

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

Response from Warrington Borough Council

Warrington Public Health has a long tradition of partnership working with the local government in recognition of the important role that council services plays in protecting and improving the health and wellbeing of local people. Warrington Public Health team is now an integral part of the council, and this has meant that there is now even greater opportunity and scope to influence the wider issues that affect the health of our residents; particularly with the aim of reducing health inequalities across the town.

Over a number of years Warrington has seen a big reduction in the number of people who smoke tobacco products. However, results from the 2013 local lifestyle survey found that there are still over 20,000 smokers in the town with the vast majority living in the most disadvantaged areas. As smoking is still the number one cause of preventable illness and early death, Warrington Borough Council is committed to support every measure that will contribute to helping current smokers quit and to prevent uptake in future generations.

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

Tobacco Free Futures believes that standardised packaging should be introduced if the available evidence supports the conclusion that the introduction of standardised packaging would be likely to:

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

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 Health¹ backs up Sir Cyril Chantler's view. He concluded that,

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

- Plain packaging will reduce smoking initiation among youth and young adults.
- Plain packaging will promote smoking cessation among established smokers.
- Plain packaging will support former smokers to remain abstinent.
- Plain packaging will help to denormalise 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. 2

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 3 4 5 while their data on illicit have been shown to be highly misleading. 6

Smoking remains the major preventable cause of premature death and disease in the UK, with half of all long term smokers dying from their addiction. 7

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) 8 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 West, 13,000 people die each year from smoking related illnesses – that's 35 deaths every day. 9

Around 18,000 children in the North West are known to try smoking every year. 10 We need to do all we can to ensure that this number reduces to negligible levels.

83% of people in the North West who try smoking do so before the age of 14. 11

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

Tobacco control policies must be pursued in parallel and not serially 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 2013¹², 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 quit line, and a significant decline in tobacco consumption immediately following implementation of plain packaging. ¹³

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.

Support for standardised packaging in the North West

Support for standardised packaging is at an all-time high with 64% of people in the North West in favour and only 10% opposing¹⁴. 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.¹⁵

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.

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.¹⁶ 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.¹⁶ 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

Official figures show the illegal tobacco market has in fact decreased in the UK as a result of effective enforcement over a number of years in spite of the efforts of the industry as highlighted in November 2013 by the Chair of the Public Accounts Committee who accused tobacco multinationals of deliberately oversupplying European markets, with the tobacco smuggled back into the UK. Committee Chair Margaret Hodge said:

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

Part of this strategy has been to fund a growing number of third parties – organisations and individuals (notably ex-police) – 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 17}

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. 18 19 20 21 22 23 24

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"²⁵ 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 UK¹⁸ and Australia²⁶ 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.^{27 18} 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."²⁸

There is no plausible mechanism of action because all the key security features on existing packs of cigarettes would also be present on standardised packs. These include coded numbering and covert anti-counterfeit marks. Jane Ellison, Parliamentary Under-Secretary of State for Health, said in a November 2013 Parliamentary debate that: "I am grateful to those hon. Members who have made

the point that if we were to adopt standardised packaging, it would not mean plain packaging. Approaches such as anti-smuggling devices could be built into standardised packaging, if we choose to go down that route.” 29

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.” 30

Outside packaging is in any case a very poor indicator of whether a pack of cigarettes is genuine or illicit³¹. 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). The headlines from the latest Department of Health/Trading Standards Institute Tobacco Control Survey 2013/14, released on the 2nd July at the TSI Conference, show that the most common illicit product found by Trading Standards Officers is actually diverted licit brands which would not be in standardised packaging and would stand out for easy identification.

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.

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]”. 32 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.” 33

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. 34

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.³⁵ 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.³⁶ In March 2014 the Sydney Morning Herald reported that there had been only one seizure of counterfeited plain packs since December 2012.³⁷

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". 38 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." 39

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, 40 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. 41

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 Quit line service. 42 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 Quit line 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." 43

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 be 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. 44 45

Other evidence from the UK

Tobacco companies are spending considerable efforts in opposing any moves towards the introduction of standardised tobacco packaging. In the North West, JTI entered into a partnership arrangement with the Manchester Evening News which featured three weeks' worth of JTI-funded advertising on illegal tobacco and published a series of articles generated by the company. Tobacco Free Futures issued a written response to the Manchester Evening News, and a response was received. The response was unwilling to admit to entering a partnership with JTI or agree to the inclusion of a more balanced article which would have countered the misinformation provided by JTI and outline that the illicit market is on a sustained long-term decline, that there is no evidence that standardised packaging would lead to an increase in the illicit trade and that all tobacco – legal or illegal – will kill one in two of its long term users.

A briefing on the tobacco industry and their tactics in using illegal tobacco arguments to oppose tobacco control measures can be found here: <http://www.illegal-tobacco.co.uk/wp-content/uploads/2014/03/illegal-Tobacco-The-facts-about-the-Tobacco-Industry-V3-28-05-14.pdf>

The tobacco industry has repeatedly claimed that the level of illicit trade in Australia has increased since, and as a result of, the introduction of standardised packaging. For example, BAT told investors in March 2014 that total illicit activity in Australia had risen by more than 30 per cent since the introduction of standardised packaging introduction. 46

Comprehensive regional illicit tobacco programmes change the social norms around illicit tobacco, reducing the size of the illicit tobacco market, reducing the proportion of smokers buying illicit tobacco and increasing the public's likelihood to report intelligence. For example, in the North West between 2009 and 2011, following partnership development, two bursts of social marketing activity and enhanced intelligence and enforcement models:

The number of smokers admitting that they bought illegal tobacco dropped from 19% to 17%.

The number of 16 to 24 year-old smokers admitting that they bought illegal tobacco dropped from 28% to 23%.

A willingness to report trading increased from 26% to 30% and remained high (74%) if selling to children.

The proportion of adults who buy illicit tobacco believing that 'everybody does it' shrunk from 65% in 2009 to 53% in 2011.

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

The proportion of young people who have bought cigarettes from sellers such as neighbours, car boots and ice-cream vans from 42% to 27%.

The proportion of young people who have bought fake cigarettes, down from 28% to 22%.

The proportion of young smokers who have ever bought single cigarettes, from 67% to 49%⁴⁷.

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?

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

We do have some suggestions to strengthen the regulations to achieve the desired outcome of protecting children and ensure they are possible to enforce once enacted.

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. We would recommend stipulating a minimum size of cigarettes.

The draft regulations do not propose requirements relating to the size of cigarette packets. We 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. 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.

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, e.g. Costco.

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 if it 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.

Local Authority Trading Standards Officers will be tasked with enforcing the legislation. We feel it is most important for government to recognise the vital role that LA TS Officers play in public health and invests in support to enable LA TS Officers to carry out the enforcement role effectively.

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?

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

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

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.

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

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:

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

The cost of smoking-related early deaths in the North West alone is calculated to be more than £602 million per year.

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.

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

² Hansard. HoC column 1018 et seq. (3rd April 2014)

³ Evans-Reeves, K.A., Hatchard, J. Gilmore, A. 'It will lead to negative unintended consequences': An evaluation of the relevance, quality and transparency of evidence submitted by the tobacco industry to the UK Consultation on standardised packaging. March 2014. European Conference on Tobacco or Health.

⁴ Ulucantar S, Fooks GJ, Hatchard JL, et al. Representation and Misrepresentation of Scientific Evidence in Contemporary Tobacco Regulation: A Review of Tobacco Industry Submissions to the UK Government Consultation on Standardised Packaging PLoS Med. 2014; (3):e1001629.

⁵ Hatchard JL, Fooks GJ, Evans-Reeves KA, et al. A critical evaluation of the volume, relevance and quality of evidence submitted by the tobacco industry to oppose standardised packaging of tobacco products. BMJ Open. 2014; (2).

⁶ Gilmore A, Rowell A, Gallus S, Lugo A, Joossens L, Sims M. Towards a greater understanding of the illicit tobacco trade in Europe: A review of the PMI funded "Project Star" report. Tobacco Control Published Online First: 12 December 2013. doi:10.1136/tobaccocontrol-2013-051240

⁷ ASH Smoking Statistics 2014 http://www.ash.org.uk/files/documents/ASH_93.pdf

⁸ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2645845/>

⁹ Public Health England Local Tobacco Control Profiles <http://www.tobaccoprofiles.info/profiles/tobacco-control/data#gid/1000110/pat/6/at/102/page/8/pat/E12000002/are/E06000049>

¹⁰ Cancer Research UK 2011 <http://www.cancerresearchuk.org/about-us/cancer-news/press-release/more-than-200000-uk-children-start-smoking-every-year>

¹¹ Tobacco and Young People in the North West of England (Global Youth Tobacco Survey of young people, 2011)

¹² Griffiths E, Cullen S. Smokers slugged in Government's plan to raise \$5.3 billion. ABC News, 1 August 2013

¹³ Tobacco: Key facts and figures Australian Government, Department of Health

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

¹⁵ YouGov Survey. Fieldwork undertaken between 29th October - 1st November 2010

¹⁶ Rowell, A., K.A. Evans-Reeves, and A. Gilmore. Tobacco industry manipulation of data on and press coverage of the illicit tobacco trade in the UK. Tobacco Control, 2014.

¹⁷ See for example:

http://www.tobaccotactics.org/index.php/Tobacco_Industry_Responds_to_UK_Plain_Packaging_Consultation

¹⁸ Van Walbeek C, Shal L. Are the tobacco industry's claims about the size of the illicit cigarette market credible? The case of South Africa. Tobacco Control Published Online First 11 June 2014 doi:10.1136/tobaccocontrol-2013-0514412014

¹⁹ Gilmore A, Rowell A, Gallus S, Lugo A, Joossens L, Sims M. Towards a greater understanding of the illicit tobacco trade in Europe: A review of the PMI funded "Project Star" report. Tobacco Control Published Online First: 12 December 2013. doi:10.1136/tobaccocontrol-2013-051240.

²⁰ Van Walbeek C. Measuring changes in the illicit cigarette market using government revenue data: the example of South Africa. Tobacco Control Published Online First 15 January 2014 doi:10.1136/tobaccocontrol-2013-051178.

²¹ Stoklosa M, Ross H. Contrasting academic and tobacco industry estimates of illicit cigarette trade: evidence from Warsaw, Poland. Tobacco Control Published Online First 13 August 2013

²² Analysis of KPMG LLP report on use of illicit tobacco in Australia 2013 Full year report. Quit Victoria, Cancer Council Victoria. 12 April 2014 http://www.cancervic.org.au/downloads/mini_sites/Plain-facts/analysis-kpmg-illicit-tobacco.pdf

²³ Illicit trade of tobacco in Australia: A report prepared by Deloitte for British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited Quit Victoria, Cancer Council Victoria. March 2011 [updated November 2011]

²⁴ Illicit trade of tobacco in Australia: Report for 2011: A report prepared for British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited. A critique by Quit Victoria. Cancer Council Victoria. May 2012.

²⁵ KPMG. Project Sun- A study of the illicit cigarette market in the European Union. 2013 Results.

²⁶ Analysis of KPMG LLP report on use of illicit tobacco in Australia: 2013 Full year report. Quit Victoria, Cancer Council Victoria, April 2014.

²⁷ House of Commons Committee of Public Accounts. HM Revenue & Customs: Progress in tackling tobacco smuggling. HM Revenue & Customs: Progress in tackling tobacco smuggling. 4 Sept. 2013

²⁸ PAC publishes report on tackling tobacco smuggling. Public Accounts Committee press release. 10th October 2013

²⁹ Hansard: backbench business debate. 7 November 2013 column 477

³⁰ Revised EU Tobacco Products Directive: Article 15

³¹ Joossens L. Smuggling, the Tobacco Industry and Plain Packs Cancer Research UK, Nov. 2012

³² Oral evidence to the House of Lords European Union Sub Committee (Home Affairs) on 24th July 2013.

³³ [Home Affairs Select Committee First Report on Tobacco Smuggling](#); paragraph 44

³⁴ Greenblat, E. [Plain packaging making 'no impact' on Australian smokers, say tobacco chiefs](#): Sydney Morning Herald, 4th March 2014

³⁵ Chantler Review [Notes-of-Australia-based-meetings](#); See, for example, exchange with Mark Connell of BAT Australia, page 36.

³⁶ 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.

³⁷ Corderoy, A. [Tobacco industry claims on impact of plain packaging go up in smoke](#). Sydney Morning Herald, 12 March 2014.

³⁸ [Australia cigarette plain packaging law upheld by court](#) BBC Business News Online, 15 August 2012

³⁹ Stewart, S. [Unpublished Letter](#) to the Sydney Morning Herald, 12 March 2014

⁴⁰ Scollo M, Bayly M, Wakefield M. [Availability of illicit tobacco in small retail outlets before and after the implementation of Australian packaging legislation](#). Tobacco Control, published on April 10, 2014 as 10.1136/tobaccocontrol-2013-051353

⁴¹ Scollo M, Zacher M, Durkin S, Wakefield M. Early evidence about predicted unintended consequences of standardized packaging of tobacco products in Australia: A cross-sectional study of place of purchase, regular brands and use of illicit tobacco. *BMJ Open*. In Press

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⁴³ Guillaumier A, Bonevski B, Paul C. Tobacco health warning messages on plain cigarette packs and in television campaigns: a qualitative study with Australian socioeconomically disadvantaged smokers. *Health Educ Res*. 2014; Vol. PubMed PMID: 24966335. Epub 2014/06/27. Eng.

⁴⁴ 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.

⁴⁵ Carter, O., Welch, M, Mills, B, Phan, T, Cheng, P. *BMJ* 2013; 346:f106. [Plain packaging for cigarettes improves retail transaction times](#). *BMJ* 2013; 346:f106.

⁴⁶ [Plain packaging making 'no impact' on Australian smokers, say tobacco chiefs](#): The Australian 4th March 2014

⁴⁷ http://tobaccofreefuture.org/wp-content/uploads/2013/08/8353_TSNW-Young-Persons-Alcohol-Tobacco-Report_130605_V3.pdf

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

a. Are you responding (required):

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

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

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

Name of organisation (required):

Name of person providing submission (required):

[Redacted]

Job Title (required):

National Officer

Contact address of organisation (required):

128 Theobalds Road, Holborn, London, WC1X 8TN

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:

Trade Union - Unite is the UK's biggest union, representing 1.4 million workers, including 6,000 in tobacco manufacturing and 66,000 in the tobacco supply chain – e.g. packaging firms, distribution. Unite also represents 100,000 members in the health sector as well as 80,000 in local government including members in public health, schools, youth work and community health services.

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:

Unite has members who work in tobacco manufacturing and the tobacco supply chain – e.g. packaging firms, distribution

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

Consultation questions

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

The Chantler Review is an attempt to understand the impact of plain packaging on changes in smokers' behaviour. The report is focused on the impact on public health. Unite believes there are many crucial steps to improving public health through health promotion to tackle smoking amongst children. It is well understood and documented that children become addicted to nicotine more readily than adults, and also understood that they are more susceptible to 'brand loyalty'. Ideally we would educate children to be resilient despite advertising, so that as adults they can make an informed decision.

One crucial initiative would be for the Government to support schools to restore the World Health Organisation initiative, 'Health Promoting Schools' and enable trained professionals, including school nurses, to lead and deliver this strategy. Every secondary school should have access to a qualified school nurse, including as clusters of primary schools. Properly trained professional school nurses provide education and support children and young people in all matters relating to their health and as part of an early prevention strategy. There is also widespread evidence that access to youth services have a major impact on health amongst children.

Smoking rates are much higher amongst poorer communities and have been shown by the ONS to correlate with poor education attainment, unemployment and poverty. Government should dedicate far more resources and affective policy initiatives at dealing with these social problems if it is serious about public health.

Missing from the reports considerations, however are the wider impacts. For Unite this is a major absence. Since the packaging consultation in 2012 we have seen the announced closure of Imperial's factory in Nottingham, with the loss of hundreds of our members' jobs. However, there will be no fewer cigarettes manufactured and no fewer cigarettes available because the company is moving 90% of its production to Poland. In doing so it blamed the proposals on tobacco packaging – a cynical device as it was intending to save money on labour costs with the move to Poland. But it illustrates the way in which uncertainty of public policy on tobacco is having a direct impact on our members' jobs and their families.

Yet the loss of well-paid and skilled manufacturing jobs is invisible in any of the reviews, reports and impact assessments, except perhaps in the Impact Assessment for this consultation, where at page 24 para. 89 it states: "Any impact on profitability

for manufacturers will over time be eroded as investors move capital between investment opportunities...capital will be re-allocated elsewhere". This means moving jobs out of the UK, as has already happened with Imperial. It does not mean a decline in the number of smokers or a positive impact on public health; it does have an impact on the level of imports of goods previously manufactured in the UK. It will also have an impact on cross-border shopping, the illegal trade, and thus income to the Exchequer.

The UK's weak labour law and poor system of industrial planning is supporting companies relocating abroad and such relocations have a considerable impact on the communities affected. Amongst the impacts are increases in poverty, crime, smoking, drug and alcohol use which according to the World Health Organisation have major impacts on children and their health.

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?

With reference to evidence, Australia is due to review their plain packaging work in December 2014 and we would support a delay in implementation in the UK until this review is completed. There should also be a delay to assess the impact of the display ban.

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?

Unite believes there are better ways to tackle underage smoking and tobacco addiction (as spelled out in question 1). We support all initiatives which are proven to protect children from tobacco, tackle underage smoking and to address tobacco addiction and to promote better child and young adult health.

Unite has significant concerns about the increase in illicit trade from plain packaging, which is easier to fake and which will not allow manufacturers to keep one step ahead of counterfeiters through their own innovation.

Unite is concerned about the way children are getting access to cigarettes. Enforcement of current tobacco legislation is far too weak. Large scale cuts to HMRC, trading standards officers and police funding have seen job losses and cut backs, which has impacted heavily on activity to both stem tobacco smuggling and the sale to children. For example Children who get their cigarettes in ones or twos from small retailers who are prepared to break the law to sell them in this way

already do not see the packages from which the cigarettes come; those who get them from packets shared or sold by older children will also not see the plain packages.

At the same time proactive health promotion activity in the community is being severely affected by Government's austerity drive with cuts to youth services and a lack of commitment to increasing school nurses and community health staff. NHS community services have been under enormous strain due to the chaotic and expensive reorganisation caused by the Health and Social Care Act 2012, increase financial pressures and growing demand and health need associated with rising poverty.

Unite is also worried about the failure to ring-fence public health money as this will almost certainly affect poorer communities, which also tend to be the communities most affected by ill health and with the highest rates of smoking (ONS study 2013).

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?

Though as mentioned in the response to 2, it is too early to draw firm conclusions from the Australian experience, it is being indicated that price is now a bigger factor for Australian smokers. The concern would be that UK consumers would turn to the illegal trade, moving away from UK-made cigarettes manufactured under strict hygiene regulations. The impact on jobs both in manufacturing and associated sectors such as packaging will be severe, and there may not be the gains in public health that the Government is anticipating from the regulations.

Thank you for participating in this consultation.

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

How to get involved in the consultation

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

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

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

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

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

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

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

- **Emailing your response to:**

TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

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



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

Response from Dudley Health and Wellbeing Board

Dudley Health & Wellbeing Board brings together Dudley Council; Dudley Clinical Commissioning Group, West Midlands Police, West Midlands Fire Service, Healthwatch Dudley, NHS England and partners from the voluntary and community sector to identify key priorities for improving health and wellbeing and reducing health inequalities in Dudley.

The Board serves a population of **314,400** people (19% are aged under 16). It is estimated that **46,869 (18.5%)** of Dudley's 16+ population are smokers, costing the local economy approximately **£77.4 million** each year. Smokers in Dudley spend around **£82.9 million** each year on tobacco products contributing roughly **£63.1million** in duty to the Exchequer, this means that there is an annual funding shortfall of **£14.2million**.

Dudley has a comprehensive Tobacco Control programme that supports the Tobacco Control Plan for England. A key aim of the local programme is to reduce the number of young people starting to smoke through education and advocacy. Data from Dudley's Secondary School Health Related Behaviour Questionnaire show that currently 8% of 15 years olds are regular smokers, whilst this has halved over the last decade It has remained static over the last 2 years. Therefore, introducing regulations for the standardised packaging of tobacco products is an important part of our local Public Health policy in tackling health inequalities and the ongoing burden of disease caused by smoking.

Dudley Health & Wellbeing Board welcome the opportunity to respond to this consultation and urge the Government to lay Regulations on standardised packaging, under Section 94 of the Children and Families Act, before Parliament as soon as possible. I believe that this policy, combined with other tobacco control policies, will make a positive contribution to prevent the next generation of young people taking up smoking.

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

1. Sir Cyril Chantler's review confirms the case for standardised packaging *"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."*
2. Sir Cyril's report supports views held by a small group of young people in Dudley who were asked about what impact plain packaging would have on taking up smoking; they felt

- young people are attracted to the brands (tobacco) and designs just as they are to sports brands
- if a smoking product has no brand it will have no reputation with young people, therefore it is not seen as being cool.
- plain packaging will reduce the amount of young people that start smoking
- plain packaging will stop tobacco companies marketing towards specific groups of people like women and young people.

