



Tobacco Packs Consultation  
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Our ref Tobacco Packs Consultation

Date 09/07/12

## Bristol City Council's response to the government consultation on standardised packaging of tobacco products

Bristol City Council supports plain, standardised packaging of tobacco products as part of a comprehensive strategy to make smoking history for our children.

Bristol has had a long association with the tobacco industry and as a result has acquired a higher smoking prevalence than the national average at 22.5%. Whilst the prevalence is reducing, smoking still remains a major contributing factor to poor health outcomes in Bristol and to the gap of 9 years between wards with the highest and lowest life expectancy. Smoking attributable deaths within Bristol are significantly higher than the England average.

Bristol has a rapidly growing population with the biggest increase in young working adults and a substantial increase in the number of young children which is projected to continue with a high birth rate. Currently, 16% of our 14-15 year olds regularly smoke which is the highest rate within the southwest region, and 6% of 10 year olds self-report having tried smoking. Every year 340,000 children will be tempted to try smoking; two thirds of smokers start before the age of 18 years and the vast majority while they are teenagers.

Smoking greatly affects our economy with costs related to healthcare, sickness absence and loss of productivity. The highest prevalence of smokers is in the 18-30 year age group, and in Bristol this is our most rapidly increasing population group. By supporting new legislation around tobacco control Bristol is sending out a clear message that smoking is harmful.

Continued over

**Chief Executives Department**

Bristol City Council  
Health Improvement Team

Director of Public Health  
Hugh Annett



2004-2005  
Housing Renewal  
2005-2006  
Promoting Racial Equality  
2006-2007  
Transforming the Delivery of  
Services Through Partnerships

Website  
[www.bristol.gov.uk](http://www.bristol.gov.uk)



INVESTOR IN PEOPLE

Bristol City Council believes that the introduction of standardised packaging of tobacco products, in conjunction with our local tobacco control policy, will make a substantial difference in the number of children and young people taking up smoking. This effect will support a long-term reduction in our smoking prevalence and help to reduce the gap for health inequalities in Bristol.

Data taken from JSNA 2012 and the Every Child Matters survey 2010

[Redacted]

[Redacted]

Deputy Leader, Bristol City Council and Chair, Bristol Health and Wellbeing Board

[Redacted]

[Redacted]

Chair, Bristol Health and Adult Care Scrutiny Commission

[Redacted]

[Redacted]

Executive Member for Children and Young People

[Redacted]

[Redacted]

Executive Member for Care and Health

OUR REF:

**BRITISH RETAIL CONSORTIUM**  
for successful and responsible retailing

10 August 2012

Tobacco Packs Consultation  
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Director of Food Policy  
DIRECT LINE: [REDACTED]  
FAX: [REDACTED]  
EMAIL: [REDACTED]@brc.org.uk

Dear Sir

### Consultation on Standardised Packaging of Tobacco Products

The British Retail Consortium (BRC) alongside our sister organisations Scottish Retail Consortium, Northern Ireland Retail Consortium and Welsh Retail Consortium welcomes the opportunity to respond to the consultation. Together we represent retailers throughout the UK, from large supermarkets to small high street stores. Our members have a keen interest in the consultation as they sell tobacco through a range of outlets, from supermarkets to small format stores, on the high street, garage forecourts and at transport hubs.

Our members recognise the health impacts of smoking and take their responsibility extremely seriously. We supported the raise in the age of sale to 18, which brought it in line with alcohol and ensured easier compliance through Challenge 25, which has been extremely successful in preventing sales to those under age. Many of our members have also worked closely with health authorities to promote the dangers of smoking and offer cessation products and services.

Our concerns are based solely on the logistical impact the changes will have on retailers. Firstly, we are extremely disappointed on a better regulation point that the Governments are consulting on the issue so close to the implementation and pending implementation of the tobacco display ban. Our members have just spent tens of millions of pounds to install new gantries to meet the display ban which would be made redundant by these proposals. Before the display ban was introduced we discussed this with Department of Health and pointed out the illogical approach to policy making and are disappointed this was not taken into consideration.

There will also be an impact on the day to day cost for retailers serving customers. Retailers could sell hundreds of different products and packaging that is less distinguishable will inevitably increase transaction times. Firstly, it will take longer to locate the packet for the consumer. Secondly, where inevitable errors are made the customer will bring the product back to exchange for the one they wanted. An increase in transaction times will add millions of pounds of costs to the sector and would be an inevitable consequence of these proposals.

In terms of links with the tobacco industry, the BRC has no direct link to the tobacco industry and we have not met or discussed this consultation with their representatives. We have an indirect link to the tobacco industry as tobacco manufacturers will be direct suppliers to retailers who are our members.

I trust these comments are useful.



INVESTOR IN PEOPLE

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For the attention of The Department of Health Tobacco Packs Consultation via  
[REDACTED].gsi.gov.uk

From  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Response to the Consultation on the Standardised packaging of tobacco products**

One aspect of the public law of decision-making is fairness. There is a prohibition of bias both in terms of actual bias and apparent bias. Like justice, fairness needs to be done and be seen to be done.

This must be the aim of the Health Committee, Parliament and Andrew Lansley MP who is promoting this Consultation and the proposed legislation. To avoid allegations of a conflict of interests all those taking any part in this consultation will, I am sure, declare any connection with or benefit from organisations with interests in promoting the measures outlined in official publications.

Previous consultations have been criticised as quoted below :

*"The Government has been accused of fixing the outcome of public consultations on health policy after it emerged that reviews were flooded with block votes from groups funded entirely by the taxpayer."*

*"..... said the disclosures summed up Labour's "cavalier" approach to consulting the public."*

*..... said: "It will come as no surprise to us if the Department of Health has funded organisations that provide the responses to consultations that the Government is looking for."*

*"The public are understandably cynical about the way Labour consults the public - it's time we had a Government that treats the public and their views with the respect they deserve."*

Can we be assured that this consultation will be impartial and free of the above criticism? I hope so since these are the words of Andrew Lansley MP who in his current Government role has a full oversight of Health Department activity and as an elected Member of Parliament is duty bound to uphold democracy in this Country.

There are many issues that should be raised regarding this 'independent' consultation. The over-arching concern is that it is not and, under current arrangements, can never be regarded as independent. It is, by design, biased, undemocratic and a sham. Tobacco Control advocates have confirmed this by a front group being allowed privileges that few others would ever be allowed. Not only have they provided secretarial services and advice to the Health Committee but ASH has deemed it fitting to provide a Briefing Document, a testament to paranoia and a truly outrageous insult to the Democracy.

**ASH Briefing for the All Party Parliamentary Group on Smoking and Health**

## TOBACCO FRONT GROUPS & THIRD PARTY LOBBYING TACTICS

[http://www.ash.org.uk/files/documents/ASH\\_835.pdf](http://www.ash.org.uk/files/documents/ASH_835.pdf)

This is a document that makes many claims against individuals and groups in an attempt to discredit them and banish their opinions from this consultation and is, of course, published at a crucial stage in the consultation without having afforded those named a right of reply.

Although my name is not on the list I am honour bound to declare a conflict of interest having provided Big Tobacco with funds through the purchase of their product (but far more to Government through taxation). I am also in possession of an unused set of cutlery my mother exchanged for Kensitas coupons in the 1950s.

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### With regard to the Consultation Document and the Impact Assessment –

1. My initial response is that I am against the plain packaging of Tobacco or any other product so the majority of the following questions in the Consultation are largely irrelevant and the online system demands responses to questions that I find applicable. The Impact Assessment, however, is amazing being filled with questionable statements, assumed wisdom and suggested outcomes that bear the hallmark of fantasy worthy of Grimm and H C Anderson and much of it echoes previous utterings of the anti-smoking lobby group ASH.

*Assumptions, if affective, may help, might, could be, likely, may, if successful, little direct evidence, possible, impossible to quantitatively assess, hard to predict, - Should legislation be built on such robustly promoted uncertainties and potentially damaging outcomes?*

Para 11 describes how smokers are already exposed to around 7,000 views of Health warnings each year but fails to acknowledge the fact that many are numbed by familiarity rather than impressed by their incessant messages of doom and death. Many wise people have the same thought.

*"Familiarity breeds contempt, while rarity wins admiration." - Apuleius, Roman philosopher, rhetorician, & satirist (124 AD - 170 AD)*

There is no substantial evidence that plain packaging or more prominent warnings will have any positive effects.

2. I can find no reference to any study produced by any individual, group or 'expert' not working within Tobacco Control.

Tobacco Control, through their adherence to directives issued by the unelected and undemocratic organisation WHO and their FCTC demand that no individual or organisation who may be considered to have connections with, benefit from or further the interests of the Tobacco Industry should contribute to their studies.

Many individuals and organisations within Tobacco Control have connections with, benefit from and even rely upon funding and evidence from Pharmaceutical Companies who in turn benefit from Government funded promotion of their largely ineffective NRT products. Any reliance on 'expert opinion' from those who benefit either directly or indirectly from pharmaceutical funding should be regarded as biased.

In the words of Sir Liam Donaldson to the Health Committee on a previous occasion  
*"Firstly, the study was carried out by the researchers who were partly sponsored by the tobacco industry, so there was a clear conflict of interest there. .... Quite honestly, I do not think that study stands up to any scientific scrutiny whatsoever,*

*leaving aside the conflict of interest in the funding which to me is tantamount or comparable to a research study on organised crime being funded by the Mafia."* This, from a highly regarded individual, should apply equally to all parties contributing to an independent consultation. The studies cited as evidence for this Consultation are at least in some part funded by those who benefit from the Pharmaceutical Industry or funded as directed by Government so there is a clear conflict of interest here.

This consultation can never be regarded as balanced and is only independent by being independent of alternative view.

3. Do any members of Government or the Health Committee have accurate figures detailing Government's 'investment' in smoking cessation, anti-smoking organisations and promotion of Tobacco Control proposals?

Anne Milton (Parliamentary Under Secretary of State (Public Health) on 19 Mar 2012 stated "*The Department of Health has not spent any money on advertising or marketing the forthcoming consultation on tobacco packaging, neither through the NHS Smokefree marketing campaign, nor through any other organisation.*"

<http://www.theyworkforyou.com/wrans/?d=2012-03-19>

Thanks to FOI requests, it is now clear that almost £1/2 million of public money was used by Smokefree SouthWest alone for the promotion of plain packaging. This cannot be regarded as impartial and by many justified against the reality of funding shortages for patient care? How much more funding has been allocated to other organisations specifically for the plain packaging campaign?

Much evidence gleaned from this Consultation will be severely tainted by direct Government funding in favour of its own proposals and will again display a clear conflict of interest. Can such expenditure be justified when no Government funding has been made available for alternative opinion and any supported by 'Big Tobacco' or its 'friends' are to be banned/condemned/excluded under FCTC rules and guided by the ASH list of undesirables?

4. The Impact Assessment shows youth smoking is already declining (fig 2, para. 17) and smoking prevalence has stagnated during recent years (fig 1, para. 14).

These 2 pieces of data are of extreme importance when considering the necessity of further interventions.

a.) With regard to the continuing reduction of youth smoking prevalence only those with an over zealous drive would propose more regulation when their declared aim is already being achieved. (Incidentally, the Smoking Ban of 2007 appears to coincide with a small decrease in the previous healthy rate of decline.) Is there really a need for an unproven experiment to speed up progress?

An interesting observation may be made from other data regarding 'undesirable' plain packaged products and tobacco consumption by young people –

The National Health Service statistics from page 183 of "Smoking, drinking and drug use among young people in England in 2010" are revealing.

*"In 2010, the key survey estimates for 11 to 15 year olds in England included the following:*

- *5% of pupils were regular smokers, equivalent to around 150,000 young people (CI=130,000-170,000)*
- *13% had drunk alcohol in the last week, equivalent to around 400,000 young people (CI=370,000-430,000)*
- *12% had taken drugs (including volatile substances) in the last year, equivalent to*

around 380,000 young people (CI=350,000-410,000)

• 7% had taken drugs in the last month, equivalent to around 200,000 young people (CI=180,000-230,000)

[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 Full report.pdf](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_Full_report.pdf)

The clear conclusion is that more 11-15s take plain packaged drugs than smoke yet this proposal encourages more plain packaging!

b.) Data for general smoking prevalence clearly illustrates the effect of previous Tobacco Control intervention.

Smoking rates as seen in ONS Household Surveys declined steadily for many decades yet the massive increased use of public monies to fund many expensive anti-smoking and smoking cessation groups appears to coincide with the slowing and current stagnation of progress! The 'triumph' of imposing the 2007 'Smoking Ban' marks the end of any decline. Further unproven regulation might, in common with the smoking ban, be similarly counter-productive and have further unintended consequences.

Contrary to the opinion of Tobacco Control advocates in their Government funded review of the Smoking Ban the public recognise the vast personal, social and economic harm of the 2007 legislation.

Again, Sir Liam Donaldson's words of wisdom must apply to the bias of studies claiming positive effects.

