EL200

Department of Health

Llywodraeth Cymru
Welsh Government

The Scottish Government
Riaghaltas na h-Alba

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

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

a. Are you responding (required):

☐ As a member of the public (go to question b)

☐ As a health or social care professional (go to question b)

☒ On behalf of a business or as a sole trader (go to question c)

☐ On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

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

Name of organisation (required):

Simmons & Simmons LLP

Name of person providing submission (required):

[redacted]

Job Title (required):

Senior Communications and PR Executive

Contact address of organisation (required):

CityPoint, One Ropemaker Street, London, EC2Y 9SS

Contact email address (required):

[redacted]om

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

☒ Yes

☐ No

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

☐ Tobacco retailer (supermarket)

☐ Tobacco retailer (convenience store)

☐ Tobacco retailer (other type of shop or business)

☐ Specialist tobacconist

☐ Duty free shop

☐ Wholesale tobacco seller

☐ Tobacco manufacturer

☐ Retailer not selling tobacco products

☐ Pharmaceutical industry

☐ Business involved in the design or manufacture of packaging

☒ Other (please provide details below)

If other, please tell us the type of business:

Firm of solicitors

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

☐ NHS organisation

☐ Health charity/NGO (working at national level)

☐ Local Authority

☐ Local Authority Trading Standards or Regulatory Services Department

☐ Local tobacco control alliance

☐ Retail representative organisation

☐ Industry representative organisation

☐ Other type of business representative organisation

☐ University or research organisation

☐ Other (please provide details below)

If other, please tell us the type of organisation:

f. **Does your response relate to** (required):

☒ United Kingdom

☐ England only

☐ Scotland only

☐ Wales only

☐ Northern Ireland only

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

☐ No

☒ Yes (please describe below)

If yes, please describe:

As an international law firm, we act for the owners and licensees of some of the most famous global brands. Our clients operate in variety of industry sectors and they include tobacco companies. The views expressed in our response are those of this firm and not necessarily of any of our clients.

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

Consultation questions

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

Please see attached letter.

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

N/A

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

Please see attached letter.

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

N/A

Thank you for participating in this consultation.

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

How to get involved in the consultation

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

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

Completing the online form on the Department of Health website at:
http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1

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- **Emailing your response to:**

  TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

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

Simmons & Simmons

Simmons & Simmons LLP CityPoint One Ropemaker Street London EC2Y 9SS United Kingdom

06 August 2014

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

Dear Sirs

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

We wish to respond to the UK Department of Health's Consultation on the introduction of regulations for standardised packaging of tobacco products, launched on 26 June 2014.

Simmons & Simmons LLP is an international law firm which advises owners and licensees of some of the most famous global brands. Our clients operate in a variety of industry sectors, and they include tobacco companies. The views expressed in this letter are those of this firm and not necessarily of any of our clients.

We understand and are mindful of the importance of improving public health, and in particular the desire to protect children and young adults. However, we are concerned that the draft Regulations would breach international treaties and EU laws, fragment the EU internal market, deprive rights holders of their fundamental rights and facilitate an increase in counterfeit tobacco products.

Accordingly, our comments are particularly relevant to questions 1 and 3 of the Consultation.

The Chantler Review

The Chantler Review was limited in scope and does not address important legal issues that were identified by stakeholders in response to the 2012 consultation on standardised packaging[1]. We therefore request that due consideration is given to these concerns:

Breach of the United Kingdom's obligations under TRIPS

Under TRIPS, the UK is required to ensure that "*the use of a trade mark in the course of trade shall not be unjustifiably encumbered by special requirements, such as…use in a special form or use in a manner detrimental to its capability to distinguish goods or services of one undertaking from those of other undertakings*"[2].

[1] Paragraph 15 on page 6, Paragraph 1.2 on Page 10 and Paragraph 2.9 on page 17 of the Chantler Review
[2] Article 20 of TRIPS

The rights of tobacco brand owners to use their trade marks would be significantly encumbered by the Regulations. Rights holders would be prevented from using any logo, device or stylised word marks in connection with tobacco products. This is not justifiable under TRIPS unless it is "*necessary to protect public health ... provided that such measures are consistent with the provisions of [TRIPS]*"[3].

The Chantler Review does not appear to have uncovered evidence that meets that test. It states that "*the introduction of standardised packaging as part of a comprehensive policy of tobacco control measures would be very likely over time to contribute to a modest but important reduction in smoking*"[4]. It is far from certain that standardised packaging will have an impact on the prevalence of smoking. The effect is only "*likely*" and only then if it is part of a range of measures, suggesting that, absent adequate additional measures, standardised packaging alone may have no effect on the prevalence of smoking. Furthermore, any combined effect would only be "*modest*" in nature. Indeed, Sir Cyril acknowledges that "*research cannot prove conclusively that a single intervention such as standardised packaging of tobacco products will reduce smoking*" and that there are "*various confounding factors which are known to affect smoking*"[5].

Accordingly, it would be disproportionate to encumber trade mark owners' rights in the manner proposed in the Regulations on the basis of the above conclusions of the Chantler Review.

It should also be remembered that Cuba, Ukraine, Indonesia, Honduras and Dominican Republic are currently in the process of challenging the introduction of plain packaging in Australia before the World Trade Organisation on the basis that such legislation is in breach of TRIPS.

Impairment of trade mark function

The Trade Marks Directive 89/104/EEC and Trade Marks Act 1994 define a trade mark as "*any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings. A trade mark may, in particular, consist of any words (including personal names), designs, letters, numerals, the shape of goods or of their packaging*".

A trade mark may comprise logos, devices, stylisations and colours – all of which indicate the origin of the goods or services for which the marks are registered and facilitate a consumer in distinguishing goods from one originator to another. This "origin function" of a trade mark also assures the consumer of the quality of the product that he/she is purchasing, on the basis that it will be the same as previous products purchased under that same trade mark. Businesses invest significant time and expenditure in developing distinctive brands which enable consumers easily to distinguish their products from those of others.

By preventing the use of trade marks (save for a plain word mark) in connection with tobacco products, the ability of consumers readily to distinguish one brand from another will be significantly impaired and so consumer confusion will increase.

Breach of UK and EU fundamental rights

Article 17(1) of the Charter of Fundamental Rights of the European Union (which has been legally binding on the UK government since 01 December 2009 pursuant to the Lisbon Treaty), states that "*everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions*".

[3] Article 8(1) of TRIPS
[4] Paragraph 6.11 on page 40 of the Chantler Review
[5] Paragraph 6.11 on page 40 of the Chantler Review

As a matter of English and EU Law[6], trade marks are akin to tangible property and should be covered by Article 17(1), and Article 17(2) clarifies that "*intellectual property shall be protected*".

Article 17(1) foresees derogation from this fundamental right as acceptable only where it is "*in the public interest and.....subject to fair compensation being paid in good time for their loss.*" Furthermore, "*use of property may be regulated by law in so far as is necessary for the general interest.*"

As stated above, the Chantler Review has not found proof of the benefit of standardised packaging and it does not sufficiently demonstrate that its introduction is "necessary". It concludes that any reduction in the number of smokers occurring as a result of standardised packaging (and only if used in conjunction with other measures) would likely be "*modest*".

It would be inappropriate to remove a fundamental right on the basis of the possibility of a hypothetical modest benefit. Such action would also reduce confidence in the UK Government's respect for such fundamental rights in other industry sectors.

Moreover, the Regulations do not appear to address the issue of compensation for rights holders who have made substantial investments in their brands.

Increase in counterfeiting

The purchasing of counterfeit products is on the increase in the UK[7] and counterfeit tobacco products are a pressing concern, both in terms of public health (counterfeit products are unregulated) and infringement of IP rights.

The Chantler Review dismisses the idea that standardised packaging makes it easier to produce counterfeit products. We respectfully submit that it is entirely logical that a plain box with plain text is easier to reproduce than one which bears a complex or stylised logo, textured packaging, holograms or other technically difficult effects and particular colour variations.

Counterfeiting should not be regarded as something which happens only in "*fag houses*" or other insalubrious surroundings. By making it easier to reproduce the packaging for tobacco products the risk of counterfeits entering the legitimate supply chain increases.

Regulations

We note that sections 14-18 of the draft Regulations seek to address legal issues raised by stakeholders during the 2012 consultation regarding the registration and maintenance of trade marks for use on tobacco products.

In particular, the Regulations state that a trade mark registration may not be revoked on the basis of non-use under section 46 of the Trade Marks Act 1994 if, but for the Regulations, the mark would be used. The Regulations also purport that applications for trade marks for tobacco products should not be prevented from being registered purely because they cannot in fact be used, in an attempt to overcome the requirements of section 32(3) of the Trade Marks Act 1994 or because they cover tobacco products in an attempt to overcome the requirements of Article 7 of the Paris Convention and Article 15(4) of TRIPS.

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[6] Sections 2(1) and 22 of Trade Marks Act 1994. Similar provisions exist under the Trade Marks Directive 89/104/EEC and the Community Trade Mark Regulation 207/2009/EC. See also *Anheuser-Busch Inc. v Portugal 73049/01*

[7] A recent report by Price Waterhouse Cooper indicates that 13% of consumers admitted to buying counterfeit cigarettes. In 2012, almost 40 million products were detained by EU customs with an estimated value of nearly €1 billion, according to the EU Commission's annual report of customs actions.

