to this Consultation as below:

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."

A report by Professor David Hammond for the Irish Department of Health backs up Sir Cyril Chantler's view. He concluded that,

"Overall, the existing evidence on plain (standardised) packaging supports four primary conclusions:

- 1) Plain packaging will reduce smoking initiation among youth and young adults.
- 2) Plain packaging will promote smoking cessation among established smokers.
- 3) Plain packaging will support former smokers to remain abstinent.
- 4) Plain packaging will help to denormalize tobacco use."

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.

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.

The Government should resist efforts by the tobacco industry and its surrogates to delay decision-making and laying of the regulations before Parliament. As outlined below, there is now strong evidence that the industry's arguments are either weak or without foundation while their data on illicit have been shown to be highly misleading.

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?

We support the response that Action on Smoking In Health have made as below

Standardised packaging needs to be part of a comprehensive strategy

Tobacco control policies must be pursued in parallel and not seriatim if they are to have their best possible effect in reducing prevalence rates. The optimum date for implementation of standard packaging would be May 2016 at the same time as implementation of the EU Tobacco Products Directive (TPD), which includes updated larger health warnings and graphic warnings on the front of the packs.

Standardised packaging was introduced in Australia as part of a comprehensive strategy. This included larger health warnings (75% rather than the 65% in the TPD), mass media campaigns and reducing affordability by increasing taxation. Australia is committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years, starting in December 2013, a far higher increase than the current escalator in place in the UK which is only 2% above inflation. The Australian strategy has been very successful with a significant increase in calls to the quitline, and a significant decline in tobacco consumption immediately following implementation of plain packaging.

To introduce a mass media campaign equivalent to Australia at the time of the introduction of plain packaging, would, on a per capita basis, cost the equivalent of £33.7 million a year in the UK, a far higher amount than is currently being spent here. In relation to mass media campaigns it is important to note that new evidence

from the UK shows that mass media campaigns are highly effective in reducing smoking prevalence and consumption, that both the negative and positive emotive campaigns used in the UK are effective in this respect and the suspension of campaigns significantly reduced quitting activity (calls to quit lines and use of smoking cessation literature and websites). Yet currently in the UK mass media campaigns are not consistently being screened at a level that would maximise their effectiveness.

The DH Tobacco Control Plan for England runs until the end of 2015 and needs to be renewed and refreshed for the period 2016-2020, the period when standardised packaging will be implemented. It is important in updating its tobacco strategy that the Government gives careful thought to how to maximise the public health benefits of the implementation of standardised packaging, by, for example:

- Increasing funding for sustained mass media campaigns in advance of standardised packaging coming into effect;
- making stop smoking services mandatory and ensuring delivery to a high quality standard;
- supporting enforcement through adequate funding of trading standards departments, regional partnerships against illicit trade, and work on illicit trade by HMRC and the UK Border Force;
- introducing tax rises on tobacco products over and above the existing escalator, particularly to counteract any possible negative effects from brand-shifting or price cutting;
- restructuring taxation to minimise the variance in tax between handrolled tobacco and manufactured cigarettes and the taxation between different price categories of manufactured cigarettes; and
- introducing further levies on the industry to fund stop smoking services and other tobacco control initiatives, and to meet health costs caused by tobacco consumption.

Impact of standardised packaging on the illicit market

A principal tobacco industry argument against standardised packaging has been that the illicit trade in tobacco in the UK is on the increase and that plain packaging will inevitably exacerbate this trend. There is no good reason to accept either of these arguments. With respect to the first argument tobacco industry data purporting to show an increase in illicit is misleading, with respect to the second there is no plausible mechanism of action by which plain standardised packaging would lead to an increase in the size of the illicit market, and indeed evidence published since the 2012 consultation suggests that it is false.

Misleading nature of tobacco industry data on illicit

Research and leaked industry documents have now established that claims by industry that rates of illicit tobacco use are increasing markedly in the UK and will increase further following standardised packaging should be seen simply as part of

the tobacco industry's public relations campaign to prevent the policy. Analysis shows that the number of press articles citing industry data on illicit increased suddenly once standardised packaging emerged on the policy agenda, that industry data significantly exaggerate the scale of illicit and claim trends are upwards when independent data show the opposite.¹³ Further, evidence cited in industry submissions to support its claims that standard packaging will increase illicit has been shown to be very poor quality and effectively manufactured by the industry to support its case – all such 'evidence' was produced by industry or those funded by it and none was peer-reviewed.³

Part of this strategy has been to fund a growing number of third parties – organisations and individuals (notably ex-policemen) - who provide a more credible voice in debates, produce reports which are presented as independent while reinforcing industry messages. Yet the links to industry have rarely been disclosed.³

More broadly, growing evidence from a number of jurisdictions now suggests that tobacco company commissioned data and evidence on illicit, including that published by leading accountancy firms, will tend to over-estimate the scale of the illicit trade, exaggerate the upward trend (either by exaggerating current levels or by revising historical figures downwards) and mis-represent the nature of the trade in order to down-play the extent of tobacco industry involvement.

Although empty pack surveys can provide accurate figures on the extent of non-domestic tobacco use, the limited methodological detail available on the tobacco industry's empty pack surveys which usually form the basis of their data suggest that the industry may be deliberately designing these surveys to exaggerate the extent of the illicit trade.^{15 18}

In a public climb-down following criticism of its previous data which suggested that in 2012 rates of illicit in the UK had suddenly increased countering previous trends, KPMG's latest report, this time commissioned by all four transnational tobacco companies, has revised its illicit estimate for the UK illicit trade downwards stating that "alternative data sources suggest this [the 2012 estimate] may have overstated non-domestic incidence for the full year" They claim that additional data which were not previously available to them "suggest there has been a more gradual decline from 2011 to 2013" (pages 300-302). It is a moot point whether these figures would have been revised without academic criticism of KPMG's data for industry both in the UK¹⁵ and Australia and this revision undermines the industry's public claims about illicit.

Growing evidence also suggests that the tobacco manufacturers continue to facilitate the illicit trade in their products and at best are failing to control their supply chains. ¹⁵ In October last year the Chair of the Public Accounts Committee said that: "The supply of some brands of hand-rolling tobacco to some countries in 2011 exceeded legitimate demand by 240%. HMRC must be more assertive with these manufacturers. So far it has not fined a single one of them."

Even the industry's own data indicates that around a fifth of illicit cigarettes across the EU are PMI's own brands, a level which outstrips counterfeit PMI product approximately five times¹⁵ while Imperial Tobacco's brand Classic which, until recently, it was producing in Ukraine, was so consistently found in the illicit market it was labelled as an illicit white product.

Lack of plausible mechanism of action by which standardised packaging would cause an increase in illicit

Consistent with the highly misleading nature of industry data on illicit outlined above, 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, and additional markings will be required under the EU Tobacco Products Directive. These include unique identifiers, 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."

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).

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."

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". The Illicit Trade Protocol also specifies that any track and trace system should be fully independent of the tobacco industry.

It should be noted that Philip Morris International has developed a coding system called "Codentify", which the company has licensed for free to JTI, Imperial Tobacco and BAT. The four tobacco multinationals have set up a "Digital Coding and Tracking Association", based in Zurich to promote Codentify globally as the track and trace system of choice despite serious limitations in the Codentify system and the industry's involvement contravening the Illicit Trade Protocol. According to PMI, the system is based on unique twelve digit codes and 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".

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 it claims that pack design is vital in combatting illicit trade. While we do not support the use of a coding system which is proprietary to the tobacco industry as is the case with Codentify it is certainly the case that this or any other coding systems independent of the industry could be used on standardised packs as readily as on branded ones.

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."

Evidence from Australia on Illicit Tobacco

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.

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.

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."

Research in Victoria, Australia found there was no increase in the availability of illicit tobacco in small retail outlets after the implementation of standardised packaging, and despite predictions by the tobacco industry of a marked increase in the sale of counterfeit cigarettes, post-legislation in 2013 only 2.6% of cigarette smokers reported having purchased one or more packets in non-compliant packaging in the past three months.

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 survey was conducted on the mistaken assumption that adult smoking prevalence ought to have markedly declined in the immediate aftermath of the policy's implementation, which was not the assumption underpinning the policy intervention.
- 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 is nowhere near big enough to pick up the sort of declines in smoking prevalence expected from one year to the next. To measure a statistically significant decline of, for example half a percentage point, which is the sort of magnitude one might expect to see over a twelve month period, would have required a sample size of around 90,000.

The Australian Institute of Health and Welfare (AIHW) National Drug Strategy Household Survey, released online on 17th July, showed that fewer Australians are smoking daily. The daily smoking rate dropped significantly between 2010 and 2013, from 15.1% to 12.8% among people 14 or older. As shown in the graph below this fall was greater than the underlying trend and is evidence that Australia's comprehensive policy approach to tobacco control is working. Importantly, this decline occurred before the large tax increases were introduced and Australian experts therefore suggest it can be attributed to standardised packaging, suggesting it has been effective at reducing smoking prevalence.

Smokers have also reduced the average number of cigarettes they smoke per week-down from 111 cigarettes in 2010 to 96 cigarettes in 2013. And the results show younger people are delaying starting. The proportion of 12-17 year olds who had never smoked remained high in 2013 at 95%, and the proportion of 18-24 year olds who had never smoked increased significantly between 2010 and 2013 (from 72% to 77%). The age at which 14 to 24-year-olds smoked their first full cigarette was almost 16, rising from 14.2 to 15.9 years of age between 1995 and 2013.

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. Excise tax must be paid before tobacco products are released for home consumption, but may be paid while stock is still in the warehouse. An analysis by Cancer Council Victoria found that it was evident from the 'bump' in industry monthly sales figures that some pre-stocking did occur prior to the large tax increase in December 2013 which would also have tended to increase sales figures in 2013, with retailers likely to have purchased sufficient stock to cover not just December but some weeks after 1st January 2014 as well." In addition 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.

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.

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

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 New South Wales Quitline 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 and a significant increase in calls was sustained over time.

Guillaumier A et al, University of Newcastle, Australia, reported in June 2014 that 'following the implementation of plain packaging, perceptions of the quality and

taste of cigarettes have changed'. Thematic analysis of six focus groups with 51 participants revealed some participants reporting reductions in product quality. For example, 'I've noticed the reduction in the grading of the tobacco.'

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.

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. As the Impact Assessment concludes there is no evidence at all that this is the case from the experience in Australia; indeed transaction times have tended to decline post implementation not increase. Most recently, research published at the end of May, which may not been taken into account in the IA, reported that the claim that plain packaging would negatively impact on small tobacco retailers by making it harder to locate and retrieve cigarette packs, thereby increasing transaction times, has not eventuated in Australia.

Furthermore, Trans-national Tobacco Companies are fee-paying members of the proponents of these messages: Scottish Grocers Federation, Association of Convenience Stores, National Federation of Retail Newsagents, and the Federation of Wholesale Distributors. The Tobacco Retailers Alliance, which has been extremely vocal in its opposition to standardised packaging is a front group of the Tobacco Manufacturers' Association, the transnational tobacco companies' trade association in the UK which is entirely funded by tobacco companies. A series of PMI leaked documents reveal the integral role that such organisations play in opposition to tobacco control regulation.

Other industry arguments in the UK

Recent research from the University of Bath examined the relevance and quality of the evidence tobacco companies have cited to support their argument that standardised packaging 'won't work'. This work is consistent with the growing evidence from Australia outlined above which refutes, one by one, the industry's claims that standardised packaging won't work.

Research by Hatchard et al. found that tobacco companies cited only 17 research reports directly addressing standardised packaging, of which 14 (82%) were commissioned by or linked to global tobacco companies who have a commercial interest in the policy outcome. Analysis of the independence and publication status of this research showed that its quality is significantly lower than the quality of evidence supporting standardised packaging. The remainder of

tobacco companies' evidence (60 research reports) did not address standardised packaging of tobacco products at all.⁵

Ulucanlar et al. examined two submissions and three research reports in great detail to reveal three techniques used by tobacco companies to misrepresent independent studies on standardised packaging:

- Fundamental misrepresentation of studies supportive of standardised packaging, mis-citing them and distorting their main messages;
- Use of a mimicked version of scientific critique to discredit the supportive literature, which featured insistence on methodological perfectionism and uniformity, lack of rigour and use of a litigation model of review;
- Evidential landscaping whereby industry evidence relevant to standardised packaging that would have undermined their case was withheld, while peer-reviewed and independence evidence on other issues (e.g. psycho-social drivers of smoking) was cited, giving the impression of evidential quality.⁴

Overall, the University of Bath found that the low quality of tobacco companies' evidence against standardised packaging and its highly misleading critique of the evidence in favour of standardised packaging suggest that their proposition that there is inadequate evidence that standardised packaging will lead to public health benefits is largely without foundation.

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?

Wiltshire Council welcomes the draft regulations, which we consider, with only minor changes, to be fit for purpose. We support the recommendations as suggested by ASH as set out below. Exemption for tobacco products other than cigarettes and hand-rolling tobacco

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.

Regulation 4(7) with respect to pack size

This regulation while prohibiting packs containing less than 20 cigarettes allows manufacturers to compete on number by including more than 20 cigarettes. In Australia this has been a tactic used by the industry and extra cigarettes have been introduced into some brands for the same price as a promotional tool. Such extra free cigarettes are known colloquially as "loosies" and Imperial Tobacco has gone

further and registered a brand name called "Peter Stuyvesant + Loosie" and made 21 cigarettes to a pack.

One way of preventing this would be by mandating that packs 'must contain 20 cigarettes' to prohibit additional cigarettes being included as a promotional tool.

Regulation 10 with respect to misleading brand names, variants and descriptors

Brand names, brand variant names and brand descriptors will become a more important element of tobacco product promotion once standardised packaging is introduced.

Recital (27) of the TPD specifically covers this issue:

"Tobacco products or their packaging could mislead consumers, in particular young people, where they suggest that these products are less harmful. This is, for example, the case if certain words or features are used, such as the words 'low-tar', 'light', 'ultra-light', 'mild', 'natural', 'organic', 'without additives', 'without flavours' or 'slim', or certain names, pictures, and figurative or other signs. Other misleading elements might include, but are not limited to, inserts or other additional material such as adhesive labels, stickers, onserts, scratch-offs and sleeves or relate to the shape of the tobacco product itself. Certain packaging and tobacco products could also mislead consumers by suggesting benefits in terms of weight loss, sex appeal, social status, social life or qualities such as femininity, masculinity or elegance. Likewise, the size and appearance of individual cigarettes could mislead consumers by creating the impression that they are less harmful. Neither the unit packets of tobacco products nor their outside packaging should include printed vouchers, discount offers, reference to free distribution, two-for-one or other similar offers that could suggest economic advantages to consumers thereby inciting them to buy those tobacco products."

There is good evidence for example that female-oriented brand descriptors such as "slims" target beliefs about smoking behaviour among young women, and these beliefs are an important predictor of smoking behaviour in this group.

However, the list in Recital (27) is not comprehensive and there is evidence that many other words are also misleading. For example:

- Smooth - population based studies have found that adult smokers perceive 'smooth' as a synonym for 'light'. A UK study found that over half of young people, including non-smokers as young as 12, believed that a cigarette brand labelled as 'smooth' would be less harmful.⁶⁷

- Colour names - such as gold or silver - materials provided by Philip Morris to retailers indicated that the names 'gold' and 'silver' have been used to replace 'light' and 'ultralight' and 'blue' has been used to replace 'mild'. Prohibiting the use of such colours is not sufficient, if the colour name is allowed to stay then the association will remain. Smokers will continue to believe, erroneously, that products labelled 'gold' and 'silver' are less harmful, even if all products are the same standardised colour.

- Numbers - as many as 80% of Canadian smokers shown packages with different numbers in the name reported that the brand with the lower number

delivered less far and could lower the risk. And a study in the US found that almost 90% of participants reported that a brand with the number '6' in the name would have lower risk than an otherwise identical pack but with the number '10' instead.

A requirement to prohibit misleading words or features is set out in Article 13 of the TPD, and is contained within Regulation 10 of the draft regulations on standardised packaging. Regulation 10 does not, however, specify which brand names and variants are prohibited.

It is essential that the 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), are transposed into UK legislation. Furthermore the responsibility should rest with the industry to demonstrate that any brand names, variants or descriptors are not misleading before they can be put on sale in the UK.

Review process

In Australia in the build up to the legislation tobacco companies engaged in strategies of reassuring customers, re-energising the names of brands, and expanding product ranges to provide extra value for money and retain consumer interest, e.g. menthol capsule cigarettes, packaging re-design, adding bonus cigarettes to packets, changing names so that they are longer and take up more room on plain packets. The Government should monitor such activity and where appropriate review and revise the regulations.

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?

We support the response made by ASH as below

Illicit trade and cross border shopping

For the reasons stated in answer to Q.2 above we do not think the evidence justifies 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".

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. As shown in table 8 of the IA this did not lead to an increase in cross border shopping. Indeed both cross border shopping and illicit trade declined

over the period between introduction and full implementation from October 2008 to September 2010. As the IA acknowledges this is because the greatest influence on cross border shopping is down to external factors such as the £/€ exchange rate and the number of passenger journeys and therefore, just as with graphic warnings, standardised packaging is unlikely to have a significant impact.

Impact on Retailers

Tobacco sales are undergoing long-term decline. At its peak in the 1950s adult male smoking prevalence was 80%. Female smoking prevalence continued to rise and reached a peak of 45% in the mid-1960s.⁶⁹ Since then smoking prevalence amongst both men and women has declined significantly and is now under 20%. Government policy is designed to sustain and increase this trend.

More recent data from HMRC tobacco clearances (see above) shows the impact this has had on sales volume with the number of million cigarette sticks cleared for UK sales falling from 94.080 million in 1992/3 to 54.737 million in 2002/3 to 37.932 million in 2012/13, a decline of 30% in the last ten years. (see table above from the HMRC Tobacco Factsheet November 2013). Small retailers have had to adjust to this decline and will continue to have to do so. It is important to note that any impact of standardised packaging will be marginal compared to the overall secular trend.

HMRC clearance data also shows the importance of the government's anti-smuggling strategy in supporting retailers. The impact is clearest with respect to handrolled tobacco. At its peak the illicit market share of handrolled tobacco was estimated to be over 60%; most recent estimates by HMRC suggest that it has fallen to 36%. This is matched by a growth in the amount of taxed HRT released for consumption which rose 2.8 million kilograms in 2002/3 to 6.2 million kilograms in 2012/13.

The impact of underlying trends in sales for independent retailers need to be taken into account too, particularly given the rise of small outlets set up by large retailers in the UK. An economic analysis of the impact of point of sale display legislation in Ireland using AC Nielsen data concluded that no statistically significant change in cigarette pack sales was observed following implementation of the legislation over and above seasonal and underlying trends, and that small and independent retailers are facing a broader and longer-term decline in sales generally which is most likely due to other causes. We would expect to see the same pattern occurring in the UK both as a result of the implementation of point of sale display legislation and standardised packaging, and recommend to DH that such data should be gathered for the UK as part of the evaluation of the impact of the legislation. In contrast to tobacco industry predictions in Australia there is no evidence to suggest that smokers have defected from smaller to larger stores to make their tobacco purchases in the wake of standardised packaging legislation.