5. Para 15 and Annex 2 of the Impact Assessment makes very interesting reading and, I hope, does not overwhelm the intelligence of those who read them. Apart from the many assumptions and declared limitations used to illustrate the possible financial benefits for each adult who decides to give up smoking there is a blatant imbalance since there is not a single mention of additional or overall costs. As well as the expense of smoking cessation services and their promotion of ineffective (far less than 5% success rates over 12 months) pharmaceutical products no mention is made of additional costs to the Country of care and illnesses associated with old age or even the savings from 'premature death' pension savings. Alternative opinion does exist!

*"If people stopped smoking, there would be a savings in health care costs, but only in the short term. Eventually, smoking cessation would lead to increased health care costs."*

<http://www.nejm.org/doi/full/10.1056/NEJM199710093371506>

*"An analysis the Czech Health Ministry has made shows that Czech smokers pay in consumer taxes and VAT dozens of billions of crowns more than what their treatment costs, the Czech Television (CT) public broadcaster Sunday quoted Health Minister Leos Heger (TOP 09) as saying."*

<http://praguemonitor.com/2011/08/15/minister-smokers-treatment-costs-one-tenth-taxes>

*At older ages, smokers incurred higher costs. Because of differences in life expectancy, however, lifetime health expenditure was highest among healthy-living people and lowest for smokers*

<http://www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050029>

5. After reading the document a number of times it is becoming obvious that the proposed legislation is simply one more step towards the endgame of Tobacco Control - the elimination of tobacco use. The webpage

<http://tobaccocontrol.bmj.com/content/21/2/293.full> and public statements by representatives of anti-smoking groups such as ASH are quite clear about this. Is there any representation anywhere in this Impact Assessment for alternative opinion? Maybe, just maybe there are some individuals who actually enjoy tobacco use or hold more liberal opinions and do not share the bias of the contributors to this Impact Assessment.

A poll published by the Institute of Public Affairs in Australia (October 2011) asked about the nanny state and plain packaging. Questions posed were:

**Q1: Some people claim Australia is becoming a 'nanny state' where there is too much government intervention and control in people's day to day lives. Do you agree or disagree that Australia is becoming a 'nanny state'?**

Total agree 55%	Total disagree 40%	Don't know 5%
Strongly agree 29%	Strongly disagree 11%	
Somewhat agree 26%	Somewhat disagree 29%	

**Q2: Thinking now about plain packaging, by that we mean the removal of brand names and logos so all products have a uniform pack design. Please say whether you believe that plain packaging will be effective or not effective in reducing consumption?**

Fast food	Cigarettes	Alcohol
Effective 29%	Effective 31%	Effective 23%
Not effective 68%	Not effective 66%	Not effective 74%
Don't know 3%	Don't know 3%	Don't know 3%

<http://www.ipa.org.au/publications/1926/new-poll-more-australians-agree-we-are-becoming-a-nanny-state-70-think-food-tobacco-alcohol-plain-packs-ineffective>

The majority of the public, those affected by legislation and obviously Stakeholders in all that affects their futures, appear to have less enthusiasm for the Plain Packaging proposals. Where are the unfunded public plain-packaging pressure groups or must we believe that the paid for advocates of this policy speak on behalf of the general public rather than their paymasters?

Might a rational mind consider that Tobacco Control inspired legislation has already exposed young people to more visible smoking and smoking encouragement by forcing full size smokers from of adult environments into full view outside and yet their present concern is sightings of a little box? I am sure the vision of friends in animated camaraderie holds more attraction than a coloured packet or am I simply anticipating the next tranche of unending demands?

6. Para 53 Calls for a quantified estimate based upon the subjective judgements of up to 33 internationally-renowned experts.

Experts in what?

Bias or balance?

Surely all legislation should be based upon objective criteria rather than on the subjective judgements of only those with acceptable beliefs and deemed acceptable



under the terms of the FCTC. Genuine Democracy is denied through the implementation of FCTC policies.

Clause 11 of FCTC 5.3 states *"The measures recommended in these guidelines aim at protecting against interference not only by the tobacco industry but also, as appropriate, by organizations and individuals that work to further the interests of the tobacco industry."*

Interference in what?

Democracy or the demands of an unelected international pressure group?

How much more funding has the DoH set aside to further the careers of the chosen 'up to 33' anti-smoking franchisees?

Participants in the anti-smoking industry may enjoy the trust of and benefit financially from Governments but many in the broader reaches of Society see it as a multi-billion pound industry absorbing public funds, producing nothing and respecting the wishes only of its own participants.

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Although there many more comments could be made about this Consultation I will end with wise words quoted in the Telegraph (02 Jan 2009) -  
<http://www.telegraph.co.uk/news/politics/4076290/Government-fixing-health-consultations-with-taxpayer-funded-groups.html>

*Andrew Lansley, the shadow health secretary, said the disclosures summed up Labour's "cavalier" approach to consulting the public.*

*Mr Lansley said: "It will come as no surprise to us if the Department of Health has funded organisations that provide the responses to consultations that the Government is looking for.*

*"The public are understandably cynical about the way Labour consults the public - it's time we had a Government that treats the public and their views with the respect they deserve."*

**I live in hope!**

[REDACTED]

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**From:** [REDACTED]@elderfield.co.uk>  
**Sent:** 12 June 2012 19:27  
**To:** Tobaccopacks  
**Subject:** Response to plain packaging consultation

I am a director of a house building company. I wish to give my considered view about plain packaging for tobacco products.

Several of the people who work on our sites are smokers. They are decent hardworking men, however I'm sure some of them buy cigarettes and tobacco on the black market. However if cigarettes and rolling tobacco are going to be sold in plain packaging I firmly believe it will lead to an increase in counterfeiting and a loss of control over the contents of these packs which are likely to be far more damaging to the health of people who smoke them. Packs will be far easier to copy if typefaces and colours are standardised and it will be more difficult for smokers to recognise counterfeit products. Smokers may even end up paying 'full price' for counterfeit products sold illegally in small shops.

If counterfeiting increases then Government tax revenues will be adversely affected and this would seem to be a shot in the foot in these austere times. I would be amazed if there is any smoker in the UK who is unaware of the health risks of smoking, just as we all know consuming too much alcohol can cause health problems.

I feel strongly that a Government who imposes plain packaging on a legal product is acting irresponsibly. It would be pressing the accelerator for counterfeiting, thus losing much needed Government revenue to organised crime and moreover having no control over the contents of counterfeit products so risking the health of those who buy them.

I am not a smoker and have never been a smoker.

[REDACTED]

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Luxembourg, 31<sup>st</sup> of July 2012

Dear Madam, Dear Sir,

#### **Consultation on standardised packaging of tobacco products**

Fedil – Business Federation Luxembourg recently received feedback about this ongoing consultation process and does not support the envisaged proposal of standardised packaging for tobacco products.

Fedil understands that such plain packaging requirements would seek to prohibit the use of all trademarks on tobacco products, other than word marks in standard type face.

Trademarks are more than merely word marks and registered trademarks that can be used on packaging include graphic representations, shapes, device marks and colour marks. Trademarks exist to indicate the source of goods and services and to assure consumers about the consistency of a product's quality and characteristics. Trademarks assist consumer choice by enabling them to distinguish the products of one company from those of another, or to distinguish one brand from that of another. Fedil fears that plain packaging could seriously limit consumer's ability to buy the product of their choice and could lead to confusion in the marketplace. Moreover, it could also facilitate illicit trade in inferior counterfeits and stronger demand for black market tobacco products in the marketplace.

Fedil considers that UK plain packaging would directly affect the interests of Luxembourg companies, in particular the last remaining family owned tobacco manufacturer in Luxembourg by undermining the EU's authority to defend IP rights internationally. The direct consequence being that the last national operator, Landewyck Group in Luxembourg, would face a substantial barrier as its tobacco products are little known in the UK and were only present in a limited number of outlets over the last year.

Moreover, the EU has exclusive competence with regard to international trade relations. This means that if members of the World Trade Organisation sought to challenge a UK plain packaging law (alleging, for example, a breach of the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS)), it would be for the EU, not the UK, to answer the challenge.

This would put the EU in a very difficult position for the following reasons:

The EU has fought hard on behalf of its member states at international level to ensure that all countries respect trademark rights and has been a world leading advocate of strong IP protection. For example, it has consistently advocated opposing unjustified encumbrances to the use of trade marks. This is because intellectual property (particularly trade mark rights) is crucial to the competitiveness of the EU and a key source of its economic power.

EU's authority to continue defending the rights of EU trademark owners at international level would be compromised in the event of one of its member states having prohibited trade mark use in respect of a particular product category.

A plain packaging measure in the UK would raise significant systemic concerns for non-tobacco sectors. There are increasing calls to drive tobacco control type strategies against the fast food and alcohol industries. The World Health Organization has stated that "Processed foods and alcohol are two prime candidates for stronger global, regional, and national regulatory controls".

In order to protect IP rights in general and EU's authority to defend IP rights abroad in the way it has done in the past and to avoid a dangerous precedent that could affect key EU export industries in the future, the UK should reject plain packaging.

As well as placing the EU at risk of a WTO challenge and undermining the EU's authority on IP matters at international level, a UK plain packaging law could breach the UK's EU Treaty obligations in a number of respects:

- The Community Trade Mark Regulation (CTMR) and the Trade Mark Directive (TMD) secure that trademarks are uniformly protected across the EU member states so as to support the functioning of the internal market and an undistorted competition within the EU.
- Article 1(2) of the CTMR provides that "*A Community trademark shall have a unitary character. It shall have equal effect throughout the Community: it shall not be registered, transferred or surrendered or be the subject of a decision revoking the rights of the proprietor or declaring it invalid, nor shall its use be prohibited, save in respect of the whole Community. This principle shall apply unless otherwise provided in this Regulation.*" This provision is fully prohibitive of any future UK legislation on plain packaging which would effectively ban the use of registered Community trade marks in the UK.
- In general, it undermines the EU's credentials as a defender of IP rights on the international stage.

It would also put the EU in breach of its international obligations under TRIPS for which it has fought hard to maintain it.

In addition, if the UK was to introduce plain packaging, it would breach the EU Treaties in many other respects and run counter to recent jurisprudence enforcing those IP regulations and protection measures:

- It would deprive companies of their trademarks property rights and thereby contravene Article 17 of the EU Charter of Fundamental Rights. In Case C-491/01 *BAT*, the European Court of Justice found that a ban on certain descriptors (e.g. "Light") did not violate the right to property because manufacturers could continue to distinguish their products using other distinctive signs. It held that "*it is only if normal usage is no longer possible as a result of provisions of public law that a situation can arise in which the substance of the right is affected by reason of those provisions.*" There can be no doubt that plain packaging would eliminate normal trade mark use as referred to by the ECJ and therefore affect the substance of the property right guaranteed in Article 17.
- It would contravene Article 11 of the EU Charter which guarantees the freedom of expression. In Case C-491/01 *BAT*, the Court of Justice found that mandatory warning labels did not violate the freedom of expression because the measure left "*sufficient space for the manufacturers ... to be able to affix other material, in particular concerning their trademarks.*"
- It would also contravene Article 34 of the Treaty on the Functioning of the European Union as it would be a measure having an effect equivalent to a quantitative restriction on imports between Member States. It is well established that packaging regulations engage Article 34. Smaller companies and less universally known branded products would suffer in particular.

Unlike the CTMR, none of these Treaty provisions would be absolutely prohibitive of UK plain packaging if the UK could demonstrate that plain packaging is based on firm evidence and proportionate, among others by providing clear evidence that the use of trade marks on tobacco packages are a driver of smoking prevalence in the population.

However, the balance of evidence suggests the opposite (i.e. that tobacco packaging is not a driver of smoking prevalence).

Given the wide range of impacts of plain packaging on fundamental principles of the EU, to introduce such a measure, the UK would need to demonstrate a clear necessity of the plain packaging measure.

Finally, the introduction of plain packaging on tobacco products could be used to set similar restrictions on consumer products and services, and thus introduce a dangerous precedent not only against trade mark owners but against free enterprises and freedom of consumer's choice in general.

Fedil therefore cannot support the envisaged proposal and invites Department of Health of the UK to abandon this option and seek other measures than compressing and expropriating trademark rights to implement its health policies.

Yours sincerely,

  
Director

11<sup>th</sup> July 2012

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

*Dear Secretary of State,*

**Re: CBI comments on standardised packaging of tobacco products**

I write in response to the Government's consultation on standardised packaging of tobacco products, which is due to close shortly.

I should stress at the outset that the CBI has no mandate or wish to comment on the Government's public health agenda insofar as smoking is concerned. However, these proposals contain a number of points of wider concern for the CBI and its members which are important to highlight. In particular, we are concerned that these proposals may damage business confidence in the UK as an intellectual property (IP) hub, and we remain sceptical of whether they are consistent with the Government's better regulation agenda.