Amending trade mark law in the manner envisaged by the Regulations will have far reaching implications which do not appear to have been fully considered. In our view the Regulations are: (i) contrary to EU law; (ii) inconsistent because they seek to apply to UK registrations but not Community trade marks (notwithstanding that the laws for Community trade marks and UK trade marks are intended to be harmonised); (iii) fragment the internal market; (iv) create legal uncertainty; and (v) adversely affect additional rights afforded to trade marks with a reputation.

First, the Trade Marks Directive 89/104/EEC, which has been implemented in the UK via the Trade Marks Act 1994, introduces harmonised trade mark laws across all member states in respect of national registrations. Pursuant to that Directive, a trade mark may be revoked if there has been no genuine use for a continuous period of five years. The position proposed under the draft Regulations for UK trade mark registrations for tobacco products is directly contrary to this position. If challenged before the Court of Justice of the European Union, the draft Regulations would most likely be set aside on the grounds that they are inconsistent with (and the UK has deliberately derogated from) the Directive. If that occurs, all of the issues raised in previous consultations regarding the revocation, invalidity and registrability of tobacco marks due to non-use will apply.

Secondly, the provisions in the draft Regulations regarding non-use apply only to UK trade mark registrations under the Trade Marks Act 1994 as interpreted in the UK. The Regulations do not take into account the interplay between UK trade marks and Community trade marks, the latter of which are subject to the Community Trade Mark Regulation 207/2009/EC. Under the current system a trade mark owner can rely on a UK trade mark registration to oppose a Community trade mark application and vice versa. However, the inconsistencies between the position under Community law for Community trade marks and the proposed law for UK trade marks will give rise to significant issues in this regard. For example, a trade mark owner may seek to rely on its UK trade mark registration for tobacco products against a new Community trade mark application for a similar mark, and the applicant of that mark may defend such opposition by counter-claiming that the UK trade mark is not relevant because it has not been used. The Office for Harmonisation in the Internal Market (which is responsible for the registration of Community trade marks) would assess the merits of the opposition and the counter-arguments on the basis of Community trade mark law. Under Community trade mark law, a mark which has not been used during a continuous period of five years is vulnerable to revocation. As such, the counter-argument may be successful notwithstanding the provisions in the draft Regulations and the Community trade mark application may proceed to registration. Consequently, the inconsistencies between Community and UK trade mark law which would be introduced by the draft Regulations would unfairly prejudice trade mark owners' ability to rely on their marks effectively at a Community level. Further, an owner of both UK and Community trade marks who seeks to enforce them in a designated Community trade mark court in the UK, would be faced with having to prove use of the Community trade mark (even if that use were only in the UK), but not of the UK registration.

Thirdly, the proposed revisions to UK trade mark law would result in a lack of harmonisation of trade mark law across the EU and a fragmentation of the internal market preventing the free movement of goods into the UK from other EU member states. This would directly undermine the purpose of the Trade Marks Directive 89/104/EEC and the Treaty on the Functioning of the European Union 2012/C326/01.

Fourthly, the proposed changes may create legal uncertainty. Under the Regulations a registration cannot be invalidated or revoked for non-use if the owner can demonstrate that, but for the Regulations, it would have used the relevant mark. It is unclear how this could be demonstrated. Simply because a mark is in use today does not mean that it would still be in use at a later date, but for the Regulations. Any number of factors may have resulted in the retirement of that brand. Similarly, how would an owner of marks registered after the Regulations are introduced be able to demonstrate that it would have used the mark but for the Regulations?

Such a registration may simply be a defensive registration made in the knowledge that it would be difficult to be invalidate or revoke it for non-use due to the Regulations.

Fifthly, the Regulations do not purport to deal with marks with reputation, which are entitled to greater protection, including against goods and services in other classes (i.e. non-tobacco products). The owner of a trade mark registration for Class 34 goods (i.e. tobacco products) is currently able to enforce it against, say, trade marks for beverages or bed linen, if certain requirements are met. Without use of the trade marks in the UK, any existing reputation in those trade marks will evaporate over time, removing existing rights enjoyed by trade mark owners.

It is worth remembering that the Tobacco Products Directive 2014/40/EU already contains strict requirements for the packaging of tobacco products. In particular, that: (i) combined health warnings for tobacco products should cover 65% of both the external front and back surface of the packet and any outside packaging[8]; (ii) no feature of the packaging should promote a tobacco product or encourage its consumption by creating an erroneous impression about (amongst other things) its characteristics and health effects[9]; (iii) packaging should not resemble food or cosmetics[10]; (iv) packaging should not suggest that a particular tobacco product is less harmful or has other health or lifestyle benefits[11]; (v) member states shall prohibit the marketing of tobacco products with a characterising flavour or containing flavourings in any of their components[12]; and (vi) packaging should not refer to taste, smell, flavourings or additives[13]. These are robust measures and should themselves help to address a number of the issues Sir Cyril raises in connection with the packaging of tobacco products and their impact on the prevalence of smoking. We therefore urge the UK government first to assess the impact of the new requirements of the Tobacco Products Directive, before introducing further changes which raise significant legal concerns.

In light of the fundamental legal issues identified above, we believe that it is premature to be drafting Regulations implementing standardised packaging and we trust that the UK Government will give due consideration to these issues.

Yours faithfully

[redacted]

[8] Article 10 of the Tobacco Products Directive
[9] Article 13 of the Tobacco Products Directive
[10] Article 13 of the Tobacco Products Directive
[11] Article 13 of the Tobacco Products Directive
[12] Article 7 of the Tobacco Products Directive
[13] Article 13 of the Tobacco Products Directive

EL 201

Department of Health

Llywodraeth Cymru
Welsh Government

The Scottish Government
Riaghaltas na h-Alba

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

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

a. Are you responding (required):

☐ As a member of the public (go to question b)

☐ As a health or social care professional (go to question b)

☐ On behalf of a business or as a sole trader (go to question c)

☒ On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

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

Name of organisation (required):

National Federation of Retail Newsagents (NFRN)

Name of person providing submission (required):

[redacted]

Job Title (required):

Public Affairs Executive

Contact address of organisation (required):

Yeoman House, Sekforde Street, London, EC1R 0HF

Contact email address (required):

[redacted]

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

☒ Yes

☐ No

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

☐ Tobacco retailer (supermarket)

☐ Tobacco retailer (convenience store)

☐ Tobacco retailer (other type of shop or business)

☐ Specialist tobacconist

☐ Duty free shop

☐ Wholesale tobacco seller

☐ Tobacco manufacturer

☐ Retailer not selling tobacco products

☐ Pharmaceutical industry

☐ Business involved in the design or manufacture of packaging

☐ Other (please provide details below)

If other, please tell us the type of business:

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

☐ NHS organisation

☐ Health charity/NGO (working at national level)

☐ Local Authority

☐ Local Authority Trading Standards or Regulatory Services Department

☐ Local tobacco control alliance

☒ Retail representative organisation

☐ Industry representative organisation

☐ Other type of business representative organisation

☐ University or research organisation

☐ Other (please provide details below)

If other, please tell us the type of organisation:

f. **Does your response relate to** (required):

☒ United Kingdom

☐ England only

☐ Scotland only

☐ Wales only

☐ Northern Ireland only

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

☐ No

☒ Yes (please describe below)

If yes, please describe:

Declaration of Interests

1. In 2012 the NFRN reorganised with the separation of the not-for-profit trade association from its commercial operations, NFRN Commercial Ltd.

The NFRN

2. The NFRN, while working with tobacco manufactures on issues of mutual concern, has no financial links or arrangements with any tobacco manufacturer.

3. The NFRN does work with the Tobacco Retailer Association, Tobacco Manufacturers Association and campaign groups such as "Hands Off Our Packs" and "No Thank EU" on matters of common interest. In August 2013 the NFRN assisted in arranging the distribution of campaign and information packs from the "No Thank EU" campaign to NFRN members across the country.

4. The NFRN does not receive any funding from, nor does it fund, any of these groups.

5. NFRN policy is set by members at its Annual Conference. Members of staff, including those who deal with tobacco manufacturers and campaign groups, are not permitted to take part in the policy debates at the Annual Conference.

6. In the Republic of Ireland, Transatlantic Public Affairs, who also work for Philip Morris, have previously provided no cost public affairs advice to the local NFRN district. They now provide advice for a fee. Such advice is monitored by the Head Office Public Affairs team to ensure compliance with the aims and objectives of the NFRN.

7. The Public Affairs team works for the NFRN and does not have sight of commercial agreements between the NFRN, NFRN Commercial Ltd and third parties, whether they be tobacco manufacturers or not.

NFRN Commercial Ltd

8. NFRN Commercial Ltd, a wholly owned subsidiary operated at arm's length from the NFRN, maintains commercial relationships with most tobacco manufacturers. As a result of these relationships an amount of £30,000 pa is spent by tobacco manufacturers on advertising and sponsorship.

9. As these relationships are with NFRN Commercial Ltd, the companies have no influence over NFRN policy.

10. Senior management have received a modest amount of hospitality from tobacco manufacturers. All such hospitality is recorded and is available for inspection. As members of staff, they do not have any say in the adoption or revision of NFRN policy.

Newtrade Publishing Ltd

11. The NFRN also owns Newtrade Publishing Ltd, publishers inter alia of Retail Newsagent and Retail Express. Newtrade Publishing Ltd is operated as an arm's length organisation, with contact limited to senior NFRN management and the Communications and Public Affairs teams who deal with Newtrade Publishing Ltd staff as normal press contacts. Newtrade Publishing Ltd publications have carried advertising from tobacco manufacturers but this is unrelated to the work of the NFRN.