One young female, who currently smokes, spoke about the impact that the cigarette pack had on influencing her to smoke stating that *'if the packs were plain when I was younger then I definitely would not be smoking now'*.

A summary of their views can be viewed on the following link
<http://www.dudleykickash.com/test2/plain-packaging-video.html>

3. Professor David Hammond's report for the Irish Department of Health¹ also 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."*

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?

4. Standardised packaging needs to be part of a comprehensive strategy 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.
5. 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 2013.²
6. 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

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

² <http://www.abc.net.au/news/2013-08-01/government-to-raise-5-billion-from-cigarette-tax-increase/4857244>

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

Illicit Tobacco Trade: General

7. A principal tobacco industry argument against standardised packaging has been that it will inevitably lead to an increase in the illicit tobacco trade. There is no good reason to accept this argument, since there is no plausible mechanism of action, and indeed evidence published since the 2012 consultation suggests that it is false.
8. There is no plausible mechanism of action because all the key security features on existing packs of cigarettes would also be present on standardised packs, 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."*³
9. The production costs of illicit cigarettes (including packaging) are very low. In Paraguay costs can be as low as 5 US cents a pack, a Jin Ling pack in Kaliningrad or a Chinese counterfeit pack may cost about 20 cents a pack to produce. Counterfeiters are also able to produce quality and apparently genuine packaging at low prices in a short time. It follows that outside packaging is a very poor indicator of whether a pack of cigarettes is licit or illicit.⁴ The only obvious circumstances in which external packaging could be useful in this respect is precisely if standardised packaging is introduced – which would of course enable easy visual identification of "cheap white" brands (ones with no licit market in the UK) and diverted licit brands (where the first destination market was in a country without standardised packaging, and the product has been diverted into illicit channels).
10. Number codes will develop further into an international standard system because of the requirements of Article 15 of the revised EU Tobacco Products Directive and Article 8 of the Illicit Trade Protocol, a subsidiary treaty under the WHO Framework Convention on Tobacco Control, to which the UK is a Party.
11. Article 15 of the Tobacco Products Directive states that: *"Member States shall ensure that all unit packets of tobacco products are marked with a unique identifier. In order to ensure the integrity of the unique identifier, it shall be irremovably printed or affixed, indelible and not*

³ Hansard: backbench business debate, H.C Column 477. (7 November 2013)

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

hidden or interrupted in any form, including through tax stamps or price marks, or by the opening of the unit packet."⁵

12. Article 8.3 of the Illicit Trade Protocol states that: *"With a view to enabling effective tracking and tracing, each Party shall require that unique, secure and non-removable identification markings (hereafter called unique identification markings), such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol for that Party".*⁶
13. It should be noted that Philip Morris International has developed a coding system called "Codentify", which the company has licensed for free to JTI, IT and BAT. The four tobacco multinationals have set up a "Digital Coding and Tracking Association", based in Zurich. According to PMI, the system is based on unique twelve digit codes, which enable enforcement authorities to determine key information including: date, time, factory and line of production and intended target market. Since the codes are based on a secure algorithm, it is claimed that it would be a simple matter to identify "fake" codes on illicit packaging. PMI's promotional material claims that "Codentify".... *"makes the leap into the digital age and can meet the demands of governments that want to improve tax revenue collection, the robustness of verification processes and supply chain security ... When it comes to protecting government tax revenues, securing the supply chain and fighting illicit trade, Codentify offers a highly advanced, secure and cost-effective solution for the 21st century".*⁷
14. 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.
15. Not surprisingly therefore Andrew Leggett, Deputy Director for Tobacco and Alcohol Strategy at HM Revenue and Customs has said about standardised packaging that *"we're very doubtful that it would have a material effect [on counterfeiting and the illicit trade in tobacco]"*.⁸ This conclusion was supported by the House of Commons Home Affairs Select Committee, in its report on the illicit tobacco trade published in June 2014. The Committee reported that: *"We believe that the decision on standardised packaging should be driven by health reasons and the imperative need to reduce the numbers of young people who start smoking. We note the statement of Sir Cyril Chantler to the effect that he was not convinced that standardised packaging would bring about an increase in the illicit market; even if this were the case, we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government's drive towards introducing standardised packaging."*⁹

Illicit Tobacco Trade: Australia

⁵ Revised EU Tobacco Products Directive: Article 15

⁶ Text of the Illicit Trade Protocol: Article 8.3

⁷ Codentify: Protecting Government Revenues, Securing the Supply Chain, Fighting Illicit Trade.

http://www.pmi.com/eng/documents/Codentify_E_Brochure_English.pdf

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

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

16. The tobacco Industry has repeatedly claimed that the level of illicit trade in Australia has increased since, and as a result of, the introduction of standardised packaging. For example, BAT told investors in March 2014 that total illicit activity in Australia had risen by more than 30 per cent since the introduction of standardised packaging.¹⁰
17. These claims were examined during the Chantler Review and shown to be unsupported, a fact that was effectively admitted during Review meetings with representatives of the tobacco industry in Australia.¹¹ The Australian Government and customs officials have also rejected tobacco industry claims that illicit trade in Australia has risen since the introduction of standardised packaging.¹² In March 2014 the *Sydney Morning Herald* reported that there had been only one seizure of counterfeit plain packs since December 2012.¹³
18. In response to this article, the paper was contacted by Sonia Stewart, the former Head of Corporate Affairs & Legal for Imperial Tobacco Australia, who has now left the industry. In her job at IT Australia she had "commented numerous times in the media during 2011-2013 about the anticipated impact of plain packaging", claiming for example that "the legislation will make the counterfeiters' job both cheaper and easier by mandating exactly how a pack must look".¹⁴ She wrote to the paper that "based on these figures from Australian Customs authorities, there doesn't appear to be any evidence that plain packaging itself has caused an increase in tobacco smuggling." She added: "Imperial Tobacco did expect to see an increase in tobacco smuggling because of plain packaging, but based on the figures from Australian Customs it looks like those predictions were simply wrong."¹⁵

Tobacco Consumption in Australia

19. The tobacco industry has also claimed that tobacco consumption in Australia has risen since the introduction of standardised packaging. Again, independent evidence does not support this proposition.
20. In November 2013 a study by the consultancy firm London Economics, funded by Philip Morris, reported that since the introduction of plain packaging in Australia their survey showed no statistically significant change in smoking prevalence. This report has been sharply criticised by, among others, the Cancer Council of Victoria¹⁶, 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.

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

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

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

¹³ Corderoy, A Tobacco industry claims on impact of plain packaging go up in smoke, *Sydney Morning Herald*, 12 March 2014.

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

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

¹⁶ Cancer Council Victoria, Comments of the Phillip Morris funded London Economics report "An analysis of smoking prevalence in Australia: final", 2013, Cancer Council Victoria: Melbourne.

- 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.
21. The tobacco industry in Australia has reported an increase in tobacco sales from 21.015bn sticks in 2012 to 21.074bn in 2013,¹⁷ 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 2013.¹⁸
22. The Australian Government's Department of Health has released figures showing that total consumption of tobacco and cigarettes in Australia in the first quarter of 2014 was the lowest ever recorded, as measured by estimated expenditure on tobacco products:
- \$5.135 billion in September 1959;
 - \$3.508 billion in December 2012 (when standardised packaging was introduced); and
 - \$3.405 billion in March 2014.
23. This is supported by figures from the Australian Treasury showing that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when tobacco plain packaging was introduced. Clearances are an indicator of tobacco volumes in the Australian market.¹⁹
24. In June 2014, Professor Ashok Kaul of the University of Saarland and Professor Michael Wolf of the University of Zurich published research funded by Phillip 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.²⁰ 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).²¹

Other Evidence from Australia

¹⁷ Kerr, C. Labor's plain packaging fails as cigarette sales rise: *The Australian*. 6 June 2014

¹⁸ Is Smoking Increasing In Australia?: *Guardian Datablog*. 6 June 2014

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

²⁰ The (Possible) Effect of Plain Packaging on Smoking Prevalence in Australia: A Trend Analysis: University of Zurich Department of Economics, Working Paper no 165

²¹ 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

25. Young JM et al, University of New South Wales and Cancer Institute New South Wales, reported in January 2014 that the introduction of standardised packaging in Australia in 2012 was associated with a sharp rise in the number of calls to the Quitline New South Wales service.²² 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.
26. Wakefield M et al, Cancer Council Victoria, Annenberg School for Communication Pennsylvania and South Australian Health and Medical Research Institute University of Adelaide, reported in 2013 that smokers in Australia were less willing to display their packs in public and smoke in outdoor areas since plain packaging was introduced. Researchers counted patrons, smokers and tobacco packs at cafes, restaurants and bars with outdoor seating for several months both before and after the introduction of standardised packaging. They found that pack display on tables declined by 15% after plain packaging, which was mostly due to a 23% decline in the percentage of patrons who were observed smoking. The study also found that the declines in pack display and patrons observed smoking were stronger in venues where children were present.²³
27. Tobacco retailers in the UK have suggested that the introduction of standardised packaging means that it will take longer to serve customers and so convenience stores will lose custom. 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 be 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.²⁴

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

28. We believe that the regulations should also apply to specialist tobacco products including cigars and cigarillos. While I note the explanation for their exclusion is their low rate of use by young people, I 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.
29. 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

²² 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

²³ 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

²⁴ 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.

regulations by introducing an element of branding. In particular we would like to see the UK prohibit the sale of 'slim' cigarettes. I 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'.²⁵

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

30. 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".
31. 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 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

32. Tobacco sales are undergoing long-term decline. At its peak in the 1950s adult male smoking prevalence was 80%.²⁶ Female smoking prevalence continued to rise and reached a peak of 45% in the mid-1960s.²⁶ 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.
33. 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

²⁵ 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.

²⁶ Wald, N. & Nicolaides-Bouman, A. *UK Smoking Statistics* (2d ed.). OUP, 1991.

HRT released for consumption which rose 2.8 million kilograms in 2002/3 to 6.2 million kilograms in 2012/13.

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	83,362	10,134	93,496	2,107	4,058	2,081	8,247
1992/93	83,939	10,141	94,080	1,955	3,822	2,027	7,805
1993/94	67,229	7,265	74,514	1,724	3,161	1,765	6,670
1994/95	75,442	8,735	85,177	1,679	3,036	1,665	6,280
1995/96	71,769	9,059	80,828	1,501	2,558	1,347	5,405
1996/97	71,848	8,500	81,346	1,453	2,204	1,221	4,877
1997/98	76,976	11,707	88,683	1,548	1,948	1,148	4,644
1998/99	54,739	5,637	60,376	1,084	1,736	919	3,738
1999/00	64,443	10,488	74,929	1,369	2,194	890	4,553
2000/01	26,666	5,273	31,938	970	2,343	704	4,018
2001/02	45,581	5,694	51,272	816	2,746	832	4,194
2002/03	48,606	6,131	54,737	862	2,806	658	4,424
2003/04	52,297	4,812	57,109	988	3,213	626	4,827
2004/05	47,224	4,444	51,666	778	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	45,760	645	3,368	416	4,449
2007/08	42,256	3,682	45,940	569	3,741	388	4,697
2008/09	38,739	3,441	43,180	504	4,076	363	4,943
2009/10	44,839	4,258	49,097	555	5,640	415	6,611
2010/11	42,335	3,343	45,678	466	5,431	359	6,256
2011/12	39,629	2,984	42,613	458	6,236	333	7,025
2012/13	35,202	2,730	37,932	421	6,215	301	6,937

34. 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.
35. 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.
36. 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. I recommend that the DH get in touch with Bookers and AC Nielsen for more information.

Consumer Surplus

37. 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.
38. 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, I would suggest, that it is illusory.
39. 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

40. Standardised packaging is backed by the Smokefree Action Coalition of which Dudley MBC is a member. The SFAC 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 and others.²⁷ The consensus of medical professionals, public health and other relevant experts is that standardised packaging would make an important positive contribution to reducing the harm caused by tobacco consumption.
41. 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.²⁸ 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.
42. 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.

²⁷ [Smokefree Action Coalition](#)

²⁸ 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.

43. 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.²⁹
44. 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.³⁰ 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.

Signature

Date

²⁹ 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.

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Commissioning Manager
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www.necsu.nhs.uk

7th August 2014

Dear Consultation Team

Tobacco Packaging

I am responding on behalf of the County Durham and Darlington Respiratory Network. The network is made up of a body of experts who are the advisory group to the three Clinical Commissioning Groups (CCGs) of County Durham and Darlington (North Durham CCG, Darlington CCG and Durham Dales, Easington & Sedgefield CCG). County Durham & Darlington Respiratory network is committed to improving peoples 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.

The purpose of the group is to assist clinicians and commissioners to deliver the outline of 'An Outcomes Strategy for Chronic Obstructive Pulmonary Disease (COPD) and Asthma in England', and to improve care for people with respiratory disease across the county. Smoking causes around 80% of deaths from lung cancer, around 80% of deaths from bronchitis and emphysema, and about 17% of deaths from heart disease and 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.

We fully support and encourage the government to implement legislation that will reduce the uptake of smoking to prevent the health burden and suffering caused by smoking. We therefore welcome the findings of the Charter Review, particularly the impact that standardised tobacco packaging could have on uptake of smoking among young people. 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



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

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 sincerely

[Redacted Signature] ory Network

Cc: CDD Respiratory Network members

 Durham, Darlington and Sedgfield
 Darlington
 North Durham
Clinical Commissioning Group Clinical Commissioning Group Clinical Commissioning Group

County Durham and Darlington   



EL289



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):

ESTA (European Smoking Tobacco Association)

Name of person providing submission (required):

[Redacted]

Job Title (required):

Secretary General

Contact address of organisation (required):

Rond Point Schumanplein 9, Box 1, B-1040, Brussels, Belgium

Contact email address (required):

[Redacted]

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

Yes

No

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

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

Duty free shop

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

If other, please tell us the type of business:

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

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

If other, please tell us the type of organisation:

f. Does your response relate to (required):

United Kingdom

England only

Scotland only

Wales only

Northern Ireland only

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

No

Yes (please describe below)

If yes, please describe:

The European Smoking Tobacco Association (ESTA) represents, since 1990, the interests of the European manufacturers, distributors and importers of fine-cut tobacco, pipe tobacco, chewing tobacco and nasal snuff tobacco. The 48 members of ESTA are mainly small and medium sized companies (SMEs) and include national associations from the European Union, the accession countries and the European Economic Area. ESTA is financed via annual contributions made by its members. ESTA is duly registered in the European Commission's register of interest representatives: 0138855852-93.

- 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?

In his final conclusion to the review, Sir Cyril Chantler notes that "[...] in conclusion, research cannot prove conclusively that a single intervention such as standardised packaging of tobacco products will reduce smoking prevalence [...] however, after a careful review of all of the relevant evidence before me, I am satisfied 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." We note that the above conclusion was made in the absence of assessing the merits of any alternative means of tobacco control (as evidenced by the "Method Statement of the Independent Review into standardised packaging of tobacco" (hereafter "Method Statement") at page 1).

In reaching the above conclusions, Sir Cyril Chantler has reviewed information provided by a wide range of health/tobacco control advocates, business organisations and 'independent sources' and has visited Australia (the only country in the world to date to have had introduced a similar measure to the one presented in this consultation). Nevertheless no randomised, controlled trial carried out to test the impact of standardised packaging on the take up of smoking amongst children has been performed during the review. Despite this significant methodological and substantive caveat, the author of the study has concluded that the proposed measure would contribute to a reduction in smoking prevalence, "especially in children and young adults".

Against this background, ESTA would like to note that, at the present moment in time, there is no reliable, scientifically tested evidence that standardised packaging will achieve such legitimate public health objectives as reducing smoking prevalence in children and young adults. In particular, despite the introduction, in December 2012, of a similar measure based on similar assumptions as those made in the Chantler Review, the Australian Government has not been able to demonstrate that its own-stated public health objectives (in terms of actual changes in smoking behaviour) have been achieved. During the nineteenth months period since the introduction of the measure in Australia, there has been no notable change in the long term decline in legal consumption that was not already present before plain

packaging. The report of the Chantler review specifically acknowledges these facts (page 23):

" Box 1: Australia - prevalence and attitudes

[...] It is too early to draw definitive conclusions. Data is only just becoming available, impacts may take time to materialise and the effect of plain packaging is difficult to distinguish from other simultaneous tobacco control measures. [...] Comprehensive surveys showing changes in prevalence since the introduction of plain packaging in Australia are not yet available. 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."

ESTA also notes that in the "Method Statement" document Sir Cyril Chantler states: "My Review is not concerned with legal issues, such as competition, trade-marking and freedom of choice. Nor will it consider issues such as the overall economic impact of standardised packaging on tobacco producers, retailers or associated industries". It is regrettable that the review has been conducted in total ignorance of such important elements as, for instance, essential legal issues, including intellectual property related issues raised by a possible introduction of standardised packaging of tobacco products and that no meaningful proportionality analysis has been conducted neither as part of the review nor as part of the subsequent impact assessment. The author of the review chooses, however, to address illicit trade and counterfeiting issues in the report even if he is clearly not an expert on these matters and even if his opinion goes beyond the mandate "to give advice to the Secretary of State for health, taking into account existing and any fresh evidence, as to whether or not the introduction of standardised packaging is likely to have an effect on public health (and what any effect might be), in particular in relation to children." Given the above elements and, in particular, the lack of any scientific, facts-documented evidence that standardised packaging leads to positive behavioural change as well as the methodological and substantive caveats (see above) that the report on the independent review presents, ESTA believes that the Chantler review is far from providing the "strong and convincing evidence" (see the 2012 Department of Health Consultation on the Standardised Packaging of Tobacco Products) required by the Government prior to engage into a costly, risky and complex legislative measure.

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?

Please refer to our answer to question 1 (in particular the lack of evidence on any positive impact achieved by standardised packaging - within the nineteen months

period - since its introduction in Australia). Please also refer to ESTA's members' submissions for more detailed explanations (this comment is valid for all four questions).

This being said, ESTA would like to remind to the DoH of its continuous support for a number of regulatory measures which, unlike standardised packaging, have a clear potential to properly address the smoking prevalence in children and young adults. Such measures include the use of the CitizenCard – the UK's leading proof-of-age card and the 'No.ID No Sale' campaign at tills. An additional welcomed measure would be the enforcement, without unnecessary delay, of the new ban on proxy purchasing of tobacco for children (under 18), as is currently the case for alcohol beverages in the UK. The government should give greater support to proof-of-age schemes, which have contributed to a decrease in youth smoking prevalence (11-15 year-old regular smokers in England) from 13% in 1996 to the lowest ever figure of 3% in 2013, and to 3% (average 13 years old – lowest figure since 1982) in Scotland.(1)

ESTA firmly believes that the combination of the above measures would effectively address, by very significantly reducing, the smoking prevalence in children and young adults. This is, indeed, the main regulatory aim of the proposed draft regulations.

(1) ... Refer to: <http://www.hscic.gov.uk/catalogue/PUB14579/smok-drin-drug-young-peop-eng-2013-rep.pdf>

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?

ESTA notes that the draft regulations allow for a partial implementation of the Directive 2014/40/EU (hereafter the "TPD 2"). It is to be noted that, at the present point in time, the TPD2 is being challenged in the courts of law by an EU Member State and also by tobacco manufacturers.

As a general comment and as stated above (see our answer to question 1), ESTA does not agree with any provisions set in the draft regulations which aim to introduce standardised packaging of tobacco products within the UK market. It is to be noted that three EU Member States have submitted to the European Commission detailed opinions on a similar legislative act (namely the Irish Standardised Packaging of Tobacco Bill).

On this point, ESTA would like to draw the attention to the Department of Health of a substantive element which would produce unintended negative effects on consumers. Under both the current EU regulatory regime and the provisions of the

revised TPD2 Directive (see Article 7.12), tobacco products other than cigarettes and roll-your-own tobacco are specifically excluded from a number of obligations including those referring to the absence of characterising flavours and of certain additives. The revised TPD2 Directive includes, nevertheless, a ban, under article 13, to refer to the "taste, smell, any flavourings or other additives". As a result, the Draft Regulations institute under Part 4, Section 10 a "de jure" ban on products other than cigarettes or roll-your-own tobacco to refer to "taste, smell or any flavourings or other additives" on their packaging even if these products are legally allowed to contain characterising flavours and certain additives. There is both a legal and a commercial need for the manufacturer of a product to be able to clearly inform consumers on the content of their products which, in this particular case, is clearly not met.

In order to solve this contradiction between the legally permitted content of the product and its allowed description on the packaging, we propose to change the title of Part 4 to "Provisions which apply to both cigarettes and hand rolling tobacco". Such a transitory change would allow for the time needed to develop a proper solution to the above contradiction and for its proper implementation by 20 May 2016.

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?