In this letter we argue that IP has a crucial role to play as a driver for economic growth in the UK; that businesses should be able to exploit their IP and brand value; and that it is important that new regulation is effective in achieving public policy goals.

**IP has a crucial role to play as a driver for economic growth in the UK**

IP has a crucial role to play in rebalancing and growing the economy. UK business investment in IP is worth at least £65 billion per year, and an increasing number of industries rely on IP to underpin their business models. Many businesses rely on IP to underpin their business model, such as through trademarks, and others have IP at the core of their product or service, which are supported by copyright or patents. These interests span the CBI's membership, including sectors as diverse as retail, consumer goods, pharmaceuticals and clean technology.

In order to continue attracting IP-rich firms to the UK, business must have confidence that the Government is fully committed to making the UK the best place to invest in, develop and exploit IP. This confidence could be bolstered in a number of ways, including taking a lead in calling for better IP enforcement measures internationally and ensuring that the significant investment that firms make in IP and other intangible assets is understood and taken account of in policy decisions across Government. In other words it is important for Government to champion IP and its role in



economic growth. We are concerned that the proposals in this consultation undermine the Government's support for IP and could set a precedent for how IP might be treated in subsequent proposals that affect the broader economy.

### **Businesses should be able to exploit their IP and brand value**

While the focus of IP policy tends towards copyright and patents, trademarks and the investment that firms put in to brands are equally significant. An estimated one million people are employed in the UK in the creation and management of brands, accounting for 4 per cent of total employment, and approximately £32.55 billion (or 2.3 per cent of GDP<sup>1</sup>) is spent on building up brands each year. This demonstrates the intrinsic value of brands, and their contribution to the UK economy.

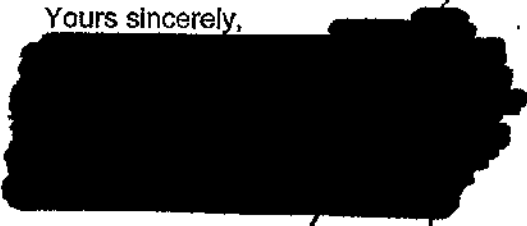
We are concerned that the introduction of standardised packaging may undermine this intrinsic value, by limiting the ability of firms to invest in, use and exploit their brands. For example, the consultation's proposals to introduce 'prescribed colours for packaging' and to prevent businesses from using forms of branding including 'logos, colours or other features associated with the... brand' would prevent businesses from fully harnessing the potential of their brand, which may have fundamental importance for their business identity. This would create damaging uncertainty for other businesses with brand value at the core of their business.

### **It is important that new regulation is effective in achieving public policy goals**

The proposed changes are far-reaching and so far untested in the UK or other countries. They would have a dramatic direct impact on the companies concerned and an indirect effect on the confidence of other companies that invest heavily in their brands. In this context, we would argue that it is particularly important that these proposals will be effective in achieving the desired public policy goal. A robust, evidence-based approach to new regulation forms the basis of Government's commitment to better regulation, and these proposals should demonstrably be able to pass this test.

I hope that this is useful in setting out the CBI's broader views at this important stage of the policy process.

Yours sincerely,



Director, Competitive Markets

*The CBI is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce. Our mission is to promote the conditions in which businesses of all sizes and sectors in the UK can compete and prosper for the benefit of all. The CBI's speaks on behalf of UK business interests, is established under Royal Charter and is funded by subscriptions made from companies and organisations that choose to join it. The CBI represents a wide range of businesses and organisations ranging in size and sector, including those that operate in the tobacco industry.*

cc:  MP  
Baroness 

<sup>1</sup> British Brands Group, Westminster Business School Study on the Value of Brands to the Economy, 2008

10 August 2012

[REDACTED]  
Department of Health  
Richmond House  
79 Whitehall  
London  
SW1A 2NS

**Re: CBI comments on standardised packaging of tobacco products**

I write in response to the Government's consultation on standardised packaging of tobacco products, to expand on points already made to the Secretary of State for Health in a letter dated 11<sup>th</sup> July.

I should stress at the outset that the CBI has no mandate or wish to comment on the Government's public health agenda insofar as smoking is concerned. However, these proposals contain a number of points of wider concern for the CBI and its members which are important to highlight. In particular, we are concerned that these proposals may damage business confidence in the UK as an intellectual property (IP) hub which fosters innovation, as a truly competitive marketplace and we remain sceptical of whether they are consistent with the Government's better regulation agenda, particularly in terms of the impact on small firms.

In this letter we argue that IP has a crucial role to play as a driver for economic growth in the UK; that businesses should be able to exploit their IP and brand value in a competitive marketplace; and that it is important that new regulation is effective in achieving public policy goals.

**IP has a crucial role to play as a driver for economic growth in the UK**

IP has a crucial role to play in rebalancing and growing the economy. UK business investment in IP is worth at least £65 billion per year. Many businesses rely on IP to underpin their business model, such as through trademarks, and others have IP at the core of their product or service, which are supported by copyright or patents. These interests span the CBI's membership, including sectors as diverse as retail, consumer goods, pharmaceuticals and clean technology.

In order to continue attracting IP-rich firms to the UK, business must have confidence that the Government is fully committed to making the UK the best place to invest in, develop and exploit IP.



Emma Wild Head of Enterprise Competitive Markets  
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Director-General: John Cridland CBE President: Sir Roger Carr

Registered No: RC000139 (England and Wales) Registered Office: CBI Centre Point 103 New Oxford Street London WC1A 1DU



This confidence could be bolstered in a number of ways, including taking a lead in calling for better IP enforcement measures internationally and ensuring that the significant investment that firms make in IP and other intangible assets is understood and taken account of in policy decisions across Government. In other words it is important for Government to champion IP and its role in economic growth. We are concerned that the proposals in this consultation undermine the Government's support for IP and could set a precedent for how IP might be treated in subsequent proposals that affect the broader economy.

### **Businesses should be able to exploit their IP and brand value**

While the focus of IP policy tends towards copyright and patents, trademarks and the investment that firms put in to brands are equally significant. An estimated one million people are employed in the UK in the creation and management of brands, accounting for 4 per cent of total employment, and approximately £32.55 billion (or 2.3 per cent of GDP<sup>1</sup>) is spent on building up brands each year. This demonstrates the intrinsic value of brands, and their contribution to the UK economy.

We are concerned that the introduction of standardised packaging may undermine this intrinsic value, by limiting the ability of firms to invest in, use and exploit their brands. For example, the consultation's proposals to introduce 'prescribed colours for packaging' and to prevent businesses from using forms of branding including 'logos, colours or other features associated with the... brand' would prevent businesses from fully harnessing the potential of their brand, which may have fundamental importance for their business identity. This would create damaging uncertainty for other businesses with brand value at the core of their business.

We are also concerned about the broader impact these proposals would have on competitive markets and fostering innovation. Limiting the use of packaging and branding to distinguish products on the market, will automatically reduce the ability of firms to introduce new products onto the market, the ability of companies to enter markets and the incentive to invest in innovation to create new products. These proposals therefore risk creating a worrying precedent for how UK markets operate; reducing competitiveness and potentially undermining the position of the UK as an attractive place to do business.

### **It is important that new regulation is effective in achieving public policy goals**

The proposed changes are far-reaching and so far untested in the UK or other countries. They would have a dramatic direct impact on the companies concerned and an indirect effect on the confidence of other companies that invest heavily in their brands. In this context, we would argue that it is particularly important that these proposals will be effective in achieving the desired public policy goal. A robust, evidence-based approach to new regulation forms the basis of Government's commitment to better regulation, and these proposals should demonstrably be able to pass this test. We are particularly concerned that any new proposals are able to estimate the full impact on business, and that in this instance the Government's impact assessment does not adequately factor in the impact on small firms that are part of the UK packaging supply chain. Small and medium sized companies are frequently originators of innovative packaging designs for brand owners including the tobacco manufacturers and may be particularly impacted by these proposals.

I hope that this is useful in setting out the CBI's broader views at this important stage of the policy process.

---

<sup>1</sup> British Brands Group, Westminster Business School Study on the Value of Brands to the Economy, 2008

Yours sincerely,

[Redacted signature]

[Redacted name]

Head of Enterprise

*The CBI is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce. Our mission is to promote the conditions in which businesses of all sizes and sectors in the UK can compete and prosper for the benefit of all. The CBI's speaks on behalf of UK business interests, is established under Royal Charter and is funded by subscriptions made from companies and organisations that choose to join it. The CBI represents a wide range of businesses and organisations ranging in size and sector, including those that operate in the tobacco industry.*

[REDACTED]

---

**From:** [REDACTED]@usc.edu>  
**Sent:** 14 June 2012 18:27  
**To:** Tobaccopacks  
**Subject:** Comments on expert judgments

### **Tobacco Packs Consultation**

These comments are directed at the plan for expert judgment use as a method for **estimating the impact** on sales of the labeling decision. My earlier work in this area is sited in paragraph 125 of Annex 2 titled Elicitation of Subjective Judgments on the Impact on Smoking of Plain Packaging policies for Tobacco Products. Expert judgment is my field of expertise and I have lead studies, both applied and academic, on the use of experts for more than 25 years.

My comments are indexed by the relevant paragraph in Annex 2.

Para. 123. This paragraph refers to certain biases that can, and often, do arise in probability elicitation. The most effective way of dealing with biases such as overconfidence, which is not mentioned but is generally believed to be the most severe and prevalent bias, is to provide training with feedback. This most often accomplished through the use of training exercises such as quizzes involving almanac questions where the subject are unaware of the true values but the administrator knows the answers. The subjects are then shown how well their subjective distributions for uncertain quantities perform. Such training is standard practice but seems to be omitted from the protocol described here.

Para. 125. Why are impartiality and lack of economic or personal stake considered impractical? Who considers them impractical and why? There should be considerable concern that judges may have a responsibility to "defeat" smoking and this can color their responses. As an alternative, experts who have an apparent conflict of interest may be asked to testify to an impartial group of experts who can weigh the value of their testimony while considering the potential for motivational bias. This approach was taken in the NUREG 1150 exercise.

Para. 126. The list of potential experts would seem to favor those that have an economic/political view against tobacco use. Drawing experts from this pool and not considering motivational bias to be a disqualifying factor would seem to invite biased results. This is essentially an economic issue and I wonder if these organizations can provide well qualified economists.

Para. 128. Again, there is no mention of training. I also strongly disagree with decision to have anonymity. Experts perform best when they know that their names will be associated with their judgments. Even the most qualified experts are sometimes so busy that when they are not held accountable, they will default to other tasks and not put in the time and effort required.

Para. 130. It appears that the linear combination is done by averaging values of the variable not the probabilities. The linear opinion pool approach entails averages of the probabilities not the values of the variables. One needs to construct the distribution function for each expert and then average the distribution functions. Averaging fractiles can lead to absurd results in some cases.

[REDACTED]  
Director, Center for Risk and Economic Analysis of **Terrorism Events**  
University of Southern California  
Los Angeles, California, USA

This email was received from the INTERNET and scanned by the Government Secure Intranet anti-virus service supplied by Cable&Wireless in partnership with MessageLabs. (CCTM Certificate Number 2006/04/0007.)

Tobacco Packs Consultation  
Department of Health  
7<sup>th</sup> Floor Wellington House  
133-155 Waterloo Road  
London  
SE1 8UG

### **Response to the Consultation on Standardised Packaging**

Chesapeake protects and promotes the world's great brands as a leading international supplier of consumer packaging. The company is one of Europe's leading suppliers of folding cartons, leaflets and labels, as well as plastic packaging. Chesapeake now has 43 locations in Asia, Europe and the United States and employs approximately 5,100 people worldwide.

We would like to register our vote for Option 1, maintain the current legislation on packaging. This letter explains our belief of the potential impact to our business and our arguments against the unintended consequences of this proposal.

#### **Chesapeake –A Tobacco Packaging Manufacturer**

Chesapeake has 2 sites in the UK, Bradford and Portsmouth with over 100 employees, dedicated over the last 20 years to the supply of various formats of printed packaging to the tobacco sector.

As a company we have invested heavily in specialised tobacco print and converting equipment to ensure our packaging meets the quality and commercial requirements of the Industry and the latest government regulations. A gravure printing and converting press can cost upwards of £4m and Chesapeake has invested in 6 machines in the UK.

There are only now two tobacco manufacturers with factories in the UK. As a consequence of Chesapeake being located in the UK, we are a key supplier to both these companies. The UK market accounts for 40% of our tobacco turnover of £21m.

The manufacture of tobacco packaging requires specialised gravure printing presses. These machines are not easily redeployed in other market sectors due to their requirements for high volume, associated tooling costs and the need for specific packaging profiles.

#### **Consequences of Standardised Packaging**

- Printed outer wrap film: This will have to be transparent, not printed. Chesapeake has specialised in producing this material for the UK and European markets. Our printed film turnover is currently £1.75million. This would be wiped out if the proposal for standardized packaging is implemented.