The Impact Assessment page 28 p.112 states 'anecdotally the [retail] profit margins on the sale of tobacco may be relatively low.' This is corroborated by information provided to ASH by a retailer in Gateshead, John McClurey, a member of the ASH advisory council. According to John McClurey profit margins on cigarettes average around 4.5% compared to profits on other products on sale in his shop which average around 22%. This means that while tobacco currently amounts to around 50% of his sales turnover it is a much smaller proportion of his profits. In fact he estimates that currently tobacco sales only amount to about 20% of his profits with 80% of his profits coming from sale of non-tobacco products. To illustrate the point John McClurey has told us that if a customer buys a packet of chewing gum he makes around 17 pence in profit compared to 14 pence on a price-marked packet of 10 John Player Special. Plus a price-marked pack of 10 JPS cigarettes costs £3.50, while a packet of chewing gum only costs 50 pence, so the customer buying chewing gum as opposed to cigarettes has £3 left over available to spend on other items.

For a shop where tobacco only accounts for 20% of turnover, which is the average estimated in the ACS report referenced in the IA, the proportion of profits would be even smaller at around 5% for tobacco compared to 95% for non-tobacco products.

Comprehensive data on prices and profit margins is available from wholesalers such as Bookers who can be contacted via their website <https://www.booker.co.uk/help/contactus.aspx>. Data on the proportion of tobacco sales accounted for by different types of outlet is available from AC Nielsen which can also provide data on the trends in sales of tobacco between different types of retailers over time. We recommend that the DH get in touch with Bookers and AC Nielsen for more information.

Consumer Surplus

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.

In point 160 of the IA it is accepted that the theory of consumer surplus is more difficult to apply both 'in principle and practice' to an addictive product like tobacco. The rationale for including "lost consumer surplus" as a potential cost of standardised packaging does not stand up to scrutiny. 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 any case 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 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 with only 11% opposed. 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.

Section 94 of the Children and Families Act 2014 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.

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. Furthermore, the claims that the tobacco industry and those it funds have made to oppose the legislation have now comprehensively been shown to be highly misleading and its data highly inaccurate.

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, whose appalling conduct in the debate over standardised packs has now been clearly documented, 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

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E L 313



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)

[Redacted] _____

Address of respondent (required):

Contact email address (required):

[Redacted] _____

Now go to question 1

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

Name of organisation (required):

Name of person providing submission (required):

Job Title (required):

Contact address of organisation (required):

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:

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 report failed to draw on the wide literature around brand marketing relying instead on narrowly defined studies conducted by researchers without marketing experience or education. As a professional and published marketer I find it disappointing that proposals entirely concerned with marketing effects are developed without reference to the literature on brands, advertising and marketing

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?

tobaccopackaging@dh.gsi.gov.uk

Plain Packaging for Cigarettes – a marketing perspective

My principle concern with this policy is that it shows no understanding of the role that brands play in decision-making around smoking.

Firstly, brands do not act to recruit customers to a given product – we choose to buy the product and then we select the brand. Nobody starts buying bread because they saw a Warburton's ad – they buy bread because, well, they want bread! What the brand provides is a heuristic – a short cut, if you will – allowing the consumer to make a choice quickly and confidently. What we do know is that it is the search for a benefit that makes consumers choose to buy a product rather than the shininess of the brand presentation. Or is you prefer: we buy bread because we want to eat it not because the advert featured a brass band playing chunks from the New World Symphony!

This contention is well supported in the literature both looking at advertising in aggregate and at specific markets in tobacco and alcohol. For example, Duffy (Journal of Policy Modelling, 1995):

"In an empirical application to data for the alcoholic drinks and tobacco markets in the United Kingdom, it is concluded that aggregate advertising appears to have had little or no effect upon product demand in this sector over the past three decades. The scope for restraining consumption of these products through advertising bans may be negligible."

Indeed, the evidence suggests that significant interventions such as advertising bans have had little effect on the consumption of tobacco or the rates of take up of

smoking by young people. Between 2003 and 2005 all forms of tobacco advertising in the UK were banned. If the arguments for a ban were correct – less tobacco use and fewer tobacco users – we would have expected the rate of tobacco consumption to accelerate. However, the ban (like the smoking ban in public spaces) had no discernible impact on the long-standing decline in use.

Secondly, packaging serves two purposes – identification and appeals to impulse. In the first instance we put our product into easily identified packaging as part of that heuristic, as a quick means of identifying our particular version of a given product. And, where purchase is often impulse driven, we use packaging to make the product stand out from other similar products. So yes packaging can assist purchase – but only where it isn't a considered purchase. Tobacco isn't an impulse purchase – we have to make a choice to buy and ask someone for the product. We can't just grab 20 Regal from the countline display! Thus the only impact of plain packaging will be to increase confusion and error (they all look the same) and slow down the purchase process by making selection by the shop assistant more difficult.

And thirdly, smokers are going to buy tobacco. Put it in plain packets or wrap it in shiny gold tissue paper, it doesn't make a difference – the smoker will go to the counter and ask for the product she wants. And the smoker will still ask for a brand – Benson & Hedges, Marlboro' or whatever – as that is the heuristic, the short cut allowing the person serving to meet that customers requirements. What will change – which suits big tobacco fine – is that levels of switching between brands will reduce.

Much of the research base used to support the argument for plain packaging is founded on small sample and focus group assessments of people's (and especially young people's) reactions to packaging. Although this has some limited value as an assessment it does not recognise the limited relationship between advertising and aggregate consumption. The plain packaging argument is essentially a false prospectus targeting an insignificant factor in the adoption of smoking by young people and ignoring research around reasons for quitting.

Further evidence regarding the limited role of advertising in sustaining smoking in the population (and it's ineffectiveness in changing behaviour) comes from research into the impact of graphic warnings – a central element of the 'plain packaging' strategy – on cigarette packets:

"... Half the respondents in both surveys said they had "often" or "very often" noticed the warnings, and around one in five had very often read or looked closely at them.

But the percentage of regular smokers who noticed them fell from 77 per cent in 2008 to 66 per cent in 2011."

This research – from the Centre for Tobacco Control Research at the University of Stirling – reminds us again that advertising is least effective when seeking to change behaviour. In other word, brands are not about customer recruitment but about

maintaining customer loyalty. Starting smoking is associated with risk-taking, peer pressure and social rewards rather than with advertising or the wider glamorisation of cigarettes.

I am not qualified to comment on other concerns around plain packaging but am prepared to hear the views of those directly involved.

1. Impact on employment: here from the Consumer Packaging Manufacturers Alliance:

"Plain packaging would have a catastrophic effect on the packaging industry and its supply chain that currently employs over 60,000 people across the UK. .

"It would remove the need for a series of highly skilled printing and packaging techniques that currently support jobs and flourishing apprenticeship schemes. Plain packaging could result in the loss of jobs within the supply chain and so it is essential that the Treasury and BIS undertake their own thorough assessments as part of this review.

"Inward investment into the UK packaging industry has been substantial in recent years, but further investments are on hold pending the Government's decision on plain packaging. If the measure was adopted it would inevitably lead to jobs and investment being redirected to other parts of Europe and the world. It is extraordinary that the Government has so far failed to take these concerns into account."

2. Increase in illicit and smuggled cigarettes – here from Australian customs officials

"...in 2012-13, tobacco smuggling detections jumped from 55 to 76, with the number of seized cigarettes jumping from 82 million to 200 million."

It is worth noting that many experts – police, customs officials and others interested in organised crime – see cigarette as a growing element within these criminal enterprises.

While the plain packaging changes do not affect me – I am a non-smoker and have no clients involved with the tobacco business of ancillary businesses – I feel strongly that any policy initiatives would be better directed to areas where intervention is of proven effect and where there are not significant downside risks in terms of job losses and increased criminal activity.

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?

No

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?

See my submission in 2 above. There is ample quantitative analysis - at the individual product level as well as at the aggregate level - that shows limited impact from advertising on overall demand. the standardised packaging proposals will definitely mean people lose jobs in Bradford where I live, will probably mean more smuggling with associated crime and violence, but will probably have no discernable impact on consumption.

Thank you for participating in this consultation.

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1

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Department
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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):

Job Title (required):



Contact address of organisation (required):

Barking Town Hall, 1 Town Square, Barking, IG11 7LU

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?

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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 following response includes references to the action on smoking and health (ASH, 2014a) consultation response on Standardised packaging of tobacco products.

Sir Cyril Chantler's Independent review concludes that "there is sufficient evidence derived from independent sources that the introduction of standardised packaging, as part of a comprehensive policy of tobacco control measures, would be very likely, over time, to contribute to a modest but important reduction in smoking prevalence, especially in children and young adults" (Chantler, 2014; DH, 2014a, p.5-6).

Jane Ellison MP advised in her oral statement to the House of Commons on 3 April 2014 that "smoking is a disease of adolescence" and that "around 600 children start smoking in the UK every day" (DH, 2014b, p.2). Jane Ellison MP stated that introducing the regulations "would be very likely to have a positive impact on public health" and referred to Sir Cyril's point that "if this rate of smoking by children was reduced even by 2%, for example, it would mean that 4,000 fewer children taking up smoking each year." (DH, 2014b, p.2).

The Chantler review advises that a modest contribution to reducing smoking prevalence "should not be underestimated" given the healthcare cost to society (Chantler, 2014, p.40).

ASH have also referred to a report by Professor David Hammond for the Irish Department of Health that concluded "the existing evidence on plain packaging supports four primary conclusions:

- 1) Plain packaging will reduce smoking initiation among youth and young adults.
- 2) Plain packaging will promote smoking cessation among established smokers.
- 3) Plain packaging will support former smokers to remain abstinent.
- 4) Plain packaging will help to denormalize tobacco use." (Hammond, 2014, p.43).

The London Borough of Barking and Dagenham considers that the case for introducing standardised packaging of tobacco products is merited from the independent evidence cited in the Chantler report, and would welcome the regulations being adopted.

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 London Borough of Barking and Dagenham supports the introduction of standardised packaging of tobacco products as part of a wider tobacco control plan, and would welcome the regulations being adopted by May 2016 to coincide with the implementation of the EU Tobacco Products Directive (ASH, 2014a).

The Department of Health tobacco control plan for England would benefit from being reviewed to consider the practical implementation of standardised packaging of tobacco products.

Although, the tobacco industry has argued that illicit tobacco sales will be significantly increased through the introduction of standardised packaging (ASH, 2014a). A research paper questioned the validity of the tobacco industry data as misleading, advising that government data had been misquoted and that "data on levels of illicit should be treated with extreme caution." (Rowell et al., 2014, p.1).

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?

Barking and Dagenham trading standards supports the implementation of standardised packaging of tobacco products, and is well equipped to tackle any counterfeit tobacco intelligence within the borough. The Association of Chief Trading Standards Officers (ACTSO) also supports adopting these new regulations as a "logical next step", believing "that tobacco manufacturers already have sophisticated mechanisms for ensuring their products are not counterfeited" (Venn, 2014, p.1).

In preparation of the implementation of the standardised packaging of tobacco products, trading standards will carry out a series of routine inspections or visits within the borough to provide guidance on the implementation of the regulations, and enforcement measures. This engagement is to ensure business compliance.

Trading standards concerns relate to illicit tobacco products that are easily available within the Borough. To address these concerns, the London Borough of Barking and Dagenham trading Standards team will continue to implement a programme on tobacco control including age restricted sales, checking for counterfeit and illegal tobacco products, monitoring the sale of electronic cigarettes to minors and providing business advice to businesses selling tobacco products and related accessories.

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 London Borough of Barking and Dagenham supports the implementation of standardised packaging of tobacco products, as a necessary step within a tobacco control plan to reduce smoking prevalence and de-normalise smoking.

Denormalising smoking through taxation and smokefree legislation has proved effective within a national tobacco control plan, and "64% of adults in Great Britain were in favour of standardised packaging with only 11% opposed" (ASH, 2014a, p.18; ASH, 2014b). Also Professor David Hammond's report referred to evidence in Australia that "suggests that plain packaging has increased calls to state Quitlines, and may have increased rates of smoking cessation." (Hammond, 2014, p.43).

The Public Health England (PHE) press release 'standardised packaging can save lives and boost local economies' identifies a potential boost to local economies that money saved from quitting smoking can be spent elsewhere locally. For London alone PHE estimate a total saving of "£61.3 million" in a year, through the introduction of standardised packaging (PHE, 2014).

The ASH reckoner of the local cost of smoking estimates that the London Borough of Barking and Dagenham has a smoking population of 30,598, and we are committed to reducing smoking prevalence as part of a tobacco control plan (ASH, 2013).

Thank you for participating in this consultation.

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References:

- Action on smoking and health (ASH). (2014a) *Consultation response on the introduction of regulations for standardised packaging of tobacco products*, ASH, London.
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HUNTERS & FRANKAU

ESTABLISHED 1790

7th August 2014

Department of Health Standardised Tobacco Packaging Consultation
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TobaccoPackaging@dh.gsi.gov.uk

Dear Sirs

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

Hunters & Frankau Limited (H&F) is a medium-sized enterprise under the current EU definition with a turnover of £24 million in 2013 and employing 45 people. We are the main importer and distributor in the UK of premium, hand-made cigars from Cuba and other developing countries in the Caribbean and Central America. We also import and distribute machine-made cigars principally from Holland and Germany. We do not distribute any tobacco products other than cigars. At present our portfolio contains a total of 35 different brands of cigars, which are sold in 653 packaging options including 390 packs containing multiple quantities of cigars and 263 single cigars that can be offered for sale individually.

We have studied the document published on 26th June 2014 by the Department of Health entitled "Consultation on the Introduction of regulations for standardised packaging of tobacco products", which includes draft regulations for the introduction of Standardised Packaging (SP) in the UK. We welcome the Department's decision to recognize that significant differences exist between different categories of tobacco products and to exclude cigars, along with other specialist tobacco products, from the draft regulations although we note that all products will be affected by regulation 10. We would comment on the four questions posed in the Consultation Document as follows.

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

- 1.1 On 10th January 2014 H&F made a submission to the Chantler Review which included an independent review it had commissioned of all published evidence available on how SP might impact on the consumption of cigars, and thereby on public health.
- 1.2 H&F made a specific request for a meeting with the Sir Cyril Chantler and his team to discuss their review, but it was refused.
- 1.3 H&F notes that in paragraph 1.17 of his report Sir Cyril Chantler comments: "The Review has, however, focused on cigarettes and roll-your-own tobacco in view of their overall prevalence and particularly their use by children and young people."
- 1.4 H&F would point out that not one item of research re-evaluated by the Chantler Review contained a single study of the likely efficacy of standardised packaging for cigars. In fact throughout the material analysed by the Stirling Systematic Review, the word "cigar" appears only twice (on pages 107 and 108 in a section on search strategy) and in all the Update Material of September 2013 it appears just once (on page 41 in a section on the inclusion criteria for the Wakefield et al study).

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IMPORTERS AND DISTRIBUTORS OF THE FINEST CIGARS

HARRODS S.A. EXCLUSIVE DISTRIBUTORS. HUNTERS & FRANKAU LIMITED REGISTERED IN ENGLAND AT THE ABOVE ADDRESS No. 22183

1.5 In conclusion H&F would highlight that, in the absence of any further research that might be commissioned, no evidence whatsoever exists on the efficacy of SP to achieve the Department's goals as far as cigars are concerned.

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

As arguments may be made to include cigars in the final regulations for SP, H&F wishes to re-visit and update the parameters studied in its submission to the 2012 consultation under a number of specific headings.

2.1 The UK cigar market is small and declining. It is served by small and medium sized businesses.

- a) In 2012, the most recent year for which industry figures are available, cigars accounted for just 0.8% of the unit sales of tobacco products in the UK. *Source: ITPAC Pool Figures.*
- b) UK sales of cigars have declined continuously over the last ten years (-46.5%) at nearly twice the rate of cigarettes (-25.7%). This trend is expected to be maintained, and is likely to accelerate when the Display Ban is implemented in small shops in April 2015. *Source: ITPAC Pool Figures.*
- c) In the six years (2007 to 2012) since Smoke-free regulations were introduced, UK cigar sales have fallen by one third. *Source: ITPAC Pool Figures.*
- d) Most of the UK companies involved in the distribution and retail of cigars are small or medium-sized, often family-owned, specialist businesses that are vulnerable to regulation.
- e) Specialist Tobacconists as defined by Section 6 of TAPA 2002 exemplify the small businesses that depend on selling cigars. H&F estimates there are around 78 such shops in the UK: 63 in England, 10 in Scotland, 4 in Wales and 1 in N. Ireland. *Source: H&F customer records.*
- f) Cigars sales figures provide no evidence that cigarette smokers switch to cigars as a safer alternative. The recent dramatic growth of e-cigarette sales from an estimated £44 million in 2012 to an estimated £193 million in 2013 (+339%) would indicate that any trend away from cigarettes on health grounds is being directed to this new product sector. *Source: Mintel.*

2.2 Cigars have different user groups and consumption patterns from mainstream tobacco products.

- a) Cigars are smoked by mature, adult males. They do not appeal to children and young people and currently are not used for smoking initiation.
- b) Only 2% of the UK's adult male population and virtually no females smoke cigars, whereas 21% of all UK adults smoke cigarettes. *Source: ONS Lifestyle Survey 2012.*
- c) Cigars are smoked infrequently. Average consumption is fewer than one per week compared to 13 per day, or 91 per week, for cigarettes. *Source: Eurobarometer Smoking Habits 2012, Omnimas telephone surveys.*
- d) The average retail price of a single Havana cigar in 2013 was £14. The price of such cigars is a major deterrent to consumption by anybody not earning a substantial adult wage: *Source: H&F sales data.*
- e) There are no young people who are being attracted into smoking cigars, let alone at high levels of consumption, who need to be protected by SP.

2.3 SP regulations on cigars would damage small and medium sized British businesses without delivering any significant reduction in smoking prevalence.

- a) A typical box of 25 Havana cigars in the UK costs £286. In Belgium, France and Germany the same box costs just over £100 less and it is nearly £150 cheaper in Spain. Similar cross-border price disparities exist for smaller, machine-made cigars.
- b) The unilateral introduction of SP for cigars in the UK would create a powerful additional incentive to UK consumers, over and above the existing price advantage, to buy their cigars in nearby countries where the packaging remains largely unchanged.
- c) This will inflict devastating damage on the British companies that distribute imported cigars and the retailers that sell them.
- d) No significant reduction in smoking prevalence would take place because consumers would secure supplies elsewhere, but there would be a consequent loss of duty revenue to HMT.