ESTA refers to its response to the 2012 Consultation on Standardised Packaging of Tobacco Products of the UK Department of Health. We have discussed in detail a number of assumptions and estimates made in that document and our argumentation remains valid to this point in time.

After a careful review of the current impact assessment, ESTA notes the following:

- the Regulatory Policy Committee (RPC) only gave the 2014 Impact Assessment an "amber" rating, meaning that there were concerns with its content;
- there is a different baseline between the 2012 and 2014 impact assessments. The 2014 impact assessment contains the TPD2 measures in the baseline, whereas the 2012 does not. It is therefore difficult to draw meaningful comparisons between the two;
- no convincing evidence has been put forward to support the effectiveness of standardised packaging in reducing the smoking prevalence in children and young adults or in the general smoking population;

- despite a number of findings pointing towards a potential increase in both counterfeit products and illicit trading (2) if a standardised packaging measure was to be introduced and of a resulting, quite significant, predicted loss of excise revenue for the Exchequer (not to mention the negative consequences of consuming unregulated tobacco products) the impact assessment does not properly consider these findings when formulating policy recommendations. This is a particularly interesting caveat in the case of hand rolling tobacco where the stated illicit part of the market was already 36% in 2013 (see page 33 of the Impact Assessment);

- the assumptions made around costs and benefits in both Policy Option 1 and Policy Option 2 are purely speculative in nature (not based on a sound, scientific methodology of calculation) and, therefore, not realistic. In respect to the figures presented under Policy Option 2, the "expected benefits" category costs, for instance, do not have any scientific basis of quantification and seem to have been made as pure estimates. On the "costs" side, ESTA believes that a significant caveat is the lack of a conservative calculation of the sum which would be required by law as compensation for deprivation of product manufacturers' intellectual property, should a standardised tobacco packaging policy be pursued.

In sum, the above elements clearly indicate that the best options to properly reduce smoking prevalence in children and young adults (but also in the general population) while mitigating the counterfeit and illicit trading risks remain a combination of:

- the implementation, across the European Union, of the provisions contained in the TPD2 Directive (Policy Option 1 discussed in the Impact Assessment);

- the consistent use of the CitizenCard – the UK's leading proof-of-age card and the 'No ID No Sale' campaign at tills;

- the enforcement of anti-illicit and counterfeiting policing rules as well as of the rules against proxy tobacco purchasing for children in the United Kingdom.

We express our hope that this submission is made publicly available in its entirety.

(2) The findings include:

- Paragraph 131 - page 33: "The CBS share could increase further if standardised packaging was introduced in the UK but not in other EU countries; with the extra incentive of tobacco in branded packets being available at cheaper prices. While attempts to sell tobacco bought in other countries could be identified by law enforcement, legitimate CBS may yet mitigate some of the benefits of standardised packaging in the adult population and result in a loss of revenue to the Exchequer. The same losses associated with an increase in the illicit market share would apply to an increase in the CBS share. Based on 2013 tax gap data, for every percentage point increase in the tax gap, we would expect a revenue loss of around £120m for cigarettes and £25m 81 for HRT per annum. Any change in CBS would be additional

to the illustrative figures stated above; this is a particularly large risk as an increase in CBS when undertaken for personal use cannot be mitigated."

[...] page 34: "However, standardised packaging may lead to easier market entry for new counterfeit suppliers leading to an overall increase in the supply of counterfeit cigarettes. Another advantage claimed for the counterfeit trade is that consumers will be less able to detect a genuine standardised pack from a counterfeit pack [...]."

[...] page 34 - "We conclude that there is likely to be an increase in the UK duty unpaid segment but we have no means of quantification. In the absence of a quantified estimate of the impact on the non-UK duty paid market, our central assumption is that there may be an (unquantified) increase in the UK duty unpaid segment. Hence, we adopt a critical value approach as a sensitivity analysis later in the IA. [...] We recognise that using an (unquantified) increase in the UK duty unpaid segment for this IA is not ideal."

Thank you for participating in this consultation.

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

How to get involved in the consultation

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

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

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

<http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products->

1

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

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

- o **Emailing your response to:**

TobaccoPackaging@dh.gsi.gov.uk

- o **Posting your response to**

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

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

Response from Action on Smoking and Health – Northern Ireland (ASH NI)

ASH Northern Ireland (ASH (NI)) works towards the elimination of harm caused by tobacco. It is hosted and facilitated by Cancer Focus Northern Ireland.

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

1. 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."*
2. 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) *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."*

3. 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
4. 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.
5. 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,

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

² Hansard, HoC column 1018 et seq. (3rd April 2014)

there is now strong evidence that the industry's arguments are either weak or without foundation^{3 4 5} while their data on illicit tobacco trade has have been shown to be highly misleading.⁶

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

6. 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 standardised 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.
7. Standardised packaging was introduced in Australia as part of a comprehensive strategy. This included larger health warnings (75% rather than the 65% in the Tobacco Products Directive), mass media campaigns and reducing affordability by increasing taxation. Australia is committed to annual increases in tobacco taxation of 12.5% over inflation each year for four years, starting in December 2013⁷, 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.⁸
8. 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,⁹ that both the negative and positive emotive campaigns used in the UK are effective in this respect¹⁰ and the suspension of campaigns significantly reduced

³ Evans-Reeves, K.A., Hatchard, J. Gilmore, A. 'It will lead to negative unintended consequences': An evaluation of the relevance, quality and transparency of evidence submitted by the tobacco industry to the UK Consultation on standardised packaging. March 2014. European Conference on Tobacco or Health.

⁴ Utucanlar S, Fooks GJ, Hatchard JL, et al. Representation and Misrepresentation of Scientific Evidence in Contemporary Tobacco Regulation: A Review of Tobacco Industry Submissions to the UK Government Consultation on Standardised Packaging. PLoS Med. 2014; (3):e1001629.

⁵ Hatchard JL, Fooks GJ, Evans-Reeves KA, et al. A critical evaluation of the volume, relevance and quality of evidence submitted by the tobacco industry to oppose standardised packaging of tobacco products. BMJ Open. 2014; (2).

⁶ Gilmore A, Rowell A, Gallus S, Lugo A, Joossens L, Sims M. Towards a greater understanding of the illicit tobacco trade in Europe: A review of the PMI funded "Project Star" report. Tobacco Control Published Online First: 12 December 2013. doi:10.1136/tobaccocontrol-2013-051240

⁷ Griffiths E, Cullen S. Smokers slugged in Government's plan to raise \$5.3 billion. ABC News, 1 August 2013

⁸ Tobacco: Key facts and figures Australian Government, Department of Health

⁹ Sims M, Salway R, Langley T, Lewis S, McNeill A, Szatkowski L, Gilmore A Effectiveness of tobacco control television advertising in changing tobacco use in England: a population-based cross-sectional study Addiction 2014; 109: 986-94.

¹⁰ Sims M, Langley T, Lewis S, Richardson S, Szatkowski L, McNeill, Gilmore AB. Effectiveness of tobacco control television advertisements with different types of emotional content on tobacco use in England, 2004-2010. Tobacco Control. Published Online First 18 July 2014 doi:10.1136/tobaccocontrol-2013-051454

quitting activity (calls to quit lines and use of smoking cessation literature and websites).¹¹ Yet currently in the UK mass media campaigns are not consistently being screened at a level that would maximise their effectiveness.¹²

Public Information campaigns on tobacco need to be excluded from current Northern Ireland Assembly restrictions. Currently, these Public Health Campaigns are classed as advertising meaning they must go through a special permissions procedure. This leads to a stop-start approach rather than the required sustained approach.

9. It is important 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;
- 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

10. 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 tobacco trade 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 tobacco trade

11. 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.¹³ Analysis shows that the number of

¹¹ Langley T, Szatkowski L, Lewis S, McNeill A, Gilmore AB, Salway R, Sims M. The freeze on mass media campaigns in England: a natural experiment of the impact of tobacco control campaigns on quitting behaviour. *Addiction* 2014; 109: 995-1002

¹² Langley T, Lewis S, McNeill A, Gilmore A, Szatkowski L, West R, Sims M. Characterizing tobacco control mass media campaigns in England. *Addiction* 2013;108(11):2001-8

¹³ Rowell, A., K.A. Evans-Reeves, and A. Gilmore. Tobacco industry manipulation of data on and press coverage of the illicit tobacco trade in the UK. Tobacco Control, 2014.

press articles citing industry data on illicit tobacco trade increased suddenly once standardised packaging emerged on the policy agenda, that industry data significantly exaggerate the scale of illicit tobacco trade 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 tobacco trade 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

12. Part of this strategy has been to fund a growing number of third parties 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 14}
13. More broadly, growing evidence from a number of jurisdictions now suggests that tobacco companies 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.^{15 16 17 18 19 20 21}
14. 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 16}
15. 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”*²² They claim that additional data which were not

¹⁴ See for example:

[http://www.tobaccotactics.org/Index.php/Tobacco Industry Responds to UK Plain Packaging Consultation](http://www.tobaccotactics.org/Index.php/Tobacco%20Industry%20Responds%20to%20UK%20Plain%20Packaging%20Consultation)

¹⁵ Van Walbeek C, Sha L. Are the tobacco industry’s claims about the size of the illicit cigarette market credible? The case of South Africa. Tobacco Control Published Online First 11 June 2014 doi:10.1136/tobaccocontrol-2013-0514412014

¹⁶ Gilmore A, Rowell A, Gallus S, Lugo A, Joossens L, Sims M. Towards a greater understanding of the illicit tobacco trade in Europe: A review of the PMI funded “Project Star” report. Tobacco Control Published Online First: 12 December 2013. doi:10.1136/tobaccocontrol-2013-051240.

¹⁷ Van Walbeek C. Measuring changes in the illicit cigarette market using government revenue data: the example of South Africa. Tobacco Control Published Online First 15 January 2014 doi:10.1136/tobaccocontrol-2013-051178.

¹⁸ Stoklosa M, Rees H. Contrasting academic and tobacco industry estimates of illicit cigarette trade: evidence from Warsaw, Poland. Tobacco Control Published Online First 13 August 2013

¹⁹ Analysis of KPMG LLP report on use of illicit tobacco in Australia 2013 Full year report. Quit Victoria, Cancer Council Victoria. 12 April 2014 http://www.cancervic.org.au/downloads/mini_sites/Plain-facts/analysis-kpmg-illicit-tobacco.pdf

²⁰ Illicit trade of tobacco in Australia: A report prepared by Deloitte for British American Tobacco Australia Limited, Phillip Morris Limited and Imperial Tobacco Australia Limited Quit Victoria, Cancer Council Victoria. March 2011 [updated November 2011]

²¹ Illicit trade of tobacco in Australia: Report for 2011: A report prepared for British American Tobacco Australia Limited, Phillip Morris Limited and Imperial Tobacco Australia Limited. A critique by Quit Victoria. Cancer Council Victoria. May 2012.

²² KPMG. Project Sun- A study of the illicit cigarette market in the European Union. 2013 Results.

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 Australia²³ and this revision undermines the industry's public claims about illicit.

16. Growing evidence also suggests that the tobacco manufacturers at best are failing to control their supply chains.^{24 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."*²⁵
17. Even the industry's own data indicates that around a fifth of illicit cigarettes across the EU are Philip Morris International (PMI)'s own brands, a level which outstrips counterfeit PMI product approximately five times¹⁵ while Imperial Tobacco's brand *Classic* which it was, until recently, producing in Ukraine, was so consistently found in the illicit market it was labelled as an illicit white product.²⁶

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

18. Consistent with the highly misleading nature of Industry data on illicit tobacco trade 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."*²⁷
19. 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.²⁸ 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).

²³ Analysis of KPMG LLP report on use of illicit tobacco in Australia: 2013 Full year report. Quit Victoria; Cancer Council Victoria, April 2014.

²⁴ House of Commons Committee of Public Accounts. HM Revenue & Customs: Progress in tackling tobacco smuggling. HM Revenue & Customs: Progress in tackling tobacco smuggling. 4 Sept. 2013

²⁵ PAC publishes report on tackling tobacco smuggling. Public Accounts Committee press release. 10th October 2013

²⁶ Directorate-General for Internal Policies; Policy Department Budgetary Affairs. Workshop Cigarette Smuggling: Briefing papers. European Parliament 22 January 2014.

²⁷ Hansard: Backbench business debate. HoC Column 477. (7 November 2013)

²⁸ Joossens L. Smuggling, the Tobacco Industry and Plain Packs, Cancer Research UK, November. 2012

20. 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.
21. 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."*²⁹
22. 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"*.³⁰ The Illicit Trade Protocol also specifies that any track and trace system should be fully independent of the tobacco industry.
23. It should be noted that PMI 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.³¹ 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"*.³²
24. 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 system independent of the industry could be used on standardised packs as readily as on branded ones.
25. 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]"*.³³ 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.

²⁹ Revised EU Tobacco Products Directive: Article 15

³⁰ Text of the Illicit Trade Protocol: Article 8.3

³¹ Joossens L, Gilmore A. The transnational tobacco companies' strategy to promote Codentify, their inadequate tracking and tracing standard. Tob Control Published Online First: 12 March 2013. doi:10.1136/tobaccocontrol-2012-050796.

³² Codentify: Protecting Government Revenues, Securing the Supply Chain, Fighting Illicit Trade. PMI

³³ Oral evidence to the House of Lords European Union Sub Committee (Home Affairs) on 24th July 2013.

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."*³⁴

Evidence from Australia on Illicit Tobacco

26. 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, British American Tobacco (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.³⁵
27. 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.³⁶ 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.³⁷ In March 2014 the *Sydney Morning Herald* reported that there had been only one seizure of counterfeit plain packs since December 2012.³⁸
28. 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"*.³⁹ 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."*⁴⁰
29. 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,⁴¹ and

³⁴ Home Affairs Select Committee First Report on Tobacco Smuggling: paragraph 44

³⁵ Greenblat, E. Plain packaging making 'no impact' on Australian smokers, say tobacco chiefs: *Sydney Morning Herald*, 4th March 2014

³⁶ Chantler Review Notes-of-Australia-based-meetings: See, for example, exchange with Mark Connell of BAT Australia, page 38.

³⁷ 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.

³⁸ Corderoy, A. Tobacco Industry claims on impact of plain packaging go up in smoke. *Sydney Morning Herald*, 12 March 2014.

³⁹ Australia cigarette plain packaging law upheld by court: BBC Business News Online, 15 August 2012

⁴⁰ Stewart, S. Unpublished Letter to the Sydney Morning Herald, 12 March 2014

⁴¹ Scollo M, Bayly M, Wakefield M. Availability of illicit tobacco in small retail outlets before and after the implementation of Australian packaging legislation. Tobacco Control, published on April 10, 2014 as 10.1136/tobaccocontrol-2013-051353

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.⁴²

Tobacco Consumption In Australia

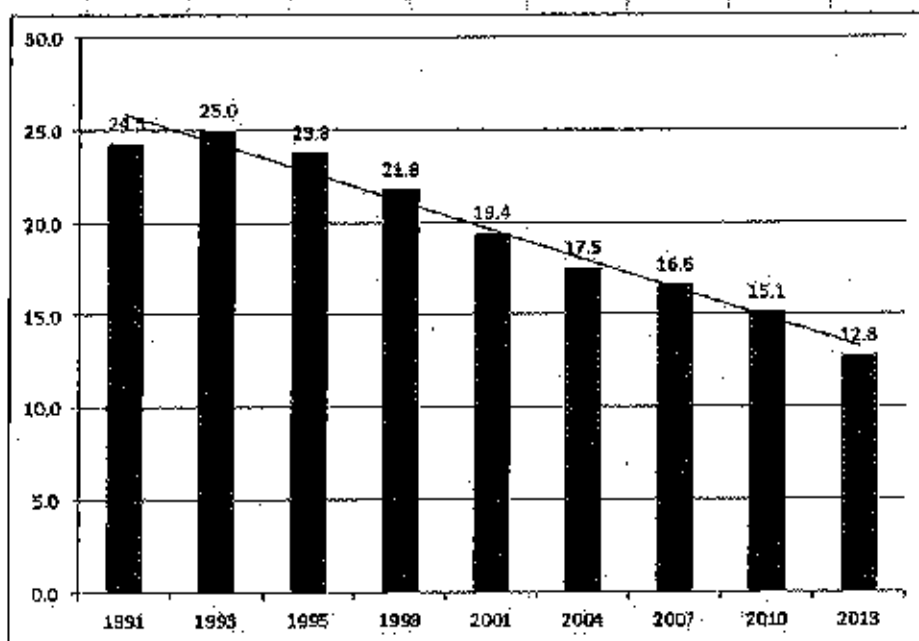
30. The tobacco industry has also claimed that tobacco consumption in Australia has risen since the introduction of standardised packaging. Again, independent evidence does not support this proposition.
31. ASH UK issued a news release on 16th July 2014 to highlight a huge drop in Australian smoking rates attributed to the standardised packs. New figures issued by the Australian Government shown adult smoking rates have fallen by a **massive 15%**. Before the measure was introduced in December 2012 daily smoking prevalence stood at 15.1% and has now fallen to 12.8%⁴³. The survey was conducted before the Government's hike in tobacco tax 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. Deborah Arnott, Chief Executive of ASH said: *"The UK Government is currently consulting on standardised packaging before deciding whether to proceed and has asked for new and emerging evidence. Well here it is and it demonstrates a massive decline in smoking prevalence in Australia following introduction of standardised packaging. This is exactly the strong and convincing evidence the tobacco industry said was needed."*
32. 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 Victoria⁴⁴, 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.
33. 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.

⁴² Scollo M, Zacher M, Durkin S, Wakefield M. Early evidence about predicted unintended consequences of standardized packaging of tobacco products in Australia: A cross-sectional study of place of purchase, regular brands and use of illicit tobacco. *BMJ Open*. In Press

⁴³ 2013 National Drug Strategy Household Survey: key findings (2013 NDSHS) Australian Institute of Health and Welfare (AIHW). www.aihw.gov.au/alcohol-and-other-drugs/ndshs/

⁴⁴ Comments on the Philip Morris funded London Economics report "An analysis of smoking prevalence in Australia: final", 2013. Cancer Council Victoria: Melbourne. Nov. 2013

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.



Daily smoking adults 14+, National Drug Strategy Household Survey 1991 to 2013

Source: AIHW 2014 <http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/2013/data-and-references/>

Change in daily smoking since previous survey

absolute change	0.70	-1.20	2.00	2.40	1.90	0.90	1.46	2.34
% change	2.9%	-4.8%	8.4%	11.0%	9.8%	-5.1%	-8.8%	-15.5%

34. 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.

35. The tobacco industry in Australia has reported an increase in tobacco sales from 21.015bn sticks in 2012 to 21.074bn in 2013,⁴⁵ 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

⁴⁵ Kerr, C. Labor's plain packaging fails as cigarette sales rise: The Australian, 6 June 2014

well.⁴⁶ 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 2013.⁴⁷

36. 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.
37. 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.⁴⁸
38. 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.⁴⁹ 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).⁵⁰

Other Evidence from Australia

39. 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.⁵¹ 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.

⁴⁶ Critique of tobacco industry claims about trends in sales of tobacco products. Cancer Council Victoria.

⁴⁷ Is Smoking Increasing In Australia?: Guardian Datablog. 6 June 2014

⁴⁸ Tobacco facts and figures: Australian Department of Health, 19 June 2014

⁴⁹ The (Possible) Effect of Plain Packaging on Smoking Prevalence in Australia: A Trend Analysis: University of Zurich Department of Economics, Working Paper no 165

⁵⁰ 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

⁵¹ 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

40. 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.'⁵²
41. 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.⁵³
42. 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 (IA) 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.^{54 55}
43. Furthermore, Trans-national Tobacco Companies are fee-paying members of the proponents of these messages: Scottish Grocers Federation,⁵⁶ Association of Convenience Stores,⁵⁷ National Federation of Retail Newsagents,⁵⁸ and the Federation of Wholesale Distributors.⁵⁹ 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.^{60 61} A series of PMI leaked

⁵² Guillaumier A, Bonevski B, Paul C. Tobacco health warning messages on plain cigarette packs and in television campaigns: a qualitative study with Australian socioeconomically disadvantaged smokers. *Health Educ Res.* 2014;Vol. PubMed PMID: 24966335. Epub 2014/06/27. Eng.

⁵³ 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

⁵⁴ Wakefield M, Bayly M, Scolto 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.

⁵⁵ Carter, O., Welch, M, Mills, B, Phan, T, Chang, P. *BMJ* 2013; 346:f106. Plain packaging for cigarettes improves retail transaction times. *BMJ* 2013; 346:f106.