- Plain: Chesapeake is the only supplier of printed innerframe in the UK (the U shaped card inside the pack), if this moves to a plain format, then this material would be supplied directly from board mills and, as such, Chesapeake would lose at least £3m in turnover.
- One Shape: Chesapeake prides itself on the strength of its design and creative capabilities. Our design centre is based in Bradford. This proposal would negate the need for some of our creative team in the UK.
- Standardised Packaging
  - A pack with just a printed 4-colour Health Warning and one solid colour will be much easier to copy by counterfeiters. Most cigarette packs are printed using gravure technology. This has the capability to maintain strong identifying colours, excellent metallics and consistency of colour across large volumes. Due to the cost of gravure machinery this acts as another barrier to entry for the counterfeiter. The introduction of 'plain packs' will mean the tobacco companies would not need gravure technology and could purchase packaging in cheaper economies outside of the UK, using alternative less advanced technologies.
  - The UK government currently **loses £3.1bn** in tax revenue through smuggled or counterfeit product. This loss would undoubtedly increase as it became easier to copy standardised packaging.
  - Chesapeake has invested over £5million in upgrading all its machines so that it can manufacture pictorial health warnings in the UK. This proposal will mean that it cannot recover the significant investment it has made.
  - Safety: Chesapeake performs stringent testing on the raw materials, inks and finished packs to ensure they are a safe product for the consumer. A recent scare with food packaging highlighted the migration of potentially harmful chemicals from inks into the foodstuffs which was subsequently well controlled by the packaging industry. There would be no such control of counterfeit products and no regulation of the board used, inks or how safe/clean is the manufacturing environment.
- Display Ban: By 2015 all shops in the UK will have implemented the display ban so that no tobacco products will be visible to the public (nearly all multiple retailers have already introduced this). We would therefore question the value of implementing this legislation by the UK Government since in the majority of retail outlets packaging is already concealed.
- Branding / Trademark and IP: Chesapeake has major concerns that this action may set a dangerous precedent which could then be extended to other market sectors which are also deemed to be potentially harmful to the public's health such as alcoholic drinks and certain food types. These two markets are even more critical for Chesapeake and many associated industries and support services such as advertising.

In summary, Chesapeake has major concerns over the consultation on Standardised Packaging due to:

- Standardised packaging reduces the complexity of packaging and makes it easier and more economical for counterfeiters to copy and replicate the packaging. Chesapeake has invested millions in its two facilities to ensure that it can produce high quality, specialized packaging to meet the legal and product requirements of the tobacco regulations set by governments around the world.
- The tobacco packaging supply chain is made up of professional companies like Chesapeake, whom ensure that packaging is produced to the highest standards in relation to the safety of the consumer and the environment. The consumer and the environment would be put at risk through a further increase in counterfeit product.
- Further growth in counterfeit/smuggled product from outside the UK and the banning of printed film /innerframe could make our company's investment in the UK unsustainable and could lead to job losses or factory closures.

Yours faithfully

A large black rectangular redaction box covering the signature of the sender.A small black rectangular redaction box covering the name of the sender.

**Divisional Director**

Chester-le-Street & District Area Action Partnership  
Civic Centre  
Newcastle Road  
Chester-le-Street  
Co Durham  
DH3 3UT

## **SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS**

"The Area Action Partnership (AAP) is a community focused partnership working with local communities, partner services and elected councillors for the Chester-le-Street & District Area".

We would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

Around 340,000 children in the UK try their first cigarette every year. Smoking starts not as an adult choice but in childhood through experimentation, at an age when children have little grasp of the health risks from middle age nor the speed with which addiction takes hold. The average age for smokers starting in the North East is just 15, with 43% of smokers starting between the ages of 10 and 14.

Smoking still remains the largest cause of premature death, disease and health inequalities in the North East, killing 11 people a day and costing at least £210m a year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism. Within County Durham the cost is estimated to be £21 million a year and smoking attributable deaths in County Durham are higher than the north east average.

Based on this level of harm to individuals, our communities and the North East region, we believe plain, standardised packaging of tobacco products to be a proportionate response that would:

- Discourage young people from starting to smoke – tobacco firms invest huge sums of money into advertising and marketing their products to recruit new customers, who are nearly always children. Branded tobacco products are viewed as more appealing among young people than plain, standardised packs, which are viewed as less attractive, containing more poisons and of poorer taste.
- Encourage people to stop smoking – plain, standardised packs communicate the harms of smoking far more effectively than branded products, with the health messages more obvious. Packs in the white or silver colours of former "low tar" brands give the false impression to smokers that they can minimise the risks of their smoking, delaying or replacing quitting intentions.
- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people's exposure to smoke from tobacco products.

Having seen these cigarette packaging the AAP believes it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through these innovative, colourful packaging, similar to the way breakfast cereals, energy drinks or confectionary are marketed.

There is within the AAP high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We therefore call for Government action to adopt this measure and help to make smoking history for our children.

Yours faithfully

[Redacted signature]

AAP Coordinator

[Redacted name]

[Redacted email]@durham.gov.uk

To [Redacted email]gsi.gov.uk



Cleveland Fire Brigade

## **SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS**

To [REDACTED] [gsi.gov.uk](mailto:[REDACTED]@gsi.gov.uk)

Cleveland Fire Brigade would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

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Smoking still remains the largest cause of premature death, disease and health inequalities in the North East, killing 11 people a day and costing at least £210m a year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism.

Based on this level of harm to individuals, communities and the North East region, we believe plain, standardised packaging of tobacco products to be a proportionate response that would:

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- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people's exposure to smoke from tobacco products.

We believe that it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through innovative, colourful packaging in a similar way to breakfast cereals, energy drinks or confectionary.

There is high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We call for Government action to adopt this measure and help to make smoking history for more children in the North East.

[REDACTED] Community Health & Wellbeing Manager  
Cleveland Fire Brigade

Health Improvement Manager  
County Durham and Darlington Stop Smoking Service  
The Greenhouse  
Amos Drive  
Greencroft Industrial Park  
Annfield Plain  
County Durham  
DH9 7XN

Our Ref: IM/tobaccopacks

5th July 2012

Via email: To  [gsi.gov.uk](mailto:gsi.gov.uk)

**Re: Submission supporting plain, standardised packaging of tobacco products**

We would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

County Durham and Darlington NHS Foundation Trust is one of the largest trusts in England. It provides services for 600,000 people living in Durham, Darlington and North Yorkshire including health and wellbeing, community services and acute hospital services. The Trust also hosts Fresh, the UK's first regional tobacco control programme, as part of its strategy to prioritise the prevention of ill-health.

County Durham and Darlington Stop Smoking Service see around 10,000 smokers each year and a recurring story which is told to our advisors is the regret they have that they ever started in the first place. Many started at the times when the risks of smoking were not so well understood, marketing and promotion of tobacco products were unregulated and smoking was seen as normal. With the removal of the ability to blatantly promote their products so flagrantly, the industry has become more sophisticated and tobacco packaging and cigarette design are now one of their key ways into the youth market.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

Around 340,000 children in the UK try their first cigarette every year. Smoking starts not as an adult choice but in childhood through experimentation, at an age when children have little grasp of the health risks, nor the speed with which addiction takes hold. The average age for smokers starting in the North East is just 15, with 43% of smokers starting between the ages of 10 and 14.

Smoking still remains the largest cause of premature death, disease and health inequalities in County Durham and Darlington, causing:

- 1,024 premature deaths annually.
- 6,223 hospital admissions of County Durham and Darlington residents aged over 35 each year as a result of a smoking-related illness.
- An annual cost to the NHS in our area of almost £26m through hospital admissions, outpatient appointments, GP and nurse consultations and secondary care and prescription costs.

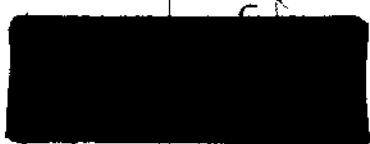
Based on this level of harm to individuals and communities in County Durham and Darlington, we believe plain, standardised packaging of tobacco products to be a proportionate response that would:

- Discourage young people from starting to smoke – tobacco firms invest huge sums of money into advertising and marketing their products to recruit new customers, who are nearly always children. Branded tobacco products are viewed as more appealing among young people than plain, standardised packs, which are viewed as less attractive, containing more poisons and of poorer taste
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- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit
- Reduce people’s exposure to smoke from tobacco products.

We believe that it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through innovative, colourful packaging in a similar way to breakfast cereals, energy drinks or confectionery.

There is high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We call for Government action to adopt this measure and help to make smoking history for more children in County Durham and Darlington.

Yours sincerely



  
Health Improvement Manager  
County Durham and Darlington Stop Smoking Service



County Durham Health  
& Wellbeing Partnership

To: [REDACTED]@gsi.gov.uk

10 July 2012

Dear

Sedgefield Health Network represents organisations and groups within the NHS, Local Authority, independent, voluntary and community sector that have an interest in improving health and wellbeing for our local communities.

We would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

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- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people's exposure to smoke from tobacco products.

Having seen these cigarette packaging Health Network members believe it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through these innovative, colourful packaging, similar to the way breakfast cereals, energy drinks or confectionary are marketed.

There is within the Health Network high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We therefore call for Government action to adopt this measure and help to make smoking history for our children.

Yours faithfully

[Redacted signature]

[Redacted]  
**Sedgefield Health Network Chair**  
[Redacted] [uk.net](http://www.sedgefieldhcn.uk.net)

Copy: [Redacted] Public Health Portfolio Lead Tobacco  
Public Health County Durham and Darlington  
NHS County Durham and NHS Darlington



**CRIMESTOPPERS**

**0800 555 111**

Call anonymously with information about crime

ML/PE/Assoc12

8<sup>th</sup> August 2012

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

Sent by Post and e-mail

Dear Sir

Consultation Submission - Standardised Packaging of Tobacco

About Crimestoppers

Crimestoppers is an independent charity helping to find criminals and help solve crimes.

We run the anonymous 0800 555 111 phone number that you can call to pass on information about crime. Alternatively people can pass us information anonymously via our website ([www.crimestoppers-uk.org](http://www.crimestoppers-uk.org)) using our 'Giving Information Form.'

Callers do not have to give their name or any personal information and calls cannot be traced.

Last year we received 90,868 calls and online forms with useful information. As a result of this information:

- 8,264 criminals were arrested and charged
- £25,339,693 worth of illegal drugs were seized
- £3,155,704 worth of stolen goods were recovered

Rationale for Submission

Whilst we obviously applaud Government's efforts to help reduce smoking rates and prevent youth smoking uptake, we have no direct stake or expertise in health issues.

Crimestoppers' core expertise lies in crime detection and prevention, in partnership with communities, the general public and law enforcement agencies. Our concern on the issue is centred on what we conclude to be the detrimental effects that standardised packaging would have on crime and by association the stretched law enforcement agencies, neighbourhoods and communities that we exist to serve.

It is with this in mind that we would put forward our views by way of this brief consultation response.

Our Position

We are convinced that the illicit trade in tobacco is a significant and growing problem in the UK.

Every year we handle in excess of five hundred pieces of information from the UK public related to illicit tobacco that are ultimately disseminated to the relevant UK agency.

Crimestoppers Trust

Wallington

T 020

F 020

E [info@crimestoppers-uk.org](mailto:info@crimestoppers-uk.org)

[www.crimestoppers-uk.org](http://www.crimestoppers-uk.org)

[www.fearless.org](http://www.fearless.org)

Crimestoppers Trust is a Registered Charity and a Company Limited by Guarantee. Registered in England and Wales. Company Number: 5322856 Registered Office: 2-6 Cannon Street, London, EC4M 6YH

In some cases illicit trade in tobacco is associated with low-level crime and individual smuggling from abroad, but we are wholly persuaded that it is also connected to well-funded organised criminal gangs whose impact at a community and societal level is pernicious. These criminal gangs are also often associated with other dangerous and damaging activities which include drug and human trafficking, prostitution and violence.

The community minded people that see it as their civic duty to inform us of crimes and the problems at a street level or the mothers who do so as a last resort, ground down by criminality on their streets, are the people that we deal with daily. For example, we know that illicit cigarettes are often and more likely sold to children because of the lack of scruples of the people involved in the trade.

Similarly, we engage with law enforcement agencies, who in these days of challenges on the public purse, are juggling resources and priorities evermore to make sure that society is kept safe. At this time, in our considered view, the selling of illicit tobacco on street corners or down at a local pub are just not deemed high level or worthy of committing diminishing and vital man hours to, or operational planning time, in the breadth of competing calls for attention.

It is our central concern therefore that any policy that is likely to cause a greater impact on stretched law enforcement resources and local communities through illicit tobacco, should be reflected on very carefully.

Through our extensive experience of handling information related to the illicit tobacco trade, it is our conclusion that standardised packaging would indeed exacerbate the problem.

With 200 or so brands of cigarettes in the UK it is not a great leap of imagination to anticipate that the barrier for entry to counterfeiters, when all packs look the same, would be significantly reduced. We know that the public are regularly already deceived by counterfeits, unsure and unable to identify them, particularly if bought from unscrupulous retailers. Plain packaging would make this matter worse.