General Principles

12. While the NFRN, NFRN Commercial Ltd and Newtrade Publishing Ltd believe that it is perfectly legitimate to have business relationships with the manufacturers of legal tobacco products, they are aware of the sensitivity of the sector and the potential for reputational risk. The NFRN and NFRN Commercial Ltd therefore take a conservative approach to these relationships, ensuring that relationships are focused towards achieving the aims and objectives of the NFRN and that all commercial arrangements are proportionate to the service being provided.

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

Consultation questions

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

The NFRN was disappointed that the Chantler Review concluded that a policy of standardised packaging for tobacco products should be introduced.

We do not consider that enough time has passed to be able judge whether the policy has been effective in its aim to prevent children from smoking.

Chantler himself concedes in the report that 'there are limitations to the evidence currently available' which suggests to the NFRN that it would be sensible to wait until further evidence has emerged from Australia, particularly given that the evidence which has emerged suggests that the policy is not having the desired impact.

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

The NFRN is concerned about the impact standardised packaging would have on the illicit trade, in light of emerging evidence from Australia.

A report produced by accountancy firm KPMG found that illicit tobacco consumption as a proportion of total tobacco consumption had increased from 11.8% in June

2012 to 13.3% in June 2013 and 13.9% by December 2013, demonstrating that consumption of illicit products increased after the introduction of standardised packaging.

Furthermore, these findings are supported by official figures from the Australian government which demonstrated that the number of seizures of illicit tobacco increased by 60% between 2011/12 and 2012/13.

Given that illicit tobacco can contain higher levels of chemicals and/or ingredients unfit for human consumption, the impact of standardised packaging on the illict trade needs to be properly analysed before the policy is introduced in the UK as an increase in the illicit market is not only detrimental to legitimate retailers but to public health.

In addition, evidence has suggested that standardised packaging has actually increased tobacco consumption in Australia. In the year since plain packaging was introduced, tobacco companies reportedly sold 0.3% more cigarettes than in the previous year.

Importantly, figures from the Australian Government's National Drug Strategy Household survey also found that the proportion of children smoking daily actually increased during the period when plain packaging was introduced with figures rising from 2.5% in 2010 to 3.4% in 2013.

For these reasons, the NFRN thinks it would be sensible to wait until a fuller picture emerges from Australia before introducing the policy in the UK, as it seems there are a number of undesirable consequences which can result from standardised packaging.

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

The NFRN does not have relevant experience in this area and does not wish to comment.

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

Aside from the evidence provided in the answers to the questions above, the NFRN is not aware of any further evidence which would improve the assumpations made in the impact assesment.

Thank you for participating in this consultation.

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

How to get involved in the consultation

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

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

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  TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

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

EL202

PETROL RETAILERS ASSOCIATION

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

Petrol Retailers Association, August 2014

1. Executive Summary

The Petrol Retailers Association (PRA) welcomes the opportunity to submit to this consultation. Our submission should be read in conjunction with all the other evidence we have provided to the Government on this issue.

The PRA remains seriously concerned this policy will provide significant burdens to independent retailers.

Forecourt retailing is one of the most heavily regulated industries, and further burdensome regulations, alongside the current economic environment continue to hit the sector hard. 1,000 independent forecourts have closed across the UK since 2009.

Tobacco is the second most important product category, after fuel, to the independent forecourt operator and one that is therefore vital to our members. In our latest membership poll, 90% of our members stated they believe direct tobacco sales are important to their bottom line – an increase of 11% on our 2012 survey.

Despite the period of time the Government has taken to examine this policy, it is clear that the potential benefits remain highly uncertain, and costs to business and the exchequer have not been fully assessed. Much of the real-world evidence from Australia has not been included within the Impact Assessment, which instead has relied upon wholly inaccurate assumptions and estimates. Not only would such a procedure to policy making go against the Government's commitment to ensure decisions are made on a robust, evidence-based policy making process, it would also go against the Government's commitment to support business. Implementing policies without a solid evidence base risks the Government opening itself up to significant criticism and other action by the businesses that stand to be seriously impacted.

2. About the Petrol Retailers Association

The Petrol Retailers Association (PRA), part of the Retail Motor Industry Federation, represents 5,500 independent fuel retailers across the UK, many of whom are small rural filling stations. The PRA is committed to helping petrol retailers run their businesses legally and profitably, adapting to new challenges in the market place.

The retail sector makes a key contribution to the economy, supporting jobs in communities across Scotland and the rest of the United Kingdom. Forecourt retailing is one of the most regulated industries and tough economic times, alongside wave after wave of new regulation, means it is much harder for businesses who are already struggling. The latest data from Experian Catalist shows that nearly 1000 independent petrol filling station dealers across the UK having closed since 2009 – nearly 200 each year.

As an association we have made our opposition to standardised packaging clear, on the grounds that it will seriously threaten the economic growth of this country as well as jobs and businesses in our sector. Tobacco is a legal product and is a vital part of the independent forecourt shop sales. After fuel, tobacco remains the second most important product category to forecourt retailers, contributing between 30-50% share of overall revenue. In addition, tobacco regulations often seriously impact retailers, with heavy financial burdens in order to comply.

3. Declaration of links to the tobacco industry

Tobacco manufacturers are amongst the wide range of retail and supplier members of the PRA. The PRA represents the interests and concerns of independent forecourt operators across the UK and we do so without any obligation to commercial interest.

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

As set out within our submission into the Chantler Review, we strongly believe the only evidence which can go some way to determining whether or not this policy is effective in achieving its aim of reducing smoking can be found from the real-life information coming out of Australia.

We were therefore significantly disappointed to see the Chantler Review's conclusions were based upon the original evidence base from the 2012 consultation – the same evidence the Department of Health assessed before stating *"Having carefully considered the different views, the Government has decided to wait until the emerging impact of the decision in Australia can be measured before we make a final decision on the policy in England."*

Whilst Chantler states that *"Australia does not constitute that trial because a number of things have happened together, including tax rises. Disentangling and evaluating these will take years, not months."* It should be possible to disentangle the evidence, and indeed this is likely to be the process the Australian Government will take to evaluate the effectiveness of this policy. We therefore urge the Government to make its decision on whether or not to move ahead based on real-world evidence, rather than on projected estimates and assumptions.

PRA

PETROL RETAILERS ASSOCIATION

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

The tobacco category is of vital importance to independent retailers – particularly forecourts. It is the second most important category after fuel and contributes to between 30-50% of an independent forecourts overall revenue. Any impact on that revenue should not be underestimated. Data from Experian Catalist shows how much the sector has been impacted by the tough economic environment and the increasing number of regulations; nearly 1,000 independent petrol filling station dealers across the UK have closed since 2009 – nearly 200 each year for the past five years. Whilst as the Impact Assessment states *"there are many trends already impacting on small retailers such as confectionary/tobacconist/newsagents"* these are largely driven by the ever-increasing regulatory burdens such as increasing business rates, increased national minimum wage and further taxation on fuel duties.

Retailers are already doing what they can to adapt and future-proof their businesses. In particular, the latest data from the Association of Convenience Stores[1] highlights the signs of emerging growth in the retail sector which grew by 5% from 2012 – 2013. There are now over 49,000 convenience stores in the mainland UK, worth £35.6billion. These shops provide an increasing range of products and services to their local communities – such as home grocery delivery and bill payment services. In addition local shops are a key source of local employment, providing 376,000 jobs nationally. However, these signs of growth should not be misinterpreted. Local shops owners have to work considerable hours - 57% of shop owners work more than 50 hours per week on average, and 28% take less than 10 days holiday per year.

The assumption within the Impact Assessment that *"small retailers, such as CTNs, in order to thrive in this changing world, already need to be planning their future business strategies, considering diversifying and thinking about how to cope with all the trends and shocks that are likely to affect them. Our assumption is that standardised packaging will not add greatly to these needs for future-proofing."* does therefore not take into account the changes they have already made. Standardised packaging will simply add another burden on top of retailers who are already struggling.

Since the introduction of standardised packaging in Australia, a significant amount of new evidence has been published showing the real-life impacts of the policy, in addition to new views and research in the UK. We have summarised the evidence which is of particular importance below:

The impact on small retailers

Roy Morgan research of 450 stores across Australia[2]

Evidence released by the Australasian Association of Convenience Stores shows, in detail, the wide-ranging impacts this policy has had on retailers in Australia – these significant retail impact areas, aside from transaction times, are not taken into consideration within the Impact Assessment. This research, which was conducted in August 2013 by Roy Morgan Research, 9 months after the introduction of standardised packaging, surveyed 450 small retailers nationwide. The Roy Morgan data shows retailers

[1] Association of Convenience Stores, 2013, The Local Shop Report 2013, accessed at http://www.acs.org.uk/en/research/local-shop-report/index.cfm

[2] Roy Morgan Research, September 2013, Impact of Plain Packaging on Small Retailers – Wave 2, accessed at http://www.aacs.org.au/wp-content/uploads/2013/10/Impact-of-Plain-Packaging-on-Small-Retailers-W2-Final-Report.pdf

are suffering as a result of result of increased illicit trade, increased labour and inventory management costs, and product handling errors. In particular:

- Two-thirds of small retailers claim plain packaging has negatively impacted their business.
- 78% experienced an increase in the time taken to serve adult smoker customers and 62% report additional time is spent communicating with these customers about tobacco products.
- 62% of small retailers have faced increased frustration from adult smoker customers and 65% have seen an increase in the frequency of staff giving the wrong products to customers (primarily due to difficulty in recognising/distinguishing between brands).
- 34% of retailers have experienced increased frequency of attempted product returns predominantly due to customers being given a product they did not ask for.
- 44% of small retailers consider that plain packaging has negatively affected the level of service they are able to provide to their non-tobacco customers.
- 66% of small retailers have spent additional time training part-time, casual or transient staff as a result of the changeover to plain packaging, while 44% have faced additional costs from training staff members as a result of the changeover.
- 83% perceive that the government has negatively affected the ability of small retailers to compete with larger chains.
- 33% of small retailers reported having had customers enquire about purchasing illicit tobacco since the introduction of plain packaging.