⁵⁶ [http://tobaccotactics.org/index.php/Scottish Grocers%27 Federation](http://tobaccotactics.org/index.php/Scottish_Grocers%27_Federation)

⁵⁷ [http://tobaccotactics.org/index.php/Association of Convenience Stores](http://tobaccotactics.org/index.php/Association_of_Convenience_Stores)

⁵⁸ [http://tobaccotactics.org/index.php/National Federation of Retail Newsagents](http://tobaccotactics.org/index.php/National_Federation_of_Retail_Newsagents)

⁵⁹ [http://tobaccotactics.org/index.php/Federation of Wholesale Distributors](http://tobaccotactics.org/index.php/Federation_of_Wholesale_Distributors)

⁶⁰ [http://tobaccotactics.org/Index.php/Tobacco Retailers Alliance](http://tobaccotactics.org/Index.php/Tobacco_Retailers_Alliance)

⁶¹ [http://tobaccotactics.org/Index.php/Tobacco Manufacturers%27 Association](http://tobaccotactics.org/Index.php/Tobacco_Manufacturers%27_Association)

documents reveal the integral role that such organisations play in opposition to tobacco control regulation.⁶²

Other industry arguments in the UK

44. 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.
45. 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.⁶³ The remainder of tobacco companies' evidence (60 research reports) did not address standardised packaging of tobacco products at all.⁵
46. 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
47. 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.

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?

48. ASH NI welcomes the draft regulations, which we consider, with 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

⁶² http://tobaccotactics.org/index.php/PMI%27s_Mobilising_Support_from_Retailers

⁶³ Moodie C, Stead, M, Bauld, L, McNeill, A, Angus, K, Hinds, K, Kwan, I, Thomas, J, Hastings, G and O'Mara-Eves. A Plain Tobacco Packaging: A systematic review. Stirling: Public Health Research Consortium; 2012.

49. 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

50. 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.
51. 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

52. Brand names, brand variant names and brand descriptors will become a more important element of tobacco product promotion once standardised packaging is introduced.
53. 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."

54. 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.^{64 65 66}
55. However, the list in Recital (27) is not comprehensive and there is evidence that many other words are also misleading. For example:

⁶⁴ U.S. Surgeon General. Factors influencing tobacco use among women. In: Surgeon General's Report: Women and Smoking 2001: pp.453-536.

⁶⁵ Hammond D, Doxey J. Deadly in pink: the impact of cigarette packaging among young women. *Tob Control* 2011; 20: 353-360 doi:10.1136/tc.2010.038315

⁶⁶ Carpenter CM, Wayne GF, Connolly GN. Designing cigarettes for women: New findings from the tobacco industry documents. *Addiction* 2005; 100:837-851.

- Smooth - population based studies have found that adult smokers perceive 'smooth' as a synonym for 'light'.⁶⁷ 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.⁶⁸
- Colour names - such as gold or silver⁶⁸ - 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'.⁶⁹ 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 tar and could lower the risk.⁷⁰ 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.⁷¹

56. 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.

57. 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

58. 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.⁷² The Government should monitor such activity and where appropriate review and revise the regulations.

⁶⁷ King B, Borland R. What was "light" and "mild" is now "smooth" and "fine": new labeling of Australian cigarettes. Tobacco Control 2005;14(3):214-5.

⁶⁸ 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.

⁶⁹ Hammond, D. Use of Tobacco Marketing Descriptors to Convey Modified Risk. Submission to the US Food and Drug Administration. 2010.

⁷⁰ Hammond D, Parkinson C. The impact of cigarette package design on perceptions of risk. Journal of Public Health 2009; 31(3):345-53.

⁷¹ Bansal-Travers M, Hammond D, Smith P, Cummings KM. The Impact of Cigarette Pack Design, Descriptors, and Warning Labels on Risk Perception in the U.S. AJPM 2011; 40(6): 674-82

⁷² Scollo, M, Occleston, J, Bayly, M, Lindorff, K, Wakefield, M. Tobacco product developments coinciding with the implementation of plain packaging in Australia. Tobacco product developments coinciding with the implementation of plain packaging in Australia. Tob Control, 2014.

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

59. 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

60. Tobacco sales are undergoing long-term decline. At its peak in the 1950s adult male smoking prevalence was 80%.⁷³ Female smoking prevalence continued to rise and reached a peak of 45% in the mid-1960s.⁷³ 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 (see table below).

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	63,382	10,134	93,498	2,107	4,058	2,081	6,247
1992/93	63,839	10,141	94,080	1,955	3,822	2,027	7,805
1993/94	67,229	7,285	74,514	1,724	3,181	1,785	6,670
1994/95	78,442	8,735	85,177	1,679	3,036	1,585	6,280
1995/96	71,769	8,059	80,828	1,501	2,558	1,347	5,405
1996/97	71,846	8,500	81,346	1,453	2,204	1,221	4,877
1997/98	79,976	11,707	91,683	1,548	1,948	1,146	4,641
1998/99	54,739	5,837	60,576	1,084	1,738	919	3,738
1999/00	64,443	10,488	74,929	1,389	2,194	990	4,563
2000/01	28,868	5,273	31,838	970	2,343	704	4,018
2001/02	45,551	8,691	51,272	819	2,748	632	4,194
2002/03	46,808	8,131	54,737	982	2,808	656	4,424
2003/04	52,297	4,812	57,109	888	3,213	828	4,827
2004/05	47,224	4,444	51,688	778	3,094	522	4,344
2005/06	47,539	4,811	52,350	744	3,409	494	4,647
2006/07	41,754	4,007	45,760	645	3,368	418	4,449
2007/08	42,258	3,882	45,940	569	3,741	368	4,697
2008/09	39,739	3,441	43,180	504	4,076	383	4,843
2009/10	44,839	4,258	49,097	555	5,840	415	6,811
2010/11	42,335	3,343	45,678	486	5,431	359	6,259
2011/12	38,829	2,984	42,813	456	6,238	333	7,025
2012/13	35,202	2,730	37,932	421	6,215	301	6,937

61. 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.

62. 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

⁷³ Wald, N. & Nicolaides-Bouman, A. UK Smoking Statistics (2d ed.). OUP, 1991.

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.

63. 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 the Departments of Health 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.⁷⁴
64. 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.
65. 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.
66. 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 Departments of Health get in touch with Bookers and AC Nielsen for more information.

Consumer Surplus

⁷⁴ Scollo, M., Zacher, M., Durkin, S. Wakefield, M. Early evidence about predicted unintended consequences of standardized packaging of tobacco products in Australia: A cross-sectional study of place of purchase, regular brands and use of illicit tobacco. *BMJ Open*. In Press

67. 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.
68. 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.
69. A more detailed analysis of the issues around consumer surplus prepared in response to the consultation stage Impact Assessment by the economist Dr Matthew Levy of the London School of Economics for the Department of Health is included at Appendix A. Some, but not all, of his concerns have been taken into account in the revised IA.
70. 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

71. 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 Cancer Focus NI, the British Heart Foundation and Cancer Research UK, the Chartered Institute of Environmental Health, the Trading Standards Institute and others.⁷⁵ The consensus of medical professionals, public health and other relevant experts is that standardised packaging would make an important positive contribution to reducing the harm caused by tobacco consumption.
72. 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.⁷⁶ 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.
73. 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.

⁷⁵ Smokefree Action Coalition

⁷⁶ 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.

74. 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.

75. In June 2014, the Government also published the 2,444 much awaited detailed responses to the 2012 consultation. Prior to this, the Tobacco Control Research Group analysed the evidence submitted by the tobacco companies in their own personal submissions to the 2012 consultation and concluded that the arguments put forward by the tobacco companies against the public health benefits of plain packaging are "largely without foundation". The study suggests the collective argument put forward by companies that plain packaging would 'not work' are based on misuse and misrepresentation of published evidence on plain packaging and is "highly misleading".⁷⁷

76. Anna Gilmore, Professor of Public Health at the University of Bath Department of Health and one of the authors said: "Standardised packaging aims to prevent the use of packaging as a powerful marketing tool by removing all brand imagery and text. Yet tobacco companies have systemically sought to fabricate doubt over the evidence for standardised packs and the addictiveness of their products. The scale and consistency of the misrepresentation of the evidence base indicates that any evidence tobacco companies produce, including their responses to public consultations, should be viewed with the upmost scepticism".⁷⁸

77. Lead author of the paper published on 'PLOS Medicine' Dr Selda Ulucanlar, also from the University of Bath added: "It is very likely that the industry's reprehensible approach to evidence revealed in this paper cast doubts in the minds of policy-makers and played a role in delaying implementation of plain packaging in the UK"
"Between 13 July 2013, when the Government put plain packaging on hold, and the end of March 2014, when the Chantler review will be completed, an estimated additional 148,554 children (4,951 classrooms full) will have started smoking".

78. 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.⁷⁹ 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.

Tobacco has a major impact on the health of our population. It is the largest preventable cause of death and disease in our community and plays a major role in exacerbating health inequalities. We believe that the introduction of standardised packaging for

⁷⁷ S Ulucanlar, G.J. Fooks, J.L. Hatchard, A.B. Gilmore, Representation and Misrepresentation of Scientific Evidence in Contemporary Tobacco Regulation: A Review of the Tobacco Industry Submissions to the UK Government Consultation on Standardised Packaging, PLOS Medicine, 25 March 2014

⁷⁸ University News, Expert verdict on tobacco industry evidence against standardised packaging, University of Bath press release 25 March 2014

tobacco products can play a major role in reducing prevalence amongst young people, in supporting smokers who wish to quit and in de-normalising tobacco. We will continue to provide smoking prevention, cessation and policy advice to individuals, organisations and communities and will support the implementation of the proposed legislation.



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):

Chief Executive

Contact address of organisation (required):

40-44 Eglantine Avenue, Belfast, BT9 6DX

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?

See Attached Document

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

See Attached Document

- 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?

See Attached Document

- 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 Attached Document

Thank you for participating in this consultation.

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

How to get involved in the consultation

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

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

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

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

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

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

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

- **Emailing your response to:**

TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

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

EL 291



Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
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Department of
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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):

Chief Executive

Contact address of organisation (required):

Health Equalities Group, 151 Dale Street, Liverpool, L2 2JH

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)

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- 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:

Health Charity (working at regional / local level)

f. Does your response relate to (required):

United Kingdom

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Scotland only

Wales only

Northern Ireland only

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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?

Sir Cyril Chantler concluded in his report that he believes it is highly likely that standardised packaging would reduce the uptake and prevalence of smoking in children. This is supported by Prof. David Hammond from the Irish Department of Health who reported that plain packaging would reduce smoking initiation among youth and young adults; promote smoking cessation among established smokers, support former smokers to remain abstinent and help to denormalise tobacco use (1).

Positive responses to the Chantler report from Dame Sally Davies (2) and Jane Ellison also affirm that the case for standardised packaging is strong and should be considered by Parliament as soon as possible.

In Australia, government data show that adult smoking rates have fallen by 15%. Before the measure was introduced in December 2012, daily smoking prevalence stood at 15.1% and has now fallen to 12.8%. As ASH have stated:

"Standardised packaging is the only new policy intervention over this time period and is therefore the most likely reason for the significant fall in smoking prevalence. The survey was conducted before the government's major hike in tobacco tax of 12.5% in December 2013".

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?

Firstly, implementation of standardised packaging has proved very successful in Australia. It is worth noting however that Australian government have committed to annual increases in tobacco taxation of 12.5% above inflation for four years (3). This is far higher than the current taxation of 2% in the UK and is something which may need to be considered by UK government.

Secondly, in light of the concerns raised by the regulatory policy committee, HoM accept that further investigation may be required to ensure that standardised packaging is "fit for purpose" and will not have an adverse impact upon the policy areas (4).

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?

Heart of Mersey welcomes the draft regulations. We would however like to draw your attention to the following two sections of the regulations:

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

HoM is of the viewpoint that the regulations should apply to all tobacco products available to purchase in the marketplace. This ensures consistency across the industry and negates the likelihood of other products such as cigars being perceived as less harmful to health.

2. Pack size

Regulations around pack size should include the prohibition of pack sizes both below and above 20 cigarettes. Australia have come up against issues in regards to pack size as manufacturers are including extra 'free' cigarettes in packs (21 for the price of 20). HoM suggest that regulations state that all cigarette packs must contain 20 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?

HoM is not aware of any further evidence or information which would improve the assumptions or estimates you have made in the consultation-stage impact assessment.

-
1. Hammond, D. Standardized Packaging of Tobacco Products. Evidence Review. Prepared on behalf of the Irish Department of Health. March 2014.
 2. Hansard. HoC column 1018 et seq. (3rd April 2014).
 3. Griffiths, E., Cullen, S. Smokers slugged in Government's plan to raise \$5.3 billion. ABC News, 1 August 2013.
 4. Walker, G. Regulatory Policy Committee raises plain pack concerns. www.conveneincestore.co.uk, 25 July 2014.

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

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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



EL292

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):

Cheshire & Merseyside Tobacco Alliance (CMTA)

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:

Local tobacco control alliance for Cheshire & Merseyside

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 concluded in his report that he believes it is highly likely that standardised packaging would reduce the uptake and prevalence of smoking in children. This is supported by Prof. David Hammond from the Irish Department of Health who reported that plain packaging would reduce smoking initiation among youth and young adults; promote smoking cessation among established smokers, support former smokers to remain abstinent and help to denormalise tobacco use (1).

Positive responses to the Chantler report from Dame Sally Davies (2) and Jane Ellison also affirm that the case for standardised packaging is strong and should be considered by Parliament as soon as possible.

In Australia, government data show that adult smoking rates have fallen by 15%. Before the measure was introduced in December 2012, daily smoking prevalence stood at 15.1% and has now fallen to 12.8%. As ASH have stated:

"Standardised packaging is the only new policy intervention over this time period and is therefore the most likely reason for the significant fall in smoking prevalence. The survey was conducted before the government's major hike in tobacco tax of 12.5% in December 2013".

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?

Firstly, implementation of standardised packaging has proved very successful in Australia. It is worth noting however that Australian government have committed to annual increases in tobacco taxation of 12.5% above inflation for four years (3). This is far higher than the current taxation of 2% in the UK and is something which may need to be considered by UK government.

Secondly, in light of the concerns raised by the regulatory policy committee, CMTA accept that further investigation may be required to ensure that standardised packaging is "fit for purpose" and will not have an adverse impact upon the policy areas (4).

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?

CMTA welcomes the draft regulations. We would however like to draw your attention to the following two sections of the regulations:

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

CMTA is of the viewpoint that the regulations should apply to all tobacco products available to purchase in the marketplace. This ensures consistency across the industry and negates the likelihood of other products such as cigars being perceived as less harmful to health.

2. Pack size

Regulations around pack size should include the prohibition of pack sizes both below and above 20 cigarettes. Australia have come up against issues in regards to pack size as manufacturers are including extra 'free' cigarettes in packs (21 for the price of 20). HoM suggest that regulations state that all cigarette packs must contain 20 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?

CMTA is not aware of any further evidence or information which would improve the assumptions or estimates you have made in the consultation-stage Impact assessment.

-
1. Hammond, D. Standardized Packaging of Tobacco Products. Evidence Review. Prepared on behalf of the Irish Department of Health. March 2014.
 2. Hansard. HoC column 1018 et seq. (3rd April 2014).
 3. Griffiths, E., Cullen, S. Smokers slugged in Government's plan to raise \$5.3 billion. ABC News, 1 August 2013.
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Department
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Name of person providing submission (required):

[REDACTED]

Job Title (required):

Chief Executive

Contact address of organisation (required):

CMTA c/o Health Equalities Group, 151 Dale Street, Liverpool, L2 2JH

Contact email address (required):

[REDACTED]

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

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

Draft response from Darlington Borough Council

1. Darlington Background

- a. Darlington Borough Council commissions Stop Smoking Services for the population of Darlington.
- b. The estimated smoking population in Darlington is 19,264 and this is approximately 21% of the overall adult population. The distribution of smokers in Darlington is unequal. It is higher in the more deprived areas with 31% of routine and manual workers smokers and 21% of pregnant women smoke at time of delivery. Both of which are higher than the national average.
- c. The Darlington Healthy Behaviours social norms Survey, which is completed by 3,500 young people attending local secondary schools, indicated that 16% of young people had reported that they had ever smoked and that 5% reported that they smoke regularly.
- d. Smoking related mortality rates in Darlington are significantly higher than England and have shown little change over time.
- e. Smoking and tobacco control is one of the key issues raised in the Darlington Single Needs Assessment and local actions to address the associated harms are captured in the Tobacco Control Plan.

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

The Chantler Review suggests that standardised packaging would reduce the appeal of tobacco products to consumers and increase the effectiveness of health warnings on the retail packaging. It also reported that current packaging can also distract from the prominence of graphic health warnings.

The review highlighted the need to tackle the uptake of smoking amongst young people. Local evidence shows that the average age for young people to try smoking for the first time is 15 years old.

Darlington Borough Council would agree that, along with other tobacco control measures, standardised packaging will reduce initiation of smoking among young people and will help to denormalise tobacco use.

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?

A considerable amount of new information on the potential effectiveness of standardised packaging since has emerged since the previous consultation in 2012.

A YouGov survey in 2014 showed that 69% of people in the North East supported standardised packaging and that nationally 32% of smokers support standard packs. In addition to this 82% of smokers in the North East wish they had never started and 68% say they would like to be able to quit.

A focus group conducted by FRESH, the office for Tobacco Control in the North East among smokers and non-smokers aged 18-24 where examples of Australian standardised packs were demonstrated indicated that this group considered that these packs made the product appear more harmful and less attractive than standardised packs.

Since standardised packaging was introduced in Australia in December 2012 adult smoking rates fell by 15%. Recent figures released in Australia show that total consumption of tobacco and cigarettes is currently the lowest ever recorded and reduced significantly between December 2012 (when standard packs were introduced) and March 2014.

In the North East between 2009 and 2013, partnership working between the NHS, the 12 local authorities, Police and HM Revenue and Customs facilitated by regionally by FRESH has resulted in the proportion of smokers buying illicit tobacco dropping from 24% to 17%. In the same period it was reported that the size of the illicit tobacco market had shrunk from 15% to 9%.

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?

We support the comprehensive draft regulations particularly in terms of:-

- the colour of tobacco packets;

- the minimum number of cigarettes or minimum weight of hand rolling tobacco that a packet can contain;
- the scope of the regulations across the UK;

The reassurance that these regulations will not affect other labelling requirements for tobacco products such as health warnings and fiscal marks is also welcome.

The draft regulations apply only to cigarettes and hand-rolling tobacco. We believe that the regulations should also apply to all tobacco products including cigars and cigarillos. Even though use in these products is currently low in young people it is possible that the regulations could increase the attractiveness of these products. Young people need to be aware of the dangers of these products before consumption increases and that the regulations should be extended now to include specialist tobacco products.

The regulations should be included to stipulate a minimum size of cigarette. This would prevent any opportunity for slim cigarettes to be repositioned as cigarillos which would be exempt under the current draft regulations. Evidence produced in the North East of England by FRESH indicates that young women in particular are attracted to slim cigarettes.

We recommend that the UK follow the example of Australia in regulation the size of cigarette or tobacco packets. This would ensure that all packets would be exactly the same dimensions and have the same type of opening. This will prevent pack design or opening mechanisms to be used to differentiate products and as a specific marketing tool.

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?

General comments

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



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

The impact assessment considers the potential costs that may arise through increases in the demand for and the supply of illicit tobacco. However, in Chantler's finding there is no evidence to suggest an increase in illicit tobacco products or that standardised packaging would be easier to counterfeit. Evidence from Australia shows that since the measure was introduced, there has been a fall in tobacco use with no increase in illicit tobacco.

The benefits of introducing standardised packaging identified in the impact assessment far outweigh the costs. In Darlington it is estimated:-

- smoking related costs to the NHS in Darlington is £6.2 million a year
- The cost of smoking related sick days is £5.8 million
- The cost of smoking related deaths is £9.5 million
- Total smoking related costs in Darlington are approximately £31.8 million. The duty contributed to the Exchequer by smokers in Darlington is approximately £26 million. This demonstrates a net overall cost to Darlington of £5.8 per year.

Sent on behalf of Darlington Smoke Free Alliance by the Director of Public Health for Darlington, [REDACTED]

[REDACTED]

EL294

[REDACTED]

August 7, 2014

By E-mail Submission (tobaccopackaging@dh.gsi.gov.uk)

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

Re: Comments to "Standardised Packaging of Tobacco Products: Draft Regulations"

To whom it may concern:

[REDACTED]
[REDACTED] We are headquartered in [REDACTED] and we have offices in over
[REDACTED] worldwide. On behalf of [REDACTED] I write today to express our
opposition to the UK and Ireland's efforts to institute a "plain packaging" law on tobacco
products. Not only is plain packaging a direct attack on a legal industry but also sets a
dangerous precedent for other businesses.

Manufacturers place great efforts to develop packaging for their cigarettes that deters
counterfeiting. Plain packaging would remove these safeguards, thus making it easier to
produce illicit cigarettes. KPMG carried out an assessment of the illegal tobacco market in
Australia for 2013. Their figures showed an increase in total illegal consumption after
plain packaging was introduced. In the year following plain packaging, illicit consumption
rose from 11.8% to 13.3% at the end of 2013. This is despite the fact that illegal
consumption had dropped the three prior years. Illicit consumption cost the Australian
government approximately AUD \$1 billion in lost tax revenues. Given the fact that the
illegal tobacco trade is well established in both the United Kingdom (UK) and Ireland, it is
our belief that the illegal tobacco trade in the UK would benefit should your proposed
policy be passed and very easily migrate to all of Ireland, and vice versa.