2.4 The role of cigar packaging.

- a) Despite the small volume share of the total tobacco market held by cigars, the category accounts for nearly half of all the Stock Keeping Units (SKUs) of tobacco products offered in the UK. Consequently cigars would face a disproportionately larger burden if SP were required. *Source: ITPAC Survey Nov 2012.*
- b) In contrast to targeted cigarette packaging, the principal role of cigar packaging is:
 - i) to enable clear differentiation between the very large number of countries of origin, tobacco types, brands, sizes and pack variants that are found in the market (see opening paragraph on page 1), and
 - ii) to protect against counterfeiting, which has a long history in the cigar market that stretches back over a century.
- c) Most cigar brand packaging has remained largely unchanged for decades. Recent adaptations have mainly resulted from the need to comply with regulatory demands such as health warnings.

2.5 Vintage cigars and collectors

- a) Unlike any other tobacco product hand-made Havana cigars are considered to improve with age like fine wines.
- b) As a consequence H&F as well as the specialist retail trade hold extensive inventories of Havana cigars that range from two to fifteen years old, and sometimes even older.
- c) The total number of Havana cigars of all ages held in inventories in the UK is estimated to be in the region of 3.5 to 4 million units, all of which would have to be repacked if SP for cigars were introduced. *Source: H&F estimates.*
- d) An integral part of the value of old, or vintage, cigars, lies in their packaging because it often provides the evidence required to prove their provenance.
- e) London continues to hold its position as the focal point in the world of vintage Havana cigars. Collectors from many countries are drawn to the UK in search of rare cigars providing valuable sources of revenue to British retailers and the tourist industry.

2.6 Drawing the line for a distinction is clear and simple

- a) Under the provisions of the revised Tobacco Products Directive (2014/40/EU), a distinction is made between cigars, cigarillos and pipe tobacco as opposed to cigarettes and hand-rolling tobacco. As a result specialist tobacco products can be given separate treatment because they "are consumed mainly by older consumers and small groups of the population". *Source: Preamble 26 of 2014/40/EU.*

- b) Cigars, as opposed to cigarillos, are defined as weighing over 3gms each, which provides a further clear categorization in the market.

2.7 Conclusion

H&F considers that policy development for tobacco products should recognise the differences that exist between product categories based on their individual market structures, their distribution networks, their patterns of consumption and the consumer usage they attract. On this basis H&F believes that the decision to exclude cigars from the draft regulations is practical, enforceable and proportionate.

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?

- 3.1 H&F wishes to draw attention to Regulation 10 (3)(d) in Part 4 of the draft regulations, which states that the labelling and any outside packaging of all tobacco products shall not contain any element or feature which "refers to taste, smell, any flavourings or other additives or the absence thereof".
- 3.2 It is noted that Regulation 10 fulfils the obligation to transpose Article 13 of the revised Tobacco Products Directive 2014/40/EU into UK law, however it is also noted that Article 7 section 12 of the same Directive exempts non-cigarette and RYO products from the 'characterising flavours' requirements.
- 3.3 H&F would welcome clarification that the intent behind Regulation 10(3)(d) is to preclude the mention on cigar packs of any flavouring despite the fact that it will remain legal for a cigar to contain such flavouring.

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?

- 4.1 Given that Regulation 10 will require cigar manufacturers that produce products with characterising flavours to redesign their packs to achieve compliance, their costs should be included in the impact assessment.
- 4.2 Should SP be extended to include cigars, the impact that would be felt by the small and medium sized businesses that distribute and sell them, many of which would face extinction, should be added to the impact assessment.

We would like to thank the Departments of Health in England, Scotland, Wales and Northern Ireland for the opportunity to participate in this consultation.

Yours faithfully,



Managing Director

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Telephone: [REDACTED]

Consultation on the Introduction of Regulations for Standardised Packaging of Tobacco Products

Introduction

The Scottish Grocers' Federation (SGF) is the trade association for the Scottish Convenience Store Sector. It has almost 2,000 convenience stores in membership, including groups such as SPAR Scotland, Booker Premier, KeyStore, Nisa, Costcutter, McColl's, the Scottish Co-Operative, Scotmid and Clydebank Co-op, as well as a number of independent retailers. SGF promotes responsible community retailing and works with key stakeholders to encourage a greater understanding of the contribution convenience retailers make to Scotland's communities.

For the purposes of transparency we should state that several tobacco manufacturers are part of SGF's corporate membership programme. However, for the avoidance of doubt, we should state clearly that the policy decisions, campaigning work and lobbying activities of the Federation are solely determined by our National Executive, which is comprised exclusively of our retail members. Corporate members are not represented on the National Executive.

We are happy for this response to be placed in the public domain.

Tobacco continues to be an important product category for our members; driving footfall and contributing to overall turnover. In Scotland our members exert a great deal of effort to ensure that tobacco is sold responsibly – they use the Challenge 25 age verification procedures for tobacco products as well as alcohol products although they are not legally required to do so. Additionally all our members must be registered on the Scottish government Tobacco Retail Register. The register was introduced in 2011 with new penalties such as tobacco banning orders also being introduced for any offences in relation to the Register.

Levels of smoking in Scotland are slightly higher than in the rest of the UK. However levels of youth smoking are at their lowest levels since surveys began. For example, the smoking rate among 16 to 24-year-olds dropped, from 26.5% in 1999 to 22% in 2012, with exposure to second-hand smoke also falling.¹ Despite the fall, numbers of young smokers in deprived areas remained above the national average. Indeed smoking in Scotland is fundamentally an issue of health inequality: in our most affluent communities around 10% of people are smokers, this rises to some 40% in our most disadvantaged communities². Scotland has three key smoking-related issues: the proxy purchase of tobacco products, the illicit trade and health inequality. In our view the introduction of standardised packaging will simply do nothing to address these issues and, in respect of the illicit trade, has the potential to exacerbate an already serious problem.

¹ ASH Scotland

² Creating A Tobacco Free Generation: Scottish Government Tobacco Control Strategy 2013

Let us be clear: standardised packaging is not a tobacco control measure. Anyone over the age of eighteen years will still quite freely be able to purchase tobacco products. Standardised packaging simply adds to the cost of doing business and to the burden of compliance for retailers. It also increases the risk of driving customers towards the illicit trade.

The UK government has stated that it aims to pass legislation on standardised packaging before the general election in 2015. This is a quite arbitrary, unnecessary and artificial deadline. We urge the Department of Health to take the appropriate time to fully consider every submission it receives. In the interests of effective policy and better regulation we will expect to see the issues raised by stakeholder as part of the consultation reflected in changes to the draft regulations.

Consultation Questions

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

In his review Sir Cyril Chantler concluded that

"Standardised packaging.....is very likely to lead to a modest but important reduction over time on the uptake and prevalence of smoking and thus have a positive impact on public health."

In the Impact Assessment (IA) attached to the draft regulations, however, standardised packaging is identified as the preferred policy option because it will lead to very substantial health gains – this simply does not correspond with Chantler's conclusion regarding the health benefits. In our view the potential health gains have been significantly inflated throughout the IA and throughout the wider consultation document and this gives undue weight to standardised packaging as the preferred option.

Chantler Review: The Health Evidence

The basis for much of the Report of the Chantler Review was the Systematic Review of plain packaging research evidence conducted by the Public Health Consortium.

In our view, the Systematic Review does not provide conclusive evidence that packaging is the determining factor in a young person's decision to begin smoking. Indeed the assessment of the limitations of the review by the authors' themselves raises substantive questions about its efficacy as an evidence base. We have quoted at some length from the section on the limitations of the systematic review (with emphasis added):

"There were also a number of limitations with the plain packaging studies found. Some of these are because plain packaging is not yet in place in any country and therefore it has not yet been possible to conduct research that would fully evaluate the potential impact of this policy. This affects study design, which is the first limitation of the review. Studies of the type that are generally regarded as the most robust (those that compare a population exposed to an intervention with one not exposed to it, such as randomized controlled trials) are not available because plain packaging is yet to be introduced and so therefore 'real' comparisons cannot be made."

Similarly, other designs which help increase confidence in the findings, such as longitudinal designs are also unfeasible in respect to assessing plain packaging prior to its introduction. The absence of trials and longitudinal research is the most significant limitation of this review, although one which is impossible to avoid until the policy is in place in at least one jurisdiction.

A second limitation in relation to study design is that the evidence in the review is largely drawn from correlational studies, which makes it difficult to draw conclusions about expected outcomes. Many of the studies use hypothetical scenarios, and are therefore not truly able to test how individuals would react or behave if

www.scottishshop.org.uk

plain packaging was to be introduced. Within the correlational studies in the review there are further limitations in that some of the surveys use samples representative of the general population but most do not and instead use convenience or probability sampling. This same lack of representativeness also applies to the qualitative research included, although focus groups and interviews are not intended to be representative. However, a more relevant limitation of some of the qualitative studies included was that quite limited information about the methodology and analysis was provided, although this may partly be due to the fact that many of these studies had been translated or were early drafts of papers.

It is also worth noting that findings regarding smoking-related attitudes, beliefs and behaviour from both the surveys and qualitative studies in the review are reliant upon self-report. Without any form of validation (such as validating reported changes in cigarette consumption) these have quite weak predictive validity. A common argument is that plain packaging research can never truly replicate real market conditions and, as such, the suggested impacts on consumption, cessation and uptake are so far speculative.

A further limitation is that when comparing new packs (in this case plain packs) with those already in the marketplace the new packs typically attract a great deal of both favourable and unfavourable attention and this can distort the findings."

It is important to note the fact that the previous Labour government had mooted the idea of some form of plain packaging measures, but had concluded that there was no evidence base to justify legislation. On 16 December 2008, in response to an oral question from Sir George Young on whether there remained a strong possibility of the government introducing plain packaging for tobacco products at some point, Alan Johnson, then Health Secretary, answered as follows

Alan Johnson: [...].....*I have to say, however, that despite the fact that the Rt Hon. Gentleman is quite right about the huge response in favour of plain packaging, there is no evidence base that it actually reduces the number of young children smoking³.*

In our view little has changed since then. There is still a need for more robust research and evidence that standardised packaging can actually change people's behaviour. Chanter recognised the limitations of the existing research but then overcame this in two ways. First, by concluding that the methodology of the research was sound (this was never really in doubt – the issue was always with the conclusions) and second by concluding that the randomised control trials needed to establish causality could not be carried out (partly for ethical reasons). This 'solution' actually leaves a significant gap in the evidence that standardised packaging is effective and means that proposal legislation is not sufficiently based on a robust evidence-base.

³ House of Commons Library Standard Note SN/HA.6175, October 2013 Standardises Packaging of Tobacco Products

The Recent Health Evidence

In July 2013, early research on the impact of compulsory plain packaging on smokers in Australia was carried out by the Centre for Behavioural Research in Cancer funded by Cancer Council Victoria. This research was published in the British Medical Journal.⁴

This research considered the immediate effects of plain packaging on 536 cigarette smokers in November 2012, all living in the Australian state of Victoria. It found that, compared to smokers of branded cigarette packs, smokers who smoked from plain cigarette packs with large front-of-pack health warnings, were more likely to:

- Perceive their tobacco to be of lower quality and less satisfying than a year ago;
- Think about and prioritise quitting.
- Support the plain packaging law.

Some commentators see this research as providing compelling evidence of the need to introduce standardised tobacco packs in the UK. Others remain unconvinced⁵. In particular, they argue that the research was conducted in only one Australian state with 536 active smokers, and is not evidence of any national change on levels of smoking.

Whilst highlighting the usefulness of this initial research, the NHS itself⁶ has said that there are important limitations to the conclusions that can be drawn from it:

"The study's strengths are that it is based on a relatively large representative sample of people from one Australian state, and that it was timed to occur during the introduction of increased health warnings.

However, there are important limitations to the conclusions that can be drawn from this research, including:

- *that people were surveyed at only one point in time and attitudes may have changed if surveyed at a different period of time;*
- *that the study could not assess whether a change in packaging achieves the desired outcomes – of an increase in quit rates;*
- *Whether the change in packaging prevented people from starting smoking in the first place.*

While people smoking the plain pack cigarettes were significantly more likely to have thought about quitting and place higher priority on quitting, their intention to quit smoking remained unchanged (i.e. they did not intend to quit smoking)."

⁴ <http://bmjopen.bmj.com/content/3/7/e003175.full>

⁵ House of Commons Library Standard Note SN/HA.6175, October 2013 Standardises Packaging of Tobacco Products

⁶ <http://www.nhs.uk/news/2013/07/july/Pages/Does-plain-packaging-help-smokers-quit.aspx>

The NHS concluded that:

“Because this study looks only at one point in time, it cannot establish cause and effect between factors, or say that the packaging is the cause of the change in attitudes. Importantly, it cannot tell us whether a change in packaging achieves the desired outcomes of an increase in actual quit rates or preventing people from starting smoking.”

This study, in our view, is typical of the inconclusive nature of the evidence on plain packaging generally. A common feature of research studies into plain packaging is that they cannot establish cause and effect. As the NHS itself notes in relation to the Victoria study, the intention to quit smoking remained unchanged.

In a study published in September 2013, Ford et al⁷ compared adolescents' responses to three different styles of cigarette packaging; novelty, regular and plain. The sample consisted of eleven to sixteen year olds who had never smoked. The main outcome measure was the susceptibility to smoking and composite measures of pack appraisal and pack receptivity derived from eleven survey items. The authors state that positive pack approval increases the susceptibility to smoke. However we would simply draw your attention to the following statement from the authors themselves:

“The cross sectional nature of this survey does not enable causal relationships to be drawn about packaging and future smoking behaviour.”

The existing research simply does not provide a sufficiently robust evidence base to justify the development and implementation of a policy such as standardised packaging. The Cabinet Office's guide to better policy making⁸ states that

“We will improve our use of evidence and research so that we better understand the problems we are trying to address.”

We would strongly argue that the existing research does not provide a better understanding of the problem that standardised packaging aims to address i.e. what really motivates young people to begin smoking. Most of the evidence relied upon in the Chantler Review – and in the Impact Assessment – come from historic studies which were previously dismissed by the Government as being insufficient to justify standardised packaging (see, for example, above answer from the then Health Secretary).

In July 2013 the Health Secretary announced that the UK government would assess the impact of the policy in Australia before any final decision was made by the UK government. This was the most credible, proportionate and balanced view to take. In our view this was the approach that should have been taken forward and we have not heard a convincing case for the subsequent abandonment of this approach.

⁷ <http://bmjopen.bmj.com/content/3/9/e003282.full.pdf+html>

⁸ Better Policy-Making (2001) CPMS, Cabinet Office. <http://www.civilservant.org.uk/betterpolicymaking.pdf>

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 the context of tobacco control, the policy landscape has altered considerably since 2012. By 2015 every tobacco retailer in the UK will have to implement the tobacco display ban (legislated for by both the UK and Scottish governments). This, coupled with the ban on advertising of tobacco products, means that children and young people will simply not be exposed to packaging to any real extent. Additionally, the revision of the European Tobacco Products Directive has mandated that the health warnings on packaging have to be increased to 65% of the surface area; this will further restrict the visibility and awareness of packaging and branding. In terms of obtaining robust evidence, our strong view is that governments both north and south of the border should wait to carefully assess the impact of the tobacco display ban before introducing any further tobacco measures. Although it is not mandatory all of our members have implemented the Challenge 25 regime to ensure that tobacco products are effectively age restricted and are not sold to young people.

The Tobacco and Primary Medical Services (Scotland) Act 2010 introduced a tobacco retail register – all tobacco retailers must be registered on this and new offences such as Tobacco Banning orders were introduced for offences in relation to the Act (the Register and the Banning Orders are unique to Scotland). Scotland also has an Enhanced Tobacco Sales Enforcement programme, which is implemented by local authority Trading Standards and funded by the Scottish Government⁹. The ETSEP consists of an agreed level of business advice and support visits (20% of retailers) and formal test purchase visits (10% of retailers) for each local authority to achieve in an effort to reduce the number of sales of tobacco to anyone under 18

In Scotland it is an offence to buy tobacco products on behalf of anyone under eighteen. However, as the Scottish Government itself recognises 'proxy purchases' are the main way young people obtain cigarettes¹⁰. Unfortunately and for various reasons adults are willing to purchase cigarettes and tobacco for young people. As such there is clearly an issue of the enforcement of existing legislation but it is also clear that packaging plays no part in these transactions, with affordability being the deciding factor. Overall the levels of young people smoking are already in decline in Scotland.

Standardised packaging does not control or restrict access to tobacco – anyone over 18 will still be able to purchase tobacco products. It will however impose even more of a burden of compliance on the retailer and potentially impact on their legitimate business by increasing the problem of illicit trade.

⁹ SCOTSS: Enhanced Tobacco Sales Enforcement Programme Report 2010-2014

¹⁰ Creating a Tobacco-Free Generation: A Tobacco Control Strategy for Scotland (2013). Edinburgh: Scottish Government.

Plain Packaging In Australia

One of the main change since the 2012 consultation is that standardised packaging has been fully implemented in Australia. Our colleagues at the Australasian Association of Convenience Stores have advised us that the additional costs that small retailers in Australia have been forced to absorb as a direct result of plain packaging have seriously impacted their bottom line. The cost burdens associated with additional staff training, labour, product handling errors, increased inventory management procedures and customer frustration have been substantial.

The following is a selection of recent direct quotes from retailers outlining some of the actual experiences of tobacco plain packaging in Australia:

"When placing orders more time is spent as all packets look the same. Mistakes are made if a staff member places stock in the wrong spot. Previous to plain packs, it never happened."

"Deliveries are much harder to check off, extra time is taken."

"The biggest impact is at point of sale; in the filling of cabinets and locating product(s) for the customer."

"When stock is filled out in the shop, wrong stock is being placed in wrong spots by staff."

"New staff find it hard to learn where stock is. It is difficult with products at the bottom of the shelf, as they are hard to read. It takes extra time to serve customers as well, with new staff needing time to find (cigarettes)."

"Customers can ask for the wrong product as well, normally they don't realise until they have taken a (cigarette) out and lit it. Then they try to return and abuse staff when this is declined."

"The sales in my store have moved away from the big name (brands), moving to the cheap labels. I admit that this is because of price, but also the fact that they all look the same."

"Chop chop [illicit loose tobacco] has increased in my area as a result as well. Once again I admit price has something to do with it, but also a large part is played by plain packaging. It all looks the same, the chop chop people don't have to do much to make it look better than plain packaging, a white box is all they need, in fact. There is a disconnection from perceived quality when the stock comes in the same colour and not the branded pack."

The Impact Assessment ignores the study by the respected research agency Roy Morgan Research (which recently carried out the Australian Institute of Health and Welfare Household Survey) of AACS members. The study is the longest-running and most comprehensive assessment of the retail impact of plain packaging. Conducted amongst 450 retail outlets across Australia, this research has been regularly updated since the introduction of standardised packaging and includes the following results:

- Two-thirds of small retailers claim plain packaging has negatively impacted their business.
- 78% experienced an increase in time taken to serve customers and 62% report additional time is spent communicating with these customers about tobacco products.
- 62% of small retailers have faced increased frustration from customers and 65% have seen an increase in the frequency of staff giving the wrong products to customers (primarily due to difficulty in recognising/distinguishing between brands).
- 34% of retailers have experienced increased frequency of attempted product returns predominantly due to customers being given a product they did not ask for.
- 44% of small retailers consider that plain packaging has negatively affected the level of service they are able to provide to their non-tobacco customers.