Consumers are downtrading to cheaper products

As we have seen in Australia, standardised packaging of tobacco products will break down product branding as a means of competition, leading to consumers deciding which product to purchase based on price. Retailer's margins on economy brands are 38 per cent lower than premium brands, scarcely making a profit at all. Research by InfoView showed market share for cheaper cigarettes in Australia rose from 32 percent to 37 percent over the year since standardised packaging was introduced[3]. The margin for retailers is much smaller on low-value products in comparison to premium – a decrease from approximately 8% to 5%. Given tobacco sales represent 30-50% of a forecourts overall revenue, this will be a significant loss to the forecourt retailer – which it is implausible to assume will simply be made back by spend elsewhere.

Centre for Economic and Business Research[4]

The Centre for Economic and Business Research' report highlights just how serious the impacts of this policy may be on the independent retail sector. This too was not included within the Impact Assessment. In particular the report concludes that as a result of plain packaging, 6,400 convenience stores could close, up to 30,000 of the 182,300 retail jobs in the UK could be lost and small retailers' overall earnings could be cut by up to £300 million p.a. – the equivalent of 19%.

[3] Research by InfoView, which monitors the industry, showed market share for cheaper cigarettes rose from 32 percent to 37 percent over the year.

[4] Cebr, May 2013, Quantification of the economic impact of plain packaging for tobacco products in the UK, accessed at http://www.cebr.com/wp-content/uploads/2013/05/Philip-Morris_economic-impacts-plain-packaging_Cebr-report_final-final.pdf

PRA Populus Poll[5]

In March 2014 we undertook a second poll of our members to better understand their concerns with regards to the Government's proposals to introduce plain packaging of tobacco products. This follows on from the poll we undertook to inform the 2012 standardised packaging consultation. It is the overwhelming view of our members that the Government should wait for the Australian Government's official review into the plain packaging 'experiment' before embarking on similar legislation over here. PRA members' reliance on tobacco has grown even stronger since last surveyed in 2012. Today more than nine out of ten believe direct tobacco sales are important to their bottom line. Concerned about the direct correlation between, what they view as, a fragile economic situation and the survival of their business, three-quarters believe that if the Government decided to proceed forward with standardised packaging that it would have a negative impact on them. They state that now is not the time to experiment with unproven tobacco control policies which, as has been measured in Australia for over a year, will hurt small retailers.

- 84% agree that implementing standardised packaging would go against the Government's pledge to help small business, an 8 point increase on when they were last surveyed
- Eight-in-ten think that the government should only pursue tobacco control measures that are proven to work and that do not harm retailers
- 93% agree that there is no credible evidence that standardised packaging will stop people from smoking and the UK and Scottish Governments should fully evaluate the Australian experiment before implementing the same policy here

Impact on the illicit trade of tobacco products

The forecourt sector is already hit hard by the illicit trade in terms of both fuel and tobacco. The illicit trade of tobacco undermines the responsible retailer business and is wholly detrimental to those working within the confines of the law – undermining small retailers such as our members by depriving them of key earnings whilst having a detrimental effect on general footfall as consumers do not enter their shops to buy other groceries. The high profits and low risk involved in smuggling and counterfeiting tobacco allows criminals to make considerable returns by undercutting legitimate retail sales with products that have been known to contain asbestos, dead flies and faeces. In addition, the unregulated sale of these products also makes them far more accessible to children.

The illicit trade of tobacco products is a significant issue in the UK, the latest Tax Gap report by HMRC estimating the annual cost of tobacco smuggling is up to almost £3bn.

The latest reports from Australia are showing a significant increase and change in shape of the illicit market since the introduction of standardised packaging. Given the significant threat tobacco smuggling poses, to tax revenues, health and its link with other crimes, it is amiss that the link between illicit tobacco and standardised packaging has not been fully investigated.

Australian Customs and Border Protection Service (ACBPS) – Annual Report[6]

The latest data from the ACBPS shows an increase in the total number of cigarettes confiscated in 2012-13 reached 200 million sticks – this is a significant increase on 82 million sticks confiscated in 2010-11. In addition the duty evaded rose to $151million. This is a significant increase in the detection of tobacco

[5] Populus, March 2014 PRA Retailers Survey, available at http://www.populus.co.uk/Poll/PRA-Retailers-Survey/
[6] Australian Customs and Border Protection Service, October 2013, Annual Report, available at http://www.customs.gov.au/webdata/resources/files/ACBPSAnnualReport2012-13.pdf

smuggling – and the increase in cigarettes is combined with a decrease in the quantity of loose tobacco being smuggled.

KPMG research into the illicit trade in Australia[7]

KPMG have provided an independent assessment of the levels of consumption of illicit tobacco in Australia since the introduction of standardised packaging. The results show that Australians are not smoking less, but instead finding cheaper alternatives. The data shows consumption of illicit products has grown from 11.8% in June 2012 to 13.9% in June 2013 – equating to a loss of $1billion to the Australian Government. . Primarily this has been driven by an increase in contraband, however illicit white have also become much more prominent, now making up approximately 30% of non-domestic manufactured cigarette consumption. Whatever the make-up of the growth in the illicit market, there has been a clear and significant increase in illicit tobacco following the introduction of standardised packs.

The health impact continues to remain uncertain

The PRA supports the Government's objective of reducing smoking, and in particular youth smoking. However we continue to have serious concerns that, not only will this policy add further burdens on an already struggling sector, the evidence for this policy remains weak and in fact may result in the opposite effect. In particular:

Experts disagree on the evidence

Reports from Dr Neil McKegany, of the Centre for Drug Misuse Research and one of Scotland's leading experts in tacking addiction warned there was insufficient evidence to support standardised packaging. In particular he stated: *"The argument for requiring tobacco products to be sold in plain or standardised form may well be a case where the collective support for a policy has developed well beyond the available evidence."*[8]

Smoking rates in Australia have increased

There is now a reasonable quantity of data available on smoking rates in Australia. None of this shows that tobacco consumption has yet decreased since the introduction of standardised packaging – and much data in fact points to the opposite. This is concerning and should be fully evaluated before a decision is taken whether or not to move ahead.

1. South Australian Health Minister Jack Snelling stated that his state's smoking rates had increased from16.7% to 19.4% from May 2013 to May 2014[9].
2. The tobacco industry have reported increased sales by 59million cigarettes in the first year since plain packaging was introduced. As stated by Breitbart: *"This represents one of the few incidences of cigarette consumption increasing in a modern Westernised country. The increase of 0.3 percent reverses the downward trend of 15.6 percent in the previous four years."*[10]

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[7] KPMG, April 2014, Illicit tobacco in Australia – full year report, available at http://www.pmi.com/eng/media_center/media_kit/Documents/Illicit_Tobacco_in_Australia_2013_full_year_report.pdf

[8] The Scotsman, 'Lack of evidence' to back plain tobacco packaging, http://www.scotsman.com/news/health/lack-of-evidence-to-back-plain-tobacco-packaging-1-3366654

[9] Government of South Australia., 'Alfresco dining areas out of puff', 21/05/14 http://www.rcsa.asn.au/uploads/news/Alfresco%20dining%20areas%20out%20of%20puff.pdf

[10] http://www.breitbart.com/Breitbart-London/2014/07/24/Australian-Plain-Packaging-Leads-To-Explosion-In-Fake-Cigarettes

3. Research by London Economics shows that there has be no change in smoking prevalence due to standardised packaging[11].
4. The Universities of Sarrland and Zurich found no evidence of a lasting plain packaging effect on smoking prevalence[12].

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

The consultation requests views on the assumptions and estimates made throughout the Impact Assessment; we have a number of fundamental concerns which we have summarised below. The Impact Assessment sets out the evidence base for the decision with regards to standardised packaging, it is therefore imperative that it is accurate and unbiased. However, as it stands, there are a number of significant holes and incorrect assumptions made throughout. It is clear the Impact Assessment and evidence base for the policy is based upon *"assumptions"* and *"estimates"*. This is particularly disappointing considering this policy has now been in place in Australia for almost two years, and there therefore is much more reliable, real-world evidence available.

The gaps within the document have also been highlighted by the Government's Regulatory Policy Committee, who rated the Impact Assessment as amber – therefore not fit for purpose. In particular within their Opinion they highlight that the following key areas need to be reviewed:

1. The loss of profits as a result of brand value are not included in the NPV – the costs will be significant for tobacco manufacturers but will also have a direct costs to retailers' profits.
2. There is no Impact Assessment for the revised Tobacco Products Directive and as a result an adequate comparison cannot be made between the two policies.
3. The assumptions made on the impact on retail transaction costs should be tested during the consultation.
4. It is unclear what costs are in and out of scope for the One-In-Two-Out regulation and further evidence is required to support its assumption with regards to the NPV to business.