Department of Health
Standardised Packaging Tobacco Consultation
August 7, 2014
Page 2 of 2

Further, the legality of Australia's plain packaging measure is currently in dispute given the legal challenges brought before the World Trade Organization by the governments of Ukraine, Honduras, Dominican Republic, Cuba and Indonesia. The European Union has joined many nations, including the United States, in reserving third party rights in those proceedings. Those challenges would have equal merit with respect to your proposed policy. It would seem appropriate to withdraw your proposed policy until those disputes have been resolved.

Lastly, valuable intellectual property will be immediately stripped from manufacturers producing perfectly legal product with the passage of your proposal. Manufacturers invest significant money in establishing strong intellectual property rights including trademarks. Depriving companies of their brands is the epitome of anti-business climate, one where potential industry will certainly no longer invest. Plain packaging undermines US business interests and certainty regarding the commitment of the EU to a strong and stable business environment where intellectual property rights are protected.

In closing, we kindly request immediate action by the UK and Ireland to dismiss with any plans to implement a plain packaging law on tobacco products.

cc:





Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
Government
Riaghaltas na h-Alba



Department of
Health, Social Services
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www.dhssps.ni.gov.uk

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- 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 1

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

Name of organisation (required):

Name of person providing submission (required):

[Redacted]

Job Title (required):

Vice President, General Counsel and Secretary

Contact address of organisation (required):

[Redacted]

Contact email address (required):

[Redacted]

Is this the primary contact person for 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:

Leaf Tobacco Merchant

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Scotland only

Wales only

Northern Ireland only

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No

Yes (please describe below)

If yes, please describe:

Publically traded company engaged in the leaf supply business

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?

No

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

No

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?

See letter

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Response to the consultation on the introduction of regulations for standardised packaging of tobacco products



**Response to the consultation on the Introduction of regulations
for standardised packaging of tobacco products**

**Forest
Sheraton house
Castle Park
Cambridge
CB3 0AX
T 01223 370156
E contact@forestonline.org
www.forestonline.org
www.handsoffourpacks.com
www.noprime minister.org.uk**

CONTENTS

1.0	Executive Summary	3
2.0	About FOREST	6
3.0	Preface to the consultation response	7
4.0	FOREST's response to the consultation questions	14
5.0	Further issues regarding the consultation	19
	Appendix I – The public response to the standardised packaging consultation	21
	Appendix II – How ministers got tangled up over tobacco packaging	22
	Appendix III – Do the right thing, Dave, just say no to plain packaging	24

1.0 EXECUTIVE SUMMARY

- 1.1 FOREST is an independently established organisation founded in 1979 to represent the views of adults who smoke and non-smoking adults who are tolerant of other people's enjoyment of tobacco. We receive donations from three UK-based tobacco companies – British American Tobacco, Imperial Tobacco Limited, and Gallaher Limited (a member of the Japan Tobacco Group of Companies) – and are supported by people from many walks of life.
- 1.2 FOREST's principal activities include providing media comment and analysis, presenting evidence to parliament and other legislative or regulatory bodies, running campaigns defending the interests of adult consumers, and organising social and political events where supporters can gather and communicate their opinions on tobacco-related issues.
- 1.3 FOREST submitted a substantial response to the Department of Health's 2012 consultation on standardised packaging. This new consultation response focuses on the significant developments since then and explains why there is insufficient reason for the Government to change its earlier decision not to introduce standardised packaging of tobacco in the UK.
- 1.4 In our view the most significant developments since the previous consultation in 2012 are:
- a) the UK Government's own response to the 2012 consultation;
 - b) the introduction of standardised packaging of tobacco in Australia;
 - c) studies assessing the impact of standardised packaging in Australia;
 - d) the introduction of legislation in the UK parliament that would allow for the introduction of standardised packaging of tobacco products in the UK;
 - e) the European Union's revised Tobacco Products Directive, to be introduced in 2016;
 - f) publication of the Chantler Review in April 2014
- 1.5 In order to understand the impact of developments since 2012 it is necessary to revisit the reasons that, we believe, contributed to the UK Government's decision not to proceed with standardised packaging in the wake of the 2012 consultation. They include:
- i) the claim that cigarette packaging attracts young smokers was patently unproven or false;
 - ii) the supporting evidence for prohibiting brand packaging was limited to highly subjective conjecture often produced by those with an inherent bias;
 - iii) the impact of the tobacco display ban had not yet been assessed;
 - iv) standardised packaging had still to be introduced in Australia so there was no evidence for or against the impact it might have in that country;
 - v) any anticipated fall in legal tobacco consumption would be outweighed by greater access to illicit tobacco;
 - vi) as counterfeit cigarettes pose a potentially greater risk to health, encouraging their use by introducing 'plain' packaging would outweigh any marginal reduction in smoking rates;
 - vii) an increase in illegal sources of tobacco – encouraged by standardised packaging – would by definition lead to a fall in public revenues from anticipated duties and taxes.
- 1.6 We believe the UK Government took the right decision following the 2012 consultation. It looked at the evidence and the arguments and the strength of opposition to standardised packaging and chose not to implement the policy. The recent change of heart is a mystery. Given there is still no conclusive or credible evidence that standardised packaging in Australia has delivered its goal of reducing smoking rates amongst young Australians, and there is genuine concern about an apparent increase in illicit sales that may offer more dangerous public health risks, we believe the UK government should at least wait until the tobacco display ban has been fully implemented in the UK, and its impact assessed, before introducing standardised packaging. In our view a comprehensive review in 2017 of the impact of tobacco control measures such as the display ban and standardised packaging (in Australia) would make more sense and be of far more use than the flawed Chantler Review.

- 1.7 The application of standardised packaging in Australia offers an ideal opportunity to evaluate whether the efficacy of the policy in terms of public health gains justifies the denial of commercial rights to tobacco manufacturers and retailers, but this must first require a reasonable period (at least five years) for the new law to be assessed. Meanwhile the fact that legislation for standardised packaging has been introduced in one country (on the other side of the world) is not in itself grounds for the United Kingdom to apply a similar law when there has been relatively little public or political debate, there is no political mandate for standardised packaging, and evidence to support the policy is scant and littered with caveats.
- 1.8 Research methodologies that have been accepted by public authorities in the past as a reliable means to identify the consumption of illicit tobacco products cannot be lightly dismissed as suddenly unsuitable just because the data obtained after the introduction of standardised packaging in Australia suggests that illicit consumption has risen. The initial studies give credence to FOREST's concerns expressed in the previous consultation that standardised packaging of tobacco is likely to become a counterfeiter's charter and will therefore provide little if any public health gains.
- 1.9 While the Coalition Government has the authority to introduce standardised packaging it does not have the political mandate to do so as none was sought from the electorate at the 2010 general election and the policy runs counter to how the government politicians suggested they would act.
- 1.10 The proposed regulations for standardised packaging neither encourage personal responsibility as promised (taking instead a more intrusive approach) nor is there evidence of the regulations providing a sunset clause or meeting the one-in-one-out criteria that were set out in the Coalition Agreement.
- 1.11 Actions that go against the promises and perceptions built up by public statements of politicians are responsible, we believe, for bringing the Houses of Parliament into disrepute, disconnecting its occupants from the electorate and encouraging voters to think politicians are not to be trusted, are all the same, and that voting is a waste of time. A political party that was honest in its approach and stated from the outset that standardised packaging would be one of its public health measures would, if elected, have a clearer mandate and would be able to carry the public with it in applying such legislation – and that parties should look towards the next general election – only ten months away – and put their declared policy position to the test at that time.
- 1.12 While the process of arriving at the EU's revised Tobacco Products Directive was flawed and undemocratic, it is a regrettable fact that the revised TPD now exists. Why then should the UK government seek to "gold plate" untested tobacco control measures introduced by the EU when it has not yet been able to assess the results of the new regulations (including larger health warnings on cigarette packets) to be introduced in 2016?
- 1.13 The terms of the Chantler Review were too narrow and failed to take into detailed consideration the wider aspects of the effects of standardised packaging. These included the:
- a) potential to make counterfeiting of tobacco products easier;
 - b) effect that greater counterfeiting could have on public health, especially of young people;
 - c) impact that standardised packaging could have on business, in particular packaging companies and manufacturers;
 - d) impact that standardised packaging could have on local communities, in particular small retailers; and
 - e) impact on the public finances from an increase in illicit sales and the burden placed on businesses that could both result in lost tax revenues.
- 1.14 We believe the commissioning of the Chantler Review was a cynical exercise in media and public manipulation designed to give ministers a reason to reverse their previous opposition to standardised packaging, and that the narrow terms of the Review were designed to ensure it would recommend that standardised packaging be introduced despite the lack of clear supporting evidence.

- 1.15 Interviews broadcast by the BBC following the publication of the Chantler Review suggest that Sir Cyril Chantler was not the unbiased, open-minded arbitrator the public had a right to expect but an ex-smoker of already formulated views.
- 1.16 Previous evidence provided by the Department of Health (Plain Tobacco Packaging: A Systematic Review) was not independent but was biased in favour of the authors' own views towards standardised packaging, and that as this research was insufficient to convince government ministers to introduce standardised packaging in 2012 then – in the absence of any new evidence – there is no reason to do so now.
- 1.17 We believe the Chantler Review was selective in its use of evidence, as evidenced by the omission of one study that did not fit its conclusions. The one empirical study that is available, by Dr Ashok Kaul and Dr Michael Wolf of the University of Zurich, was not included in the Chantler Review, despite Chantler's team receiving a presentation by the authors. Those findings showed that using the same statistical sources regularly quoted by tobacco controllers in Australia, there had in the first 13 months of the new laws been no measurable impact on the smoking rates of 14-17 year-olds.
- 1.18 The Chantler Review failed to understand or take into account how consumers behave when price effects their decision making or that the combination of large tax increases and standardised packaging is commoditising tobacco products and driving smokers towards low-cost "value" brands or illicit supplies.
- 1.19 The Chantler Review also failed to understand the dynamics of the counterfeit market of making packs that look like legal standardised packaging – or the branded packs available in other countries – and that the latter option is more profitable while making it harder for the consumer to tell whether it is counterfeit because there is no longer a bona-fide domestic product to compare it with.
- 1.20 We note the Chantler Review did not report the Australian government's own figures from Customs which showed that seizures of smuggled tobacco had reached their highest detected level in three years, rising from 82 million cigarettes detected in 2010/11 to 200 million cigarettes detected in 2012/13 – resulting in a growth in duty evasion of A\$135 to A\$151.
- 1.21 We note the Chantler Review did not report that industry figures show that legal sales in Australia are rising and that one of the unintended consequences of standardised packaging now being seen in that country is that the process of commoditisation means smokers can afford more tobacco, encouraging greater sales.
- 1.22 Finally we concur with the Regulatory Policy Committee in its review of the Impact Assessment that accompanies this consultation when it stated that, "By going beyond minimum EU requirements, the Department is gold-plating the measure." Why any government, least of all a Conservative-led government, would want to "gold plate" EU regulations is beyond comprehension.

2.0 ABOUT

- 2.1 FOREST represents adults who choose to consume tobacco and non-smoking adults who are tolerant of other people's enjoyment of tobacco.
- 2.2 Established in 1979, the group was founded by Sir Christopher Foxley-Norris, a former Battle of Britain fighter pilot and a lifelong pipe smoker who died, aged 86, in 2003. Sir Christopher was awarded the DSO in 1945, OBE in 1956, CB in 1966, KCB in 1969, and GCB in 1973.
- 2.3 Patron of FOREST is TV chef and restaurateur Antony Worrall Thompson. Members of its Supporters Council include artist David Hockney, musician Joe Jackson, inventor Trevor Baylis, screenwriter Ronald Harwood and businessman Randal Macdonald.
- 2.4 Media work – FOREST director Simon Clark (1999-present) appears regularly on British television and radio and is often quoted by national and local newspapers. Since August 2010, when FOREST launched a satellite group (FOREST Eireann) in Ireland, its spokesman has also appeared with increasing frequency on Irish radio (national and local), with regular quotes in Irish newspapers.
- 2.5 Political lobbying – FOREST has submitted reports and presented its views to a number of public bodies including the Health and Safety Commission, House of Commons Health Select Committee, Greater London Authority Investigative Committee on Smoking in Public Places, Scottish Parliament Community Care Committee and other bodies, including several local council committees. FOREST has also been active internationally, making submissions to the European Commission and representing consumers at meetings convened by the EC in Brussels. In December 2010 FOREST organised an online petition in response to an EC public consultation to revisions to the Tobacco Products Directive.
- 2.6 Campaigns – FOREST-run campaigns include *Hands Off Our Pocks, Save Our Pubs & Clubs* and *The Free Society*, an online resource that publishes articles on a range of subjects including tobacco, food, drink, surveillance and other issues related to individual freedom. Through *The Free Society*, FOREST has been active in creating a network of like-minded groups and individuals who look beyond tobacco and are opposed to excessive regulation in general.
- 2.7 Events – FOREST organises its own events in London and at party conferences. These include debates, panel discussions, receptions and dinners including the recent Freedom Dinner at Bofsdale of Canary Wharf. Invited guests include politicians, political researchers, broadcasters and journalists.
- 2.8 Public speaking – FOREST representatives have spoken at many public meetings and private events including university debates. Director Simon Clark has addressed many institutions including the Oxford Union and University College Dublin Debating Society. He has also spoken at meetings organised by leading think tanks such as Policy Exchange and the Adam Smith Institute.
- 2.9 Publications – To raise awareness of specific issues FOREST publishes or commissions occasional reports and other publications. In recent years these have included *The Bully State: The End of Tolerance* by former MSP Brian Monteith, and *Civil Liberties: Up In Smoke* by Simon Davies of Privacy International. Print copies are distributed to journalists and politicians and softcopies made available online.
- 2.10 Support and funding – FOREST is supported and receives donations from tobacco companies. In the interests of transparency this fact is recorded on the FOREST website where it states: "FOREST is supported by British American Tobacco, Imperial Tobacco Limited and Gallaher Limited (a member of the Japan Tobacco Group of Companies). The views expressed on this or any other FOREST-affiliated website are those of FOREST alone."

3.0 PREFACE TO THE CONSULTATION RESPONSE

3.1 What has changed since the last consultation of 2012?

The latest consultation on standardised packaging of tobacco products asks for response submissions to consider any new developments since the last consultation of 2012 that led to the then Secretary of State for Health announce that the government was not going to proceed with standardised packaging at that time.

It is the opinion of FOREST that the fundamental developments since that time have been:

- 1) The UK government's own response to the consultation exercise;
- 2) The introduction of standardised packaging of tobacco products by the national government of Australia;
- 3) Studies on the effects of the standardised packaging policy in Australia;
- 4) The passing of legislation in the UK Houses of Parliament that would allow for the introduction of standardised packaging of tobacco products across the UK using secondary legislation;
- 5) The agreement of a new European Union Tobacco Products Directive;
- 6) The subsequent commissioning and publishing by the UK Department of Health of the Chantler Review

In this consultation response FOREST will provide its own interpretation of the above developments and comment on other information that is related to the possibility of standardised packaging being introduced in the UK, such as press comments and relevant research studies. The purpose of this is to establish if any of the above developments are of enough significance to require a change of policy by the UK government that will result in the introduction of standardised packaging.

3.2 Why standardised packaging of tobacco products was wrong in 2012

In order to reach a conclusion about the impact of developments since 2012 it is necessary to remind ourselves of the salient arguments against the introduction of standardised packaging that contributed to the government's decision not to proceed with standardised packaging following the 2012 consultation:

ij) The argument that packaging attracts young smokers is not credible

If attractive packaging is relevant to enticing young people to start smoking and the answer is therefore to introduce standard unappealing packaging then young people would not be interested in trying other more dangerous illegal drugs that come in next to no packaging at all, and around which constant alarm about the health risks (including immediate risk to life) is made with great regularity. But many young people are interested in marijuana, heroine, cocaine, amphetamines, strictly controlled prescription drugs and other illegal substances that are harder to source than legal tobacco; all are sought without a second's thought to their packaging or lack of it.

It is not the packaging that makes tobacco products attractive, glamorous, cool, enjoyable, or age-defining – even to young people – it's what smoking says about them as adolescents, who they want to be and who they want to be associated with or accepted by. Packaging does not impact on any of these cultural norms. Given that some young people go through a rebellious stage in their adolescence, pushing against authority, it can be expected that some will find purchasing an unattractive pack of cigarettes a rite of passage that declares their resistance to adult conformity and provides a way to stand out from the crowd. That would be counter to the professed aims of the proposed regulations but an entirely logical response to standardised packaging.

- ii) *The evidence that packaging encourages young people to smoke is limited to highly subjective conjecture often produced by those with a bias towards prohibiting brand packaging*

Without going into extensive detail that would repeat FOREST's previous consultation response, the so-called evidence for the 2012 proposal relied upon opinion surveys that lacked any scientific credibility. The most robust data on youth smoking rates, including studies by the NHS itself, indicates that becoming a smoker is statistically correlated with socio-economic factors, education, family structure (living with a lone parent), social mobility (educational aspirations), sibling and peer smoking activity, as well as rebelliousness and risk taking – with packaging languishing well behind and practically off the scale. A study by the NHS Information Centre supports this view:

“There is strong evidence that pupils' smoking habits are influenced by the smoking behaviour of their families and friends. Almost all smokers (99%) said they knew at least one person who smoked, compared with 81% of non-smokers. Around three-fifths (62%) of pupils lived in households where no one else smoked, and they were less likely to be smokers than those who lived with other smokers, particularly those who lived with several other smokers. Among pupils who said that no one they lived with smoked, 94% did not smoke, compared with 69% of those who lived with three or more smokers.”¹

The EU Special Eurobarometer 385 'Attitudes of Europeans Towards Tobacco' published May 2012 indicated that less than 1% of UK respondents cited packaging as a reason for starting smoking. The fieldwork was conducted February-March 2012 (ie after the launch in January 2012 of Plain Packs Protect, a campaign that was designed to increase the awareness of packaging).

According to respondents, friends or family smoking were once again listed as the overwhelmingly most important factors in starting smoking.

“Among the following what were the most significant elements that made you start smoking?”²

Your friends smoked	77%
Your parents smoked	24%
You liked the taste or smell of tobacco	8%
Cigarettes were affordable	12%
You liked the packaging of the cigarettes	1%
You liked menthol cigarettes	4%
You liked cigarettes with a specific sweet or fruity or spicy flavour	1%
Other (spontaneous)	10%
None	4%
Don't know	2%

All this points to government being most successful in reducing youth uptake of smoking through help and information to parents (specifically the important role they play in the actions of their children) and directly to youths themselves.

This evidence supports the argument that it is not credible to expect young people to become disinterested in smoking because the packaging has been made unattractive by order of the state.

- iii) *The UK government had not had the opportunity to consider the impact (if any) of the legislation prohibiting the retail display of tobacco products (which will not be fully implemented until 2015)*

¹ NHS Information Centre: Smoking drinking and drug use among young people in England 2010
http://www.ic.nhs.uk/webfiles/publications/003_Health_Lifestyles/Smoking%20drinking%20drug%20use%202010/Smoking_drinking_and_drug_use_among_young_people_in_England_2010_Summary.pdf

² Special Eurobarometer 385 'Attitudes of Europeans Towards Tobacco', published May 2012 page 70

that could inform the decision making process about the utility of bans on tobacco product visibility and visual attractiveness

In a number of public pronouncements the coalition government and the devolved administrations have laid great store on their willingness to restrict public policy to that which can be derived from a sound evidence base. Legislation to introduce restrictions on the visibility of tobacco products available for retail sale is at different stages of introduction depending on the jurisdiction within the UK and will not be completed in smaller tobacconists and shops until 2015. Given that such legislation removes tobacco products from their highest general visibility in the process of a sale being made – namely the serried ranks of “colourful” packets on a gantry – the theory upon which the government’s standardised packaging policy rests – that it is packaging that proves so attractive to young people – could have been tested by research *after* the new laws were fully applied.

The fact that the government now appears unwilling to wait for such an opportunity suggests either a recklessness (by abandoning past commitments to evidence-based policy) or a lack of confidence in the measures limiting tobacco retail display and the anticipated outcomes.

iv) Insufficient time was available for the UK government to receive credible research findings of the broad impact of the standardised packaging legislation introduced in Australia

The scale of the government intervention being proposed – the denial of intellectual property rights of legally constituted and already highly regulated commercial entities through the denial of brand identities that they have over time invested heavily in – cannot be underestimated. The whole of the commercial world is watching because there is genuine concern being voiced (eg most recently Mars Foods) that what might be done to the brands of tobacco manufacturers will in time become a possible threat to other concerns involved in the manufacture or sale of foods, drinks and other consumable products. It is therefore not surprising that legal actions to defend commercial interests have materialised and the World Trade Organisation is considering the implications for international trade.