We know of course that markings can be attached to cigarette packs to help with identification by customs or trading standards, but it is unrealistic to expect at a community level that people will be able to make correct judgements on what is counterfeit or not - they often do not have the time, inclination, sophistication or knowledge to understand what a hologram should look like, or what a series of numbers might mean or indeed the will to contact enforcement every time. The most readily way of identifying a counterfeit from a licit one is looking at the current branding devices and whilst we accept that counterfeiters are already able to produce counterfeits, we do believe that plain packaging will inevitably make it worse.

It is also feasible that the only branded and sought after products on the streets will be illicit branded cigarettes, whose cache rises as branding is removed from legal tobacco, if indeed branding devices are as important to smokers as the policy intention suggests.

The reach of the criminal gangs involved means it is often an international operation of significant means and sophistication funding other illegal activities. The supply chains for illicit and counterfeit cigarettes extend out across Europe into Eastern Europe, the Middle East and Asia. Significant money is already spent trying to tackle this but the crime level is already on the rise before any further detrimental measure, such as plain packaging, is introduced.

8<sup>th</sup> August 2012

We believe it is likely that the introduction of plain packaging will make it more difficult for the police, customs and trading standards to detect illicit tobacco - whatever clever security markings are added - because of the dedicated efforts required to choose to look for illicit tobacco with all the competing priorities.

These criminal enterprises are all too aware that often in poor communities smokers find it difficult to pay high-street prices, so illicit cigarettes are made available in pubs, clubs, fag houses, markets, street corners, car boot sales, under the counter in some unscrupulous retailers. Violence is often associated with any challenge to it, as is intimidation, often including to law enforcers such as trading standards.

In a time of cuts to law enforcement services and without effective resources to aim at the problem, the criminals will have a freer run.

We are concerned that with the availability of illicit tobacco products, especially counterfeits, the ability of consumers and investigators to detect genuine products is diminished. Whilst acknowledging that smoking is inherently harmful, we are also somewhat alarmed at the potentially "worse" health impact counterfeits have on adult smokers, especially in areas of deprivation and on young people.

We by no means have any axe to grind with Government or proponents of health policy, but because of our trusted position in society in terms of seeing criminal activity and its impact on neighbourhoods, where we see the significant associated problems with illicit tobacco, we welcome the opportunity to have shared our views on this topic.

In conclusion, with the inherent risks in the proposal we do not believe the policy is viable or practical because of the negative significant risk of increased crime and we urge the Government to think carefully before introducing such a drastic, unproven and high risk policy on these shores, where high tobacco prices already make it a lucrative and tempting enterprise for criminals, a daily blight on our streets and in our society and a significant burden for our stretched law enforcement services.

Yours faithfully

  
  
Chief Executive



Department of Health

Richmond House

79 Whitehall SW1A 2NS

07/08/2012

Dear Secretary of State,

In response to the Consultation on standardising packaging for the Tobacco industry,

I support option one, namely "do nothing",

Crisp Installs Ltd have been associated with the Tobacco Industry for the last 12 years

In which time we have steadily grown our Business to the point today where we employ 20/25 individuals

Solely dependent on the Merchandising element of the Tobacco trade,

Should this measure be adopted I would seriously question why the Tobacco industry would continue its investment in providing display equipment when its product is no longer identifiable to the public, this would have a catastrophic effect on our business as installers not mention the producers and suppliers all predominately based in the UK.

Obviously we have a vested interest in the continuation of packaging as it is

We have just been involved in the cover up of Tobacco Gantries in the super-market sector and hopefully will be involved with transformation of the stores that come into focus in 2015

We cannot see any benefit in changing packaging that is already covered from view,

We do however see the advantages plain packaging would bring, particularly **Illicit Trade**

Allowing the organised criminal gangs opportunity to copy and counterfeit product, Black market racketeering will increase with their limitations reduced by this measure,

With regard to the anticipated reduction in underage smoking, I believe that the opposite effect will prevail due to the inability of the consumer to be able to associate with the premium brands the manufacturers will move production focus and sales to the cheaper end of the market,

This will create price competition and in turn make the cost per packet reduce which will enable underage Smokers the opportunity to purchase at a more affordable cost,

Individuals planning to quit may be encouraged not to by this anticipated reduction in price,

With the display ban already under way this added measure is total over kill

We urge the Government to reserve judgement on this proposal and cancel the its intention to standardise packaging,

Hopefully you will consider these views and I thank you for taking the time to do so.

Regards

Yours sincerely

A solid black rectangular redaction box covering the signature of the sender.

Managing Director

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 09 July 2012 21:31  
**To:** Tobaccopacks  
**Subject:** Proposed Plain Packaging of Tobacco Products

To whom it may concern,

I am an independent CTN retailer:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Once again I find it incredible that both the UK and Scottish Governments can blindly propose ludicrous, ill thought, unsubstantiated proposals to introduce Tobacco Plain Packaging. Not only this but using the hard working independent retailers taxes to fund the pro advertising . For what? In my humble opinion, no more than a few overblown soundbites.

Maybe if you had to work 12 hours a day, 7 days a week to try and make a living and then see some folk in Ivory Towers try their damndest to make you work harder still, you might appreciate the true cost of your proposals.

The independent retail trade do not lightly undertake any sale, let alone cigarettes to children, yet time and time again we are castigated for that elusive "soundbite" that will get a Minister or similar some press coverage. If you perhaps actually went to ground level, you would realise that children prefer to spend their (and little it is too) money on downloads, computer games and mobiles. For most, cigarettes are the last things on their minds.

All your policies will do, if enacted, is open up the dams, mostly built by the retail trade that you would condemn, to the illicit market. It will take longer for staff to identify product making the transaction not only slower but more risky.

Please note, there is no profit in selling cigarettes as you have taxed them to the hilt. All we want is the ability to sell a LEGAL product to our eligible customers.....is that too much to ask???

To paraphrase an oft quoted phrase.... " Show me the Evidence!!!!"

I believe all you really want is my response...

Retain Option 1, I am totally against Tobacco Plain Packagaing either now or in the future.

Yours sincerely

A very angry retailer.

[REDACTED]

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CSZV  
Těšnov 5  
110 00 Praha 1  
Česká republika

tel: +420  
fax: +420  
e-mail:  
IC: 49371787  
DIČ: CZ49371787

Bankovní spojení  
KB a.s. Praha - město  
Václavské náměstí 42  
110 00 Praha 1  
č. účtu: 4243021/1100

Prague, August 9, 2012  
No.: 240/ 2012-CSZV

**The Response  
of tobacco companies – members of the Czech Association for Branded Products  
to the UK Department of Health's Consultation on Standardised Packaging of  
Tobacco Products**

The tobacco companies – members of the Czech Association for Branded Products (CSZV) represent leading tobacco producers, importers and distributors operating on the Czech market. The main objective of the CSZV is to protect and support the common interests of branded products manufacturers in areas affecting the production, marketing, distribution and sale of branded products in the Czech Republic. The below response to the UK Department of Health's Consultation on Standardized Packaging of Tobacco Products is supported by five member companies of CSZV: British American Tobacco (Czech Republic) s.r.o., DanCzck Teplice a.s., JT International, spol. s r.o. (a member of the Japan Tobacco International group), Imperial Tobacco CR, s.r.o. and Philip Morris ČR, a.s.

Our association understands and fully supports the efforts of the UK Department of Health and the European Union to improve the state of public health. Our concern however is that the **fundamental questions and reservations arise from the pack standardization proposal and/ or measures such as very large health warnings that would essentially be the same.** The tobacco companies – members of the Czech Association for Branded Products considers that in the UK Department of Health Consultation on Standardized Packaging of Tobacco Products **only Option 1 – no change (i.e. maintain the status quo for tobacco packaging) – is appropriate and wishes to emphasize its opposition to standardized packaging.**

At the same time, however, we would like to point out that despite the fact that there are similar processes running simultaneously at the EU level, the Impact Assessment of the UK Department of Health is only dealing with the possible introduction of the standardized packaging. No reference is made to the fact that the Tobacco Product Directive (2001/73/EC) revision has entered a crucial phase and that a significant number of Member States, leading IP associations and leading businesses and trade associations across Europe raised serious concerns on pack standardization and measures such as large health warnings already during the Public Consultation in fall of 2010.

We agree that minors should not smoke and that smoking must be a matter for informed adult choice. The tobacco companies – members of CSZV only market their products to adult smokers. Tobacco packaging and pack labelling is not a predictor of youth smoking. The considerable body of evidence and research which exists on the predictors for smoking initiation does not substantiate any link between packaging and youth uptake. Even when the UK Department of Health itself has previously identified "trigger factors" for smoking by minors, packaging was not one of them. Instead the Department of Health linked youth smoking initiation to a complex range of socio-economic factors including age and gender, home life, peer pressure, truancy and exclusion from school. The Consultation is, however, concerned with packaging from this perspective. As a result of this flaw, standardized packaging will not reduce youth smoking.

We consider it necessary to comment on the role and importance of branding and the potential consequences of the mentioned proposals. We believe that brand differentiations exist to facilitate consumer choice, information and convenience. Branding on packaging covers all aspects of pack design (pack shape, labelling, colours, typeface, illustrations and other features) that distinguish one product from another. The new measures under consideration would substantially increase consumer confusion without discouraging the use of the product itself. Limiting the ability to brand means limiting the ability to compete and limiting the ability to compete is a restriction of trade.

The proposals remove complexity for counterfeiters, making it easier to copy and also shift some consumer demand towards goods available on the black market. Any further rise of illicit trade would damage consumers, tax revenues and legal manufacturers and retailers.

Consumers would find it harder to choose between product variants from the same manufacturer, different products of different competitors and between legitimate and counterfeit products. There will be no incentive for suppliers to invest in premium quality and added value products. There may be strong commercial pressures to reduce such investment, as product advantages would be difficult to communicate. A market without branding is essentially a market of generics, with products competing only on price not quality. A requirement for products to be in standardized packaging would pose a significant barrier for new market entrants, unless their proposition will be focused on lower prices / lower quality.

It is our conviction that brands generally should not be unduly restricted with regard to legally sold products. The beneficial effects of brands are protected by national and community trademarks, which represent recognized property rights protected under various national and international laws and treaties to which EU is subject to. Standardized packaging or oversized warning labels would prevent or significantly restrict legal use of trademarks, which are developed over years and have significant financial value for the corporate owners.

Limiting the ability to brand limits the ability to compete. Limiting the ability to compete is a restriction of trade.

We are deeply concerned about the proposed introduction of standardized packaging, which presents a potential **BRANDING CRISIS** for the marketing and branding industries that goes far beyond the issue of standardized packaging for tobacco products. It would encourage and give precedent to other countries to introduce similar measures on other branded products and limit the ability of the EU to challenge such measures on other products via TRIPS or TBT. It could also undermine the EU's moral authority in general when it comes to defending IP right abroad. It also fixed a precedent for similar measures on other goods within the EU itself as it undermines the systems of IP protections that currently exist for all brand owners. We call on the European Commission to eliminate such proposals from any further consideration.

Respectfully submitted on behalf of the members of the tobacco companies – members of the Czech Association for Branded Products.

A large black rectangular redaction box covering the signature of the Executive Director.

Executive Director  
Czech Association for Branded Products (CSZV)

# D•MYST

the creative agency

9th August 2012

██████████  
Department of Health  
Skipton House  
80 London Road  
London SE1 6LH

Dear ██████████

**Re: Plain Packaging Consultation**

We are D-MYST The Agency, an anti-tobacco industry campaign group from Liverpool, and we are writing to support to the plain packaging initiative put forward by the Government.

Every year, 340,000 children are tempted to try smoking, and research has shown that plain packaging of cigarettes will reduce the temptation.

We would like to better young people's futures by supporting the UK public consultation and asking for a move to plain packaging.

Yours sincerely

*D-MYST The Agency*

**D-MYST The Agency**

[REDACTED]

---

**From:** [REDACTED]@mail.com>  
**Sent:** 04 July 2012 17:41  
**To:** Tobaccopacks  
**Cc:** Duncan Hames  
**Subject:** Consultation on The Standardisation of Tobacco Packaging

Dear Sir

Consultation response

I believe that leaving tobacco packaging in its current form is the correct thing to do. The evidence of the long term research, Smoking, drinking and drug use among young people in England shows a clear decline in smoking within the age group covered. The tobacco display ban has not yet been fully implemented, but the Impact Assessment projects that the measure will reduce the prevalence of smoking in 11 to 15 year olds by a fifth to 4.2%. Standardised packaging, a strategy that has no actual evidence to support it, will have disproportionate costs to the limited effect that it would deliver.

The science used to support the policy is to say the least weak. In real academic science to achieve a paper of value there has to be rigour and a tough peer review process before publication. Having read many tobacco control papers it is apparent that the standards that apply in Science, Nature or Cell do not apply to the publication that these article appear in.