In particular, our concerns are as follows:

One-in-two-out

The Impact Assessment concludes that overall this policy, whilst in scope for one-in-two-out, is classed as a ZeroOUT. The Impact Assessment only takes into account two areas of impact on business; cost to retailers and cost to manufacturers associated with changes in production processes. In particular it excludes:

- compensatory costs as a result of deprivation of branding
- costs as a result of an increase in the illicit trade of tobacco products

[11] London Economics - An analysis of smoking prevalence in Australia http://londoneconomics.co.uk/wp-content/uploads/2013/11/London-Economics-Report-Australian-Prevalence-Final-Report-25-11-2013.pdf

[12] Ashok Kaul and Michael Wolf (2014), Working paper series / Department of Economics No. 165, The (Possible) Effect of Plain Packaging on Smoking Prevalence in Australia: A Trend Analysis, http://www.econ.uzh.ch/static/workingpapers.php?id=844

In addition to the above, the Impact Assessment also makes clearly inaccurate assumptions about the impact on retailers and packaging manufacturers in particular. It is clear that, and as evidenced by the latest real-world data from Australia, retailers will not benefit as a result of this policy.

Impact on retailers

The Impact Assessment makes the assumption that over time standardised packaging of tobacco products will benefit small retailers – providing a saving to retailers and consumers of £9m a year, of which 60% of the saving is expected for retailers. The Impact Assessment makes this statement on the basis of only assessing the impact on retail transaction times as a result of this policy. It does not take into account all other costs to retailers as a result of standardised packaging, such as stock control challenges, increased customer frustration and increased product returns – these are not taken into account within the Impact Assessment.

In addition the costs to retailers including loss of profit and impact on jobs in the retail sector are not factored into the Impact Assessment's NPV value as they are *"offset by increased profits on goods and services purchased in place of tobacco"*. It is very large assumption to make that consumers will continue to make the same level purchases within the same convenience store. This is particularly the case considering the importance of the tobacco category and the average price of cigarettes. In addition it is also an implausible assumption that consumers will also continue to visit the store at the same frequency if they are no longer buying their tobacco there. Evidence[13] shows that tobacco customers are much higher spenders and visit stores on a much higher frequency than the average non-smoker shopper:

- Tobacco shoppers spend 59% more per visit; approximately £9.70 per visit rather than £6.09 for non-tobacco shoppers
- Tobacco shoppers visit 14% more often each week – a frequency of 4.1 times a week compared with 3.6
- Adult tobacco shoppers spend 81% more each week – an average of £39.77 compared with £21.92

It cannot therefore be assumed that this significant difference will continue to remain should the adult smoker choose to purchase his or her cigarettes somewhere else – at a larger supermarket who is able to fund more staff to meet the new demands of the policy, or at the black market where they are able to buy their product of choice.

The Impact Assessment needs to consider all costs to the retail trade.

Retail transaction times

The only operational issue considered within the Impact Assessment is the impact on transaction times. Here the Impact Assessment compares two studies: the first, which was not peer-reviewed, surveyed 100 retailers in one city only two months after the introduction of standardised packaging, and the second, which was peer-reviewed, surveyed 303 retailers across four cities, seven months after the introduction of standardised packaging. The first study shows a statistically significant decline of 1.55% in transaction times, the second a statistically insignificant increase of 1.52% in transaction times. Given the vast methodological differences between the two studies, it is unclear therefore why the Impact Assessment deems that the first study is the stronger of the two. This research forms the basis of the assumed £9million in savings each year to retailers and consumers. In addition the Impact Assessment also

[13] HIMI Tobacco deep dive 2012

discounts the evidence from Roy Morgan (mentioned earlier) – with a much larger sample size and geographic spread – which shows 78% of retailers have experienced an increase in transaction times.

The assumptions made with regards to retail transaction times should be independently reviewed, and should factor in the extensive Roy Morgan Research data.

The evidence for standardised packaging

To date, the evidence base both for and against this policy has been built upon experiments as prior to the implementation of this policy in Australia, no real-world evidence existed. However, as standardised packaging came fully into effect in Australia over 20 months ago, on 1 December 2012, there is now a significant body of early evidence showing the real-life impacts of this policy. Much of this real-world information is surprisingly missing from the latest Impact Assessment, which instead bases its evidence to support the introduction of standardised packaging on the *"best guess estimates"* on the *"likely impact of the introduction of standardised packaging policy"*. These best guest estimates were elicited from a panel of tobacco control experts tasked with estimating smoking rates two years after the policy had be introduced[14]. It is understandably surprising this extremely subjective and biased experiment to guess smoking rates two years after a policy was introduced was preferred over-and-above the real life evidence from Australia, which has had the policy in effect for 20 months.

In addition, the best guest estimates are expected to only constitute to a decrease in smoking prevalence of 0.69% over 10 years. This does not align with the statement that *"Option 2 is preferred in view of the possibility of very substantial health gains that it offers"*.

The evidence to support this policy should include and ultimately favour, the real-world evidence that is available over best-guess estimates and assumptions – particularly where the real-world evidence is available to cover the same time period.

7. Legislative process

The PRA is disappointed that the Government implemented the primary legislation for standardised packaging, bringing it in under the Children and Families Act 2014, before the outcomes of both the Chantler Review and this consultation. This implies that the Government had in fact made a decision prior to both of these processes – which unfortunately is supported by the most recent consultation process and the obvious biases throughout the revised Impact Assessment.

In line with paragraph 11.1 within the consultation document, we registered our concerns with regards to the consultation process in writing to the Consultations Co-ordinator, the Department of Health, the Department of Business, Innovation and Skills, the Home Office and the All Party Parliamentary Group for Small Shops. We received a response from Andrew Black at the Department of Health in relation to our request for the consultation to be extended. We do not feel that the response adequately addressed our concerns. These are as follows:

1. **The consultation, at only six weeks, was too short for such a complex policy with a complex set of regulations and impact Assessments.**

[14] DH Tobacco Programme (June 2014) Standardised Packaging of Tobacco Products (A NO. 3080

Whilst the Minister announced a consultation would take place on 3 April, the draft regulations and Impact Assessment were not made available until the consultation opened on 26 June. Thoroughly reviewing these documents is integral part of the consultation response process, and six weeks is simply not enough time for a proper review and analysis of a 46 page consultation document – with 20 pages of regulation, alongside a 71 page Impact Assessment – to understand its full implications, particularly considering the range of businesses and individuals who wish to respond. In addition, the consultation spanned the summer holiday season and Ramadan – both of which would have significantly hindered the opportunity for small businesses to engage with this.

2. **The Impact Assessment was only published in English.**
Whilst the Consultation document and draft regulations made allowances for the variety of language requirements of the individuals and organisations interested in responding to the consultation, the Impact Assessment and other associated documents did not. A number of retailers across the country, who are seriously impacted by these proposals are unable to read English and therefore would not have been fully able to understand the implications of this policy on their businesses.

3. **The Impact Assessment is not deemed fit for purpose.**
As outlined within this submission and stated within the Regulatory Policy Committee's opinion – the Impact Assessment is not yet *"fit for purpose"*. The RPC assesses the Impact Assessment to be Amber – i.e. fit for purpose if changes are made. Of particular concern to the PRA, the RPC's opinion states the following significant areas need further review and assessment:
    - The Impact Assessment does not contain a full assessment of the options available – in particular a comparison is not made between the TPD and options set out in the Impact Assessment. In addition an IA on the TPD is required to be published.
    - The section relating to *Reduction in retail transaction costs* is weak and requires further assessment and *strengthening*.
    - Further analysis of the Impact on Small & Micro Businesses is required.

    In addition to the points raised by the RPC we have noted a number of additional points of concern within this submission which we feel need to be further addressed within the final Impact Assessment.

4. **Only one policy was fully considered within the Impact Assessment.**
As raised by the Regulatory Policy Committee, the Tobacco Products Directive is considered as the baseline for this assessment, but the Impact Assessment does not fully set out what that baseline is. It cannot therefore be possible to fully assess the proposed benefits of standardised packaging, particularly in relation to the costs to business and one-in-two-out regulation.

5. **A number of tobacco regulations are yet to come into force in the UK and have not been evaluated.**
The revised Tobacco Products Directive and display ban amendments to the Health Act 2009 are due to fully come into force over the next few years. Both of these regulations aim to improve health by reducing smoking, and have particular aims to reducing smoking amongst young

people. It is illogical for the Government to implement three substantial regulations, with the same aims, in such a short space of time, which all pose significant threats to UK business, without having the chance to evaluate whether one is effective before introducing the next. This is a nonsensical approach to policy making – and is particularly concerning to the businesses burdened by these regulations.

PRA

PETROL RETAILERS ASSOCIATION

EL 203

CBI
THE VOICE OF BUSINESS

August 2014

CBI Standardised Packaging of Tobacco Products Consultation Response

1. The CBI welcomes the opportunity to respond to the consultation on the introduction of regulations for standardised packaging of tobacco products. The CBI is the UK's leading business organisation, speaking for some 190,000 businesses that together employ around a third of the private sector workforce across all sectors. This membership includes the small number of tobacco manufacturers operating in the UK. Our response focuses on issues that are of concern to the broader business community rather than tobacco manufacturers specifically.

2. While the CBI has no mandate or wish to comment on the Government's public health agenda insofar as smoking is concerned, there are two wider points of concern for the CBI and its members around the UK's reputation for better regulation and our position as a place to invest in, develop and exploit brands and intellectual property (IP).