In those circumstances the most prudent approach for the UK government was, as stated in 2012, to await the results of what happens as a result of the Australian national government’s intervention. To act before such information is available is to again overturn the well-stated policy of relying on an evidence base before introducing further legislation and to risk costly and embarrassing legal challenges that have a reasonable chance of success.

While it is open to political interpretation it should also be noted that the Labour government of Australia lost power subsequent to introducing the highly controversial standardised packaging laws that were subject to considerable opposition.

Since 2012 some studies and reporting of social behaviour has become available but three questions arise: (1) Are they of sufficient quality and credibility to have any influence? (2) Is one year’s evidence sufficient to establish a trend and deliver a credible conclusion? (3) Do the findings merit the introduction of such an invasive intervention?

v) Any anticipated fall in tobacco usage will be more than outweighed by the potential for greater tobacco use by accessing illegal sources of counterfeit and contraband supplies

The scale of counterfeit and contraband sales of tobacco products has become of increasing concern with the greater globalisation that has followed the general collapse of the communist economic powers. Organised crime emanating from tobacco producing countries in Asia has, since the 1990s, added to traditional smuggling routes and there is reliable evidence that where greater restrictions on the availability of tobacco has been introduced so the incidence of illicit tobacco sales has increased.

Further evidence previously submitted by FOREST also pointed to the belief amongst professionals in the packaging industry that the specialist printing techniques – such as embossing, debossing, varnishing, seven-colour and UV printing and more – were a barrier to counterfeiting of existing packaging that would in every circumstance contain a highly inferior product.

A particular aspect of this risk is that as consumers become unfamiliar with what a genuine branded packet should look like so they lose their ability to differentiate between officially packaged and counterfeit cigarettes. It therefore becomes easier for illicit suppliers to pass off their contraband as genuinely legal, saying their tobacco is from a country where standardised packs are not required but are relatively cheap (such as Spain). Where a regular consumer might previously have been expected to know the difference, the same level of awareness cannot be expected in a year or two after standardised packaging is introduced.

vi) *Counterfeit supplies pose a greater health risk than legally produced tobacco products and making their use more prevalent must be of even greater concern*

Added to the greater opportunity for illicit trade is the nature of what is sold in counterfeit cigarettes – adulterated tobacco with many more impurities, dangerous chemicals and unknown ingredients literally swept up off a floor. It is unlikely that the public is aware of how heavily regulated legal cigarette manufacture is, with strict limitations on what can be added to cigarettes being introduced over many years. Counterfeiters do not need to apply any of these regulations to their manufacturing process and are therefore free to find the cheapest ingredients that look the same in order to maximise their profits. Accordingly counterfeit cigarettes provide a greater risk to the consumer.

If government believes its regulations make a difference to the quality of tobacco products then it must surely recognise that counterfeiters provide a greater risk to public health that must be taken into account.

Counterfeit cigarettes are substantially cheaper than legal cigarettes. In the unlikely event that standardised packaging reduces the officially measured consumption of tobacco by young people by, say, 2% it will have achieved nothing if the consumption of illegal or counterfeit cigarettes by young people rises by 2% as a result of illicit trade. Worse, the illicit, poorer quality cigarettes will offer a greater risk to health so public policy could put young people at greater risk, the exact opposite of the government's intention.

vii) *An increase in illegal sources of tobacco – encouraged by standardised tobacco packaging – must by definition lead to a fall in public revenues from anticipated duties and taxes*

Distinct from the relative health risks that come from replacing legitimate tobacco products with illegitimate ones is the fact that illicit sales bring no revenue to the UK Treasury. In fact, given that a growth in the underground market requires a heightened response from the authorities, the cost is not just the loss of revenue but the greater expense of policing that is required to prevent it. At a time of austerity in public finances any policy that damages public revenues – contributing to a larger annual deficit and greater public debt (£1.308 trillion and rising as at 29.07.14) – has to be evaluated for its financial impact.

The foregoing represents a summary of the issues that contributed to the government's decision of 2012. What is now required is to consider the new developments listed above in 3.1 and how they might have impacted on these arguments.

3.3 The UK government's own response to the consultation of 2012

Following the consultation of 2012 the UK government announced it would not be proceeding with the introduction of standardised packaging, stating it would "wait until the emerging impact of the introduction of plain packaging in Australia could be measured".

The consultation had resulted in 665,989 responses of which 36% (238,101) supported standardised packaging and 64% (427,888) opposed it. FOREST understands this was the largest ever response to a public consultation.

The UK government pointed to the detailed responses as being 53/43% in favour of standardised packaging but this ignored the fact that many of those submissions were from its own taxpayer-funded agencies where the government pays staff to lobby government for more intervention and more public spending – what is known as rent-seeking. When a previous consultation on the retail tobacco display ban was overwhelmingly in favour of the proposed legislation due to a paucity of public responses, the government did not make this distinction or voice concern about the lack of public participation.

Since the government's response to the 2012 consultation there has been no conclusive evidence that standardised packaging has provided the hoped for reduction in the smoking rates of young Australians. Indeed, since the policy was introduced, the number of 12-17 year-olds now smoking has climbed by about 150,000 – a staggering 36% increase that goes against the long term trend.

- *In our opinion the government responded correctly to the 2012 consultation. Given that there is no conclusive evidence that standardised packaging has delivered its aim of reducing smoking rates amongst young Australians and that there is genuine concern about an apparent increase in illicit sales that provide more dangerous public health risks, the UK government should have waited until its own tobacco display ban had been fully introduced and the Australian plain packaging experiment could be properly assessed. In our opinion a target date of 2017 for a review of the evidence would have made better sense, not November 2013–March 2014 (the Chantler Review).*

3.4 The introduction of standardised packaging of tobacco products in Australia

After considerable public debate – a debate that has not yet taken place in the United Kingdom where the political and media classes have shown relatively little desire to discuss the issues in detail – the Australian national government passed a law to introduce standardised packaging of tobacco products (including cigars) with effect from December 2012. Although other national governments have announced their interest in the outcomes that flow from that policy, Australia remains the sole country with standardised packaging legislation. The World Trade Organisation is currently considering whether the Australian law is in breach of international agreements and has yet to announce its decision.

- *It is the opinion of FOREST that the application of the law in Australia provides an ideal opportunity to evaluate if the efficacy of the policy in terms of public health gains justifies the denial of commercial rights to tobacco manufacturers and retailers of what remains a legal product, and that this must first require a reasonable period for the Australian law to be applied and its impact assessed. The fact that a law has been introduced in one country is not in itself sufficient grounds for the United Kingdom to apply the law in the UK when there has been little public debate, no political mandate exists, and evidence to support the policy is scant and comes with numerous caveats.*

3.5 Initial studies into the effects of standardised packaging in Australia

The first study into the effects of standardised packaging of tobacco products in Australia produced by KPMG³ concerned the impact on counterfeit and contraband consumption. The study – using the same methodology as previously applied for such research so that a like-for-like comparison could be made – found that illicit consumption of tobacco had increased.

The same report suggested an initial reduction in legal sales of tobacco that subsequently recovered to become an increase (see 4.1 vii).⁴ This reversal of the initial downward trend was found by a number of tobacco companies.⁵ Supporters of standardised packaging criticised the KPMG methodology, failing to notice that the crucial point was that the methodology had not changed from previous studies and therefore a comparison with the past could be made. Whether tobacco sales are up or down however is irrelevant. To demonstrate that standardised packaging delivers on its aims advocates need to show a significant departure from the

³ https://www.imperial-tobacco.com/assets/files/cms/KPMG_FY2013_Illicit_Trade_Report_FINAL_11_April_2014.pdf

⁴ <http://www.heraldsun.com.au/news/law-order/illicit-tobacco-funding-gangs-and-increasing-use/story-fni0fee2-1226752355906?nk=d54b18d0b1e1a897fe0188ea21ff1575>

⁵ Australian legal tobacco sales are up by 59 million sticks in 2013 compared to 2012. Factory Made Cigarettes declined by less than -0.1% and Fine Cut Tobacco grew by +3.4%.

historical trend of declining tobacco consumption. If statistical information from sales, consumption, excise etc continue in line with the historical trend then it can be concluded that the same outcome would have happened regardless of the introduction of standardised packaging and a costly and controversial exercise could have been avoided.

- *It is the opinion of FOREST that research methodologies that have been accepted by public authorities in the past as a reliable means to identify the consumption of illicit tobacco products cannot be lightly dismissed as suddenly unsuitable simply because the data obtained after the introduction of standardised packaging shows that illicit consumption has risen. The initial studies give credence to our concerns expressed in our 2012 consultation response, namely that standardised packaging of tobacco is likely to become a counterfeiter's charter and could be counter-productive to the public health gains the government hopes to achieve.*

3.6 UK legislation allowing for standardised packaging

Legislation to allow the introduction of standardised packaging of tobacco products was not brought to parliament as an individual bill following public demand or anything near a political or public consensus. No political party included standardised packaging in its general election manifesto of 2010. Indeed the previous Labour government had dismissed the idea and the Conservative opposition had also rejected the possibility. When the Coalition Agreement⁶ was signed-off by the leaders of the Conservative and Liberal Democrat parties⁷ it didn't advocate the policy. In fact its 117 words on public health talked about "help[ing] people take responsibility for themselves" while the section on business regulation stated that:

"We will cut red tape by introducing a 'one-in, one-out' rule whereby no new regulation is brought in without other regulation being cut by a greater amount."

and

"We will impose 'sunset clauses' on regulations and regulators to ensure that the need for each regulation is regularly reviewed."

The origins of the proposed legislation on standardised packaging were a change of position by the Labour opposition looking to outflank the coalition government by bringing difficult amendments to the Children and Families Bill that initially had no bearing on tobacco control. Fearing a defeat in the House of Lords the government introduced its own amendment to the Bill that would allow standardised packaging to be introduced as long as consent to secondary legislation could be obtained. Thus the immediate threat of an embarrassing defeat was avoided but it was inevitable that having forced the government's hand the Labour opposition that had rejected the idea of standardised packaging when in power would continue to press for legislation through secondary legislation.

- *It is the opinion of FOREST that while the coalition government has the authority to introduce standardised packaging it does not have the political mandate to do so as none was sought and the policy runs counter to how the government suggested it would act. The proposed regulations for standardised packaging neither encourage personal responsibility as promised (taking instead a more hands on approach) nor is there any evidence of the regulations providing a sunset clause or meeting the one-in-one-out criteria that were set out in the Coalition Agreement. Such actions that go against the promises and perceptions built up by public statements of politicians are responsible for bringing the Houses of Parliament into disrepute, disconnecting its occupants from the electorate and encouraging voters to think politicians are not to be trusted, are all the same and that voting is a waste of time.*

3.7 The European Union's revised Tobacco Products Directive

It is not overstating the case to say the conduct of the Coalition Government regarding the presentation to parliament of the draft EU Tobacco Products Directive brought both the administration and the democratic

⁶https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

⁷ The Liberal Democrats subsequently had the Coalition Agreement endorsed by the party membership

process into disrepute. Member states were only able to agree a majority position because of the interventions of the UK's public health minister who acted in defiance of the Westminster's European Scrutiny Committee when she attended a meeting of European ministers in Luxembourg. The UK government's support for the European Commission's proposals at that meeting was decisive in securing a 'general approach' amongst member states, as the minister stated afterwards:

"Four member states – Bulgaria, Czech Republic, Poland and Romania were unable to offer their support, which meant that the UK's support (of the Tobacco Products Directive) was decisive in forming a qualified majority."

The result was a European Directive that had still to be scrutinised and debated by the Westminster parliament was not just supported but actively driven forward by UK ministers. What was particularly at odds with the government's approach was that the Directive included policies for a ban on menthol and slim cigarettes, an increase in the size of health warnings on packaging, a ban on packs of ten cigarettes and small pouches of hand rolled tobacco, policies that had not previously been UK government policy and had not been debated by the House of Commons. The Tobacco Products Directive was eventually passed with some further amendments, but in spite of that the UK government now proposes to go even further that the revised TPD demands. Standardised packaging can therefore be fairly claimed to be another example of the UK government "gold-plating" EU regulations, a position that would seem to be at odds with the views of millions of UK voters.

- *It is the opinion of FOREST that while the process of arriving at a revised Tobacco Products Directive was flawed and highly regrettable, the fact is that the revised TPD exists and will be implemented in 2016. Why then is the UK government "minded" to go even further in terms of untested tobacco control measures when it has not yet had the opportunity to assess the outcome of the revised EU regulations?*

3.8 The Chantler Review

The Review is one of four specific questions in this consultation and is answered more fully in the next section.

- *It is our opinion that the terms of the Chantler Review did not properly include the broader considerations of the effect on counterfeit and contraband or the diminution of commercial property rights. Consequently it ensured that it would produce the outcome that it did, recommending that standardised packaging should be introduced despite a lack of substantial evidence. FOREST believes the commissioning of the Chantler Review was nothing more than a cynical exercise designed to give Conservative members of the coalition government an excuse to reverse their previous opposition to standardised packaging – an exercise that ironically failed to convince the media or the change prevailing public attitudes.*

3.9 Further studies into the effects of standardised packaging in Australia

Since the publication of the Chantler Review and the government's response to it the public health minister announced that the government was "minded" to proceed with standardised packaging subject to a further consultation on the draft regulations – which rather suggested the consultation would only consider technical objections rather than fundamental principles – there has been a flurry of further evidence about smoking rates in Australia. Data released by the Australian government as recently as 17 July 2014 demonstrates that standardised packaging has not accelerated the historical decline in smoking. The latest information suggests that prevalence of daily smokers aged 14+ declined from 15.1% to 12.8% over a three year period. Unfortunately for the validity of the data the Australian government disregarded casual smokers and included data for those aged between 14 and 17 years in the prevalence data set, which had the effect of reducing the smoking incidence figure significantly.

The data further shows there has been an increase in smoking prevalence in both New South Wales and South Australia from 14.7% to 16.4% and 16.7% to 19.5% respectively and that nationally smoking prevalence among 12-17-year-olds (as opposed to 14-17-year-olds) increased from 2.5 to 3.4% despite plain packaging.

4.0 FOREST'S RESPONSE TO THE CONSULTATION QUESTIONS

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

- 1) *It is FOREST's opinion that Sir Cyril's decision to recommend that the government proceed with standardised packaging is as baffling as it is predictable.*

For example, the Review:

- *states it only considered the public health aspects of standardised packaging. It took no account of the effects on the UK economy, consumers or illicit trade.*
- *says it is not possible to prove that standardised packaging would reduce smoking and that, if it was introduced, it would be almost impossible to measure any effect.*
- *states it is too early to draw definitive conclusions about the impact of plain packaging in Australia, that data is only just becoming available, and that any impacts may take time to materialise.*
- *accepts the findings of past studies of standardised packaging where known flaws and limitations are excused as "necessary constraints on study design". However studies commissioned by the tobacco industry from respected independent bodies like KPMG are dismissed altogether.*
- *says that branded goods inevitably have a "spillover" effect on children. If this argument is accepted it signals a slippery slope for other products such as alcohol, food and sugary drinks.*
- *describes cigarettes as a "badge product which is conspicuously consumed while making a statement about the smoker's image and identity". In fact, there are relatively few places where smoking is allowed in public, fewer people are smoking, and those that do are increasingly demonised.*
- *confuses "packaging design" with "product design" and "advertising and marketing" – arguing that they work in similar ways. Experts in these fields disagree, knowing that these are specialised areas that work in very different ways.*
- *confuses previous research and studies for its own aims. An experiment where children said that carrots in McDonalds packaging tasted better than those in plain packaging is held up as "proof that branding affects consumption". This statement is incorrect because the experiment didn't test for any increased desire amongst the children to consume carrots, whether in branded packaging or not.*
- *declares that more than 600,000 responses were received during the original 2012 consultation. It failed to mention that the overwhelming majority were against standardised packaging.*

The Review is also full of phrases like "probable", "likely", "balance of evidence" and "intuitive plausibility". These describe speculation and guesswork. They do not describe evidence and measurement.

*It has subsequently come to light through the BBC programme *Burning Desire* – broadcast on BBC Two on 5 June 2014 following publication of the Chantler Review but filmed in advance – that Sir Cyril was an ex-smoker of already formulated opinions.*

Thirteen minutes in to the programme (the second of two documentaries), Sir Cyril and the programme maker Peter Taylor attempted to rebut a claim by British American Tobacco that nicotine is no more harmful than a cup of coffee.

Taylor: But unlike coffee, which is only mildly addictive, nicotine can be extremely addictive. Professor Sir Cyril Chantler headed a government inquiry into cigarette packaging. He's one of the country's leading paediatricians and has studied and experienced the effect of nicotine on smokers.

Chantler: It is very addictive and it is addictive both psychologically, but it is also addictive biologically and we now understand far better than we did before the effect, the mechanisms, on the brain receptors that lead to that level of addiction. I know personally it's very difficult to give up.

Taylor: You were a smoker?

Chantler: I was.

Taylor: How long did you smoke for?

Chantler: More than 30 years.

Taylor: "How did a doctor ...

Chantler: Indeed.

Taylor: ... and a paediatrician ...

Chantler: Indeed.

Taylor: ... become a lifelong (sic) smoker and smoke for 30 years?

Chantler: Well, if I knew now, if I knew then, what I know now I wouldn't have started.

Commenting on e-cigarette marketing Sir Cyril added, "I'm personally worried about the advertising of them because it might cause confusion in young people's minds about the dangers of cigarette smoking."

Later, following a section about 'Be Mariboro', Philip Morris' "controversial new campaign that pushes advertising restrictions to the limit" (Taylor's words), Sir Cyril commented:

"I can't see how you can quarantine 15 to 18 year-olds or younger children. I also don't see how if you are marketing for the appeal of your particular brand how that can not have an effect on the consumption of tobacco and there is a lot of evidence from various cases in the past that shows a direct link between advertising and young people starting to smoke."

Reading these comments it's difficult to believe Sir Cyril was open-minded about plain packaging. Sadly there must be a suspicion that Sir Cyril already held the view that advertising (in this case brand packaging) was something to be controlled and was therefore predisposed to recommending intervention by the government.

ii) *The terms of the Chantler Review were too narrow – failing to take into detailed consideration the wider aspects of the effects of standardised packaging on the:*

- potential to make counterfeiting of tobacco products far easier;*
- effect that greater counterfeiting could have on public health, especially of young people;*

- impact that standardised packaging could have on business, in particular packaging companies and manufacturers;
- impact that standardised packaging could have on local communities, in particular small retailers; and,
- impact on the public finances from any increase in illicit sales and the burden placed on businesses that could both result in lost tax revenues.

While some of these issues might be addressed by the Department of Health's Impact Assessment published later, the approach asked of Chantler was akin to shutting the barn door after the horse has bolted. A more balanced and comprehensive review would have sought to consider the above aspects before coming to any conclusions because it would have allowed a cost benefit analysis – considering if any public health benefits from the various interventions were on balance worth the costs to other sectors of society – rather than leaving it to a future government to pick up the pieces later when the damage has been done.

Given what we know about the lack of evidence coming from Australia in favour of standardised packaging (and some evidence showing an effect contrary to that desired) FOREST believes the narrow approach of the Chantler Review has debased it beyond any political or practical worth.

- iii) The evidence provided earlier by the Department of Health (*Plain Tobacco Packaging: A Systematic Review*) was not independent but biased in favour of the authors' own views towards standardised packaging, with 16 of the 37 sources quoted being the result of the work of the review team including Crawford Moodle, Linda Bauld, Ann McNeil, Kathryn Angus and Gerard Hastings. This report has formed the basis for the government's case ever since and greatly influenced the Chantler Review. Given that there is no substantive body of research yet available from Australia, it has not been explained by Sir Cyril or the government how this and other studies like it that were available in 2012 – but were not considered enough to make the standardised packaging acceptable then – are enough to make it necessary now.
- iv) The Chantler Review referred to a variety of studies that were more of the same types of surveys of opinion rather than evidence based upon facts. In section 1.18 it stated "Much of the Review's time was spent considering the likely impact of standardised packaging". "Likely impact" is not actual evidence of a causal relationship between plain packaging and smoking cessation. Strangely the one study that was consciously left was the one empirical study that is available, by Dr Ashok Kaul and Dr Michael Wolf of the University of Zurich. It's not that Chantler and his team did not know about the study, the team was given a presentation by the authors,⁸ but its findings were not included. Those findings showed that using the same statistical sources regularly quoted by tobacco controllers in Australia there had in the first 13 months of the new laws been no measurable impact on smoking rates of 14-17 year-olds.

The authors tried very hard to find some change,⁹ they were as open to widening the parameters as their professional code allowed them to be, but they found nothing to support a decline in youth smoking rates. It is hard to believe that had the researchers found something, even a small percentage, their study would not have featured in the Chantler Review. The fact that it is absent is both a mystery and a condemnation of Sir Cyril's report.