In Its State of the Industry Report 2013 AACs highlights that the volume of tobacco sales increased in 2013 by 5.4%. Consumers appear to be downtrading and increasingly buying cheaper brands of cigarettes and tobacco – this challenges the assumption in the Impact Assessment that standardised packaging will not lead to the further ‘commoditisation’ of the market in tobacco products.

There is evidence to suggest that illicit trade in tobacco has increased since the introduction of standardised packaging. Official Australian Customs figures show that the number of seizures of illicit tobacco increased in 2012-2013¹¹.

Intellectual Property Compensation

Also since 2012 it has emerged that standardised packaging likely to be seen as a ‘deprivation of property’ under Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR), and similarly under Article 17 of the EU Charter. This is the view of the Rt. Hon Lord Davidson of Glen Clova, the former Advocate General for Scotland, in a legal opinion produced for Philip Morris International¹². This opinion corresponds with the views of other legal experts such as the Rt Hon Lord Hoffman¹³.

As argued by Lord Davidson, the likely consequence of this deprivation of companies’ intellectual property would be the payment of substantial levels of compensation. The European Court of Human Rights (ECtHR) has noted that only ‘exceptional circumstances’ would justify no compensation being awarded following a violation of A1P1. However, Lord Davidson contends that health grounds do not justify prohibiting trademarks without compensation.

The compensation required to be paid by the UK Government has been estimated at £5bn according to a calculation from Citigroup tobacco analyst Adam Spielman in 2008¹⁴. The issue of financial compensation cannot be separated from public health as this money would have to be sourced from existing budgets and it comes at a time when the NHS is facing a squeeze on its finances.

¹¹ Australian Government: Australian Customs and Border Protection Service Annual Report 2012-2013

¹² The Rt Hon Lord Davidson of Glen Clova QC, Opinion (2013)

¹³ Lord Hoffman, Annex 5 of Philip Morris Limited’s submission to the DoH consultation on standardised packaging.

¹⁴ Spielman, A, submission on the future of tobacco control from Adam Spielman (2008). The equivalent figure for Scotland would approximately be £400-500m based on the recognised Barnett calculation.

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?

We have serious concerns about the provisions on enforcement as they are currently dealt with in the draft regulations. The consultation document states:

5.18 If the ministers decide to proceed, the draft regulations would make it an offence to produce or supply tobacco products that have retail packaging that does not meet the provisions set out in the regulations. We propose that a person who produces or supplies tobacco products in breach of the regulations would be liable, on summary conviction, to imprisonment for a term not exceeding three months, or a fine of any amount, or both, and, if convicted on indictment, would be liable to imprisonment for two years or a fine or both.

Even to consider custodial sentences for offences in respect of standardised packaging seems extremely harsh and overly punitive. The phrase 'convicted on indictment' suggests that in Scotland such cases could be heard in one of the higher courts. Again to suggest that retailers could find themselves appearing in a higher court for an alleged standardised packaging offence lacks all balance and proportionality.

This section of Part 5 of the draft regulations requires much clarification and much more careful consideration. It does not seem to take into account the separate and unique court system in Scotland and it is not clear how offences and enforcement would operate in Scotland. There are two types of criminal justice procedure in Scotland; Solemn procedure and Summary procedure.

The choice of whether to prosecute a case under solemn or summary procedure is made by the prosecution service, known as the Crown Office and Procurator Fiscal Service (COPFS). This affects the sentences available to the court on conviction. The vast majority of criminal court cases are dealt with under summary procedure – 96% of criminal court disposals during 2010-11 were in the summary courts.

Solemn procedure involves the most serious of criminal cases and may ultimately lead to a trial either before a judge in the High Court or before a sheriff in one of the sheriff courts. Trials under solemn procedure are conducted with a jury.

Summary procedure is used for less serious offences (with the charges set out in a complaint) and may ultimately lead to a trial before a sheriff or, in justice of the peace courts. Trials under summary procedure are conducted without a jury.

The High Court is Scotland's highest criminal court. The High Court deals with the most serious of crimes such as treason, murder and rape, armed robbery, drug trafficking and sexual offences involving children.

Sheriff Courts deal with crimes which are too serious for a district Court but not serious enough for a High Court. If, however, on the basis of new evidence being provided, a Sheriff can refer the case to the High Court.

Justice of the Peace Courts were created by the Criminal Proceedings etc (Reform) (Scotland) Act 2007 and they replaced former District Courts which were operated by local authorities. As the lowest level of criminal court, Justice of the Peace Courts handle relatively minor crimes such as cases of breach of the peace, minor assaults, minor road traffic offences and petty theft.

Cases are dealt with by a bench of one or more lay justices, apart from Glasgow's justice of the peace court where a legally qualified Stipendiary Magistrate can sit. The maximum sentence that a Stipendiary Magistrate may impose is 12 months imprisonment or a fine not exceeding £10,000. Lay justices can impose custodial sentences of up to 60 days and can impose fines of up to £2,500.

It is difficult to imagine the justification for any offence in relation to standardised packaging legislation ever being heard before anything other than a Justice of the Peace Court. In our view it is much more appropriate that fixed penalty notices be applied for offences. These should then be connected to the tobacco banning orders introduced in Scotland by the Tobacco and Primary Medical Services Act of 2010. In Scotland the ultimate sanction should be a tobacco banning order and removal from the Tobacco Retail Register. Related to this, the Department of Health must take cognisance of the different legislative and policy environments in Scotland.

We cannot support any measures which would impose a custodial sentence on retailers.

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 Impact Assessment has been classified as 'amber' meaning that it is fit for purpose only if changes are made. In our view an amber rating for the IA means that it is inadequate to support the introduction of a major policy intervention such as plain packaging. The views of the RPC are significant as they provide both external and independent scrutiny of government regulation. In its comments the RPC requests that the DoH assess the following areas, which are of direct relevance to retailers:

1. Provide more detail on the costs to business of transitioning to standardised tobacco products;
2. Carry out further testing of the supposed decrease in transaction times of selecting and serving a standardised tobacco product. The RPC requests that the hypothesis that plain packaging reduces transaction times/costs should be separately tested rather than relying on the limited study set from Australia;
3. Provide information on the costs associated with the disposal of duty paid and currently branded packs;
4. Include additional analysis of the impact on small and micro businesses in all potential sectors affected.

We urge the DoH to outline how and when these areas of concern will be addressed – it is important that the draft regulations are not proceeded with until these concerns have been adequately addressed.

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The IA does not consider any alternatives to regulation despite there being alternatives available such as a renewed focus on effective enforcement or innovative educational initiatives.

The Operational Impact on Retailers

The cost/benefit analysis asserts that there will be a cost saving to retailers and consumers of £9 million per annum (£69 million over 10 years, with “over 60% of these savings expected for retailers” as a result of transaction times being reduced by 1.5 seconds per transaction. This is simply not credible: we fail to see how standardised packs will ever result in reduced transaction times, particularly when the impact of the tobacco display ban is factored in. In Scotland the tobacco display ban imposes much more onerous restrictions on retailers – only a sales area of 1,000 sq cm is permitted during a transaction, this combined with standardised packs will undoubtedly result in increased transaction times. The IA recognises the evidence from Australia demonstrating significantly longer transaction times (12.43 seconds for retrieval after plain packaging compared with 9.84 pre plain packs) represents ‘real world data’ but then asserts that any impact on retail costs is likely to be extremely short lived and likely to be negative beyond the immediate point of introducing standardised packaging. It is hard to escape the conclusion that the ‘real world data’ is being deliberately ignored in order to justify the preferred policy option.

Transactions times and the overall operational impact the regulations will have on retailers are key issues. In a typical convenience store, tobacco products are invariably a ‘high value order’ and deliveries have to be very carefully checked and accounted for before they can be ‘worked’ and transferred to the point of sale. Plain packaging will make this extremely difficult. We have a concern that transactions times will be significantly delayed, that there will be increased customer dissatisfaction and more pressure placed on staff to locate specific products. We know from our colleagues at the Australasian Association of Convenience Stores that plain packaging is indeed having this negative operational impact.

Delays at each of the stages in a transaction will have a serious cumulative impact on a retail business, leading to the need for more staff resource for these processes, and either a reduction in customer service or higher costs for the retailer. For every additional staff hour per day required, retailers would face an additional cost of £2614 per year, based on current national minimum wage rates. With the likely additional loss of margin due to smokers moving to cheaper products, these costs will be a significant financial burden for retailers. Delays at point of sale, in particular, severely undermine customer satisfaction levels. The main problem will be the increase in queuing times in store. Convenience stores, rely on speed of service to be successful. The average time spent queuing in an independent convenience store is 26 seconds¹⁵ with customers spending on average £6.13 per visit¹⁶. A typical convenience store will handle on average 1200 transactions per day, however these transactions do not occur at a consistent rate but will vary with the busy trading periods throughout the day. During these busy periods in particular disruption to transactions would have a significant impact on both queuing times and satisfaction levels of tobacco and non-tobacco purchasing customers. Each customer who leaves the store because the queue is too long equates to a lost sale.

¹⁵ HIMI (2008) Convenience Tracking Programme.

¹⁶ HIMI (2014) Convenience Tracking Programme: Purchases and Spend.

Given the significant operational impact that standardised packaging and the tobacco display ban will have on retailers we urge the government to re-examine Option 3 – defer a decision pending collection of evidence on experience with plain packaging in Australia - as being the most sensible, balanced and proportionate policy option

Illicit Trade in the UK

The illicit trade in tobacco products is already a significant problem in the UK. In its Tobacco Tax Gap Estimates 2012-13, HMRC states that the upper estimate of the market share for illicit cigarettes was 13% (a rise from the 2011-12 figure). The market share of illicit hand rolling tobacco was 42% (again an increase on the 2011-12 figure).

The combined (upper estimate) total for losses in duty for cigarettes and hand rolling tobacco is a staggering £2.9 billion.

The Impact Assessment for this consultation makes no reference to the recent Home Affairs Select Committee report on tobacco smuggling¹⁷. The Select Committee note that total spending on the government's tobacco strategy rose by £3 million in 2011-12 to £68.9 million. Despite this in 2012, a total of 1 billion illegal cigarettes were smoked in the UK, an increase of 49% since 2011. The Committee expressed its *"grave concern"* that despite an increase in resources devoted to anti-smuggling operations, 49% more illicit cigarettes managed to slip through the net in 2012 than in 2011. Additionally, the seizure of hand rolling tobacco declined to 483 tonnes. The Committee concluded that *"we are worried that not enough is being done by the government and its appropriate agencies to combat the problem of tobacco smuggling at source."*

The Committee also highlighted that the number of prosecutions and convictions for organised crime cases involving tobacco have fallen. The Committee does not believe that these numbers are decreasing due to the reduction in this type of crime and is *"deeply concerned"* that these figures may indicate a reduction in enforcement action.

Our members have significant concerns about any measure which has the potential to increase the illicit trade. The potential for standardised packaging to do this must be taken seriously. Despite the apparent economic recovery trading conditions remain extremely challenging and any revenue lost by legitimate retailers to the illicit trade has a damaging effect on business.

The criminals who sell illicit tobacco products have no qualms about selling to young people. All of our members accept that tobacco has to be controlled and regulated – and ensuring that tobacco is age restricted in an effective way is a crucial aspect of this - but this can only be done if tobacco products are made by legitimate manufacturers and sold by responsible retailers. Plain packaging will put both of these things in jeopardy.

¹⁷ House of Commons Home Affairs Committee, Tobacco Smuggling, 1st report of session 2014-2015 (HC 200)

Public Health

One of the weakest sections of the IA is the impact on equality groups. The IA does not adequately address the issue of health inequality or show convincingly how standardised package will reduce inequalities. In Scotland, for example, smoking is fundamentally an issue about health inequality. 40% of people in our most deprived communities are smokers whereas this figure falls to around 10% in our more affluent communities¹⁸. Plain packaging will simply do nothing to address this issue.


In our view it is the influence of the home environment and of peer groups which are the crucial determining factors in the onset of smoking. Growing up in homes where smoking by adults is the norm, children are more likely to become smokers themselves and to take up smoking at an earlier age. A proxy purchase is then the main way children and young people obtain cigarettes. Packaging plays little or no part in this.

¹⁸ Scottish Health Survey 2012. Scottish Government and Office for National Statistics.

5. Conclusions

Rather than pursue a policy which patently lacks a credible evidence-base, we recommend that the UK Government consider the following course of action:

- Re-examine Option 3 as outlined in the Impact Assessment as the only credible, balanced and proportionate policy response currently available.
- The Department of Health urgently consider and address the areas highlighted by the RPC in its opinion on the IA. As the RPC has stated, the Impact Assessment will only become fit for purpose if and when these actions are addressed.
- Additionally the impact of the Tobacco Display Ban and the Implementation of the EU TPD should be fully measured before standardised packaging is introduced.
- Redouble efforts to curb the rising illicit trade in tobacco products in the UK which has negative implications for public health and facilitates youth access to cigarettes. In particular urgent attention should be given to address the deep concerns of the Home Affairs Committee that the decreasing numbers of prosecutions and convictions may indicate a reduction in enforcement action. The Scottish government should also make clear how tobacco smuggling will be addressed in the event of a yes vote in the Scottish Independence Referendum.
- We ask that the Department of Health urgently reviews Part 5 of the draft regulations in relation to offences and enforcements and provide clarification on how these will be enacted in Scotland.
- Replicate measures that have proven public health benefits in reducing youth smoking uptake, such those seen in Germany. Programmes such as 'Be Smart, Don't Start' have been incredibly successful in dissuading young people from smoking. Crucially, unlike standardised packaging, this programme addresses the key issue of peer pressure¹⁹.


Public Affairs Manager
August 2014

¹⁹ Information on the 'Be Smart, Don't Start' initiative can be found at: www.besmarl.info/besmarl/der-wettbewerb.html



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

Response from Swindon Borough Council

1. Swindon Smokefree Alliance is a partnership of organisations who work together to drive down smoking prevalence and the associated harm and inequalities in health it causes in Swindon. Partners include Swindon Borough Council, Trading Standards, Community Safety Partnership, Public Health, Licensing, Healthy Schools, Great Western Hospital NHS Foundation Trust, Wiltshire and Swindon Fire Service, Swindon Stop Smoking Service provided by Seqol and community representatives.
2. Swindon Smokefree Alliance follows a strategic approach to tobacco control, an effective partnership and a focus on denormalising smoking. The Alliance has a priority outcome to reduce smoking prevalence amongst young people to 12% by 2015. The Alliance supports the introduction of regulations for standardised packaging of tobacco products.
3. Swindon's most recent Health Related Behaviour Survey conducted in four secondary schools and their feeder primary schools by Schools Health Education Unit (SHEU) in 2011 indicated that 13% of male pupils in Year 10 (14/15 year olds) and 9% of female pupils in Year 10 smoked. Swindon Smokefree Alliance hope to continue to drive down levels of smoking and would like to work towards the latest Public Health England ambition of reducing smoking levels of 15 year olds to 5% by 2025.
4. This response on behalf of Swindon Smokefree Alliance is in line with and in full support of the Action on Smoking and Health (ASH) response.

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

5. 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."*
6. A report by Professor David Hammond for the Irish Department of Health¹ backs up Sir Cyril Chantler's view. He concluded that,

"Overall, the existing evidence on plain (standardised) packaging supports four primary conclusions:

¹ Hammond, D. Standardized Packaging of Tobacco Products. Evidence Review. Prepared on behalf of the Irish Department of Health. March 2014.

- 1) *Plain packaging will reduce smoking initiation among youth and young adults.*
 - 2) *Plain packaging will promote smoking cessation among established smokers.*
 - 3) *Plain packaging will support former smokers to remain abstinent.*
 - 4) *Plain packaging will help to denormalize tobacco use."*
7. 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
8. 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.
9. The Government should resist efforts by the tobacco industry and its surrogates to delay decision-making and laying of the regulations before Parliament. In this consultation response we review some of the industry's arguments 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?

Standardised packaging needs to be part of a comprehensive strategy

10. Tobacco control policies must be pursued in parallel and not seriatim if they are to have their best possible effect in reducing prevalence rates. The optimum date for implementation of standard packaging would be May 2016 at the same time as implementation of the EU Tobacco Products Directive, which includes updated larger health warnings and graphic warnings on the front of the packs.
11. Standardised packaging was introduced in Australia as part of a comprehensive strategy, which included larger health warnings, and a sustained mass media campaign which, on a per capita basis would cost the equivalent of £33.7 million a year in the UK, a far higher amount than is currently being spent here. 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 2013.³

²Hansard, H.C column 1018 et seq. (3rd April 2014):

³<http://www.abc.net.au/news/2013-08-01/government-to-raise-5-billion-from-cigarette-tax-increase/4857244>

12. The DH Tobacco Control Plan for England runs until the end of 2015 and needs to be renewed and refreshed for the period 2016-2020, the period when standardised packaging will be implemented. It is important in updating its tobacco strategy that the Government gives careful thought to how to maximise the public health benefits of the implementation of standardised packaging, by, for example:

- Increasing funding for sustained mass media campaigns in advance of standardised packaging coming into effect;
- making stop smoking services mandatory and ensuring delivery to a high quality standard;
- supporting enforcement through adequate funding of trading standards departments, regional partnerships against illicit trade, and work on illicit trade by HMRC and the UK Border Force;
- introducing 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
- introducing further levies on the industry to fund stop smoking services and other tobacco control initiatives, and to meet health costs caused by tobacco consumption.

13. Whilst this consultation is concerned with regulations for the standardised packaging of tobacco products Swindon Smokefree Alliance are concerned about the emergence of a burgeoning market in e-cigarettes and feel this could present a future challenge to standardised packaging. The advertising of the products mimics that of cigarettes from many years ago. There is no clear evidence that the use of e-cigarettes may lead to the uptake of smoking and there is some evidence to suggest that they are a useful aid to quitting. However the rules for the packaging and advertising of such products could be brought into line with that for cigarettes. The recent consultation on the advertising of e-cigarettes may address this issue. Also the forthcoming Tobacco Products Directive will bring in new labelling requirements and there will need to be consistency between the differing pieces of legislation.

Illicit Tobacco Trade: General

14. 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.
15. 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, and additional markings will be required under the EU Tobacco Products Directive. These include unique identifiers, 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."*⁴
16. 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

4 Hansard: backbench business debate. H.C Column 477. (7 November 2013)

very poor indicator of whether a pack of cigarettes is licit or illicit.⁵ 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).

17. 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.
18. 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.”*⁶
19. 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.”*⁷
20. 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.”*⁸
21. 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 it claims that pack design is vital in combatting illicit trade. While we do not support the use of a coding system which is proprietary to the tobacco industry as is the case with Codentify it is certainly the case that this or any other coding systems independent of the industry could be used on standardised packs as readily as on branded ones.