Branded goods from legitimate retailers enable consumers to know the product they bought previously will be the same as their next purchase. Destroying brand recognition will make the consumers task more difficult.

Destroying brand equity will play into the hands of the unbranded operators and the illicit trade. The investment by community retailers have made in selling responsibly will be further challenged.

The unintended consequences of standardised packaging of tobacco include:

The huge opportunity that this tobacco control measure would offer to the illicit tobacco suppliers. Stripped of the need to make their products look like known brands they may well follow the example of the contraband trade in Canada and introduce a large range, around 200, of their own brands. There is already evidence of illicit brands being sold in the UK.

Community based independently owned stores are by their very nature fragile. Changes to their product mix and profitability is likely to cause the closure of many. These stores offer significant amenity value to the communities they serve and will be substantially missed if they are lost.

Underage access to cigarettes from tobacco retailers has been greatly reduced over the past decade, particularly since the 2007 when 18 years became the minimum age for legal sales. Any move that will grow the illicit supply channel will severely damage this progress. Criminals will not care who they sell to.

Any growth in the illicit supply of tobacco will further damage the tax take by Government.

The Department of Health's own research states that 'regular smoking among 11 to 15 year olds was related too the risk-taking behaviours (drinking alcohol, drug taking, truancy and exclusion). Living with



other smokers or having friends who smoke also increased the odds of smoking, as did a relatively lenient attitude to smoking by pupils' families. Pupils who received free school meals, an indicator of family deprivation, also had increased odds of being regular smokers.' This surely indicates where the challenge and solution to youth smoking is to be found.

Cutting down on youth smoking is a good thing, but this unproven, unmanageable tactic is not the way to go about it.

Your sincerely

[REDACTED]

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Direct Tel: [REDACTED]  
email: [REDACTED]@durham.gov.uk  
Your ref: DVP  
Our ref: DVP



[REDACTED]  
AAP Co-ordinator  
Derwent Valley Partnership  
Customer Access Point  
36-38 Front Street,  
Consett,  
Co Durham  
DH8 5AQ

7 June 2012

To [REDACTED]@gsi.gov.uk

## **SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS**

The Derwent Valley Partnership is one of 14 Area Action Partnerships (AAPs) in County Durham. AAPs were set up by Durham County Council in 2009 as key consultation mechanisms, their aim being to tackle and address the priorities put forward by local communities in partnership with residents, community groups, volunteers, partners and elected members.

As part of our local Health and Wellbeing priority, we would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

Around 340,000 children in the UK try their first cigarette every year. Smoking starts not as an adult choice but in childhood through experimentation, at an age when children have little grasp of the health risks from middle age nor the speed with which addiction takes hold. The average age for smokers starting in the North East is just 15, with 43% of smokers starting between the ages of 10 and 14.

Smoking still remains the largest cause of premature death, disease and health inequalities in the North East, killing 11 people a day and costing at least £210m a year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism. Within County Durham the cost is estimated to be £21 million a year and smoking attributable deaths in County Durham are higher than the north east average.


Based on this level of harm to individuals, our communities and the North East region, we believe plain, standardised packaging of tobacco products to be a proportionate response that would:

- Discourage young people from starting to smoke – tobacco firms invest huge sums of money into advertising and marketing their products to recruit new customers, who are nearly always children. Branded tobacco products are viewed as more appealing among young people than plain, standardised packs, which are viewed as less attractive, containing more poisons and of poorer taste.
- Encourage people to stop smoking – plain, standardised packs communicate the harms of smoking far more effectively than branded products, with the health messages more obvious. Packs in the white or silver colours of former “low tar” brands give the false impression to smokers that they can minimise the risks of their smoking, delaying or replacing quitting intentions.
- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people’s exposure to smoke from tobacco products.

Having seen these cigarette packaging the Derwent Valley Partnership believes it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through these innovative, colourful packaging, similar to the way breakfast cereals, energy drinks or confectionary are marketed.

There is within the Derwent Valley Partnership area high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We therefore call for Government action to adopt this measure and help to make smoking history for our children.

Yours faithfully



**Area Action Partnership Coordinator  
Derwent Valley Partnership**

[REDACTED]  
Chair  
Derwentside Health Network  
Greencroft Industrial Park  
Annfield Plain  
Stanley  
County Durham  
DH9 7XN

3 July 2012

## **SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS**

To [REDACTED].gsi.gov.uk

Health Networks were established in County Durham as a means of ensuring community action in line with local need and as a way of providing a locality focus for the work of the County Durham Health and Well-Being Partnership (H&WBP) and their "Altogether Healthier" action plan.

Derwentside Health Network had its inaugural meeting on Wednesday 17 March 2010 and started discussions, in line with available guidance, on establishing three priority areas of action. One of the priority areas chosen, and the biggest killer in the locality, was tobacco use.

In line with our focus on reducing tobacco use we would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

We fully support the introduction here in the UK of the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

Around 340,000 children in the UK try their first cigarette every year. Smoking starts not as an adult choice, but in childhood through experimentation, at an age when children have little grasp of neither the health risks nor the speed with which addiction takes hold. The average age for smokers starting in the North East is just 15, with 43% of smokers starting between the ages of 10 and 14.

Smoking still remains the largest cause of premature death, disease and health inequalities in the North East, killing 11 people a day and costing at least £210m a year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism. Within County Durham the cost is estimated to be £21 million a year and smoking attributable deaths in County Durham are higher than the north east average.

Based on this level of harm to individuals, our communities and the North East region, we believe plain, standardised packaging of tobacco products to be a proportionate response that would:

- Discourage young people from starting to smoke – tobacco firms invest huge sums of money into advertising and marketing their products to recruit new customers, who are nearly always children. Branded tobacco products are viewed as more appealing among young people than plain, standardised packs, which are viewed as less attractive, containing more poisons and of poorer taste.
- Encourage people to stop smoking – plain, standardised packs communicate the harms of smoking far more effectively than branded products, with the health messages more obvious. Packs in the white or silver colours of former “low tar” brands give the false impression to smokers that they can minimise the risks of their smoking, delaying or replacing quitting intentions.
- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people’s exposure to smoke from tobacco products.

Having seen the lengths cigarette companies go to dress up cigarette packaging as appealing, Health Network members believe it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through these innovative, colourful packaging, similar to the way breakfast cereals, energy drinks or confectionary are marketed.

There is high public support within Derwentside Health Network to protect children from tobacco marketing and do more to discourage children from taking up smoking. We therefore call for Government action to adopt this measure and help to make smoking history for our children.

Yours faithfully



**Chair  
Derwentside Health Network**

[REDACTED]

---

**From:** [REDACTED]parliament.uk>  
**Sent:** 10 August 2012 16:26  
**To:** MB-SOFS; Tobaccopacks  
**Subject:** From the Office of Jane Ellison MP - Submission to Consultation on Plain Tobacco Packaging

Dear Andrew

I am writing to you on behalf of my constituents, [REDACTED] and [REDACTED], who lobbied me in Parliament for Cancer Research UK's 'The Answer is Plain' lobby on tobacco packaging. Please accept this as a submission to the Government's consultation on this issue.

My constituents are supportive of the standardisation of tobacco packaging which would require all tobacco packets conform to the same shape, branding, colour and method of opening. My constituents are concerned that, presently, under-18s are more likely to be drawn to smoking because cigarette packets are designed to be attractive and communicate a brand 'personality', which has a particular appeal to children. They also suggested that standardised and regulated packaging could increase the prominence and effectiveness of health warnings on tobacco products.

I am very supportive of the aim of deterring children from starting to smoke. My understanding is that two-thirds of smokers pick up the habit before they turn 18, so I very much welcome the fact that addressing this problem is an explicit and key public health goal for the Government. I have also been supportive of the steps the Government has already taken to limit the sale and advertisement of tobacco products, including banning the sale of cigarettes in vending machines and requiring larger retailers to cover up tobacco displays.

However, as the Co-Chair of the All-Party Parliamentary Group on Retail, I am conscious that a sudden change in the law could have an impact on smaller businesses, especially in the challenging economic environment we currently face, and I did explain this to my constituents. Of course, I recognise that attitudes have changed toward smoking and retailers are having to adapt accordingly; it should be said also that shopkeepers must obey the law with regard to selling cigarettes to minors. Those that do not should be prosecuted.

Ultimately, I feel that we should move forward on an evidence-based approach. I know that Australia has implemented legislation to standardise tobacco packaging, and I am interested to see the results of this experiment, particularly with regard to smoking amongst young people and the impact on small businesses, if any. I know that the Government has worked closely in the past with retailers large and small to help them to adjust to changes limiting the sale and advertisement of tobacco products. In the event of a change in the law I would hope to see this approach continue.

For the record, I have received no representations on this issue from any delegation with opposing arguments. I would be most grateful if you could acknowledge receipt of this submission.

Kind regards



Jane Ellison  
Member of Parliament  
Battersea, Balham & Wandsworth



✉ House of Commons, London, SW1A 0AA  
↑ [www.parliament.uk](http://www.parliament.uk)  
☎ 020 [redacted] (Westminster)  
☎ 020 [redacted] (Constituency)

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Direct Tel: [REDACTED]  
Fax: [REDACTED]  
email: [REDACTED]@durham.gov.uk  
Your ref: KC/cc  
Our ref: Plain Packaging



Durham & Chester le Street Health Network  
Room 2/122  
County Hall  
Durham  
DH1 5UG

19 November 2013

Dear Sir/madam,

## **SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS**

To [REDACTED]@gsi.gov.uk

Health Networks are a grouping of local activists from statutory and Voluntary organisations in localities across County Durham that are committed to improving the health & wellbeing of local people. We are one such grouping in the Durham and Chester le Street locality in the County.

We would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

Around 340,000 children in the UK try their first cigarette every year. Smoking starts not as an adult choice but in childhood through experimentation, at an age when children have little grasp of the health risks from middle age nor the speed with which addiction takes hold. The average age for smokers starting in the North East is just 15, with 43% of smokers starting between the ages of 10 and 14.

Smoking still remains the largest cause of premature death, disease and health inequalities in the North East, killing 11 people a day and costing at least £210m a year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism. Within County Durham the cost is estimated to be £21 million a year and smoking attributable deaths in County Durham are higher than the north east average.

Based on this level of harm to individuals, our communities and the North East region, we believe plain, standardised packaging of tobacco products to be a proportionate response that would:

Health and Wellbeing Partnership  
Rivergreen Centre  
Aykley Heads  
Durham DH1 5UG

email: [REDACTED]@durham.gov.uk  
www.countydurhampartnership.co.uk/healthpartnership



- Discourage young people from starting to smoke – tobacco firms invest huge sums of money into advertising and marketing their products to recruit new customers, who are nearly always children. Branded tobacco products are viewed as more appealing among young people than plain, standardised packs, which are viewed as less attractive, containing more poisons and of poorer taste.
- Encourage people to stop smoking – plain, standardised packs communicate the harms of smoking far more effectively than branded products, with the health messages more obvious. Packs in the white or silver colours of former “low tar” brands give the false impression to smokers that they can minimise the risks of their smoking, delaying or replacing quitting intentions.
- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people's exposure to smoke from tobacco products.

Having seen these cigarette packaging Health Network members believe it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through these innovative, colourful packaging, similar to the way breakfast cereals, energy drinks or confectionary are marketed.

There is within the Health Network high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We therefore call for Government action to adopt this measure and help to make smoking history for our children.

Yours faithfully



HN Chair

**Durham Dales Health Network**  
Bishopgate Medical Centre  
178 Newgate Street  
Bishop Auckland  
County Durham  
DL14 7EJ

Tel: 01388 [REDACTED]

## **SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS**

To [REDACTED] [gsi.gov.uk](mailto:[REDACTED]@gsi.gov.uk)

We would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

Around 340,000 children in the UK try their first cigarette every year. Smoking starts not as an adult choice but in childhood through experimentation, at an age when children have little grasp of the health risks from middle age nor the speed with which addiction takes hold. The average age for smokers starting in the North East is just 15, with 43% of smokers starting between the ages of 10 and 14.

Smoking still remains the largest cause of premature death, disease and health inequalities in the North East, killing 11 people a day and costing at least £210m a year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism. Within County Durham the cost is estimated to be £21 million a year and smoking attributable deaths in County Durham are higher than the north east average.

Based on this level of harm to individuals, our communities and the North East region, we believe plain, standardised packaging of tobacco products to be a proportionate response that would:

- Discourage young people from starting to smoke – tobacco firms invest huge sums of money into advertising and marketing their products to recruit new customers, who are nearly always children. Branded tobacco products are viewed as more appealing among young people than plain, standardised packs, which are viewed as less attractive, containing more poisons and of poorer taste.
- Encourage people to stop smoking – plain, standardised packs communicate the harms of smoking far more effectively than branded products, with the health messages more obvious. Packs in the white or silver colours of former "low tar" brands give the false impression to smokers that they can minimise the risks of their smoking, delaying or replacing quitting intentions.
- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people's exposure to smoke from tobacco products.