3. This response will argue that the Government must not unduly rush legislation and should consider all relevant areas as part of the consultation process before reaching a final decision on the introduction of plain packaging. As identified below, IP does not appear to have been properly considered in the consultation or the Impact Assessment (IA). In particular, the Government must:
   - Ensure policy is subject to a robust regulatory process before introduction can be considered
   - Protect the UK's reputation as a place to invest in, develop and exploit brands and IP

Government must ensure policy is subject to a robust regulatory process before introduction can be considered

4. The UK enjoys a positive international reputation for possessing a good regulatory environment. Adherence to better regulation principles and an evidence-based approach to policy making are critical components of any successful piece of legislation. This Government has taken positive steps to further improve the regulatory environment, setting rigorous standards to be met before legislation is introduced while making space for reasoned debate and scrutiny throughout the process. However, businesses worry that the wrong options are still being considered when looking to address policy problems. As the recent National Audit Office report published in June 2014 highlighted, the Government too often relies on regulation as a default option.

5. A key principle of better regulation is that decision-making is informed by thorough and wide consultation with stakeholders. Given this, it is concerning that the current proposals lack a clear mandate. Two thirds of over 668,000 respondents set out their opposition to plain packaging in the previous consultation run by the Department of Health in 2012. Despite this level of concern raised by a wide range of stakeholders, the Government still plans to move ahead in what would amount to a relatively short-time frame over the coming months.

6. Additionally, the Regulatory Policy Committee (RPC) assessment in the Impact Assessment (IA) set out alongside the consultation document fails to give a straight green light for the proposed legislation. The RPC currently gives it an amber rating suggesting clear issues that will need to be addressed. While this rating does not mean the Government should automatically reconsider its plans, it does strongly suggest that the proposals in their current form have serious problems. There is a growing concern that in a number of cases amber rated proposals have proceeded without appropriate assessment and adjustment. The Government, having committed to a high standard of regulatory practice, must ensure this approach is avoided in relation to plain packaging.

7. However, it is not just domestic issues that need to be addressed before proceeding with standardised packaging. There are also international developments that could have a significant impact. Firstly, part of the rationale for the introduction of plain packaging in the UK is the fact that it has been implemented in Australia already. Despite this introduction, the Australian Government is not due to carry out a full ranging implementation study until the end of 2014. A more prudent position would be to wait until the results of this study are available to both judge whether plain packaging has been a success and to feed the lessons learnt through Australia's experience into the UK's approach.

8. Australia is also currently facing an on-going challenge lodged by five separate countries with the World Trade Organisation (WTO). The Australian measure is being opposed on the grounds that it acts as a barrier to trade and restricts intellectual property without bringing clear health benefits. WTO cases normally take a year or more from the initial meetings after a panel has been set up to deal with the cases. In this instance, the WTO selected the panel's three judges on 5th May 2014. There is also unprecedented attention from governments around the world with a record number of countries – 36 plus the European Union – applying formally to observe the cases.

9. The Government must be careful not to rush through the introduction of plain packaging ahead of a decision by the WTO which could have a substantial impact on its use as an accepted policy tool. There is also a wider risk that could come from pre-judging the WTO outcome. It may send out a negative signal about the UK's commitment to the international trading system which is particularly important at a time when the Government is pursuing a policy to increase multilateral trade and boost UK exports around the world.

Government must protect the UK's reputation as a place to invest in, develop and exploit brands and IP

10. While it is sensible to make sure any UK legislation is given the required time and level of scrutiny to ensure that it not only improves the policy landscape in the UK but also complies with international developments, it is also vital that the impact legislation might have on other parts of the UK economy is factored into the process.

11. One notable area that has not been given due consideration is the impact plain packaging might have on the IP environment in the UK. If the UK is to remain a great home for brands while continuing to attract IP-rich firms, business must have confidence that the Government is fully committed to making the UK the best place to invest in, develop and exploit IP. The CBI is concerned that plain packaging will 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.

12. At present, IP is not mentioned in either the current consultation or the IA. This is extremely worrying as it suggests an area that has been overlooked to date. The value of IP to the UK economy is very high. Brands have made up an important part of this with the British Brands Group estimating that in 2006 there was £15.8bn[1] invested in brand equity in the UK alone. By forcing the removal of branding from packaging, it removes the benefits businesses have accrued by carefully nurturing brands over several years.

13. In particular, the impact on trademarks could be damaging. Although the draft regulations make clear that trademarks can still be used everywhere aside from retail, this removes many of the benefits they bring. As the World Intellectual Property Organization has explained, the trademark system helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs. A trademark loses much of its value if it is no longer apparent to customers, reducing a company's ability to both appeal to it consumers and maintain its own rights.

14. Current law reflects an international consensus that trademarks are an historic and indispensable bulwark of successful economies. Undermining this as the consultation currently suggests doing risks wider unintended consequences. The Chantler Review described tobacco packaging as a 'marketing tool', however, this misunderstands the role of a trademark. Trademarks perform a vital function for consumers and the Government should reconsider steps that might damage this.

15. It is also a concern that while the current proposals may be limited to one specific area, they could send out a signal about the UK's commitment to IP as well as setting a potentially dangerous precedent that could discourage investment in other sectors and reduce the UK's desirability as a home for international brands. Given that increasing inward investment into the UK is a key Government aim, this needs to be carefully considered before proceeding as 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. This in turn will make the UK a less desirable place to invest in.

Conclusion

16. The Government is rightly free to pursue public health policies in the most effective way, but it would be inadvisable to introduce legislation when there are still unresolved issues around the likely impact and until the implications from Australia and the ongoing WTO disputes are clearer. Finally, even if these concerns have been resolved, no decision should be taken on the introduction of standardised packaging in the UK until there has been a consideration of the full range of issues that the proposals impact on, particularly the affect they might have on IP.

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[1] *Valuing Brands in the UK Economy*, Westminster Business School, University of Westminster, December 2008

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EL-204

Benkert UK Ltd

Alva
Clackmannanshire
Scotland
FK12 5DW
UK

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

4th August 2014

Dear Sirs,

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

We wish to provide additional information for the consideration of the Government prior to a decision being made whether to implement the proposals published on 26th June 2014. A detailed response is attached.

Benkert UK Ltd is a foreign owned company, part of the "Benkert Group". The Group's main activity is the manufacture of multi-colour cigarette tipping paper for supply to the major international tobacco companies.

For more than 40 years Benkert has provided 150 well paid manufacturing jobs in Central Scotland. Inward investment of more than £20m has been made. More than 90% of production is for export.

The Board of Benkert UK cannot understand why the Government would enact the proposals when their effectiveness is unproven.

The proposals are of concern to Benkert for the following reasons:

- The proposed future design of cigarette tipping paper takes away the features which we have invested in to be able to produce. The proposed cigarette tipping paper can be produced with less sophisticated equipment and has a lower resale value. The consequence is that the factory would become uneconomic.

- The threat that producing material which contravenes the regulations could result in imprisonment would make our present business untenable.

If the Government decides to implement the proposals Benkert will consider closing the factory in UK and removing production to another site in a less

hostile environment. All employees would become redundant and all activities currently undertaken in the UK would cease.

The published Impact Assessment underestimates the affect. In our attached detailed response we calculate a cost relative to Benkert which is greater than the cost stated in your Impact Assessment for the whole of the packaging industry.

Benkert UK Ltd

Alva
Clackmannanshire
Scotland
FK12 5DW
UK

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

4th August 2014

Dear Sirs,

Detail response to the standard packaging consultation and impact assessment.

The consideration of closure of our Alva factory is not an empty threat.

- The Benkert Group factories in Western Europe supply to a diminishing market as smoking prevalence decreases
- In 2013 Benkert Group closed a factory in Switzerland as production demanded was too low for economic operations to continue
- After the devastating fire in 2009 the Benkert Group reluctantly ceased production of non-tobacco products as production capacity was limited. Benkert UK has been unable to re-establish sales to those former customers and has become 100% reliant upon tobacco customers

It is not possible for Benkert UK to quantify the percentage of our current production which is ultimately sold in the UK.

Benkert UK supplies cigarette tipping to various cigarette factories within the EU. The cigarette factories supply cigarettes throughout the EU including UK.

The impact of standardised packaging upon the Benkert UK business within the EU could be to eliminate multi-colour products and branding.

- Based upon our current prices and volumes sales revenue could be reduced by approximately €4m pa
- Cost savings could arise due to improved waste levels and less materials content achieved by producing a less complex product. Based upon current we estimate this could be €0.35m pa

- There would be no saving in production costs as machines and printing cylinders would not be changed

The net reduction in profit could be more than €3.5m pa

Furthermore, if our customers decided that there is no longer a requirement for Benkert UK to print and slit white cigarette tipping paper the sales revenue loss would be greater, €10m pa.

Standardised and less complex products could be easily produced in low cost regions and imported into the EU. Benkert and its highly skilled employees will not be able to compete.

In all the above scenarios continuation of any production in UK would be unviable.

Existing plant and machinery would become redundant.

Our existing plant and machinery is designed to produce multi-colour branded cigarette tipping paper. Plant and machinery would either become redundant, or would be of a higher specification than would be required to produce the less complex products. Plant and machinery costing €15m is at risk.

A permanent impairment write-off could be required.

The current staffing of some processes would be excessive for the required less complex product.

Redundancy costs of €20K per employee could be incurred.

Benkert UK Directors have invested considerable time and cost over the past 30 months explaining our concerns to the British Governments.

- We have met with MPs, MEPs and MSPs.
- We have hosted visits to our factory.
- We have explained what we do and the role we play, and wish to continue to play, in the local economy.
- We have travelled considerably to attend wherever we are requested to meet with those who may inform and influence Governments decision.

- We have engaged with other parties throughout our industry in order to contribute to the production and presentation of information to explain the complexities of the production and packaging of tobacco products.
- We have had to engage external resources to assist us to try to understand the enormous amounts of information which we are required to review and pass our comments upon.
- We must take further advice from our legal advisers and insurers about the viability of our operations if the "offences and defences" in the draft regulations are not amended

We cannot quantify the huge drain upon our resources that this has been and the negative affect that the diversion of our attention from our core activities has caused.