⁵ Joossens L. Smuggling, the Tobacco Industry and Plain Packs, Cancer Research UK, November, 2012

⁶ Revised EU Tobacco Products Directive: Article 15

⁷ Text of the Illicit Trade Protocol: Article 8.3

⁸ Codentify: Protecting Government Revenues, Securing the Supply Chain, Fighting Illicit Trade.
http://www.pmi.com/eng/documents/Codentify_E_Brochure_English.pdf

22. 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]"*.⁹ 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."*¹⁰

Illicit Tobacco Trade: Australia

23. 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.¹¹
24. 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.¹² 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.¹³ In March 2014 the *Sydney Morning Herald* reported that there had been only one seizure of counterfeit plain packs since December 2012.¹⁴
25. 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"*.¹⁵ 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."*¹⁶

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

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

11 Greenblat, E. Plain packaging making 'no impact' on Australian smokers, say tobacco chiefs: *The Australian* 4th March 2014

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

13 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.

14 Corderoy, A Tobacco industry claims on impact of plain packaging go up in smoke, *Sydney Morning Herald*, 12 March 2014.

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

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

Tobacco Consumption in Australia

26. 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.
27. 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 Victoria¹⁷, since:
- The survey was conducted on the mistaken assumption that adult smoking prevalence ought to have markedly declined in the immediate aftermath of the policy's implementation, which was not the assumption underpinning the policy intervention.
 - 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 is nowhere near big enough to pick up the sort of declines in smoking prevalence expected from one year to the next. To measure a statistically significant decline of, for example half a percentage point, which is the sort of magnitude one might expect to see over a twelve month period, would have required a sample size of around 90,000.
28. The tobacco industry in Australia has reported an increase in tobacco sales from 21.015bn sticks in 2012 to 21.074bn in 2013,¹⁸ 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 2013.¹⁹
29. 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.
30. 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.²⁰
31. 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

¹⁷ Cancer Council Victoria, Comments of the Philip Morris funded London Economics report "An analysis of smoking prevalence in Australia: final", 2013, Cancer Council Victoria: Melbourne.

¹⁸ Kerr, C. Labor's plain packaging fails as cigarette sales rise: *The Australian*. 6 June 2014

¹⁹ Is Smoking Increasing In Australia?: *Guardian Datablog*. 6 June 2014

²⁰ Tobacco facts and figures: Australian Department of Health. 19 June 2014

show that smoking prevalence had not been reduced in Australia by standardised packaging legislation in the first year since its implementation.²¹ 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).²²

Other Evidence from Australia

32. 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.²³ 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 and a significant increase in calls was sustained over time.
33. 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.²⁴
34. 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. As the Impact Assessment concludes there is no evidence at all that this is the case from the experience in Australia, indeed transaction times have tended to decline post implementation not increase. Most recently, research published at the end of May, which may not been taken into account in the IA, reported that the claim that plain packaging would negatively impact small tobacco retailers by making it harder to locate and retrieve cigarette packs, thereby increasing transaction times, has not eventuated in Australia.²⁵

²¹ The (Possible) Effect of Plain Packaging on Smoking Prevalence in Australia: A Trend Analysis: University of Zurich Department of Economics, Working Paper no 165

²² Diethelm, P. McKee, M. Tobacco industry-funded research on standardised packaging: there are none so blind as those who will not see! Tobacco Control; 2014 doi:10.1136/tobaccocontrol-2014-051734

²³ 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

²⁴ 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

²⁵ 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 2013 - doi:10.1136/tobaccocontrol-2013-050987.

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?

35. Swindon Smokefree Alliance welcomes the draft regulations, which we consider, with the exception of the exclusion of specialist tobacco products as discussed below, are fit for purpose.
36. 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.
37. Furthermore, in the Australian regulations, the dimensions of the cigarettes and packs 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. In particular we would like to see the UK prohibit the sale of 'slim' cigarettes. We also recommend that the UK prohibit the use of misleading brand variant names such as 'slim', 'natural', 'organic', 'without additives', 'without flavours' as well as 'smooth', 'gold' and 'silver'.²⁶

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?

Illicit trade and cross border shopping

38. For the reasons stated in answer to Q.2 above we do not think the evidence justifies 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".
39. 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. As shown in table 8 of the IA this did not lead to an increase cross border shopping. Indeed both cross border shopping and illicit trade declined over the period between introduction and full implementation from October 2008 to September 2010. As the IA acknowledges this is because the greatest influence on cross border shopping is down to external factors such as the £/€ exchange rate

²⁶ Hammond D, Dockrell M, Arnott D et al. Cigarette pack design and perceptions of risk among UK adults and youth. European Journal of Public Health 2009; 19:631-7.

and the number of passenger journeys and therefore just as with graphic warnings standardised packaging is unlikely to have a significant impact.

Impact on Retailers

40. Tobacco sales are undergoing long-term decline. At its peak in the 1950s adult male smoking prevalence was 80%.²⁷ Female smoking prevalence continued to rise and reached a peak of 45% in the mid-1960s.²⁷ Since then smoking prevalence amongst both men and women has declined significantly and is now under 20% and government policy is designed to sustain and increase this trend. More recent data from HMRC tobacco clearances shows the impact this has had on sales volume with the number of million cigarette sticks cleared for UK sales falling from 94.080 million in 1992/3 to 54.737 million in 2002/3 to 37.932 million in 2012/13, a decline of 30% in the last ten years. (see table below from the HMRC Tobacco Factsheet November 2013). Small retailers have had to adjust to this decline and will continue to have to do so, it is important to note that any impact of standardised packaging will be marginal compared to the overall secular trend.
41. HMRC clearance data also shows the importance of the government's anti-smuggling strategy in supporting retailers. The impact is clearest with respect to handrolled tobacco. At its peak the illicit market share of handrolled tobacco was estimated to be over 60%, most recent estimates by HMRC suggest that it has fallen to 36%. This is matched by a growth in the amount of taxed HRT released for consumption which rose 2.8 million kilograms in 2002/3 to 6.2 million kilograms in 2012/13.

²⁷ Wald, N. & Nicolaides-Bouman, A. *UK Smoking Statistics* (2d ed.). OUP, 1991.

**HM Revenue and Customs
Tobacco Bulletin - November 2013**



6 Historic Clearances

Financial Year	Cigarettes		million sticks	Other Tobacco Products			000 kg
	Home Produced	Imported	Cigarettes Total	Cigars	HRT	Other	Total
1991/92	83,382	10,134	93,516	2,107	4,056	2,081	8,247
1992/93	83,939	10,141	94,080	1,955	3,822	2,027	7,805
1993/94	87,229	7,285	94,514	1,724	3,181	1,785	6,670
1994/95	75,442	9,735	85,177	1,679	3,038	1,565	6,280
1995/96	71,789	9,859	81,648	1,501	2,558	1,347	5,405
1996/97	71,846	8,500	80,346	1,453	2,204	1,221	4,877
1997/98	79,876	11,707	91,583	1,548	1,946	1,146	4,641
1998/99	54,739	5,897	60,636	1,084	1,736	919	3,738
1999/00	64,443	10,486	74,929	1,359	2,194	990	4,553
2000/01	28,888	5,273	34,161	870	2,343	704	4,018
2001/02	45,581	5,691	51,272	816	2,746	632	4,194
2002/03	46,808	6,131	52,939	962	2,808	656	4,424
2003/04	52,297	4,812	57,109	968	3,213	628	4,827
2004/05	47,224	4,444	51,668	770	3,044	522	4,344
2005/06	47,539	4,811	52,350	744	3,409	494	4,647
2006/07	41,754	4,007	45,761	845	3,388	416	4,449
2007/08	42,258	3,882	46,140	589	3,741	388	4,697
2008/09	39,739	3,441	43,180	504	4,076	363	4,843
2009/10	44,839	4,258	49,097	555	5,840	415	6,611
2010/11	42,335	3,343	45,678	468	5,431	359	6,258
2011/12	39,829	2,984	42,813	458	6,288	333	7,025
2012/13	35,202	2,730	37,932	421	6,215	301	6,937

42. The Impact of underlying trends in sales for independent retailers need to be taken into account too, particularly given the rise of small outlets set up by large retailers in the UK. An economic analysis of the impact of point of sale display legislation in Ireland using AC Nielsen data concluded that no statistically significant change in cigarette pack sales was observed following implementation for the legislation over and above seasonal and underlying trends, and that small and independent retailers are facing a broader and longer-term decline in sales generally which is most likely due to other causes. We would expect to see the same pattern occurring in the UK both as a result of the implementation of point of sale display legislation and standardised packaging and recommend to DH that such data should be gathered for the UK as part of the evaluation of the impact of the legislation.

43. The Impact Assessment page 28 p.112 states 'anecdotally the profit margins on the sale of tobacco may be relatively low.' This is corroborated by information provided to ASH by a retailer in Gateshead, John McClurey, a member of the ASH advisory council. According to John McClurey profit margins on cigarettes average around 4.5% compared to profits on other products on sale in his shop which average around 22%. This means that while tobacco currently amounts to around 50% of his sales turnover it is a much smaller proportion of his profits. In fact he estimates that currently tobacco sales only amount to about 20% of his profits with 80% of his profits coming from sale of non-tobacco products. To illustrate the point John McClurey has told us that if a customer buys a packet of chewing gum he makes around 17 pence in profit compared to 14 pence on a price-marked packet of 10 John Player Special. Plus a price-marked pack of 10 JPS cigarettes costs £3.50, while a packet of chewing gum only costs 50

pence, so the customer buying chewing gum as opposed to cigarettes has £3 left over available to spend on other items.

44. For a shop where tobacco only accounts for 20% of turnover, which is the average estimated in the ACS report referenced in the IA, the proportion of profits would be even smaller at around 5% for tobacco compared to 95% for non-tobacco products.
45. Comprehensive data on prices and profit margins is available from wholesalers such as Bookers who can be contacted via their website <https://www.booker.co.uk/help/contactus.aspx>. Data on the proportion of tobacco sales accounted for by different types of outlet is available from AC Nielsen who can also provide data on the trends in sales of tobacco between different types of retailers over time. We recommend that the DH get in touch with Bookers and AC Nielsen for more information.

Consumer Surplus

46. 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.
47. In point 160 of the IA it is accepted that the theory of consumer surplus is more difficult to apply both 'in principle and practice' to an addictive product like tobacco. The rationale for including "lost consumer surplus" as a potential cost of standardised packaging does not stand up to scrutiny. 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.
48. In any case 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.

Conclusions

49. 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 such as the British Heart Foundation and Cancer Research UK, the Chartered Institute of Environmental Health, the Trading Standards Institute, Swindon Smokefree Alliance and others.²⁸ 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.
50. 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 with only 11% opposed. There was majority support across age groups,

²⁸ [Smokefree Action Coalition](#)

genders and social classes.²⁹ 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.

51. Section 94 of the Children and Families Act 2014 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.
52. 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.³⁰
53. 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.³¹ 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.

29 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.

30 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.

7th August 2014

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

Dear Sir or Madam

Business response to the Department of Health's consultation on the introduction of regulations for standardised packaging of tobacco products.

ignis Ltd is a design agency employing over 50 people. We work with a global tobacco company and other fine clients and as such have a vested interest in the potential introduction of plain packaging for tobacco products.

We have a number of concerns in relation to the Chantler Review, which has been used as a basis for proceeding with the introduction of plain packaging, and the draft regulations and implications.

We believe that this review does not provide an adequate basis to proceed with plain packaging, due to the lack of credible evidence presented or considered. Specifically there is no evidence in the Chantler Review that the introduction of plain packaging will have any positive impact on smoking behaviour.

We have noticed that the review took a view on possible future behaviour and not on actual current behaviour. We believe that this a dangerous and irresponsible approach to take for such a significant piece of legislation and at its best a purely speculative approach.

There is no evidence presented that shows how reduced appeal of a pack, because of plain packaging, will lead to an actual reduction in smoking. This seems to be the Chantler Review approach.

There are a number of wider implications beyond public health that this Review does not take into consideration. We also believe that Sir Cyril has chosen to selectively use evidence from Australia which is at best unprofessional and at worst irresponsible and potentially illegal. He specifically claimed "it is too early to draw definitive conclusions" from Australia, then he uses attitudinal evidence to reach a conclusion that plain packaging is likely to have a positive impact on smoking behaviour. This has come from focus groups rather than actual data. Using focus groups to elicit views on personal choice is a misguided way of policy making. It is impossible to create the same environment in a focus group that exists when one is making personal shopping choices.

The data coming from Australia and prevalence data suggests that there is no positive impact on public health in Australia resulting from the introduction of plain packaging. Data from Australia shows that the pre-existing downward trend in smoking prevalence has not been impacted by the introduction of plain packaging.

The Australian government will not review the policy themselves until December 2014. The Department of Health should await the outcome of this review until making a decision in the UK.

The latest assessment(s) of the efficacy of plain packaging for tobacco products in Australia unequivocally demonstrates that it has had no impact upon smoking incidence, either overall or amongst minors (aged 14-17 years). Indeed, quite the converse, legal tobacco sales which had been in long term decline actually rose by some 59 million sticks in the first year plain packaging was introduced, and seizures of counterfeit tobacco products more than doubled. In other words whilst there is absolutely no evidence to support the notion that plain packaging will have a negative influence on tobacco consumption, there are clear indications that it may indeed have unwelcome associated consequences.

Data from Australia suggests that whilst consumption of cigarettes in the year to July 2013 remained at the same level as in 2012, the proportion of illicit cigarettes had increased substantially. This is corroborated by the most recent Annual Report of Australia's Customs and Border Protection Service, which indicates that the number of illicit cigarettes entering Australia has indeed risen dramatically in the past three years.

A recent KPMG report states that since plain packaging was introduced in Australia the level of illicit consumption has grown from 11.8% to 13.3% of total consumption. 'Manchester' is currently the largest illicit contraband cigarette brand in Australia with a 1.3% market share. By allowing illicit brands into the market tobacco smoking become less regulated, more affordable and counter-productive to the aim of reducing smoking. Oddly the Australian experience showed that between 2012 and 2013 consumption of all tobacco products remained the same, whereas in previous years it had been in decline. This was mainly due to the availability and affordability of cheaper cigarettes.

There is no evidence that plain packaging will have actual positive public health impacts. This government and the previous Labour government have consistently failed to provide any evidence that plain packaging will have a positive impact. It is pure speculation. We are surprised that any government is prepared to introduce any form of legislation with any evidence to support the introduction of that legislation.

This is the third public consultation on this issue over the past six years. Both governments have previously rejected the introduction of plain packaging because of the lack of evidence.

As you are undoubtedly aware, assessment of the efficacy of plain packaging for tobacco products in Australia has unequivocally demonstrated that it has had no positive impact upon smoking incidence, either overall or amongst minors (aged 14-17 years). It would therefore seem, by the Government's own stated standards, that the introduction of plain packaging would unequivocally fail to meet the metrics that constitute 'good law'.

The RPC made a number of recommendations to the Department of Health regarding the Impact Assessment (IA) and awarded the IA only an Amber Rating. Specifically the RPC made the following comments which need to be addressed for the IA's 'fit for purpose' rating to stand.

- Provision of more detail on the costs to business of transitioning to standardised tobacco products;
- Provide further information on the costs associated with the disposal of duty paid and currently branded packs;
- Include further analysis of the impact on small and micro businesses in all potential sectors affected;

- Include a fuller description of the Tobacco Products Directive so that plain packaging in the context of TPD can be more easily understood.

Indeed the draft regulations for plain packaging would appear to fall short of the Government's own 'Better Regulation' principles. In essence these principles demand that regulation is clear, transparent, proportionate, consistent and most tellingly targeted only at cases where action is needed. We are at a loss to understand how the Government will be able to judge whether plain packaging is needed when there is not a shred of robust evidence to suggest it addresses the very real issue of smoking in minors.

You will be cognisant of the fact that the tobacco control researchers whose 'evidence' was instrumental in Australia adopting plain packaging, and in whom Chantler places great store, have subsequently (upon witnessing no behavioural change in Australia) revised their position, conveniently removing the time bound element of their expectations, something which flies in the face of good scientific method, demonstrates the weakness of 'stated intentions' as any correlate of behaviour and I am sure you will recognise casts serious doubt on Chantler's conclusion that their evidence is strong and credible.

A number of other measures (which the same tobacco control researchers and their masters claim to bring about a positive public health impact) are currently on the statute or in the pipeline. These include The Tobacco Product Display Ban, a ban on Smoking in Cars and the actions outlined in the April 2014 EU Tobacco Packaging Directive (an updating of the 2001 statute). In the interests of good law and good governance I would urge you to abandon this layering of legislation and introduce these measures in a discrete manner and measure their effects before contemplating plain packaging. Chantler, claims to place great weight upon scientific rigour and strong evidence. He would himself be opposed to the introduction of more than one initiative in a short time frame that will simply confound the ability to accurately measure effects and lose the opportunity to make valuable learnings and on the back of that brings forwards credible and effective legislative measures.

Chantler's superficial rebuttal of the argument that plain packaging will be an invitation to counterfeiters and criminals to further infiltrate the UK tobacco supply chain did him no service. He would appear to accept that, as Australia have found to their cost, once you effectively commoditise tobacco packaging, adult smokers are likely to make brand choices based upon price and elect to down trade to cheaper options (in either the legitimate or illegitimate markets), thus price as a means to curb tobacco consumption is neutered. Chantler believes the solution to this lies in raising tobacco taxation to offset the effects of down-trading and that the current efforts of HMC will suffice to keep any illegal activity in check. We reject Sir Cyril's conclusion that UK law enforcement is effective at reducing and eliminating illicit trade. The massive cuts to local authority trading standards budgets and a huge reduction in tobacco enforcement activity over the last four years make such a conclusion illogical.

As an exercise on paper this position is fine, but the real world is a very different place. There can be no dispute that the UK tobacco supply chain is already infiltrated to a significant degree by criminal elements, who make smuggled or counterfeit products available in a parallel market. A market where there is no regulation, no concerns about selling to minors or the physical make-up of the products themselves. The UK, because of its high levels of tobacco taxation (and hence high retail prices for tobacco products) is, and has been for well over a decade, highly attractive to the criminal element for the profit pool it represents. HMC figures will support the assertion that as prices in the legitimate market increase, volume flows to the grey or black market, denying the Government much needed revenue and relinquishing some control over the sale of a controversial product,

The EU Tobacco Product Directive (2014), through setting minimum unit sizes (20 cigarettes and 30g of rolling tobacco) effectively doubles the entry cost to tobacco, disproportionately affecting some would argue, the most economically challenged. Proponents of this measure, see it working by pricing people out of the market (a similar argument to the tax rises proposed by Chantler).