- v) The Chantler Review fails to understand or take account of how consumers behave when price effects their decision making process. The Australian legislation was accompanied by a significant

⁸ <http://velvetglovelronlist.blogspot.co.uk/2014/04/the-missing-plain-packs-data.html>

⁹ A Kaul, M Wolf: The (Possible) Effect of PP on Smoking Prevalence in MInor In Australia: A Trend Analysis, University of Zurich, March 2014 (for PMI)

Conclusion: "Both analyses fail to find any evidence for an actual plain packaging effect. Altogether, we have applied quite liberal inference techniques, that is, our analysis, if anything, is slightly biased in favor of finding a statistically significant (negative) effect of plain packaging on smoking prevalence of Australians aged 14 to 17 years. Nevertheless, no such evidence has been discovered. More conservative statistical inference methods would only reinforce this conclusion."

tax rise of 12.5% in tobacco excise at the end of 2013 that increased pack prices from an average A\$17.50 to A\$19.70 – following on from an earlier 25% tax rise from 2010.

These tax increases obfuscate any impact of the packaging law as they have their own discouraging effect on sales. The purchase of "mainstream" and "premium" brands can fall – but smokers can do this by deciding to switch to "value" low-cost brands. A fall in one group does not mean a fall in all tobacco consumption. As Reuters¹⁰ reported about Australia on 3 April 2014:

"The Retail World supermarket sales data also showed that while sales volumes of 'mainstream' and 'premium' cigarettes fell by 8-9 percent, "value" brand sales rose 12.9 percent."

The anecdotal evidence coming from Australia is that the tax rises are influencing smokers' behavior, pushing them into value brands or illicit suppliers. Any studies about smoking rates cannot separate out these influences from that of standardised packaging.

vi) *The Chantler Review fails to understand the dynamics of the counterfeit market. Counterfeiters have two options – they make false packs with poor quality cigarettes that look like the legal standardised packaging or they make false packs with poor quality cigarettes that look like branded packs available in other countries. The second option is likely to be the preferred route as it is less expensive (no new start-up costs for design and print etc) and the consumer will find it harder to tell if it is counterfeit, as there is no longer a bona-fide domestic product to compare it with. Chantler does not take account of this second option.*

vii) *The Chantler Review does not report that the Australian government's own figures from Australia's Customs¹¹ show that seizures of smuggled tobacco have reached their highest detected level in three years. Cigarette smuggling has increased from 82 million sticks detected in 2010/11 to 200 million sticks detected in 2012/13 – resulting in a growth in duty evasion of A\$135 to A\$151.*

These cigarettes can be sold loose or in counterfeit packs. Either way standardised packaging makes their sale easier.

viii) *The Chantler Review does not report that industry figures¹² show that legal sales are rising as well:*

"In 2013, the first full year of plain packaging, tobacco companies sold the equivalent of 21.074 billion cigarettes in Australia, according to industry data provided by Marlboro maker Philip Morris International.

"That marks a 0.3 per cent increase from 2012, and reverses four straight years of declines."

The probable reason for the rise in legal sales is that by removing the branding that delineates value or type cigarettes have been commoditised (made a raw commodity rather than be divided into categories of the same item but having a range of different values through reputation for quality, taste etc.) The result is price has become the leading factor in purchase – and thus points consumers towards cheaper brands. This process means that consumers can in fact afford more tobacco, encouraging greater sales.

ix) *The Chantler Review states in section 1.19 that (a) it is not possible to prove scientifically that plain packaging would deliver a public health impact; and (b) post implementation, it would be difficult to evaluate what if any, effect plain packaging had made. As said in section 3.6 this fails the Government's own "Better Regulation" principles of: "assessing the impact of each regulation" and "reviewing the effectiveness of government regulations".*

¹⁰ <http://in.reuters.com/article/2014/04/03/us-australia-tobacco-ldINBRE320U320140403>

¹¹ <http://www.customs.gov.au/aboutus/annualreports/2013/p3i.html>

¹² <http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/australia/10718244/Australia-tobacco-sales-increase-despite-plain-packaging.html>

4.2 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) See section 3.9 – Preface to the consultation response.

4.3 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??

1) In general, technical aspects such as draft regulations are more a matter for manufacturers and retailers than for FOREST, which represents consumer interests.

4.4 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?

1) The Impact Assessment stands accused by the Regulatory Policy Committee that is tasked with reviewing it of “gold-plating” the EU Tobacco Products Directive, a conclusion with which FOREST concurs. The RPC stated:

“... the preferred option is to go beyond the European Tobacco Products Directive and require standardised tobacco packaging of cigarettes and hand rolling tobacco. By going beyond minimum EU requirements, the Department is gold-plating the measure.”

Although FOREST campaigned against an increase in the size of health warnings (as outlined in the EU’s revised TPD) in the belief that such a policy was (a) unnecessarily intrusive, (b) would have little impact on public health but would (c) further stigmatise adult consumers, it is preferable to the complete abolition of brand identity. The imposition of standardized packaging threatens many existing brands and that in turn will lead to a significant reduction in consumer choice. FOREST believes the UK government should be defending consumer choice, not “gold plating” EU regulations that are already designed to restrict choice (eg prohibition of menthol cigarettes).

5.0 FURTHER ISSUES REGARDING THE CONSULTATION

5.1 The four-month consultation on standardised packaging of tobacco products in 2012 produced a record response from members of the public.

In total, according to the summary report published in July 2013, 665,989 campaign responses were received from 24 separate campaigns; 427,888 campaign responses were from people opposed to the introduction of standardised packaging, and 238,101 were from those who supported the policy.

In April 2014, days after public health minister Jane Ellison announced the Government was now "minded" to introduce standardised packaging of tobacco following a "final short" consultation, FOREST launched the No, Prime Minister campaign so members of the public who were opposed to 'plain' packaging could once again make their voices heard, even though the final consultation period was to be much shorter – just six weeks.

We invited retailers and consumers to write a letter to the Prime Minister expressing their opposition to standardised packaging. The letter read:

Dear Prime Minister,

I am writing to express my opposition to plain packaging of tobacco.

A four-month government consultation in 2012 resulted in over 665,000 responses, with a substantial majority (427,888) opposed to the policy. I urge you to respect the outcome of that consultation which members of the public responded to in good faith.

There is no credible evidence that children start smoking because of the packaging, or that 'plain' packaging will deter children from smoking. Speculation and conjecture are no substitute for hard facts.

Before pressing ahead with legislation I urge you to wait until government has studied the impact of the tobacco display ban, which will not be fully implemented until 2015, and the introduction of larger health warnings which are being introduced in 2016 as part of the EU's revised Tobacco Products Directive.

On 5th August 2014, two days before the end of the six-week consultation, we delivered no fewer than 53,521 letters to Downing Street. As intended, copies of those letters have also been submitted as responses to the Department of Health consultation on standardised packaging.

During the consultation period the Hands Off Our Packs campaign (managed by FOREST) also invited members of the public to sign a petition similar to the petition that was submitted to the 2012 consultation. This time it read:

"The Government is holding a public consultation proposing 'plain' packaging of tobacco products. If you oppose plain packaging please enter your details below. We will submit the information to the consultation and let the government know that you are against this measure. The consultation ends on 7th August 2014."

On 7th August 2014, the closing date for the six-week consultation, FOREST delivered 97,944 petition responses to the DH opposing standardised packaging of tobacco. The total number of campaign responses hand delivered to the DH in response to the consultation was therefore 151,465. When direct emails to the DH are taken into consideration we estimate the final figure could be as much as 158,000, possibly more.

It may surprise politicians, but many members of the public feel very strongly about this issue. Standardised packaging of tobacco represents an unwelcome and unnecessary intrusion by the state

into people's everyday lives. Supporters of FOREST express concern that 'plain' packaging of tobacco is the start of a slippery slope that will lead, inevitably, to standardised packaging for alcohol, sugary drinks and anything deemed "unhealthy" by the public health industry.

We urge the Government to take seriously the views expressed by ordinary members of the public via the Hands Off Our Packs letters and petitions. There is enormous resentment that the result of the 2012 consultation – a huge majority opposed to standardised packaging – has been swept under the carpet and apparently forgotten by ministers, including the Prime Minister himself.

If government wants to remain relevant to ordinary people ministers must take into account the public's clearly expressed opinions. This is even more important when they have been expressly invited to contribute to a public consultation and have taken the time and trouble to do so.

- 5.2 Finally, and of enormous importance to supporters of FOREST, is the impact of tobacco control measures on adults who choose to smoke tobacco and don't want to quit (or, if they do, want to do so at a time of their own choosing and not be forced to do so because of intrusive and hectoring politicians).

Not for the first time a government consultation on tobacco ignores the interests of consumers who understand the health risks of smoking yet enjoy smoking, don't want to stop, and refuse to be bullied by government into quitting a legal product that earns over £10 billion for the Treasury each year.

FOREST spokesmen are often asked, "Why are you bothered about plain packaging? It won't stop people smoking." This consultation does not address this important issue so let us state our case:

- In the medium to long term standardised packaging will undoubtedly reduce the number of brands and therefore restrict consumer choice.
- Standardised packaging will continue the unacceptable process of denormalising a legal product and stigmatising adult consumers.
- It's based on the fallacy that children start smoking because of the packaging. For those and other reasons stated in the response, standardised packaging is wrong.
- Last but not least it creates a template for alcohol, sugary drinks, confectionary and other products.

**APPENDIX I – THE PUBLIC’S RESPONSE
TO THE STANDARDISED PACKAGING CONSULTATION**



7th August 2014

Department of Health
Standardised Packaging Consultation
Wellington House
133-155 Waterloo Road
London SE1 8UG

Sheraton House
Castle Park
Cambridge
CB3 0AX
T 01223 37056
contact@forestonline.org

Dear xxxx

Thank you for taking delivery today of responses to the consultation on the introduction of regulations for standardised packaging of tobacco products.

I can confirm that we submitted a total of 40 boxes – 29 white boxes, three brown boxes, six large brown boxes, and two brown envelopes.

The total number of consultation responses that we delivered to the DH today was 151,465. This figure is broken down as follows:

- 97,944 petition forms and cards opposing standardised packaging of tobacco

Respondents were invited to sign a form/card that read: “The Government is holding a public consultation proposing ‘plain’ packaging of tobacco products. If you oppose plain packaging please enter your details below. We will submit the information to the consultation and let the government know that you are against this measure. The consultation ends on 7th August 2014.”

- 53,521 letters to the Prime Minister opposing standardised packaging of tobacco

From our website (www.noprime minister.org.uk): “In response to the Government’s decision to proceed with standardised packaging, subject to a final short consultation, we invite opponents of ‘plain’ packs to write to the Prime Minister to make your feelings known”.

I would be grateful if you could confirm receipt of this letter.

Kind regards,

Simon Clark
Director, Forest

The Hands Off Our Packs campaign is owned and managed by Forest (Freedom Organisation for the Right to Enjoy Smoking Tobacco). Forest is supported by British American Tobacco, Imperial Tobacco Limited and Gallaher Limited (a member of the Japan Tobacco Group of Companies).

APPENDIX II

Brian Monteith: How ministers got tangled up over tobacco packaging ConservativeHome – May 8, 2014

The Government has got itself in to an almighty mess on the plain packaging of tobacco. Last year, out of the blue, David Cameron surprised even the Department of Health by announcing a new review of the evidence on plain packaging. Many Conservative supporters were stunned. There was no public demand for it. The public had already made their views known through their responses to the consultation: over 425,000 people had opposed plain packaging, 238,000 were in favour – a resounding majority against. Why would the Government ignore the result of its own consultation?

The Prime Minister's decision to reignite the debate was strategic. The Government had been outsmarted by Labour in the Lords, when the Opposition threatened to add an enabling amendment on plain packaging to the unrelated Children and Families Bill. In Scotland, meanwhile, the SNP Government was threatening to go it alone on plain packaging. In an attempt to reassert its authority in Westminster and the country as a whole, Cameron responded by effectively adopting Labour/SNP policy.

The Government thus appointed Sir Cyril Chantler, a leading paediatrician, to conduct a further review. Crucially, Sir Cyril was asked to consider only the impact of standardised packaging on public health. Unlike the 2012 consultation, there was to be no assessment of the impact on the economy, illicit trade or consumer interests.

The dice were loaded, and Sir Cyril didn't disappoint. Last month, following the publication of his report recommending plain packaging, Jane Ellison, the Public Health Minister, announced that the Government was "minded" to introduce legislation that will forcibly remove all graphics, typefaces, and colours that differentiate one brand from another. Accused, wrongly, of making a U-turn on plain packaging last year, the Government is now dancing to the Opposition's tune based on a report that many people consider to be deeply flawed.

The narrowness of the Chantler Review cannot be ignored, because the repercussions for other branded products – such as alcohol or processed foods and drinks high in sugar, salt and fats – are obvious. Despite claims by campaigners both in Australia and Britain that standardised packaging is a one-off for tobacco, there are numerous examples of public health campaigners demanding that the same tactics be used to tackle alcoholism, obesity and other health concerns.

Much of the Chantler Review is spent considering the "likely impact" of standardised packaging by considering surveys of children's opinions. But "likely impact" is not cause and effect. It is speculation at best. So we have a government "minded" to act not on hard evidence but on wishful thinking that is not born out from the experience in Australia – which remains the only country in the world to have introduced the policy. A weaker case is hard to imagine. To compound this, the report accepts it will not be possible to assess the impact of the measure, thus failing the government's own 'Better Regulation' principles that were designed to show legislation was worthwhile because it demonstrably worked.

Sir Cyril goes to great lengths to justify his argument for standardised packs. (To paraphrase: we cannot show this intervention will have a positive effect but if there is any possibility we should go ahead anyway.) Yet the Institute for Economic Affairs' Chris Snowdon, has established that the one empirical study that is available, by Dr Ashok Kaul and Dr Michael Wolf of the University of Zurich, was omitted from the report. (It's not that Chantler didn't know about the study (his team was given a presentation by the authors) but for some reason its findings weren't included.

Kaul and Wolf's study show that, using the same statistical sources regularly quoted by tobacco controllers in Australia, there had, in the first 13 months of the new law, been no measurable impact on smoking rates among 14-17 year-olds. The authors tried very hard to find some change. They were as open to widening the parameters as their professional code allowed them to be, yet they still found

nothing to suggest that plain packaging has reduced youth smoking rates Down Under. Call me a cynic, but it's hard to believe that had they found even a very small positive effect it would not have been mentioned in the Chantler Review. The fact that the study is completely ignored casts a serious shadow over the value of a report on which the Government is "minded" to act.

In addition, how can a report that fails to consider the impact of plain packaging on illicit trade and takes no account of published data from HMRC, NAO or OBR on increasing levels of illicit trade and reducing tax revenues from tobacco be considered to be balanced? How can the Department of Health take any decision in isolation of serious concerns about increasing crime and driving smokers to seek illegal goods?

So we await the announcement of yet another consultation, although Ellison has indicated it will be short and essentially about technical matters. The fact that there is no empirical evidence to support this massive intervention in commercial trade and intellectual property rights is a fact that appears to be lost on the Conservative-led department of a Conservative-led coalition government. No wonder manufacturers of other products unrelated to tobacco are looking on in quiet horror, knowing that if an important principle is conceded it can only be a matter of time before other potentially unhealthy products are in the firing line.

Meanwhile, according to a ComRes poll published by Grassroots Conservatives last month, fewer than one in five voters (18 per cent) backed the Government's plans. "The Government should reject plain packaging of cigarettes and concentrate on teaching young people about the dangers of smoking," the group said. Will the Government take note? Who knows? If they can consign to history the overwhelming result of a public consultation, anything's possible. No wonder voters are drifting away from politics or away from establishment parties and towards UKIP.

Finally, another time bomb is ticking. Later this year the World Trade Organisation will consider whether the Australian plain packaging law is contrary to international agreements that would force it to be withdrawn or cost huge amounts of compensation. Imagine the egg on the face of the Prime Minister if he presses ahead with a policy that is rejected by the WTO in the run up to the general election.

So how has this happened? Standardised packaging of tobacco is an idea that was neither conceived in Conservative Party gatherings nor demanded by ordinary Conservative voters. It's a classic example of a government – or, more accurately, a section of government – that has been captured by its officials, agencies and quangos, not to mention the campaign groups that it funds to lobby it to introduce more legislation. That this has happened should come as no surprise because the Department of Health has been funding groups to campaign for more government intervention since the Blair years. It is exactly the sort of abomination Conservatives should be dismantling rather than falling victim to.

If the Prime Minister truly believes in Conservative values, including strong government, he must reject Labour's attempt to bully him into submission on plain packaging. Common sense alone suggests it would be irresponsible for any government to rush to regulation on such a controversial issue. Before it enforces legislation, the Government must wait and assess the longer-term impact of plain packs Down Under. At the very least, it should wait for the WTO to pass judgement on Australia's plain packaging law.

The threat of more nanny state legislation coming from this government could easily contribute to a Conservative defeat in 2015. Conservatives cannot defeat Labour by adopting Labour policies. Instead of backing the party, people stay at home, or find new parties to vote for. Standing firm against plain packaging would signal Cameron's intention to put clear blue water between the parties at the general election. It's an opportunity he must grasp with both hands.

Brian Monteith is a former Member of the Scottish Parliament; a former spokesman for FOREST in Scotland, he is currently editor of The Free Society and ThinkScotland.org

APPENDIX III

Simon Clark: Do the right thing, Dave, just say no to plain packaging Taking Liberties – May 29, 2014

The prime minister is an ex-smoker and like many former smokers he has distanced himself from the habit, doing nothing to stop the denormalisation of smokers and demonstrating very little empathy for those who still enjoy lighting up, as he once did.

He was famously absent in 2006 when colleagues voted in favour of a comprehensive smoking ban, denying pubs and clubs the obvious and more reasonable option of separate smoking rooms. He also went missing when colleagues voted to ban smoking in cars with children, having previously expressed reservations about legislation.

In opposition the Conservative party opposed a ban on the display of tobacco in shops. In power, they enforced it. No surprise then that having rejected plain packaging following a public consultation in 2012, David Cameron did another U-turn. In November 2013 he announced a new review on plain packaging and appointed a leading paediatrician, Sir Cyril Chantler, to conduct it.

Sir Cyril's report was published in April and to no-one's surprise this pillar of the medical establishment recommended the introduction of standardised packs. Read the report with an open mind, however, and the decision is as baffling as it is predictable. For example:

- The Review states it only considered the public health aspects of standardised packaging. It took no account of the effects on the UK economy, consumers or illicit trade.
- The Review says it is not possible to prove that standardised packaging would reduce smoking and that, if it was introduced, it would be almost impossible to measure any effect.
- The Review states it is too early to draw definitive conclusions about the impact of plain packaging in Australia, that data is only just becoming available, and that any impacts may take time to materialise.
- The Review is full of phrases like "probable", "likely", "balance of evidence" and "intuitive plausibility". These describe speculation and guesswork. They do not describe evidence and measurement.
- The Review accepts the findings of past studies of standardised packaging where known flaws and limitations are excused as "necessary constraints on study design". However studies commissioned by the tobacco industry from respected independent bodies like KPMG are dismissed altogether.
- The Review says that branded goods inevitably have a "spillover" effect on children. If this argument is accepted it signals a slippery slope for other products such as alcohol, food and sugary drinks.
- The Review describes cigarettes as a "badge product which is conspicuously consumed while making a statement about the smoker's image and identity". In fact, there are relatively few places where smoking is allowed in public, fewer people are smoking, and those that do are increasingly demonised.
- The Review confuses "packaging design" with "product design" and "advertising and marketing" – arguing that they work in similar ways. Experts in these fields disagree, knowing that these are specialised areas that work in very different ways.
- The Review confuses previous research and studies for its own aims. An experiment where children said that carrots in McDonalds packaging tasted better than those in plain packaging is held up as "proof that branding affects consumption". This statement is incorrect because the experiment didn't test for any increased desire amongst the children to consume carrots, whether in branded packaging or not.

• The Review declares that more than 600,000 responses were received during the original 2012 consultation. It failed to mention that the overwhelming majority were against standardised packaging.

Despite these serious flaws public health minister Jane Ellison immediately announced that the government was "minded" to introduce legislation after a "final short consultation".

To cut a long story short, this entire charade is the result of David Cameron's biggest weakness. He appears to have no strong opinion, no guiding compass, on this and many other issues.

Yes, there was political pressure from Labour. But instead of standing firm – opponents can smell weakness and indecision a mile off – he dug himself the largest hole he could and stood on the edge, inviting his opponents to push him in.

They didn't have to push too hard. Teetering on the precipice it took only a few words from Sir Cyril and Dave was diving headlong into another fine mess of own making.

Reports suggest that David Cameron is lukewarm about plain packaging and unconvinced by the argument it will stop children smoking. In which case, why proceed with a policy that divides Conservative MPs and public opinion? (Almost two-thirds of the 645,000 responses to the 2012 consultation opposed plain packaging.)