<u>We reinstated our factory and maintained full employment following a devastating fire in 2009.</u>

The shareholders decided at that time to reinvest the insurance monies in the UK rather than site a new factory closer to our customers. The support indicated at that time from politicians at Westminster & Holyrood was an important factor in that decision.

Further investment had continued because the Directors relied on the stated policy of the UK Government (confirmed in July 2013) to not proceed with plain packaging until clear evidence was available that it could produce a reduction in smoking.

The announcement of the Chantler Review caused us to put investment plans on hold.

Had we foreseen the UK Governments change in attitude we would not have continued with the investments.

<u>The Board cannot understand why the Government would contemplate the action proposed with no conclusive evidence that it would reduce smoking</u>

The majority of the board of Benkert UK are German nationals. In Germany the attitude to plain packaging and the measures taken to reduce smoking are very different to in the UK. The German Government has listened to the concerns of businesses whose existence depends upon continuation of the status quo.

If the UK Government does not continue to support our activities we may be forced to remove our manufacturing from the UK.

<u>If the Directors are forced to conclude that continuing manufacturing in the UK is too difficult we will close the factory and the following impacts could result</u>

- More than 130 employees could be made redundant in an area which already has higher than average unemployment
- Redundancy costs exceeding £2m could be incurred by Benkert UK
- A reduction of disposable income of £3m pa from our employees
- Other local jobs could be lost
- Our spending in UK would cease. We currently spend more than £5m pa with our 10 largest UK suppliers. It is probable that they could make some staff redundant, with consequent costs.
- The plant & machinery in Benkert UK would be removed and where possible transferred to other Benkert factories, or sold, or scrapped. The cost of write offs and removal could be £10m.
- The building would be sold, or demolished and the land sold, or abandoned
- Repayment of corporation tax previously paid would be due
- £4m pa of taxes currently paid by Benkert UK and employees would cease

In summary:

- **Once only costs to Benkert £12m**
- **Annual costs to suppliers £5m**
- **Annual costs to employees and suppliers employees of loss of jobs £3m**
- **Annual costs to Government due to reduced taxes £4m**

EL 205

Multi Packaging Solutions

Limberline Road
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Hampshire
PO3 5JF
UK

5th August 2014

Standardised Tobacco Packaging Consultation
Department of Health
7th Floor wellington House
133-155 Waterloo Road
London SE1 8UG

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

Dear Sir/Madam

I represent the views of Multi Packaging Solutions, formerly Chesapeake Branded Packaging, who have grave concerns regarding the introduction of Plain Packaging and the unintended consequences this will have on our and many other UK Businesses.

MPS has 13 factories in the UK, manufacturing added value packaging for markets such as Premium Drinks, Food, Confectionery, Pharmaceutical and Tobacco markets. Two of our UK factories, Portsmouth and Bradford are dedicated to packaging for the tobacco industry. The tobacco packaging sites employ over 130 people in these two economically challenged parts of the country. The business has retained its skilled workforce, 60% of our employees have over 10 years service with the company, but we also look to the future with an active apprenticeship scheme. We have been supplying the industry for over 50 years and service cigarette manufacturers in the UK, plus other European facilities.

As we have shown to your colleagues in the Government and representatives of the Department of Health, through visits and presentations, our two facilities are specialised with substantial investment in gravure technology and a very skilled and dedicated workforce.

Our facilities are unique in the wide range of tobacco packaging which we manufacture, thus this makes the impact of Plain Packaging even more severe for our business. We see the draft legislation impacting our products of cigarette carton packaging, RYO carton packaging, printed film and printed paper overwrap.

We would like to address the four main questions from the consultation

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

We are very concerned that even though the Chantler Review was given the scope of reviewing the impact on Public Health of Plain Packaging, there is no actual evidence to confirm that there is a link between packaging and improved Public Health.

Evidence from the Australian implementation of plain packaging is inconclusive. Sir Cyril states "it is too early to draw definitive conclusions" from Australia (1). . The Special Eurobarometer 385 Report (2), which was commissioned by the European Commission and formed part of the evidence base of its impact assessment on the revised Tobacco Products Directive, states that:

- 79% of respondents say that peer influence is the most commonly cited reason to start smoking;
- by contrast only 3% cited packaging as a reason to start smoking;
- 1% of respondents indicated that the shape or texture of a pack made consumers think the brand was less harmful than other brands.

A further area of concern was that the Review was not given any scope to consider alternative policies. One such alternative which appears to have been very successful is the approach adopted in Germany of concentrating on education, especially of the youth. The policies and research show that:

"data compiled by the BZgA also provides evidence that social prevention measures and awareness-raising campaigns are the most effective tools to prevent young people from smoking, while dissuasive warnings labels on cigarette packages prove to be much less effective".(3)

In concluding his review Sir Cyril Chantler draws a subjective conclusion that

"I am not convinced by the tobacco industry's argument that standardised packaging would increase the illicit market, especially in counterfeit cigarettes"(1)

However the Department of Health's own summary of the responses to its consultation makes clear, the business community was near unanimous that standardised packaging would result in increased illicit tobacco on the market. The fact that the UK would potentially be the only European country to launch Plain Packaging will also have a dramatic effect on the balance in the markets and thus counterfeiting activity.

With UK product being simpler and cheaper to copy, due to removing the complexity of the packaging, and its high end market sales price, this makes the UK market even more attractive to the criminal community to increase their counterfeit efforts.

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

We are very surprised that the UK Government after stating its intentions:

Public Health Minister, Anna Soubry MP, said: "We are waiting to see how things develop in Australia and, as I say, good laws are based on good, sound evidence. That is the way forward."

That it wishes to push ahead with Law which is not based on any sound evidence as highlighted by Sir Cryil referenced above and by the fact that the current decline of smoking demand in Australia appears to be, only following the current declining market trend and in fact there appears to have been an upward movement in youth smoking for the first time!

These concerns are all reinforced by the fact that the Australian Government is not ready to review the impact of Plain Packaging until December 2014. Would it not be sensible for the UK Government to wait to see what this market information confirms?

Since the last consultation there has in fact been some positive news in the latest report on "Smoking, Drinking and Drug Use Among Young People in England – 2013" recently published by the HSCIC shows.(4)

"In 2013, less than a quarter of pupils said that they had smoked at least once. At 22%, this was the lowest level recorded since the survey began in 1982, and continues the decline since 2003, when 42% of pupils had tried smoking.

3% of pupils reported that they smoked at least one cigarette a week, the survey definition of regular smoking. This was also at the lowest level measured since 1982, and considerably below the 9% recorded in 2003"

The legislation currently implemented, combined with current social trends are obviously working in reducing the Youth smoking rate. We now have the full Display ban which will be effective in April 2015 and then the TPD2 legislation from May 2016. We would ask, with this background and without further convincing factual evidence, why would the UK Government introduce more legislation on Plain Packaging that will impact UK business, jobs, exports and tax revenue when there is still no reported or proved success in Australia?.

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

We have throughout the process of the first consultation, visits to our facilities and the Chandler review tried to stress that the gravure tobacco packaging machines operated by MPS are dedicated to this market and despite numerous attempts over the years we have not been able to find alternative markets which suit the equipment and the upfront capital costs. As we have stated this production format plus the complexity of the packaging are key elements which prevent counterfeit and maintains business in the UK with skilled employees and operations such as ours.

The draft regulations totally remove the complexity of the packaging:

- Plain Packaging removes the need for complex, differentiated and high quality packaging, so transferring production to low cost alternatives and countries. The likely consequence is the closure of tobacco packaging manufacturing in the UK. In the case of MPS, just one of the companies affected, this directly puts at risk over 130 jobs in lower economic regions of Portsmouth and Bradford.
- Our genuine product is regulated and tested throughout the supply chain, thus ensuring the consumer receives the highest standards of hygiene and the lowest level of migratory toxicants possible. The Counterfeit supply chain does not consider any of these elements and will put the consumer at serious risk. The Counterfeit supply chain will also not consider the legal age for smoking, selling to whoever will pay.
- Financial impact: loss of tax revenue from counterfeit products, the UK already loses approximately £2bn from counterfeit products. The loss of tax from two businesses in the UK and a further lack of investment in the UK economy.

Timing

The Industry is very concerned about the timing of this legislation combined with TPD2, there is a limited supply chain of Gravure tooling. Printers / Convertors will need to place orders well in advance of implementation dates. If firm, precise and detailed regulations are not stated very early the Tobacco companies may have to move to alternative print/converting technologies, due to the lead-time on tooling, further impacting our business

Printed Film / Paper

The UK legislation appears to be going much further than TPD2 on the outer wraps for cigarettes, suggesting these have to be clear and unprinted, this effects MPS business significantly as we have two production machines dedicated to printed films and paperwrap. If these printed packaging formats will be stopped in early 2016; we will have further obsolesce of machinery combined with the carton business, making the continued ability to manufacture tobacco packaging in our two UK facilities impossible in the long term.

UK packaging cannot be held legally responsible

Point 5.18 in the draft legislation suggests that both the supplier and the manufacturer could be held responsible should product not complying too the regulations reach the UK market. As a manufacturer we cannot control the use and the final destination of our packaging products.

There are a number of products which we produce which are generic in nature, used in a number of markets, and so we cannot be held responsible if some of this product end up in the UK market. This statement needs to be removed or amended to be made more specific.