By layering plain packaging and TPD (2014) it is unconceivable that the effect will not be an explosion in the grey and black markets in tobacco. At the turn of this century, significant increases in tobacco taxation did not lead to a fall in the incidence of smoking, much to the surprise and consternation of tobacco control proponents, significant volume simply moved underground as smokers sought out cheaper product, a demand that was quickly and efficiently filled by the criminal element, and a parallel market, which still exists today, was created. So, it would seem to me that an incontrovertible effect of plain packaging (alone and in association potentially with other measures the Government appears set on enacting) will be to drive a further significant proportion of the legitimate market underground and beyond the protection of the law, manufacturers and retailers.

Plain packaging threatens trade, jobs and tax revenues. It will create a fertile ground for a significant increase in smuggled and counterfeit tobacco products. Illicit tobacco jeopardises the livelihood of thousands of independent retailers, and the criminals who control this parallel market have no concern about that they sell or the age of the people to whom they sell. Chantler made light of this legitimate threat, it would be a mistake to accept his complacency as a reason for surety, proven econometrics (proof as opposed to evidence) demonstrate that raising prices will fuel a parallel market, and give rise to consequences that fly in the face of the stated intent of plain packaging.

Whether to smoke or not is a fundamental freedom of choice, a choice that must rest with informed adults. No right minded person would want minors to smoke, and we wholeheartedly support all reasonable and proportionate measures that actually prevent or discourage children from purchasing or consuming tobacco. However, the proposal to introduce standardised packaging is neither reasonable nor justified, an argument that seems to have been lost in the maelstrom of cant and rhetoric that have surrounded this topic. There is simply no credible evidence (let alone anything that might be thought of as proof or fact) that plain packaging will have a positive influence on decreasing the incidence of smoking, particularly amongst minors. If Government really wants to protect children from smoking it should seek a tougher enforcement of existing laws and focus on further education within schools. The incidence of smoking amongst minors, has consistently fallen over the last 10 years, due to an effective raft of measures agreed between law makers, tobacco manufacturers and the retail trade. By fuelling a parallel market, plain packaging runs the very real danger of reversing the laudable work of the last decade in the area of smoking amongst minors.

Plain packaging will not only fail to deliver a positive impact upon public health (indeed the only valid evidence on behaviour, suggests it may well have the opposite effect), but from a business perspective it will have a deleterious impact upon the thousands of independent retailers and others associated with the legitimate tobacco industry. At Ignis, we believe plain packaging will as a minimum significantly reduce our ability to invest in jobs, particularly for those in the critical post university years, more likely it will necessitate the redundancy of some of our highly skilled and talented staff, many of them aged below 30 years and at a critical stage of their employment careers.



Group Account Director

EL 319



Derby City Council

Department of Health
By email
TobaccoPackaging@dh.gsi.gov.uk

Your ref

Our ref MR/JW

Contact

email

Tel

Minicom

Date 7 August 2014


Dear Department of Health

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

I would like to thank the Department of Health for the publication of the relevant documentation and opportunity to respond to the consultation on the introduction of regulations for standardised packaging of tobacco products.

In answer to the consultation, I would like to submit the attached response (in requested template) on behalf of Derby City Council.

Yours Faithfully



Cabinet Member for Adults and Health
Derby City Council

Cabinet Office | The Council House, Corporation St, Derby DE1 2FS | www.derby.gov.uk





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):



Job Title (required):

Cabinet Member for Adults and Health

Contact address of organisation (required):

Derby City Council
Council House
Corporation Street
Derby
DE1 2FS

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:

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 is extensive evidence to support the case for immediate action by Government on standardised packaging for tobacco products in order to reduce smoking rates in the UK. The Chantler Review was thorough, balanced and reliable, and concluded that "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 commend the approach taken by the Scottish Government to push ahead with the introduction of standardised packaging, and we would also echo the Welsh Government's expressed concern at the delay in progressing with this agenda.

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?

It is estimated that smokers in Derby City spend around £66million on tobacco products per year. If the introduction of standardised packaging were to result in a drop in tobacco sales of 3.4%, as seen in Australia, Derby smokers would save around £2.2million. Because of the social gradient in smoking in the City this would reduce local health inequalities by releasing disposable income to reduce economic disadvantage (the major driver of health inequalities).

Derby City Council smoking cessation colleagues are of the view that standardised packaging will have a greater impact on preventing people from starting to smoke than on helping them stop. However, standardised packaging will be one of a range of important triggers to people deciding to quit.

We would like to draw your attention to a recent Survey of 78 Directors of Public Health conducted by the Association of Directors of Public Health in January 2014. 100% of respondents supported the introduction of standardised packaging and considered the major likely health impact to be in discouraging children and young people from taking up smoking. 94% of the Directors of Public who responded

considered that standardised packaging would have a positive impact on reducing health inequalities, particularly in relation to children and young people.

The tobacco industry has argued that standardised packaging will lead to an increase in the illicit tobacco trade. However, the revised EU Tobacco Products Directive (Article 15) 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." The industry have developed such a security system - Codentify, which is based on a secure algorithm, meaning standardised packaging would likely be no more easily counterfeited than current branded packaging.

Colleagues in Derby City Trading Standards report that tobacco products are already easy to counterfeit and we are not aware of any evidence, or convinced by any arguments, suggesting that the introduction of plain packaging would lead to an increase in counterfeiting.

We do expect retailers to see a decline in sales due to the loss of attractiveness of the product, but this will happen gradually, allowing retailers to adjust over time.

Evidence from The Australian Government's Department of Health indicates standardised packaging, alongside other tobacco control measures, has been associated with a reduction in tobacco consumption. Their figures show 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.

The Australian Institute of Health & Welfare recently published headline findings from the 2013 National Drugs Strategy Household Survey. These shown that the prevalence of smoking among adults fell by 15% in the second half of 2013, from 15.1% to 12.8%, a year after standardised packaging was introduced in December 2012.

The Australian survey also found that fewer young people were taking up smoking. The proportion of 12-17 year olds who had never smoked remained high in 2013 at 95%, and the proportion of those aged 18-24 who had never smoked rose from 72% to 77%.

Young people were also starting to smoke later, with the average age at which 14-24 year olds smoked their first full cigarette rising from 14.2 years in 1995 to 15.9 in 2013.

The survey collected data from nearly 24 000 people across Australia between 31 July and 1 December 2013, and was conducted before the government's major hike in tobacco tax of 12.5% in December 2013.

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?

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

We believe that the regulations should also apply to specialist tobacco products including cigars, cigarillos and shisha. The explanation for their exclusion given is their low rate of use by young people, however we feel this 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.

Health messages and images used on packaging should be designed to maximise their impact on reducing health inequalities, by ensuring they are meaningful and relevant to communities with the highest rates of smoking.

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 UK Government should 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

- ensuring that the industry work with retailers to equip them to identify illicit products in any new regime
- 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.

In conclusion, Derby City Council, in common with the wider public health community, the consensus of medical opinion, and general public opinion (<http://tinyurl.com/po6lbpq>), supports the introduction of standardised packaging in the UK. We support the propositions set out in the Framework Convention on Tobacco Control relating to the role of standardised packaging in helping to reduce smoking rates; that is, that standardised packaging would reduce the attractiveness and appeal of tobacco products, it would increase the noticeability and effectiveness of health warnings and messages, and it would reduce the use of design techniques that may mislead consumers about the harmfulness of tobacco products.

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.

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<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

EL320



Trading Standards Service
Public Protection Division
222 Upper Street
London N1 1XR

Consultation Co-ordinator
Department of Health
2E26 Quarry House
Leeds
LS2 7UE

Tel :
E-mail :
W

Date: 07/08/14

Dear Sir / Madam,

CONSULTATION RE STANDARDISED PACKAGING REGULATIONS

I lead on Tobacco Issues for Islington Trading Standards. Please find our response to this consultation.

I will restrict this response to enforcement matters as, although I am personally very much in favour of such regulation, my concern here is the enforcement of any resultant Regulations.

- 1) I very much agree with the assessment in the Chantler Review that the tobacco industry's argument that standardised packaging would increase the illicit market is unconvincing. Indeed, it would go further. At least until standardised packaging is a worldwide 'norm', I believe the illicit market will decline. Counterfeiters are already able to make very good copies of packaging, so this will not change. However, genuine but non-duty paid products in non-standard packaging will be very easy to spot and much harder to sell in a retail environment or, arguably, elsewhere.
- 2) No.
- 3) I believe that consideration should be given to making 'shisha' tobacco subject to the plain packaging requirements. I accept that many niche tobacco products do have a low rate of use by young people and that 'niche' is an acceptable description. I am less sure that this applies to shisha tobacco.

In my experience as an enforcement officer active in shisha lounges, shisha is smoked commonly by young people and no longer confined to specific populations. The increasing amount of research on the subject (specifically by Dr Mohammed Jawad) supports this view. Further, the fruit flavouring (and preponderance of fruit that is typically on the packaging) means that many users are unaware that the product they are smoking has tobacco or nicotine in it.

It seems to me that plain packaging should be extended to these products for this reason.

- 4) No.

Yours sincerely



Principal Consumer Services Officer (Alcohol & Tobacco)

E L 321



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):



Job Title (required):

Cabinet Member for Community Wellbeing & Public Health

Contact address of organisation (required):

Wellington Street London SE18 6PW



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?

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."

A report by Professor David Hammond for the Irish Department of Health backs up Sir Cyril Chantler's view. He concluded that;

"Overall, the existing evidence on plain (standardised) packaging supports four primary conclusions:

- 1) Plain packaging will reduce smoking initiation among youth and young adults.
- 2) Plain packaging will promote smoking cessation among established smokers.
- 3) Plain packaging will support former smokers to remain abstinent.
- 4) Plain packaging will help to de-normalise tobacco use."

In the response by 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.

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.

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 evidence base on standardised packaging has expanded considerably since the 2012 government consultation, with the publication of numerous peer-reviewed research studies and real world post-implementation evidence from Australia. The case for standardised packaging, which was already strong, has been strengthened further.

Standardised packaging was introduced in Australia as part of a comprehensive strategy. This included larger health warnings (75% rather than the 65% in the TPD), mass media campaigns and reducing affordability by increasing taxation. Australia is committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years, starting in December 2013, a far higher increase than the current escalator in place in the UK which is only 2% above inflation.

A principal tobacco industry argument against standardised packaging has been that the illicit trade in tobacco in the UK is on the increase and that plain packaging will inevitably exacerbate this trend. There is no good reason to accept either of these arguments. With respect to the first argument tobacco industry data purporting to show an increase in illicit is misleading, with respect to the second there is no plausible mechanism of action by which plain standardised packaging would lead to an increase in the size of the illicit market, and indeed evidence published since the 2012 consultation suggests that it is false.

Opponents of standardised packaging argue that it would make production of counterfeit tobacco products easier, lower costs for consumers, confuse consumers in respect of product authenticity, and increase appeal and purchase of counterfeit tobacco. A Scottish study of 49 young women smokers aged between 16 and 24 explored the role of standardised packs in the context of the last of these contentions. Participants were presented with varying mock displays of legal and counterfeit tobacco in plain standardised packs. Perceptions towards counterfeit cigarettes were negative with concerns about content and taste. The authors concluded that standardised packaging had no bearing on perceived appeal of counterfeit tobacco.

Evidence from Australia on Illicit Tobacco

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.

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.

Research in Victoria, Australia found there was no increase in the availability of illicit tobacco in small retail outlets after the implementation of standardised packaging, and despite predictions by the tobacco industry of a marked increase in the sale of counterfeit cigarettes, post-legislation in 2013 only 2.6% of cigarette smokers reported having purchased one or more packets in non-compliant packaging in the past three months.

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. As the Impact Assessment concludes there is no evidence at all that this is the case from the experience in Australia; indeed transaction times have tended to decline post implementation not increase. Most recently, research published at the end of May 2014, which may not been taken into account in the IA, reported that the claim that plain packaging would negatively impact on small tobacco retailers by making it harder to locate and retrieve cigarette packs, thereby increasing transaction times, has not eventuated in Australia.

Health warnings

Health warnings were more noticeable on plain packs, with greater recall of warnings which could lead to greater cognitive processing, particularly among young non-smokers. Plain standardised packs with large health warnings were found to be complementary measures.

Perceptions of risk

Differences in pack design and colours created a false sense of relative risk between cigarette brands. Plain standardised packs were associated with fewer false beliefs of relative risk and harm caused by cigarettes.

Consumer appeal

Plain standardised packs were less appealing and desirable to young people and young adults including smokers and non-smokers. They were also associated with less positive brand imagery such as 'cool' and 'thin'.

Measure of consumer demand and smoking behaviour

Plain standardised packs could reduce consumer demand and promote smoking cessation among existing smokers. Exposure to plain standardised packs reduced urge and motivation to smoke when compared to branded cigarette packs.

Post implementation: the impact of plain packaging regulations in Australia

Australia introduced standardised packaging in December 2012 and three papers were considered. While it was too early to be able to measure the impact on youth initiation, one study found an increase in the number of calls to the Quitline, an effective means of smoking cessation support.

Plain pack colour

Non-white, dark and drab colours were found to be most effective in reducing appeal. Dark colours were also more effective in minimising misconceptions that some cigarettes were safer than others.

Additional evidence since 2012

The Hammond review included studies published before and after 2012. We conducted a separate search of published peer reviewed literature from 2012 onwards. The new evidence we identified is summarised below. We have also cited some studies that were included in the Hammond review, but from which we want to draw out findings that were not captured in the review summaries.

Furthermore, Trans-national Tobacco Companies are fee-paying members of the proponents of these messages: Scottish Grocers Federation, Association of Convenience Stores, National Federation of Retail Newsagents, and the Federation of Wholesale Distributors. The Tobacco Retailers Alliance, which has been extremely vocal in its opposition to standardised packaging is a front group of the Tobacco Manufacturers' Association, the transnational tobacco companies' trade association in the UK which is entirely funded by tobacco companies. A series of PMI leaked documents reveal the integral role that such organisations play in opposition to tobacco control regulation.

Tobacco products are already easy to counterfeit and TSI is not aware of any evidence, or convinced by any arguments, which suggest that the introduction of plain packaging would lead to an increase in counterfeiting. Covert safety markings will still be used in standardised packaging to help authorities distinguish them from counterfeits.

Since 2000 successive UK Governments have implemented a cross-government anti-smuggling strategy, including tough measures to force tobacco manufacturers to control their supply chains and the strategy has been highly successful in reducing the size of the illicit trade from 21% and rising in 2000 to 10% by 2009-10 for cigarettes and from 60% and rising to 46% of handrolled tobacco. The introduction of graphic warnings in the UK in 2008-9 made tobacco products significantly less attractive to smokers yet the illicit trade continued to decline in line with the pre-existing trend. TSI believes that smokers are unlikely to increase their foreign travel simply because the logos and colours on their tobacco products have disappeared.

The above was in a press release from TSI in Aug 2012.

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?

We consider that the draft regulations to be comprehensive and would suggest only minor changes, to be fit for purpose. The changes we recommend are set out below.

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

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.

Slim and super-slim cigarettes

From the introduction of Virginia Slims through to modern day equivalent brands such as Vogue, we have seen the tobacco industry attempt to give to cigarettes a more 'elegant' appearance, to increase their appeal. The legislation in Australia has standardised packet size, effectively removing the opportunity for the tobacco industry to market these slim and super-slim cigarettes. The tobacco industry uses such mechanisms to reinforce misconceptions of reduced risks between different brands of cigarettes, or to enhance the appeal of different cigarettes to different segments of the market. The regulations as drafted would not remove the opportunity for tobacco manufacturers to make this distinction.

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?

Impact on Retailers

Tobacco sales are undergoing long-term decline. At its peak in the 1950s adult male smoking prevalence was 80%. Female smoking prevalence continued to rise and reached a peak of 45% in the mid-1960s. Since then smoking prevalence amongst both men and women has declined significantly and is now under 20%. Government policy is designed to sustain and increase this trend.

More recent data from HMRC tobacco clearances shows the impact this has had on sales volume with the number of million cigarette sticks cleared for UK sales falling from 94,080 million in 1992/3 to 54,737 million in 2002/3 to 37,932 million in 2012/13, a decline of 30% in the last ten years.

Small retailers have had to adjust to this decline and will continue to have to do so. It is important to note that any impact of standardised packaging will be marginal compared to the overall secular trend.

HMRC clearance data also shows the importance of the government's anti-smuggling strategy in supporting retailers. The impact is clearest with respect to handrolled tobacco. At its peak the illicit market share of handrolled tobacco was estimated to be over 60%; most recent estimates by HMRC suggest that it has fallen to 36%. This is matched by a growth in the amount of taxed HRT released for consumption which rose 2.8 million kilograms in 2002/3 to 6.2 million kilograms in 2012/13.

Comprehensive data on prices and profit margins is available from wholesalers such as Bookers who can be contacted via their website <https://www.booker.co.uk/help/contactus.aspx>. Data on the proportion of tobacco sales accounted for by different types of outlet is available from AC Nielsen which can also provide data on the trends in sales of tobacco between different types of retailers over time.

Conclusions

Smoking is one of the nation's most serious public health challenges, with the greatest harm suffered by the least advantaged in society. The evidence for standardised packaging as an effective measure to help drive down smoking rates is already strong, and is growing even stronger now that the positive impact is beginning to be seen in Australia.

The evidence tells us that, as part of a comprehensive programme of tobacco control, standardised packaging has the power to bring significant improvements in public health. The latest data from Australia indicates that it could also bring real economic benefit to our most deprived communities.

The evidence for the benefits standardised packaging can deliver is now irrefutable. To delay its introduction is to delay our attainment of those benefits. We want to build on the progress already made in driving down rates of youth smoking. Removal of tobacco companies' ability to engage young people through marketing, improved knowledge of the health harms and fewer smoking role models are all essential to achieving a tobacco free generation

Evidence shows 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 with only 11% opposed. 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.

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. Furthermore, the claims that the tobacco industry and those it funds have made to oppose the legislation have now comprehensively been shown to be highly misleading and its data highly inaccurate.

Royal Borough of Greenwich has already made a public commitment by signing up to the Local Government Declaration on Tobacco.

We acknowledge that;

- Smoking is the single greatest cause of premature death and disease in our communities;
- Reducing smoking in our communities significantly increases household incomes and benefits the local economy;
- Reducing smoking amongst the most disadvantaged in our communities is the single most important means of reducing health inequalities;
- Smoking is an addiction largely taken up by children and young people, two thirds of smokers start before the age of 18;
- Smoking is an epidemic created and sustained by the tobacco industry, which promotes uptake of smoking to replace the 80,000 people its products kill in England every year; and
- The illicit trade in tobacco funds the activities of organised criminal gangs and gives children access to cheap tobacco.

Royal Borough of Greenwich believe that standardised tobacco packaging will:

- Support local efforts to reduce the number of young people who smoke, removing one of the few remaining opportunities the tobacco industry has to market their products to children.
- Have greater effect if bought in at the same time as measures in the European Tobacco Product's Directive in April 2016
- Deliver local public health benefits with little impact on local businesses
It will support the work of the Greenwich Tobacco Free Partnership.

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Thank you for participating in this consultation.