Having seen these cigarette packaging Health Network members believe it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently

***Better health & wellbeing for people in the Durham Dales***

marketed through these innovative, colourful packaging, similar to the way breakfast cereals, energy drinks or confectionary are marketed.

There is within the Health Network high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We therefore call for Government action to adopt this measure and help to make smoking history for our children.

Yours faithfully



A handwritten flourish or scribble consisting of a single continuous line that loops around and ends in a small dot.



Chair  
Durham Dales Health Network

East Durham Area Action Partnership  
DCC Offices  
Spectrum 8  
Spectrum Business Park  
Seaham  
SR7 7TT

## SUBMISSION SUPPORTING PLAIN, STANDARDISED PACKAGING OF TOBACCO PRODUCTS

To @gsi.gov.uk

East Durham Area Action Partnership encompasses the boundaries of the Former Easington District Council, with a population of over 94,000. The AAP Partnership Board has 21 Members with representation from the Community, Elected Members and stakeholder partners including Durham County Council, Health Authority, Police, Fire Service and Local Business.

A considerable investment has in the past targeted the reduction in the use of tobacco, the success of which has seen Easington move from the worst position in England to the national average 2005 (38%) down to 2008 (24.1%).

Smoking is a major contributor to Coronary Heart Disease (CHD) and many Cancers. Our rate of deaths due to CHD and Cancers has correspondingly fallen over the last six years by 27% for CHD and 9.5% for Cancers. However we still have a high rate of pregnant mums who smoke

We would like to express our strong support for measures to introduce plain, standardised packaging for all tobacco products in the UK as part of the current Government consultation.

We fully support introducing here in the UK the same type of plain packaging that is being implemented in Australia in December 2012 - tobacco products with no branding, a uniform colour and standard font and text for writing on the pack. We believe these would bring public health benefits over and above those from current initiatives in the UK.

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Smoking still remains the largest cause of premature death, disease and health inequalities in the North East, killing 11 people a day and costing at least £210m a year to the NHS and economy through treating smoking related conditions, second hand smoke and the loss to businesses through smoking related sickness and absenteeism. Within County Durham the cost is estimated to be £21 million a year and smoking attributable deaths in County Durham are higher than the north east average.

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- Discourage people who have quit or are trying to quit smoking from relapsing – the temptation of brands increase the pressure on former smokers not to stay quit.
- Reduce people's exposure to smoke from tobacco products.

Having seen these cigarette packaging the AAP believes it is wrong that a product that contains over 4000 chemicals, including at least 80 known to cause cancer, is currently marketed through these innovative, colourful packaging, similar to the way breakfast cereals, energy drinks or confectionary are marketed.

There is within the AAP high public support to protect children from tobacco marketing and do more to discourage children from taking up smoking. We therefore call for Government action to adopt this measure and help to make smoking history for our children.

Yours faithfully

[Redacted signature]

[Redacted name]



## EUROPEAN CARTON MAKERS ASSOCIATION

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### **European Carton Makers Association (ECMA) response to Department of Health consultation on standardised packaging of tobacco products**

ECMA is the established forum and officially recognised umbrella organisation for national carton associations throughout Europe, including the UK. Founded in 1960 to promote the interests of one of the most diverse sectors of the packaging industry, ECMA today represents approximately 500 carton producers which account, by volume, for 90 per cent of the total European market, both tobacco and non-tobacco products. The total EU turnover for the sector as a whole is € 9 billion (£7,2 billion). Further information about ECMA and its members is available at [www.ecma.org](http://www.ecma.org).

ECMA can offer the Department of Health the expertise of its members in the manufacture of tobacco packaging. It is the packaging industry that would ultimately implement a standardised packaging policy. As a consequence, we have a unique perspective that can help the UK Government to make a balanced assessment of the likely consequences of Standardised Packaging.

ECMA supports the Government's efforts to ensure that UK policy protects public health. However, we oppose the possible introduction of standardised packaging<sup>1</sup> as an option because it lacks clear evidence to support claims of public health benefit and also carries significant negative unintended consequences. While the public health benefits of Standardised Packaging are uncertain, we are certain that it would lead to the simplification of the carton manufacturing process to a point where counterfeiting becomes significantly easier and cheaper.

#### **Inadequate Impact Assessment**

We are concerned that the risk that standardised packaging will increase the supply of dangerous counterfeit tobacco products has not been examined by the Government in sufficient detail. The Impact Assessment, published alongside the consultation document, does not adequately explore the effects of standardised packaging on illicit trade. It is discussed only briefly in paragraphs 75 to 78 of the consultation. This analysis quantifies the impact of a 1 per cent increase in market share of illicit trade, but does not explore the precise impact of a standardised packaging policy on the illicit market.

In fact, we can see from the Impact Assessment that the UK Government has underestimated the role that complexity through branding and functionality of cigarette cartons has as the first line of defence in counterfeiting. In paragraph 78 the impact assessment states that 'It may be argued that standardised tobacco packaging would be easier and cheaper to copy, so increasing the supply of illicit tobacco. **Standardised tobacco packs would still need to carry coloured picture warnings as**

<sup>1</sup> Option 2 set out in the Department of Health consultation on standardised packaging for tobacco products.



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well as covert markings [ECMA emphasis]'. It is clear from this extract that the Government's analysis assumes that pictorial health warnings on cigarette packaging are a deterrent to counterfeiters. **This is not the case:** Pictorial health warnings pose no real barrier to counterfeiters because they can be produced (and reproduced) using low-cost printing techniques from equipment that is readily available in the market and using four basic print colours only. They are in no way comparable to branding in their complexity and for this reason they cannot be considered an effective anti-counterfeiting measure.

In response to the consultation this letter addresses the questions in the consultation document relevant to the packaging industry, in particular questions 7 (costs of standardised tobacco packaging for manufacturers) and question 11 (unintended consequences of standardised tobacco packaging). The responses to these questions are elaborated in the paragraphs below.

**Standardised Packaging policies will have unintended consequences which will undermine the UK's efforts to protect public health**

Counterfeit cigarettes - an unregulated and untaxed product often manufactured and supplied by international criminal networks - are already a significant problem in the UK. **According to HMRC figures, smuggling of cigarettes, including counterfeits, costs the UK in the region of £1.4 billion per year in lost revenue<sup>2</sup>. The impact assessment estimates that the illicit products constitute approximately a 10 per cent market share in the UK.**

As an organisation that has substantial expertise in the manufacture of folding cigarette cartons, we are concerned that Standardised Packaging will have the unintended consequence of exacerbating the existing illicit trade problem in the UK. Standardised Packaging will increase the production and supply of counterfeit cigarettes on the market by lowering barriers to market entry, increasing the economic incentive for counterfeit supply, and limiting the capacity for consumers to differentiate between genuine and illicit products.

The result will be more availability of a lower cost, potentially dangerous product which is contrary to various UK policy objectives from consumer health to combating cross-border illicit tobacco trade.

Standardised Packaging will provide the following benefits for counterfeiters:

**1. Standardised Packaging lowers barriers to market entry for counterfeiters.**

A modern cigarette packet is a sophisticated product which forces counterfeiters to overcome costly barriers in order to produce convincing copies. The production process enables hi-tech printing from state-of-the-art equipment using enhanced design features such as embossing, debossing, hot-foil stamping and UV varnish. It also enables hi-tech functionality such as automated creasing, cutting and gluing which can produce unique packaging features such as rounded edges and push up buttons.

<sup>2</sup> Tackling Tobacco Smuggling - building on our success, A renewed strategy for HMRC and the UKBA, April 2011



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In addition to the constant updating of the overall package design, these features make it more expensive and difficult for illegal manufacturers to make accurate copies which can be passed on to unsuspecting consumers as genuine products. In contrast, Standardised Packaging would keep cigarette package design and functionality static at a level much easier to replicate. Specifically, Standardised Packaging incentivises the counterfeit cigarette trade gifting them two important advantages that they do not currently enjoy:

### **I. Reducing a multiple-step production process to a single step**

- Reducing the number of elements and functionality features on a pack causes the production process to become more simplified. This ultimately takes a highly automated and integrated process using special equipment down to potentially a single inexpensive piece of equipment.
- The level of technical difficulty required to manufacture a Standardised Package simply does not compare to current practice. Specialised production equipment and techniques used to automate systems and enhance print quality like hot foil stamping and embossing, and functionality will be made entirely redundant.
- Today, most tobacco packaging is printed with gravure technology using multiple print towers and spot colours because it offers faster and more consistently higher quality results compared to offset printing. Some specific finishes – like metallic inks and certain structural varnishes – cannot be achieved using offset printing with process colours.

### **II. Lowering the investment required for equipment**

- If the production process becomes simpler, the investment in equipment required to manufacture a standardised or generic pack would be significantly reduced. Without high quality branding, designs and differences in functionality, the expensive gravure technology which is standard in the industry today would not be necessary.
- Normal offset printing is more than capable of delivering a quality standardised pack with graphical health warnings. Offset equipment requires an investment in machinery potentially ten times less than that currently required for gravure technology, meaning it would quickly become the industry standard.
- Counterfeiters will be able to access the offset printing technology at low cost and with relative ease. Additionally, the installation space required for a counterfeit operation will also become many times smaller as the multiple print towers and specialised machinery becomes redundant.

### **2. Standardised Packaging will provide increased economic incentives for counterfeits in the UK market**

The Organisation for Economic Cooperation and Development in its 2007 report 'The Economic Impact of Counterfeiting and Piracy' sets out the economic incentives that drive counterfeiting:





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*'Counterfeiters and pirates target the supply of products where profit margins are high, taking into account the risks of detection, the potential penalties the size of the markets that could be exploited and the technological and logistical challenges in producing and distributing products'<sup>3</sup>.*

Standardised Packaging will create precisely these economic incentives for counterfeiting. It reduces input costs thereby lowering the barriers to market entry, while high taxation ensures that the average retail price of cigarettes in the UK remains high - low cost and high prices will mean high profit margins. In addition, relatively low enforcement penalties makes counterfeit tobacco production and supply a lower-risk activity compared to other criminal enterprises.

All these factors will make the UK market much more attractive to counterfeiting and increase the likelihood that more sophisticated and organised criminal groups will enter the market. This process would undermine the positive work of the HMRC and UKBA in driving down the illicit cigarette trade.

### **3. Standardised Packaging limits the capacity for consumers to differentiate**

Packaging plays a key role in helping consumers, and others, to authenticate a product. Standardised Packaging will undermine this process by limiting the number of anti-counterfeiting features on a cigarette pack. The more complex the pack's design then the more opportunities a consumer has to identify a flaw in a counterfeit pack. Conversely, if packaging is plain or generic then consumers will have limited opportunity to authenticate a legitimate product or identify a counterfeit product; therefore helping counterfeiters to pass their products off as genuine articles.

**The impact of these three points will be a significant increase in counterfeit production and supply onto the UK market. This will lead to three unintended and negative consequences:**

#### **Standardised Packaging will undermine responsible cigarette carton manufacturing**

Responsible manufacturing is a critical element of effective tobacco control. Among other things, responsible manufacturers of cigarette cartons:

- 1) operate in a highly regulated environment driven by the public demands on their clients;
- 2) use only food-use approved inks specially approved by their clients and produced by a limited number of high-tech suppliers; and
- 3) operate comprehensive internal tracking systems that trace production from cradle to client and ensure that no surplus or waste materials from the production process can escape onto the market.

Removing competition from the market by mandating Standardised Packaging will result in a lowering of responsible industry standards that will affect tobacco control efforts. In recent years, ECMA members have invested approximately € 200 million (£ 169 million) in sophisticated state-of-

<sup>3</sup> Organisation for Economic Cooperation and Development, 'The Economic Impact of Counterfeiting and Piracy, 2007, page 15.



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the-art equipment and hi-tech processes which under Standardised Packaging will become redundant leaving a simpler, low-tech industry in its place.

ECMA estimates that under a Standardised Packaging regime as much as 30 to 50 per cent of newly-invested machinery becomes redundant. A change of this scale will create significant spare capacity in the carton manufacturing industry leading to industry consolidation and loss of manufacturing jobs across the EU, including in the UK. Meanwhile, the manufacture of folding cigarette cartons will transfer to markets with lower costs and, crucially, lower standards of security and traceability. Responsible manufacturing will be replaced with low-tech automation and increased competition from counterfeits.

### **Standardised Packaging will increase the risk of exposure to dangerous products**

Responsible manufacturers produce products in a highly regulated environment with a restricted supply chain that is subject to safety regulations. Counterfeit cigarettes are produced in an unregulated environment where there are no controls over hygiene, ingredient composition or the level of toxic materials. Instead of food-grade inks, for example, counterfeit packaging uses the cheapest inks available on the market.

Also, it is well documented that counterfeit cigarettes produce higher emissions of toxic heavy metals<sup>4</sup>. Standardised Packaging will increase the volume of these cigarettes in the UK, while simultaneously making it harder for smokers to identify them because genuine packs will be largely indistinguishable without unique design features.