Tomorrow at the Conservative Home conference in London we will explain to delegates what they – and you – can do to persuade the prime minister that plain packaging makes no sense, politically or in terms of public health.

We'll trot out the usual arguments – won't work, nanny state, slippery slope etc etc. But we'll also make the point that if Cameron wants to win next year's General Election he has to give people like me, a lifelong Conservative voter, a positive reason to keep his party in power.

One way to do that is to stand up to nannying tyrants like Labour, the British Medical Association and unrepresentative, publicly funded lobbyists like ASH, Smokefree South West and the rest.

Earlier this year David Cameron announced plans to reduce the burden of regulation on UK businesses.

"This is going to be the first government in modern history that at the end of its parliamentary term has less regulation in place than there was at the beginning," he said.

"We have identified 3,000 regulations we are going to scrap and we've already got rid of 800 of them."

Why, then, is the government creating regulations on plain packaging that current evidence suggests will have no negative impact on tobacco consumption but will inconvenience and possibly damage thousands of businesses, including retailers and packaging companies, if they are enforced?

Our message to the prime minister? Do the right thing, Dave. It's never too late!

To write to David Cameron opposing plain packaging of tobacco, visit www.noprime Minister.org.uk

Simon Clark is director of the smokers' group FOREST.

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

7th August 2014

Dear Sir/Madam

Please accept this letter as a formal appeal against the Department of Health's consultation on the introduction of regulations for standardised packaging of tobacco products.

Arken's Company Background

ARKEN is one of the UK's leading design-led manufacturers, specialising in delivering retail solutions. What sets us apart is our 65 years' experience working with leading brands, and delivering award-winning concepts.

Our annual turnover is 10.6M and we have 81 Employees and our number of retail outlets exceeds 10. The proportion of our business dependent on tobacco is around five percent.

We have considered the main points of the issue which you will find below.

Evidence from Australia

- Australia is the only country to have implemented plain packaging, having done so in December 2012.
- There is no evidence that plain packaging has accelerated the rate of decline in smoking or had any positive behavioural impact. Data from Australia shows that the pre-existing downward trend in smoking prevalence has not been impacted by the introduction of plain packaging.

New developments

- There was no evidence at the time of the 2012 public consultation, and there is no evidence now, that plain packaging will have actual positive public health impacts.
- There is no good reason why the Government has changed its position from July 2013 when the Public Health Minister, Anna Soubry MP, said: "We are waiting to see how things develop in Australia and, as I say, good laws are based on good, sound evidence. That is the way forward."
- The EU Tobacco Products Directive (TPD2) comes into effect in May 2016; amongst other things, this will ban packs of cigarettes of fewer than 20 sticks and all RYO under 30g. These larger packs will mean consumers will need to make fewer purchases per week, therefore reducing footfall. This could have a damaging impact on the wholesale trade due to fewer retail visits.



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- The UK is already heavily disadvantaged due to high levels of taxation compared to other members of the EU. For example, latest figures from Customs show that cross-border shopping accounted for 1.5 billion cigarettes brought into the UK in 2012/13. Should the UK government proceed to "gold-plate" TPD2 with plain packaging, it will put the UK at greater risk of losing revenue to the illegal trade and cross-border shopping.
- In February 2013, the Minister for Business and Enterprise stated his intention to "deliver more certainty for business [and to] continue to withhold agreement for any new regulations that gold plate legislation." We believe that the Government should stick to this promise and help small businesses in the wholesale and retail sectors.

Draft regulations

- We are concerned that plain packaging creates a template for criminals. The information in these regulations provides counterfeiters with one standard format across all brands, which is all they will need to produce illegal packs for the UK.
- Plain packs are much easier to fake than branded ones, even if complex health warnings, tax stamps and anti-counterfeiting markings are adopted. Once counterfeiters have mastered a plain pack, they will be able to produce all brands easily for the long term because tobacco manufacturers will be prevented from innovating and changing their packs.

Illicit Trade

- KPMG have published a report examining the illicit tobacco market in Australia which shows an increase in the size of the illicit tobacco market since the introduction of plain packaging. In the twelve months to the end of 2013 illicit tobacco rose from 11.8% of the market to 13.9%.
- If consumers want to purchase brands that look familiar to them, and at lower prices, there could be an increase in cross border shopping.
- HMRC already believe that Non-UK Duty Paid tobacco costs the UK Government up to £3.1 billion a year.
- Early evidence from Australian retail groups indicates that consumers in Australia are now being driven by price as a result of plain packaging; if UK consumers follow the same pattern they could turn to buying tobacco illegally. This would mean less footfall for retailers which would have a detrimental knock-on effect for the wholesale trade.

The 2014 Impact Assessment

The Impact Assessment does not account for the operational burden on retailers that would result from plain packaging. Plain packaging would make it harder to differentiate between stock, leading to more burdensome stock management and a need for increased staff training, something smaller retailers can ill afford.

The 2014 Impact Assessment is wrong to claim that the retailer will "benefit" from a decrease in transaction times of 1.5 seconds per transaction. Serving a customer when all the packs are the same colour and the writing so small (and in the same font) will take much longer than for a branded pack. This claim is also disputed by a number of retail groups.

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

The Government should not make any policy decision until an adequate Impact Assessment is prepared, which addresses properly the concerns of all stakeholders.

It is assumed in the Impact Assessment that downtrading will take place at twice the rate if plain packaging is introduced. This impact should not be underestimated, as the loss of profit between premium and value brands will damage businesses throughout the legitimate supply chain.

We believe that there will be a disproportionate impact on smaller independent retailers compared to supermarkets, due to fewer resources available to deal with an increase in transaction times and the need for more staff training.

Thank you for taking the time to review the above points and I very much look forward to your response.



EL297



Gravure Association of the Americas 8281 Pine Lake Road Denver NC, 28037

RE: Proposed tobacco plain packaging legislation - UK

Dear Sirs,

The Gravure Association of the Americas (GAA) would like to register our comments to the proposed legislation.

The GAA represent 124 organizations with a combined revenue in excess of \$14 billion attributed to the gravure printing process. The GAA seeks to represent gravure interests, investments and jobs in the industry globally as well as being an advocate for consumer safety through responsible packaging.

Tobacco packaging serves a niche that is only satisfied by the gravure process because of the intrinsic and inherent aspects of the process that serve to protect the product and the consumer.

The gravure process to print tobacco packaging by virtue of the applications of colour, specialty inks (metallic, pearlescent, matte, high gloss), registered emboss provide a unique package that makes it very difficult to duplicate. By restricting the demonstration of graphics to a single colour allows the simple duplication and hence counterfeiting of product which jeopardizes the safety of the consumer as well as the business interests of all legitimate tax paying businesses engaged in the entire tobacco supply chain.

This proposed policy will have a negative impact on businesses in the legitimate supply chain and boost revenue for criminal gangs profiting from the black market in tobacco products.

Evidence from Australia

The only country that has introduced plain packaging to date is Australia. Experience to date has shown this experiment has not worked:

- **KPMG** carried out an assessment of the illegal tobacco market for 2013. The figures showed an increase in total illegal consumption of 11.8% before plain packaging was introduced, to 13.9% at the end of 2013.
- This total amounts to a loss of Australian government revenue of AUD \$1 billion. Since the illegal tobacco trade is so well established in the UK, it is our belief that the illegal tobacco trade in the UK would benefit from a significant boost should this policy be passed.
- The biggest impact on the black market was the sharp increase in illegal cigarettes. Branded packs imported for the sole purpose of smuggling. They're mainly from Asia and the Middle East and sold in Australia for \$8-10, which is essentially half price.
- **KPMG** concluded that total consumption of tobacco for 2013 (illegal and legal) increased for the first time in a number of years.

Further, the legality of Australia's plain packaging measure under WTO agreements is currently in dispute brought by the governments of Ukraine, Honduras, Dominican Republic, Cuba and Indonesia. The European Union is involved in proceedings as a third party. It belies common sense for a Government to move forward with this policy when this dispute has not yet been resolved.

The Australian government itself is not planning to conduct a full review until December 2014, so it is difficult to understand how a UK-based review can determine the efficacy of the policy before then.

In our view, the UK government should await the outcome of the WTO dispute and the Australian government's post-implementation review before proceeding with such a risky and unproven policy with significant potential consequences.

Illicit trade in the UK is already a problem

HM Revenue & Customs Measuring Tax Gaps report 2012-2013 show that up to 13% of cigarettes and 42% of hand rolling tobacco consumed in the UK in 2012/13 were non-UK duty paid, up from 12% and 41% respectively in 2011-2012. This is the first time in over a decade that tobacco smuggling levels have risen, with a total cost to HM Treasury of up to £2.9bn per annum.

The KPMG report notes that "[i]llicit whites' have emerged as a major form of contraband over the past year. Manchester, a branded product made specifically for the black market is currently the largest illicit white brand in Australia; if it were sold legally in Australia it would have a 1.3% market share. Given that a significant levels of cross-border trade in the UK there will be a strong incentive to smuggle branded product across open European borders as the Australian experience shows there will be a ready market for them.

Tobacco smugglers care little about the age of those who purchase tobacco and it would therefore be expected that the availability of lower priced tobacco to youth would be increased as a result of this policy.

IP implications

Plain packaging will deprive legitimate businesses of their valuable intellectual property. Tobacco manufacturers will not be able to use their validly registered trademarks on lawfully available products. They will not be able to rely on their trademarks to distinguish their goods from those of their competitors, or use those trademarks to provide quality assurance to adult consumers. The protection of intellectual property is a key element supporting business and economic growth. It is disappointing that the Government is considering removing this protection, putting the UK at risk of breaching its international law obligations.

Measures such as plain packaging that prohibit the use of trademarks are bad business policy, as they deprive businesses of valuable assets that drive innovation and competition. The problem is not unique to tobacco products, but could directly impact UK exports in sectors such as alcohol and processed foods. Prohibiting the use of trademarks for tobacco products in the UK may encourage other countries to follow suit for other legitimate products. The need to stand up for trademark protection is thus a global issue.

Yours faithfully,

A large black rectangular redaction box covers the signature and name of the sender. To the right of the box, there is a small, dark, circular mark, possibly a stamp or a smudge.

EL298



From: Tabac World <tabacworld@manx.net>
Sent: 07 August 2014 10:30
To: Tobacco Packaging
Subject: Plain Packaging Consultation response

Dear Sirs,

Please find attached the ITPAC Consultation Submission on UK standardised packaging of tobacco products. Tabac World Limited is a Member of ITPAC and we entirely agree with this submission.

Yours faithfully,



TABAC WORLD LTD



3-4 THE SHIPYARD, RAMSEY IM8 3DT

TEL: +44 1624 816034 FAX: +44 1624 816035

EMAIL: tabacworld@manx.net

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

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

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

ITPAC CONSULTATION SUBMISSION

A. ITPAC ASSOCIATION

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

ITPAC's Core Members are: Bull Brand Ltd, Davidoff Distribution (UK) Ltd, Gawith Hoggarth TT Ltd, Heintz van Landewyck, Hunters & Frankau Ltd, Karelia Tobacco Company (UK) Ltd, Ritmeester Cigars UK Ltd, Samuel Gawith & Co. Ltd, Scandinavian Tobacco Group UK Ltd, Tabac World Ltd, Tor Imports Ltd.

ITPAC's Associate Members, in their capacity as distributors of imported tobacco products, are: British American Tobacco UK Ltd, Gallaher Ltd (a member of the JTI Group of companies) and Imperial Tobacco UK Ltd, but they are represented separately by the Tobacco Manufacturers' Association.

The name and address of the respondent is:



Imported Tobacco Products Advisory Council,
Wiltshire GU30 7LA

Contact email address
Contact Phone Number



B. RESPONSES TO CONSULTATION QUESTIONS

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

(i) Timetable

The Chantler Review was required to be completed in 3 months (reporting by March 2014). The amount of key information (from all sides) which was required to be gathered on this critically important subject resulted in a particularly compressed timetable. Against this, the Australian Government, which introduced Standardised Packaging (SP) on 1st December 2012, has announced that it will undertake a review of the effects of that measure in December 2014. Clearly, if the Australian Government considers that a 2 year period since implementation is appropriate in order to arrive at a realistic level of compelling evidence, the Chantler Review's ability to do so in such a short period of time must be questioned.

(ii) Evidence from Australia

The Chantler Review disregards evidence from Australia which so far demonstrates that SP has failed to:

- reduce the volume of tobacco sales
- reduce smoking prevalence
- deter young people from smoking

Indeed, the same evidence, ignored by the Chantler Review, shows that SP has resulted in a material growth in the illicit market there. See response to Question 2, section (vi) below.

(iii) Specialist Tobacco Products

ITPAC would point out that none of the evidence reviewed by Chantler (nor that produced by the Stirling Review and others) involves specialist tobacco products such as cigars and pipe tobacco. Since there is no evidence, there can be no justification for them to be included in the draft Regulations.

(iv) Stirling Review

The Chantler Review largely accepts the evidence quoted in the Stirling Review which is widely accepted to be unconvincing, given the levels of assumption and hypothesis contained in the latter document, and which includes an admission to this effect by the authors themselves.

(v) Impact on Business

The Chantler Review takes no account of the impact on businesses operating in the tobacco supply chain and, due to the compressed timetable, was only able to conduct limited hearings (from which ITPAC was excluded).

(vi) Conclusions

The Report of the Chantler Review includes a number of statements which do not provide compelling and specific evidence that SP will meet the Government's policy objectives. The Report states:

"Research cannot prove conclusively that a single intervention such as standardised packaging of tobacco products will reduce smoking prevalence"

and also makes it plain at the outset that:

"There are limitations as to the likely effect of standardised packaging on tobacco consumption".

For all these reasons, ITPAC finds insufficient grounds to support the conclusions which Sir Cyril Chantler claims to have reached.

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

ITPAC stands opposed to the principle of SP for any category of tobacco product; there is no credible evidence to support the claim that its introduction would positively affect the tobacco-related attitudes, beliefs, intentions or behaviours of those whom the Government is seeking to protect.

(i) Non-UK Duty Paid and Illicit Trade

Partly as a consequence of successive UK Governments' high tobacco duty policies, which have helped to establish substantial price disparities between the UK and all other EU countries except Ireland, large quantities of tobacco products, mostly cigarettes and hand-

rolling tobacco, but also including premium hand-made cigars, are purchased abroad and brought back into the UK, or are imported illegally.

The non-UK duty paid and illicit market is comprised of the following main components:

- Cross-border purchases, complying with the EU's indicative allowances, brought into the UK by individuals for their personal consumption (legal);
- Smuggled, well-known, brands brought into the UK mainly from the EU, Eastern Europe and elsewhere (illegal);
- Cheap, unknown or lesser known, brands brought into the UK mainly from Eastern Europe and the Far East (illegal);
- Counterfeit products replicating well-known brands (illegal).

ITPAC estimates that legal cross-border purchases consist of c. 25% of this trade. The majority of the illegal trade consists of well-known brands smuggled in from the EU, Eastern Europe and elsewhere.

Since 2008 HMRC and the UK Border Agency have introduced sophisticated measures, and worked closely with the tobacco industry, to reduce the consumption level of non-duty-paid and illicit tobacco yet, in spite of these, the incidence of this trade remains at a high level. HMRC's estimates for the 2012/13 year show the total non-UK duty paid share of consumption of cigarettes to be up to 16% and of hand-rolling tobacco to be up to 48%.

In this context, the unintended consequences of SP are likely to be:

- An increase in cross-border trade because the opportunity for adult smokers to buy a packet of cigarettes or hand-rolling tobacco, in their current familiar packaging as opposed to a standardised pack, is highly likely to add further competitive advantage over and above price to branded packs from overseas.
- Even more seriously, the illicit trade would have a further damaging effect on health because SP would increase the distribution of cheaper, inferior products in the UK. These products are unregulated, untested, often reported to contain rogue substances, and are sold indiscriminately to underage and vulnerable people. Additional drivers for this increase are that SP will result in easier replication by counterfeiters of the one basic main SP design than is the case with current tobacco packaging, and also lower counterfeiters' cost of production (due to the one basic design) thereby making their products even more competitive and accessible in the illicit marketplace.
- The possibility also exists that, if the UK introduces SP independently, there will be an increase in counterfeiters' practice of faking foreign (non-SP) products masquerading as overseas packs which, according to consumers' perceptions, are genuine smuggled products.

These latter 2 points provide clear indications of the likely adverse effect on public health, including that of under-age people, which would be brought about by SP.

(ii) Young people

ITPAC fully supports the Government's efforts to address smoking by under-age people, but does not consider that SP will positively affect their tobacco-related attitudes, beliefs, intentions and behaviours. It drew the Department's attention to the following studies in its 2012 SP Consultation submission, and does so again because of the importance of this topic.

In the Future of Tobacco Control Consultation 2008 the document states (Section 3.77) that 'Children may be encouraged to take up smoking if plain packages were introduced, as it could be seen as rebellious'. As acknowledged by the Department of Health in this document, ITPAC is concerned that a likely unintended consequence of the SP of legal tobacco packs could be an increase in their curiosity-value and attraction to younger consumers, which could make them 'cool' and 'enticing'

Further evidence in relation to the danger to young people is outlined in The Illicit Tobacco: North of England Study 2011 which found that '23% of 16-24 year old smokers say that they still buy illicit tobacco', that '14 and 15 year olds are twice as likely to buy illicit tobacco (as adults)', and also that 'almost 9 out of 10 people agree that children and young people are at risk because they can buy easily and cheaply from unscrupulous dealers'. Additionally, a survey by Tobacco Free Futures found that 50% of the tobacco bought by 14 to 15 year olds is illegal. See <http://www.tobaccofreefutures.org/category/strands/making-tobacco-less-affordable/>.

At best it is not proven that SP will have any impact on youth smoking. At worst, young people's access to illicit tobacco could be greater and so increase unregulated sales to them.

(iii) Price

The lack of branding as a result of SP would result in the only immediate competitive differentiation being via price. This would lead to the commoditisation of the category, which in turn would undermine premium brands and could also lead to lower quality. It might be argued that down-trading by adult consumers to the lower price end of the market can be offset by increases in tobacco duty but, as has been demonstrated over time, this practice will merely serve to increase the proportion of illicit tobacco products consumed in the market with the consequences outlined in 2(i) above.

(iv) Lower Ignition Propensity

Lower Ignition Propensity cigarettes were mandated across the EU with effect from 17th November 2011, and required cigarettes to be produced with fire retardant paper which causes the cigarette to self-extinguish when left unattended. This was promoted as a vital measure to help prevent, inter alia, house fires.

It is widely known that the majority of illegal products entering the UK do not comply with European Safety Standards. If therefore SP results in an increase in the illegal trade it will represent an additional health hazard.

(v) Retail Transaction Times

Recent retail trade reports indicate that the display ban in large shops continues to cause both consumer and trade confusion particularly for slow-moving, specialist tobacco products, which are suffering from long service times. This effect will be felt more widely next year when the display ban is extended to small shops where staffing resources are limited. SP, if introduced, would exacerbate this problem and increase the incidence of incorrect identification of products for consumers.

As such, claims made in the Impact Assessment that retail transaction times will improve as a result of SP are clearly entirely misguided.

5.

(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.

EL299



Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
Government
Riaghaltas na h-Alba



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

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

a. Are you responding (required):

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

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

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

Name of organisation (required):

Name of person providing submission (required):

[REDACTED]

Job Title (required):

Head of Trading Standards

Contact address of organisation (required):

Trading Standards Service, East Sussex County Council, St Mary's House, 52 St Leonard's Road, Eastbourne, East Sussex BN21 3UU

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?

As an enforcement authority actively taking action against the illicit tobacco trade in East Sussex, we respectfully draw to your attention to the comment in 5.6 of the Review that the Australian Government Customs Department data shows no significant effect on illicit tobacco following the introduction of plain packaging.

In addition we bring to your attention the note in 5.8 of the Review that there is no evidence of increased counterfeiting following the introduction of plain packaging in Australia.

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?

With the partnership work that we undertake with our colleagues in public health, we understand smoking remains the single largest preventable cause of ill-health & premature death, and therefore it continues to be the number one health challenge. We already enforce a number of measures to tackle the illegal sale of tobacco to children. In our opinion standardised packaging would be the logical next step, after removing young people's access to cigarettes from self-service vending machines & preventing their view of tobacco products in shops.

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?

Our role as a Local Authority Trading Standards Service includes offering specific guidance to businesses on the introduction of new legislation. We would ask that guidance materials are made available in good time to allow this valuable business support service to be carried out effectively.

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 Trading Standards Institute & The National Trading Standards Board have carried out a recent survey which shows budgets for Trading Standards have fallen by 40% over the lifetime of this parliament and Trading Standards staffing levels have fallen by 45% since 2009. Any new enforcement required for these regulations, should be properly recognised and resourced and we would suggest this should be included in the impact assessment.

Thank you for participating in this consultation.

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

How to get involved In the consultation

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

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

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

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