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[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

EL322



**Response from the TaxPayers' Alliance to the
Department of Health Consultation of August 2014
into the standardised packaging of tobacco products**

Submitted on behalf of the TaxPayers' Alliance by

[REDACTED]
TaxPayers' Alliance
55 Tufton Street
London
SW1P 3QL
[REDACTED]

Summary

The TaxPayers' Alliance (TPA) is extremely concerned that introducing standardised packaging on tobacco products would impose significant costs on taxpayers. We voiced the same concerns in an earlier submission to the department in the summer of 2012; we do not feel these concerns have been adequately addressed, or even sufficiently acknowledged.

There is also substantial evidence to suggest that other industries in the supply chain would suffer as a result. Retailers – many of which are small businesses struggling in the aftermath of a recession – will suffer if plain packaging is introduced. The evidence for the improvements to public health is also dubious. For more details on this we refer the department to our consultation response of 2012.

For the purposes of this consultation, two key areas concern the TPA:

- Potential cost of litigation and compensation
- Loss of tax receipts

Our submission explores those two issues in detail, with both covering the specific consultation questions.

In summary, the lack of published work done to assess the impact of these regulations is deeply concerning, and any unpublished work done should be released. A Freedom of Information request sent by the TaxPayers' Alliance to the Treasury sought to publish the modelling work done on the shadow economy and tax receipts, but at the time of writing a public interest test was still being carried out.

The TPA submits that the Government should not go ahead with this policy without first:

- **Confirming whether it has received legal advice on the issue of compensation.** If it has, the Government should then release all of the work done in this area, to indicate its preparedness in the event that it is sued and is found to have deprived tobacco companies of their intellectual property. If it has received advice that compensation will not be payable, the Government should explain in full the basis for this, given the contrary views of legal experts like Lord Hoffmann and others.
- **Quantifying the impact on the illicit trade.** Not enough work has been done to assess the likely impact on the shadow economy, as well as cross-border shopping and down trading, on tax receipts.

If the Government does not pause, this could mean:

- Taxpayers face a potential bill of **£9-11 billion** to finance compensation claims made by tobacco companies whose intellectual property rights will be breached, and to make up the tax revenue gap caused by a bigger illicit market.
- HMRC estimates the current loss to the Exchequer at around **£3 billion** every year due to the illicit trade in tobacco products. This figure could grow significantly with the introduction of plain packaging. It is very possible that this significant revenue loss will be made up with tax increases elsewhere.

1. Potential cost of litigation and compensation

The TPA is extremely concerned that the consultation and the Impact Assessment do not consider the legal implications of introducing plain packaging. This surely has to be a concern for the Government. Taxpayers could be horribly exposed to massive legal bills and compensation claims, as plain packaging could deprive businesses of their intellectual property.

Legal action linked to the introduction of plain packaging has happened – and is ongoing – in other countries. The introduction of plain packaging led to litigation in Australia, for instance.

A number of countries have also filed complaints with the World Trade Organisation against Australia, with more set to follow.

Not only that, the EU Tobacco Products Directive is the subject of litigation in the UK courts at the moment.

These legal challenges remain unresolved.

As we made clear in our submission to 2012 consultation, we believe the Government should wait and assess the outcomes of other cases before proceeding with the implementation of new regulations.

We are surprised that the Impact Assessment does not mention this issue at all. This is, at best, a huge oversight – it is surely in the public interest to carry out work to see how much taxpayers would have to pay out if a tobacco manufacturer were to successfully sue the Government for deprivation of their intellectual property.

It is particularly surprising because the 2012 consultation specifically asked for comment on the legal issues associated with the policy; and the Government was warned that its legal case is weak.

There were more than 2,250 detailed responses to the consultation and according to the Government's own summary:¹

"many of the businesses and business related organisations that responded to this question stated that standardised packaging could have legal implications and some suggested the measure would be illegal".

It is bizarre, therefore, that no substantial work has been done to address these concerns, particularly in the Impact Assessment. The Chantler Review also did not look at legal considerations.

New evidence on this issue has come to light, too, and the scale of potential compensation is staggering. A recent report by Exane BNP Paribas for Investors estimated the value of tobacco brands in the UK at £9-11 billion.²

¹ Department of Health, Consultation on standardised packaging of tobacco products: Summary report, 2013, pg 19

² Bushnell et al, The Plains are Coming, Exane BNP Paribas, 2014, pg 14

In 2012, we cited evidence from Adam Spielman, an analyst at Citigroup Investment Research. In a submission to a Department of Health consultation from 2008 (Future of Tobacco Control), he outlined a 'simplified discounted cash approach' to calculate the cost of compensation. He found that the cost could be £5 billion.³

Of course, the new evidence produced by Exane BNP Paribas dwarfs that. If compensation of £11 billion were paid out, that amount would be the equivalent of a cut to the Basic Rate of Income Tax of almost 3p.⁴

It is important to repeat what Lord Hoffmann, Chair of the Intellectual Property Institute's Research Council, said in 2012:⁵

"A prohibition on the use of a mark is in my view a complete deprivation of the property in that mark, notwithstanding that the proprietor might be able to distinguish his goods by the use of some other mark. I can see no reason why depriving someone of his proprietary interest in a trade mark for a tobacco product (however much it may be in the public interest to do so) should be different in principle from any other deprivation in which compensation is required."

This is backed up in the Exane report:⁶

*"– Member states can take property in the public interest but this must be in exchange for fair compensation
– Deprivation of trademarks would then need 'fair compensation'
– Thus if PP meets this criteria the UK (or French/Irish) government would need to pay fair compensation to the tobacco industry"*

This has been reported in UK and other media. The *Irish Times* reported that the bill for Irish taxpayers could run in to the hundreds of millions of Euros.⁷ The *Scotsman* wrote that estimates for the costs in Scotland alone would be £500 million.⁸

Furthermore, while the legal challenge in Australia saw no compensation being paid out, under Australian law no compensation was due as it was not an 'acquisition'. However, EU law needs only deprivation and many legal experts are of the strong opinion that plain packaging constitutes a deprivation of intellectual property.

This concern has been highlighted on numerous occasions and new evidence has emerged since the consultation in 2012. We can't stress enough how important it is that the Government takes these threats to taxpayers more seriously.

³ Spielman, A, Submission on the future of tobacco control

⁴ TaxPayers' Alliance calculations using HMRC Ready Reckoner

⁵ Press Association, *Plain cigarette packs plan attacked*, sourced from: <http://news.uk.msn.com/plain-cigarette-pack-plans-attacked>

⁶ Bushnell et al, *The Plains are Coming*, Exane BNP Paribas, 2014, pg 13

⁷ Lyons, T, *Tobacco giants may sue over plain packaging*, *Irish Times*, 21 July 2014

⁸ Hulme, C, *Scotland may pay for tobacco intervention*, *Scotsman*, 31 March 2014

We recommend that the Government should pause and consider these implications in full before going ahead with the policy. If they have been considered, then all work framing the decision to proceed anyway should be released. If the Government believes there is no risk of legal action, they should then explain why this is the case given it is a contrary view to that of other legal experts.

2. Loss of tax receipts

The Impact Assessment acknowledged three reasons why the Treasury may lose tax revenue if plain packs are implemented. They are:

- An increase in illicit trade
- An increase in legal cross-border shopping
- An increase in down trading

Increase in the illicit trade

The Chantler Review concluded that the risk to the illicit trade of introducing plain packaging was not great.⁹

"It is my view that the risks of price effects undermining the objectives of a standardised packaging policy are small and that the impacts could be readily mitigated through taxation if nevertheless they were to materialise. I am not convinced by the tobacco industry's argument that standardised packaging would increase the illicit market, especially in counterfeit cigarettes. It seems to me that the solution to illicit use is instead to have an effective enforcement regime, and the enforcement agencies in the UK have already demonstrated that an effective enforcement regime and appropriate sanctions can keep illicit to low levels, even in a relatively high tax jurisdiction."

This is shown to be a complacent view by the Impact Assessment. Paragraph 132 shows there is a genuine risk of increased counterfeiting.¹⁰

"Standardised packaging may lead to easier market entry for new counterfeit suppliers leading to an overall increase in the supply of counterfeit cigarettes"

This view is backed up elsewhere in the Impact Assessment. Paragraph 126 of the Impact Assessment demonstrates that HMRC's view is that plain packaging:

"is likely to enhance and diversify current risks"

As shown in the quote above, the Chantler Review suggests that any increased threat could be countered by a strong programme of enforcement. But paragraph 185 of the Impact Assessment suggests that the funding may not be available for such a programme:

⁹ Chantler, C, Report of the independent review undertaken by Sir Cyril Chantler, 2014, pg 37

¹⁰ This and all further references to the Impact Assessment are made in the text

"To mitigate any increase in illicit trade would require additional resources devoted to reducing the demand, and intercepting the supply of illicit tobacco products which would increase costs and the additional funding required cannot be guaranteed or assumed."

Chantler's conclusion also contradicts views of law enforcement professionals themselves. It is important to remind the department about the views of Roy Ramm, former Commander of Specialist Operations at New Scotland Yard:¹¹

"It would be easy to say dealing with this situation is one that just requires increased law enforcement, monitoring and intelligence operations, and that there is no connection between a potential increase in smuggling and the government's plans for plain packaging of cigarettes. But this is not the case. First, plain packaging will be easier to counterfeit than branded packs. Once you've forged one packet with the name of the product on it, you've forged them all. Secondly, if it is easier to fake the packet, then it will be encouragement for organised crime groups to produce more and more fake tobacco to contain within them. If there is a natural barrier put on the numbers of cigarettes you can fake, because of the multiple numbers of brands in the marketplace that need to be counterfeited, then there is no limit put upon smugglers and organised crime groups if the carton – and content – are [sic] the same."

A poll found that serving police officers are also sceptical about plain packaging. When asked whether standardised packs would make it easier to produce or sell counterfeit cigarettes, 86 per cent said it will. 68 per cent said that plain packs would lead to an increase in black market cigarettes. 70 per cent of the officers asked said that they believe the Government will lose tax revenue and 60 per cent even said that plain packs would cause children to turn to the black market.¹²

Perhaps most worryingly, the Impact Assessment notes the likelihood of an increase in the illicit trade but cannot quantify it, or attempt to quantify it. This is evident in paragraph 135:

"We conclude that there is likely to be an increase in the UK duty unpaid segment but we have no means of quantification"

This is surprising. We know that the current cost of the illicit trade in tobacco is potentially almost £3 billion according to HMRC. The Impact Assessment itself also says, in paragraph 26, that:

"Every percentage point increase in the size of the illicit cigarette market corresponds to a loss of around £120m per annum in revenue to the Exchequer."

It is unacceptable to proceed with implementing regulations without first properly assessing what the impact will be on the Exchequer, and therefore taxpayers. With the public finances still on the mend, lost revenue may mean that taxes will have to be raised elsewhere.

¹¹ Ramm, R, Government Plans for Plain Packaging Will Boost Illicit Trade, Huffington Post, July 2012

¹² Populus, UK Law Enforcement Views on Illegal Tobacco and Plain Packaging, fieldwork date: 21 June 2012 – 25 June 2012

KPMG studied the impact of plain packaging on the illicit trade in Australia. They estimated that within one year the illicit trade increased as a proportion of the total tobacco market by 2 per cent.¹³ If that were replicated in the UK, the cost would be £300 million a year, based on the calculations in the Impact Assessment.

The Chantler Review questioned the methodology of the KPMG report. But there has been no attempt by the Government to do its own analysis, so the study should still give serious cause for concern.

Increase in legal cross-border shopping

There are other potentially costly unintended consequences of introducing plain packaging. The Impact Assessment adds a cost to the Treasury from an increase in consumers buying tobacco from other EU countries and bringing it back to the UK for personal consumption.

This is, of course, legal. But there is a cost to taxpayers in the UK, although it cannot necessarily be mitigated. The Impact Assessment estimates that plain packaging may result in an increase in cross-border shopping totalling £2 billion (paragraphs 142 and 191).

Paragraph 128 of the Impact Assessment notes the difficulty of estimating the impact of plain packaging on cross-border shopping:

"it is hard to predict the potential impact on the complex and dynamic nature of the illicit trade in contraband and counterfeit tobacco and any switching in legitimate trade to branded packs purchased abroad"

But, again, it is unacceptable for the Government to consider introducing a policy without quantifying the unintended consequences when the potential cost is so large.

Increase in down trading

Tax receipts also fall when consumers switch to cheaper brands. In paragraphs 88 and 115, the Impact Assessment predicts that consumers will indeed trade down to cheaper products. Of course, this has no benefit whatsoever to public health.

"We assume that the rate of switching or downtrading between the top two price bands and the lower two price bands will take place at twice the rate after standardised packaging as before standardised packaging".

However, the IA has not taken full account of the fiscal impact of consumer down trading because it excludes switching between cigarettes and roll-your-own tobacco too, which carries a much lower rate of duty (see paragraph 122). This indicates again that the Government is seriously underestimating the cost to taxpayers.

¹³ KPMG, Illicit tobacco in Australia, October 2013



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

6 August 2014

Dear Sir,

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

I am writing to respond to the above consultation. I am an independent retailer and the National Spokesman of the Tobacco Retailers Alliance (TRA). The TRA is a coalition of independent retailers who sell tobacco products. Since 1983, we have represented the rights of legitimate retailers to sell tobacco products in a legal and responsible way. The TRA is funded by the Tobacco Manufacturers' Association through its member companies - British American Tobacco, Imperial Tobacco Limited and Gallaher Limited (a member of the Japan Tobacco Group of Companies) - which means it can offer a free membership to all independent retailers who sell tobacco. We campaign on issues of relevance both to our businesses and to the industry.

Despite many years having passed since the idea of standardised packaging was first raised, we still do not believe there is any credible evidence that introducing the measure would reduce the number of young people starting to smoke. Those people under the age of 18 who try smoking do so precisely because they are not supposed to. For most, this temporary rebellious attitude is just part of growing up. Indeed, it is more often than not peer pressure amongst teenagers that encourages them to try smoking - if not that, then because an older family member smokes.

As well as not solving the issue of those under 18 trying smoking, we believe the introduction of standardised packaging would have several negative consequences particularly for independent retailers who provide such a valued service to communities across the United Kingdom. It would lead to:

- A rise in tobacco smuggling as the simpler packaging encourages more criminals to become involved in the illicit trade by making it easier to counterfeit / smuggle. This would not only affect our businesses but also tax lost to the Treasury;
- A rise in the number of opportunities those under 18 have to get tobacco, no questions asked. Smugglers are not concerned or restricted by the age of their customers;
- A rise in customers - presented with no brand differentiation - seeking out lower-priced products and moving to non-duty-paid and illicit products including those sourced over the

internet. This would affect the viability of our businesses. According to research carried out by the Tobacco Manufacturers' Association, tobacco sales lost per shop to the non-UK duty paid market (illicit and crossborder) on average equates to over £30,000 a year;

- A rise in the length of time it takes to serve customers as retailers struggle to identify the correct product;
- A rise – as a result – in the amount of time a retailer is not able to keep an eye on the shop which will encourage theft;
- A rise in the number of customers unprepared to queue who then take their custom to supermarkets which have more tills available;
- A rise in the amount of time it takes to re-stock and stock-take as the similar packets require lengthier identification;
- A rise in the amount of red-tape facing independent retailers when the pending regulations of the display ban have not even been implemented in our shops, let alone its effects evaluated.

Instead of introducing standardised tobacco packaging, the government should consider:

- Providing greater support for enforcement of the current legislation against smuggling and the existing penalties;
- Providing greater backing for proof-of-age schemes such as No ID No Sale and CitizenCard;
- Allocating greater funds for the education of young people to raise awareness of restrictions on the sale of tobacco and the laws surrounding retail of age-restricted products;
- Recognising and respecting independent retailers as the local gatekeepers of age-restricted products rather than burdening them with more red tape.

If you have any questions following a review of the TRA submission, please do not hesitate to get in touch.

Yours faithfully,



National Spokesman,
Tobacco Retailers Alliance
PO Box 61705
London SW1H 0XS
0800 008 282



EL323



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

The TRA is a coalition of independent retailers who sell tobacco products. Since 1983, we have represented the rights of legitimate retailers to sell tobacco products in a legal and responsible way. The TRA is funded by the Tobacco Manufacturers' Association through its member companies - British American Tobacco, Imperial Tobacco Limited and Gallaher Limited (a member of the Japan Tobacco Group of Companies) - which means it can offer a free membership to all independent retailers who sell tobacco. We campaign on issues of relevance both to our businesses and to the industry.

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

Our main concern about the Chantler Review is that Sir Cyril Chantler did not meet any retailers in the UK as part of his research. The Tobacco Retailers' Alliance contacted the Review to offer a meeting which would have been attended by other retailer organisations. It would have provided an opportunity to raise concerns about the detrimental effects standardised packaging would have on retailers. However, in response to our request, we were told that Sir Cyril was not "minded to explore those issues further via a meeting".

This lack of involvement of retailer organisations at the evidence-gathering stage is perhaps a reflection of the priorities of the Review which focussed primarily on the health implications of the proposals. This is too narrow a base on which to base a major policy as it did not take into account the views of those businesses most affected by the potential restrictions.

In addition, the Review itself concludes: "Research cannot prove conclusively that a single intervention such as standardised packaging of tobacco products will reduce smoking prevalence." This hardly appears the most compellingly conclusive evidence for a measure which will detrimentally affect small retailers, as is outlined elsewhere in this response.

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?

Our members are clearly concerned about the effects of standardised packaging on their business. In a May 2014 survey of 257 TRA members, 88% felt that standardised packaging would not achieve the purported aim of the policy of reducing youth smoking. Research from the Department of Economics at Zurich University and the University of Saarland backs this up. The data from that study of 14 - 17 year old Australians found no evidence that the introduction of standardised packaging had had any effect on smoking prevalence of minors.

Indeed, since standardised packaging was introduced in Australia – the only country to do so – smoking sales overall have increased. The research by InfoView, the industry monitor, published in June found that 60 million more cigarettes had been sold in the past year. This increase reversed a long running decline in tobacco sales which had been happening in the country since 2009.

In addition, 89% of those surveyed in the TRA poll said that standardised packaging would make it easier for smugglers to copy the packaging. This is echoed by a Populus survey also from May which found that 82% of police officers believed that standardised packaging would lead to a rise in fake and smuggled packaging. The evidence from Australia also backs this up. Research by KPMG found that since the implementation of standardised packaging the illicit trade has seen a 154 per cent increase in the sale of new illegal brands.

We are also concerned that the introduction of standardised packaging will mean that customers will focus more than ever before on the price of the tobacco which they buy. If they downgrade to cheaper tobacco or to non-duty paid or illicit sources, this will have a detrimental effect on the turnover of our stores. Tobacco accounts for on average a third of sales in convenience stores and considerably more in specialist stores and so plain packaging will be a tangible threat to the viability of many stores.