### **Standardised Packaging will further deplete public finances**

Cigarettes are a highly taxed product subject to both VAT and excise duties. As a result, cigarettes contribute a significant amount of money to public funds. According to the Government's own figures, illicit trade costs the public purse an estimated £1.4 billion per year<sup>5</sup>. An increased supply of cheap, easily accessible and hard to distinguish counterfeits will further increase this cost to public funds.

### **Conclusion**

As responsible manufacturers of cigarette cartons, ECMA's members acknowledge and support the Government's public health objectives. However, as packaging experts we know that a Standardised Packaging policy will expose UK consumers to higher volumes of dangerous counterfeit goods. This will result from a growing volume of counterfeit production fuelled by:

- **Lower barriers to entry for counterfeiters** resulting from lower input costs.

<sup>4</sup> Source and health implications of high toxic metal concentration in illicit tobacco products, Environmental Science Technology, 39 (2), pp. 479, 488.

<sup>5</sup> Tackling Tobacco Smuggling – building on our success, A renewed strategy for HMRC and the UKBA, April 2011



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- **Increased economic incentives for counterfeits on the market** attracting organised criminal gangs with established distribution networks.
- **Limited capacity to authenticate genuine products** making it easier for counterfeit goods to be passed off as genuine product.

This scenario has three significant negative effects:

- **Loss of responsible manufacturing of tobacco cartons in the UK** - standardisation removes competition lowering industry standards and quality packaging moves to other markets;
- **Health risks for consumers** - Counterfeit products are unregulated and there are no controls over hygiene, ingredient composition or level of toxic materials; and
- **Loss to the public purse** - Illicit trade already costs the UK £1.4billion<sup>6</sup> per annum. This is only likely to increase further with Standardised Packaging.

Given the significant drawbacks associated with Standardised Packaging, the Government should explore other options.

We would be happy to meet with the Department of Health to discuss the issues raised in this paper in more detail.

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<sup>6</sup> Tackling Tobacco Smuggling – building on our success, A renewed strategy for HMRC and the UKBA, April 2011

[REDACTED]

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**From:** [REDACTED]@bdi.eu>  
**Sent:** 10 August 2012 11:21  
**To:** Tobaccopacks  
**Subject:** Consultation on standardised packaging of tobacco products  
**Attachments:** BDI Statement revision tobacco directive final.pdf

Dear Sir or Madam,

The Federation of German Industries (BDI) is the leading organization of German industry and industry-related services. It speaks on behalf of 38 sector associations and represents over 100,000 large, medium-sized and small enterprises with a good eight million employees. BDI speaks to political institutions at the national, European and international level.

We respond to the UK consultation since we fear that the envisaged UK policy of standardised packaging has substantial impact on the way business can operate in a free market.

Standardised/Plain packaging constitutes a far-reaching intervention into the fundamental rights of corporations guaranteed on European and international level. The prohibition of using brands and logos for the packaging of tobacco products makes communication and brand design impossible. We believe that standardised packaging is a disproportionate measure which interferes seriously with – inter alia – the right to property and the right to freedom of communication protected by the European Convention of Human Rights and the EU Charter on Fundamental Rights as well as the WTO TRIPS Agreement and the Paris Convention for the Protection of Industrial Property.

Plain packaging may even encourage counterfeiting as it is less expensive to copy, thus providing more opportunities to deceive consumers. It increases the risk that the consumer obtains a product that does not correspond to the specifications and legal requirements. Furthermore, the resulting higher number of imitations and forgeries could also result in declining tax revenue.

We consider this issue as an important development also for other sectors (food, beverages etc.) and for the use of trademarks and brands in general. Please find attached a more detailed statement of our Federation that we submitted to the respective consultation of the EU Commission in 2010 for your information.

Yours sincerely,

[REDACTED]

[REDACTED]  
[REDACTED]

Managing Director – Law and Insurance  
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## Stellungnahme

### Statement regarding the public consultation on the possible revision of the Tobacco Products Directive 2001/37/EC, DG SANCO

The Federation of German Industries shares the DG SANCO's intention to improve the protection of public health within the European Union. Nevertheless, the Federation of German Industries is opposed to an substantial part of the options proposed.

Dokumenten Nr.  
D 0398

Datum  
14. Dezember 2010

Seite  
1 von 5

The Federation of German Industries shares the DG SANCO's intention to improve the protection of public health within the European Union. Especially tobacco products bear substantial health risks for active and passive smokers. The Tobacco Products Directive 2001/37/EC therefore already contains measures to prevent EU citizens from smoking.

We nevertheless have doubts whether all of the proposals – described as options – in the consultation for a revision of the relevant Directive are appropriately balanced.

As the umbrella organization of German industry we would like to focus our answers on a number of basic legal problems.

These are as follows:

- 1) The EU's lack of competence as regards this regulation
- 2) Part 3 of the consultation: Consumer Information and
- 3) Part 6: Access to Tobacco Products.
- 4) Last not least, we would like to add some general political remarks.

#### 1) Competence

##### a) Art. 168 TFEU

Competence according to Art. 168 al. 5 AEUV is lacking. According to Art. 168 Para. 5 TFEU the EU is only allowed to act in a supportive and coordinating manner. Art. 168 Para. 5 TFEU states:

„The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may also adopt incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, measures concerning monitoring, early warning of and combating serious cross-border threats to

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health, and measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonization of the laws and regulations of the Member States“.

The responsibility for healthcare policy therefore remains with the Member States (cf. Art. 2 Para. 5 and Art. 6 TFEU). The EU may take measures that are aimed at the protection of the population's health. Nevertheless, such binding legal acts are not allowed to contain a harmonization of the statutory provision of the Member States, nor can the EU's competence replace the Member States' competence (Art. 2 Para. 5 TFEU). The measures proposed in the consultation (e.g. the introduction of plain packaging for cigarettes or the ban of cigarette vending machines) can only be realized by harmonizing laws in the MS. They are not just measures to enhance public health.

#### b) Art. 114 TFEU

According to Art. 114 TFEU, the Commission has the competence to harmonise laws and regulations in the MS necessary for the functioning of the internal market. According to Art 114 Para. 1 TFEU, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. As there are no statutes in any Member State which prescribe plain packaging for tobacco products, there is no basis for an adoption of such measures.

Furthermore, the focus on public health is not an issue for the functioning of trade in the internal market. Competence for the regulation can therefore not be based on Art. 114. The fact that national rules vary is not enough to justify EU regulation (see ECJ 5. October 2000 (Tobacco Advertising Directive) Case - 376/98 Germany/Parliament and Council ECR 2000, I-8419).

#### c) Art. 5 Para. 3 EU Treaty

The proposals do not even conform to the principle of subsidiarity (Art. 5 Para.3 EU Treaty). According to the subsidiarity principle set out in Art. 5 Para. 3 EU Treaty the EU shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States. There is no evidence that MS are not able to protect their citizens from the risks of smoking. Germany, for instance, and also a number of other EU Member States have recently adopted laws for non-smoking in public areas and restaurants. In view of the measures at the disposal of the MS any activity by the EU would not be permitted.

### **2) Part 3 of the consultation: Consumer Information**

In Germany as in all other MS all cigarette packages already contain warnings about the risks of smoking („Smoking kills“ or similar). It covers a third of the packaging but leaves enough space for the manufacturers to

present their trademark. The use of these trademarks is protected in line with Art. 17 Para. 2 EU Charter of Fundamental Rights.

a) Art 17 Para. 2 EU Charter of Fundamental Rights

The introduction of plain packaging would not be consistent with Art. 17 EU Charter of Fundamental Rights. According to Art. 17 „everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest“. According to Art. 17 Para. 2 Charter of the Fundamental Rights intellectual property is also to be protected. The use of property may be regulated in so far as it is for the general interest.

However, although the use of property may be regulated and limited due to general interest, it is widely accepted that the very substance of the right must be guaranteed.

b) Decision of the European Court of Justice (C-491/01, Para. 149)

In its judgement of December 10, 2002(C-491/01) on the validity of the Directive 2001/37/EC the European Court of Justice decided that the „right to property... is not an absolute right and must be viewed in relation to its social function. Consequently, its exercise may be restricted, **provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed**“ (Para. 149).

The Court therefore stated that the fundamental value of the brands for the tobacco manufacturers must be respected. Strong brands are the most valuable asset for tobacco industries. Plain packaging as described under option 3 would deprive the brand holders of their brands' value. Not only the way a brand is used would be affected but also the essential content of the brand itself. The possibility to distinguish products from other competitors' products would be reduced to practically zero. The brand as a sign of quality, origin and distinction would no longer be guaranteed .

c) Infringement of German Constitution

The introduction of plain packaging would also infringe several articles set out in the German Constitution:

- Plain packaging would infringe the core function of Art. 14 Para. 1 German Constitution. The unique and distinctive impression presented by different packaging would be undone by a unified packaging. The trademark's role as an indication of origin, the function of distinction, as well as the function of assignment would be eliminated.
- Plain packaging would infringe the freedom of expression guaranteed by Art. 5 German Constitution as the communication

conveyed by the packaging design and the communication conveyed by the trademarks would be eliminated.

- Plain packaging would also infringe Art. 12 and Art. 2 German Constitution (freedom of occupation and freedom of competition) as the external presentation of cigarette manufacturers would be limited and the discernability of the trademarks would be annulled.

### **3) Part 6 of the consultation: Access to Tobacco products**

Subject to the provisions of competence for the Commission as mentioned in part 1) we would like to respond to the proposals in part 6 as follows:

#### **a) Art. 15 and 16 EU Charter of Fundamental Rights**

Option 3 (banning sales and promotion in retail stores) should be re-considered with regard to the freedoms provided by the EU Charter. These bans would conflict with Art. 16, the freedom to conduct a business, and Art. 15, the freedom to choose an occupation and the right to engage in work.

#### **b) Art. 17 Para. 2 EU Charter**

A ban on promotion and displays in retail stores should also be considered under Art. 17 Para. 2 of the EU Charter. We doubt that a ban on advertising, even within specialised retail stores, would be appropriate and conform to Art. 16 and Art. 17 Para. 2 EU Charter.

We are therefore opposed to the proposed option 3 within part 6.

### **4) General remarks**

Reliable and useful information should be the basis for consumers to make proper decisions. Within the legal framework consumers may be encouraged to behave responsibly and in a manner conducive to health. Nevertheless, in the end the consumer has to decide for himself. The consumer cannot be forced to change his behaviour even though his or her behaviour might not make sense to others. But this freedom of decision plays a key role in self-determination and is fundamental to democratic societies.

Furthermore, the European Court of Justice itself acts on the assumption that the average consumer is reasonably well-informed and reasonably observant and circumspect. Plain packaging and the ban on promotion and displays in retail stores, as well as the ban on vending machines, would be at odds with this modified consumer approach.

Even given the EU Commission's lack of competence for regulations in the field of public health (see above), such an extensive proposal is not justified. Even though the proposal would be disproportional. Less burdensome measures could result in an appropriate effect. Above all it has not been proved that plain packaging will prevent people smoking. Nowadays people are reasonably well informed about the risks of smoking.



e.g. cancer. Nevertheless, many people remain ignorant of the dangers and an inclination to tempt fate is widespread. But the EU Charter also recognizes the right of freedom and self determination for EU citizens. It is not for the state to exert such a strong influence on the decisions of individuals.

Plain packaging may even encourage counterfeiters as it is less expensive to copy, thus providing more opportunities to deceive consumers. In the case of generic packaging it would be much easier and less cost-intensive to produce forgeries. The resulting higher number of forgeries would mean a drop in tax revenue. In addition, the risk would be greater that the consumer would consume a product that does not correspond to the specifications and legal requirements.

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 10 August 2012 18:35  
**To:** Tobaccopacks  
**Subject:** In support of tobacco plain packs

To UK Health Minister Andrew Lansley,

Andrew, I have a deeply personal interest in this campaign as I began my working life in 1967 at the Air Pollution Research Unit in London. Godber the MOH who was instrumental in setting up the NHS knew that the legacy of the war was smoking related diseases and Richard Doll's studies showed that definitively. So why are we still tolerating smoking today and why are we so parsimonious when it comes to driving it out of people's lives. I have spent a quarter of a century working on social housing estates and I have seen the impact of nicotine addiction on the lives and incomes of poor people. We need stop the debilitating effect of bronchitis, COPD, coronary heart disease and lung cancer on as many as possible.

Lets do the right thing and do all in our power to drive smoking out of existence.

--  
[REDACTED]  
United Kingdom

Note: [REDACTED] sent you this message as part of an Avaaz campaign to support plain packs in the UK [http://www.avaaz.org/en/our\\_lungs\\_vs\\_sam/?reply](http://www.avaaz.org/en/our_lungs_vs_sam/?reply). To respond, please e-mail [reply+plainpacks@Avaaz.org](mailto:reply+plainpacks@Avaaz.org)

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