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 practicalities of implementing standardised packaging will affect retailers on a daily basis more than most other stakeholders. In the recent TRA survey, 85% of those polled said that they thought plain packaging would slow transaction times. This is because retailers will only be able to recognise a particular brand by reading the small font on the front. Apart from that, all the packets will look the same. This is backed up by a research study entitled "The Impact of Plain Packaging on Small Retailers" carried out by Roy Morgan Research in Australia 2013 which revealed that 78% of small retailers found transaction times going up following the introduction of plain packaging there. The idea – as expressed in the Impact Assessment – that transaction times would actually go down as a result of plain packaging is misguided. We would agree with a report by the Regulatory Policy Committee looking at the Impact Assessment that more research needs to be carried out on the effects of standardised packaging on transaction times and the findings should be reported in a final Impact Assessment.

These slower transaction times have a recognised knock on effect: 80% of retailers think that slower transaction times will lead to a loss of shoppers not prepared to queue. Customers are happy to queue in large supermarkets but they are not happy to queue in smaller local shops where they tend to buy a smaller number of articles at any one time. The loss of any of these customers means the loss not only on the sale of the tobacco, but also the add-on purchases such as the newspaper or the chocolate bought during the same transaction. Therefore, the profits of the independent retailer are hit twice.

As the shopkeeper's back will be turned for longer periods during the process of identifying the correct packet out of an array of identical designs, 49% of those polled said it would lead to an increase in the risk of violence against the retailers while they are turned away. 46% think that store theft will increase for the same reasons. To put store theft into some sort of context, 44% of those polled have been the victim of burglary / theft in the year leading up to the survey. Of those, 53% think this will get worse if standardised packaging was introduced.

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?

There is comparatively little reference to the impact on retailers bearing in mind they will be the ones most affected on a daily basis if standardised packaging is introduced. Independent retailers are the gatekeepers of restricting access to age-restricted products, such as tobacco, which is why we support proof-of-age schemes such as CitizenCard's No ID No Sale. The government relies on shopkeepers including our members to enforce restrictions, old and new. Very little reference has been given in the Impact assessment to the fact that retailers will not only have to introduce this measure in to their shops but also deal with its ramifications.

In addition, there is little or no reference in the Impact Assessment that the tobacco display ban has yet to be introduced in the shops of most independent retailers. The display ban will come into force on 6th April next year for those shops of 280 sq. metres (3000 sq. feet) or less, plus all bulk tobacconists and specialists. If standardised packaging was to be given the go ahead, small retailers would be hit twice by two restrictions, neither of which have been properly evaluated. At the very least, the Government should wait until proper evidence from Australia has been collated and assessed and allow the display ban to be introduced in small shops in the UK.

The restrictions being introduced under the Tobacco Products Directive will include a ban on packets of less than 20 cigarettes, a ban on packs of less than 30g of loose tobacco and a ban on menthol cigarettes. If standardised packaging goes ahead, this will mean that independent retailers are hit with a hatrick of restrictions in short succession, all of which will affect the viability of their stores.

This is unfair treatment of independent retailers who work long hours to provide such invaluable service to customers old and young in communities across the UK. They need the support of Government, not the burden of it.

As a result, we agree with the Regulatory Policy Committee report that - before any decision is made - further research needs to be carried out as part of a Small & Micro Business Assessment (SaMBA) because of the increased regulation that will affect independent retailers amongst other SMEs.

We also do not believe it is fair that the Impact Assessment document has been made available only in English. We raised the issue with the Department of Health and were told that the Impact Assessment contained some information of a technical nature and so those reading it would be expected to have a technical knowledge of English. Many independent retailers do not have English as a first language, and while they may be perfectly fluent in spoken English, reading a document such as the Impact Assessment would be very daunting for those less proficient in reading English. As it is, the few sections of the Impact Assessment relating to retailers contained straightforward wording and could easily have been made available in other languages.

We also feel it is unfair that the consultation itself took place during the Muslim holy month of Ramadan. A large number of independent retailers are Muslims and their priority during Ramadan is not on a worldly focus but on fasting and prayer. This makes Ramadan the time of the year when Muslim retailers would be least able to respond to any consultation.

For both these reasons, we do not believe this consultation process has been inclusive of groups that may be most affected by the restrictions under consideration in the consultation.

Conclusion

In summary, we feel that there is no credible evidence that standardised packaging would have the health benefits suggested and instead it would have severe consequences for independent retailers. So we would strongly advocate Option 1 in the Impact Assessment which would allow the display ban and TPD restrictions to come into force and provide time for evaluation of the introduction of standardised packaging and its effects on retailers from Australia. As a result, I would urge the Government, on behalf of my members, not to proceed with the proposed standardised packaging restrictions.

If you have any questions following this, please do get in touch. Attached to this response, is the TRA's submission to the 2012 consultation.

Many thanks,



Tobacco Retailers Alliance
PO Box 61705
London SW1H 0XS
0800 008 282





Tobacco Packs Consultation
Department of Health
7th Floor, Wellington House
133 – 155 Waterloo Road
London SE1 8UG

8 August 2012

Dear Sir,

Consultation on standardised packaging of tobacco products

We are writing to respond to the above consultation. As background for you, we are all independent retailers who are members of the Tobacco Retailers Alliance (TRA). The TRA is a coalition of 26,000 independent retailers who sell tobacco products. Since 1983, we have represented the rights of legitimate retailers to sell tobacco products in a legal and responsible way. The TRA is funded by the Tobacco Manufacturers' Association which means it can offer a free membership to all independent retailers who sell tobacco. We campaign on issues of relevance both to our businesses and to the industry. Outlined below are the views of the TRA's members.

There is no credible evidence that standardised packaging would achieve the Department of Health's public health policy objectives, including that of discouraging young people from taking up smoking. So we support Option 1 in the consultation – to maintain the status quo regarding tobacco packaging.

We believe standardised packaging would have several negative consequences:

- an increase in demand for lower priced products from customers who would see the cost of the tobacco as the key differentiating factor between brands. This would affect our margins and the profitability of our businesses;
- an increase in transaction times as store staff find the correct product. This would lead to longer queues in stores and longer periods of time not keeping an eye on the shop;
- an increase in the time it takes for the operational burden of re-stocking and stock-taking;
- a further increase in regulations affecting our sector before pending regulations have been implemented, let alone evaluated;
- an increase in tobacco smuggling including counterfeit products (and young people's access to it) and the other criminal activity it funds in our communities.

Tobacco Retailers Alliance • PO Box 61705 • London • SW1H 0XS

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The Tobacco Retailers Alliance is funded by the TMA



Consultation on standardised packaging of tobacco products

The Tobacco Retailers Alliance (TRA) is a coalition of 26,000 independent retailers who all sell tobacco products. Since 1983, we have represented the rights of legitimate retailers to sell tobacco products in a legal and responsible way. The TRA is funded by the Tobacco Manufacturers' Association which means it can offer a free membership to all independent retailers who sell tobacco. We campaign on issues of relevance both to our businesses and to the industry. Outlined below are the views of the TRA's members.

1. Which option do you favour?

- Do nothing about tobacco packaging (i.e., maintain the *status quo* for tobacco packaging)
- Require standardised packaging of tobacco products; or
- A different option for tobacco packaging to improve public health.

We favour the first option – to do nothing about tobacco packaging (i.e., maintain the *status quo* for tobacco packaging). There is no credible evidence that standardised packaging would achieve the government's aim of reducing youth smoking. Young people do not take up smoking because they like the packaging – they take up smoking because of peer pressure or because people in their family smoke, something which the Department of Health has indicated in its own document, "Consultation on the Future of Tobacco Control (2008)".

2. If standardised tobacco packaging were to be introduced, would you agree with the approach set out in paragraphs 4.6 and 4.7 of the consultation?

No, we do not agree with the approach set out in paragraphs 4.6 and 4.7. Any attempts to reduce or eliminate the branding on tobacco would affect the selling interaction for our members. If all the packs looked the same, it would take considerably longer for store staff to perform each transaction. Shoppers use independent stores because they are convenient to them and the service they provide is rapid and simple. They are not prepared to wait in queues, as they are in supermarkets and they do not even expect to see queues when they come in to the store. Queues would affect not just those purchasing tobacco but also those purchasing other products too. Customers irritated when confronted by a queue in our stores may be tempted to make their purchases along with other shopping at the supermarket. This would inevitably have impact on the turnover of the store through lost sales.

Those customers not lured away to supermarkets would face longer queue times in the independents and longer transactions means fewer sales in any given day. To combat this, retailers might have to increase staff costs which would have implications for profits. Restocking, too, would take longer as staff take time to recognise packs they would normally know at a glance.

Shopkeepers like us would spend an increased amount of time searching for the requested product, which means an increased amount of time with our eye off the store. This would provide greater opportunity for theft from the shop plus - in the worst situations - attacks on the store or staff.

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The Tobacco Retailers Alliance is funded by the TMA

3. Do you believe that standardised tobacco packaging would contribute to improving public health over and above existing tobacco control measures, by one or more of the following:

- Discouraging young people from taking up smoking
- Encouraging people to give up smoking
- Discouraging people who have quit or are trying to quit smoking from relapsing;
- Reducing people's exposure to smoke from tobacco products?

No, there is no credible evidence that standardised packaging would help achieve the Department of Health's objectives. The Department of Health has previously listed the reasons why young people smoke and the packaging of the products was not one of them. Instead other reasons were cited including peer pressure and having family members who smoke. A better way to discourage young people from smoking would be to reduce the access young people have to smoking. One way of doing this would be to make it illegal to proxy purchase tobacco (someone aged 18 or over buying to give to someone under 18). The proxy purchasing of alcohol is already illegal everywhere in the UK – surely tobacco regulation can follow this precedent, as is already the case in Scotland?

We would also question how it is possible to pose a question about how "standardised packaging would contribute to health over and above that of existing control measures" when the display ban has yet to be implemented in the stores of our members, let alone its effects evaluated.

4. Do you believe that standardised packaging of tobacco products has the potential to:

- 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?
- Affect the tobacco-related attitudes, beliefs, intentions and behaviours of children and young people?

No, we do not believe that any of these goals will help achieve the Department of Health's public health policy objectives. We also do not believe that consumers are misled by current tobacco packaging.

With regard to young people, we believe what needs to be tackled is the access they have to tobacco, rather than the packaging. In particular, those under 18 are able to obtain tobacco from criminals selling illicit products who would not bother asking about the age of the person they are about to serve, unlike responsible shopkeepers like us. These criminals already affect our businesses and we object strongly to anything that gives them a bigger share of the tobacco market. More resources need to be allocated to reducing tobacco smuggling in our communities and enforcing existing penalties as the profits from smuggling and counterfeiting go into funding organised criminal activity, such as drug and people trafficking and prostitution.

Part of being an adolescent is to rebel in one shape or form and often smoking is seen as a way of demonstrating this. The Department of Health has previously expressed concern that those under - 18 might be encouraged to take up smoking if standardised packaging was introduced as it would be seen as an act of rebellion.

5. Do you believe that requiring standardised tobacco packaging would have trade or competition implications?

Yes, we would imagine there would be competition implications with standardised packaging but that is outside the focus of our members.

6. Do you believe that requiring standardised tobacco packaging would have legal implications?

Yes, we believe that requiring standardised packaging would have legal implications, though this is something outside of the focus of our members.

7. Do you believe that requiring standardised tobacco packaging would have costs or benefits for manufacturers, including tobacco and packaging manufacturers?

Yes, we believe that requiring standardised tobacco packaging would have costs, though this is outside the focus of our members.

8. Do you believe that requiring standardised tobacco packaging would have costs or benefits for retailers?

We do not believe that standardised packaging would provide any benefits for retailers. Tobacco is the biggest generator of cash turnover for newsagents and convenience stores – sometimes making up to 40% of turnover – and so any threats to these sales are a threat to the entire business. According to figures from JTI, smokers visit their local shop over four times every week and this footfall means that they spend on average £9.05 each time, whether that be on tobacco or tobacco and other products combined.

We believe standardised packaging would only be detrimental for retailers who already act as the gatekeepers for age-restricted products in the community. We believe standardised packaging would:

- increase the demand for lower-priced products as consumers would not want to pay for the more expensive products. (When a retailer sells a premium brand, he or she gets a higher margin than on a lower-priced brand.) This would have inevitable consequences for the turnover, profitability and ultimately the viability of our members – and their ability to maintain themselves as going concerns providing a valuable service to local communities across the UK;
- increase transaction times and queues as mentioned in the response to Q2 above;

- Increase re-stocking and stock-taking times. Staff are required to recognise packs at the various stages of checking stock and filling the gantry before they have even reached the customer. Add in the additional time to select the right product requested at the time of purchase and this would create a substantial operational burden in addition to that already being experienced. Those who do not have electronic stock management systems would be particularly badly affected;
 - increase the amount of time our members would have their eye off the shop as mentioned in the response to Q2 above;
 - increase the amount of unnecessary red tape affecting retailers when we understand the government is committed to reducing the regulatory burden for small businesses like ours;
 - Increase the number of regulations affecting retailers when the newest regulations – relating to the display ban – have yet to be implemented in the stores of our members, let alone its effects evaluated;
 - increase the activities of those selling smuggled tobacco products (which is covered in more detail in the response to Q 9 below);
 - increase the availability of smuggled tobacco to young people (which is covered in the response to Q4 above);
 - increase the number of customers defecting to supermarkets for their tobacco purchases which have staff and kiosks dedicated to the sale of tobacco. It is worth remembering that any lost sales hit small independents proportionally more than supermarkets.
9. Do you believe that requiring standardised tobacco packaging would increase the supply of, or demand for, illicit tobacco or non-duty-paid tobacco in the United Kingdom?

Yes, we believe strongly that standardised packaging would lead to an increase in both the supply of and demand for illicit tobacco. It is already a large market: the government loses £3.1bn a year (or £8.5m a day) in tax because of the activities of tobacco smugglers. At a local level, many retailers become aware of an illegal supply of a particular brand being sold in their area as they see their sales of that brand temporarily decline until the illegal supply has run out. Or, alternatively, they see a regular customer suddenly purchasing only roll-up papers.

Standardised packaging would be a gift to the criminals who mastermind smuggling webs. No longer would they have to go to great lengths to copy the complex packaging of the various brands. As a result, it would be easier and cost less to produce illicit products, which would mean these criminals make more profit from each sale. Tobacco smuggling brings crime in to communities across the United Kingdom and the profits from this activity funds further illegal activity such as drug-trafficking, people-smuggling and prostitution.

In addition to the obvious danger of counterfeit tobacco, standardised packaging would increase the demand for smuggled branded product. These products are already available at very low prices, and standardised packaging would make them seem to be better quality than legal products.

Illicit tobacco is unregulated and has often been found to contain sawdust and rat droppings. Sales from illicit tobacco do not generate money for local businesses like ours, or for the Treasury.

As well as making it cheaper and easier for existing counterfeiters, standardised packaging could open up the market for new criminals to start faking cigarettes. The existing packaging is complex and does provide a barrier for many criminals to the counterfeit market. Standardised packaging would mean it would be easier to get involved in the lucrative counterfeit tobacco trade.

It has been claimed that the covert markings on tobacco products would stop counterfeiting being a problem. We wish to emphasise that this is a spurious argument. Covert markings only help enforcement authorities and although they are working hard to crack down on the problem, over half of all Roll-Your-Own tobacco and around one in six of all cigarettes smoked in the UK is not legally bought here and has therefore evaded detection. These marks are of no use to retailers – we can't read them – and so the only defence we have are the visible features – e.g. printing, embossing and shapes – on branded tobacco packs.

As mentioned above in the response to Q4, illicit tobacco provides a major avenue of access to tobacco by under-18s and an increase in this trade would have the result of increasing the availability of illicit tobacco to minors.

10. People travelling from abroad may bring tobacco bought in another country back into the United Kingdom for their own consumption, subject to United Kingdom customs regulations. This is known as 'cross-border shopping'. Do you believe that requiring standardised tobacco packaging would have an impact on cross-border shopping?

Yes, it is foreseeable that standardised packaging would increase the possibility of UK residents, when abroad, purchasing products which are recognisable to them. Standardised packaging could also open up a market for counterfeit product which is specifically designed to look like tobacco from overseas. Branded products are more acceptable to consumers and many would seek these out. Given that branded packs are available abroad and are much cheaper than in the UK, it is inevitable that consumers will choose to purchase them. Any sale abroad is a lost potential sale for our members.

11. Do you believe that requiring standardised tobacco packaging would have any other unintended consequences?

We believe we have outlined above the variety of unintended consequences that standardised packaging would cause and that it would not achieve the Department of Health's public health policy objectives. It would be a lose-lose situation.

12. Do you believe that requiring standardised tobacco packaging should apply to cigarettes only, or to cigarettes and hand-rolling tobacco?

No, we do not believe standardised packaging should apply to any tobacco - indeed any products.

13. Do you believe that requiring standardised packaging would contribute to reducing health inequalities and/or help us fulfil our duties under the Equality Act 2010?

We believe there are better ways of reducing youth smoking than standardised packaging, as mentioned above.

In addition, we were greatly concerned that when the consultation process was launched, the documents were only available in English and Welsh. Much of our independent retailer membership is made up of those whose first language is neither of those languages – so making reading complicated documents particularly difficult.

When we contacted the Consultation Coordinator to raise the issue, we received versions of the consultation documents in the specific languages that we had asked for – Gujarati, Tamil and Urdu – from the Department of Health. The inference from the covering letter was that all one had to do to get a copy of the documentation in their chosen language was to ask, and that this was stated in the consultation documents. However, that advice is only available to those who have managed to read through seven pages of the English or Welsh language versions – again something that those less confident in reading English or Welsh are unlikely to be able or willing to do.

14. Please provide any comments you have on the consultation-stage impact assessment. Also, please see the specific impact assessment questions at Appendix B of this consultation document and provide further information and evidence to answer these questions if you can.

We do not believe in the impact assessment that enough consideration has been given to the particular needs of small businesses. In the consultation documents, the impact is only referenced as follows:

“For the more than 58,000 small shops selling tobacco, any additional costs of selling tobacco will be more burdensome than for large shops to the extent that they represent a greater proportion of their total sales revenue.”

A one-sentence summary is insufficient consideration for the needs of the UK's small businesses. More research needs to be done than what is contained in one sentence, before such a wide-ranging move as introducing standardised packaging is contemplated.

15. Please include any further comments on tobacco packaging that you wish to bring to our attention. We also welcome any further evidence about tobacco packaging that you believe to be helpful.

If standardised packaging of tobacco was to be given the go ahead, it would be inevitable that attention would then be turned to other products, such as alcohol or confectionery, all of which we sell alongside tobacco. (There has already been a large number of media stories proposing restrictions for other products, such as fizzy drinks). This would mean further regulation for retailers and would exacerbate many of the negative consequences of plain packaging that have been outlined above, such as an increase in transaction times and an increase in the amount of time a retailer spends searching for products rather than keeping an eye on the shop.

Finally, it is unreasonable to expect small independent shopkeepers to regulate the purchasing decisions of legal products by adults.