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

The impact figure in the IA of £5-10m to the UK Packaging Industry is significantly understated. This figure appears to be the estimation of the costs for only the two gravure tobacco carton packaging companies in the UK. The estimation of 60% by ECMA highlighted was based on the initial draft legislation impacting cartons, now the legislation also impacts paper and film then this will be a 100% impact.

This figure does not include the other companies who supply tobacco packaging in the UK and also the companies within the supply chain such as tooling suppliers (die-form makers, gravure cylinder makers, emboss tool manufacturers). An example of this is our UK cylinder supplier will reduce the amount of cylinders it engraves due to combined factors of no new redesign changes, a smaller portfolio of sku's, no brand extensions, a reduction in the number of colours and a lack of complexity between each variant, (one cylinder change vs up to 5-6 changes currently). This one impact on cylinders then affects a complete associated UK supply chain, from the Design Company, the metal raw material supplier, the engineering company making the cylinder base, to the cylinder engraver, the ink company through to the transport companies who transport these goods around the UK.

We are unable to put a total market cost to the total UK supply chain impact but this will be significant compared to the £5-10m estimated. We are able to confirm the cost of closure and disposal of assets of our two facilities in the UK will alone, be in excess of the £10m estimated in the IA as the total impact to the whole Supply Chain. Of concern also is over 40% of our employees are aged 50 or over so finding alternative employment late in their careers will be difficult.

The impact assessment makes a claim that there will be lower costs to manufacture the Plain Packaging. The basic cost of the pack could be lower however this cost saving will have to be passed back to the Tobacco Manufacturer, so the printer will lose revenue and more importantly will lose the added value gained through the complexity of the packaging. This loss of revenue and added value will make it even more difficult to make any type of margin on this business. This will further increase the speed of decline of the UK tobacco packaging industry as no investments will be made in the UK and returns will not justify continued manufacturing in the UK.

Summary

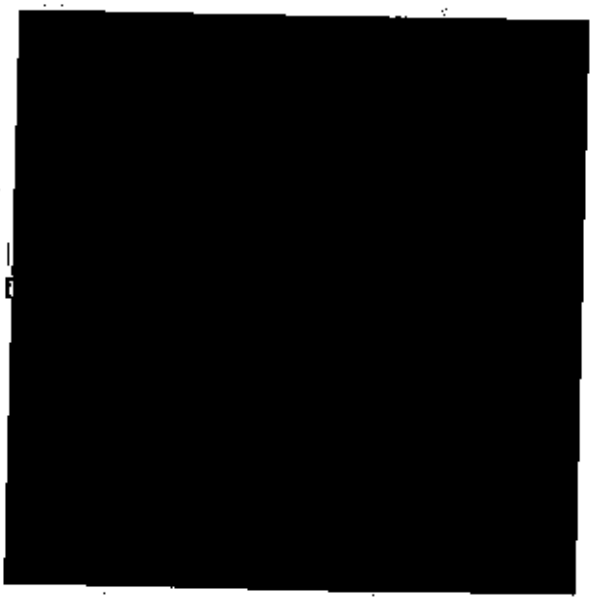
MPS believe that the draft regulations submitted will seriously damage our tobacco packaging business in the UK, and have a much wider impact on the 66,000 people who work in the industry and its supply chain. MPS will not be able to continue its operations in the UK as currently, and will have to make strategic decisions regarding the future of its facilities and the timeframe.

We are very disappointed that the UK Government will act alone, against the rest of Europe without strong evidence, with the consequence of impacting skilled UK businesses, jobs and communities. We firmly believe that complex packaging is the best line of defence against counterfeit, unregulated product reaching the UK Market and especially the youth smoker.

We would ask that the Government reconsider this legislation and its unintended consequences to UK business, continue with the rest of Europe on the implementation of TPD2 legislation and review the Australian model once accurate, provable data is available.

We thank you for considering our formal response to the Consultation and as always we are available to answer any questions on specific packaging questions.

Yours sincerely



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EL 2050

IGGESUND
HOLMEN GROUP

6th August 2014

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

Hello

As a member of the tobacco packaging supply chain from a raw material perspective, we have taken a keen interest in the topic of tobacco packaging legislation and as such, we made an official submission to the Government review held in 2012 and also offered information to the Chantler Review.

Iggesund Paperboard (a member of the Swedish forest group, Holmen AB) operates a manufacturing site in Workington, North West Cumbria on the Solway estuary. The site produces and supplies approximately 200 kT of virgin fibre folding box board into the Tobacco, Packaging and Graphical end use areas. The Mill employs approximately 400 people directly and many more indirectly in the supply and logistics chain.

Over the last 15 years we have invested some £180 million into our UK manufacturing facility and our efforts contribute to the UK economy in a huge number of ways, including continued and expanding employment, development of new skills and increased procurement of services, supplies and raw materials from other UK based Companies. One of our principle raw materials is wood and we source some 500'000 tonne per annum of harvested timber from the UK forest industry. This process again creates its own significant business footprint.

Above and beyond the obvious economic footprint, we also add value to our local community, which has been historically dominated by the vastly diminished traditional industry base (coal mining, steel works etc), through job and skills development. We don't just provide employment, but offer the opportunity to train and gain competence for a range of new disciplines. The most recent example of new skills development came through the commissioning of our new 150 MW Thermal Output Bio Mass Plant.
The £108 million investment not only created considerable employment during its development, it introduced new industry technology to the area, creating the ability for local people to explore a previously unavailable career path. It also led to a further initiative where we work directly with local farmers to make use of their fallow fields to grow fast growing willow as an energy crop. This in turn again creates a positive contribution to the local and national economy.

Our principle concern through the entire legislative review process has been one of job / business security, as it is our belief that understanding of the potential impact that the proposed legislation could have on our ability to maintain our business activity in the UK is largely unrecognised. A concern fuelled by the fact that the initial Impact assessment written in March 2012, I/A No:3080, appeared to have been written purely by the Department of Health, without input from other Departments or Agencies and contained barely any recognition of impact on the supply chain businesses that service the Tobacco industry.

[redacted]

It is our opinion that restricting / removing legitimate brand complexity from pack design through the type of measures outlined within the consultation document will commoditise tobacco products, reducing quality competition in favour of price competition. This will in turn devalue our business model as the characteristics and capabilities that our range of products offer the tobacco market will no longer be required, the result of which will be to undermine our future investment capability, jeopardising our ability to maintain a viable business and employment structure.

When this consultation plan was published, along with its 6 week deadline to respond, we respectfully requested an extension to the deadline as we felt that 6 weeks was too short a period of time to allow us to respond with the level of detail that we felt demonstrated the importance of the topic to our business (particularly as the 6 week period runs through the Summer period). As mentioned above, we had a particular concern over the lack of recognition of impact on our business in the Impact Assessment published in 2012 and our first observation in relation to the updated Impact Assessment published on 28th June 2014 would be that this concern continues.

As a result of the limited time allowed to evaluate the documents published on the 28th June 2014, we have had to focus our comments to a few significant observations, when answering the specific questions posed through the response process.

The questions and our comments can be seen below-

Consultation Questions

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

Answer–

- It is interesting to note that in preparation for the Chantler Review, Sir Cyril Chantler sought to limit further submissions to those of a research based evidence nature, but the resulting report was largely opinion based in conclusion. This is probably to be expected due to the theoretical nature of the topic, given the limited practical experience of the type of legislation currently under consideration.
  The fact that the report is openly opinion based is commendable and as a result, we would challenge the interpretation that Jane Ellison, The Parliamentary Under-Secretary of State, Department of Health offered in her Ministerial statement, accompanying the publication of the Consultation on the introduction of regulations for standardised packaging of tobacco products.
  The Chantler review clearly states in summary that *"I am satisfied that the body of evidence shows that standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but important reduction over time on the uptake and prevalence of smoking and thus have a positive impact on public health"*
  Jane Ellison's own statement read *"The report of the Chantler Review, which was published in April 2014, concluded that if standardised packaging was introduced, it would have a positive impact on public health*
  The terms "very likely to" and "would have" are very different and we would request, given the significance of the impact that this legislation would have on our business, that findings and opinions are not misrepresented, in order to allow decisions to be made based on a true understanding of the process as a whole.
- We would also challenge the statement made within the Chantler Review in relation to standardised packaging's impact on illicit activity. Whilst we would acknowledge that current pack designs do not prevent counterfeit behaviour and as such, counterfeit examples of the significant UK brands are

already in the market, we would suggest that in the continual battle against illicit activity, one clear objective should be to avoid making it an easier task for counterfeiters to operate. As a result, we continue to maintain that potential un intended consequences attached to the removal of pack complexity that the adoption of standardised packing would create, could have detrimental effects to public health through the proliferation of illicit tobacco activity.

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

Answer –

- As mentioned above, it has always been our concern that the consideration to impact on business has been limited and throughout the process we have tried to ensure that our section of the tobacco packaging supply chain is recognised. Our new observation would be that this is an issue that has not been rectified in the most recent Impact Assessment published on the 28th June 2014 as there appears to be no direct recognition of the impact on our part of the packaging supply chain. In fact the Impact Assessment in relation to tobacco packaging manufacturers seems to stop at the point of print. There is reference to a general loss of business for raw material suppliers attached to a reduction in consumption and this is a risk that we readily acknowledge and factor into our business plans.

  There is also a reference to an opinion that the packaging supply chain should, after some initial transitional outlay, experience a reduction in running cost due to a more streamlined product requirement.

  Whilst this observation may be true for other sections of the supply chain, it does not apply to us. We detailed in depth during our initial 2012 consultation response, the fact that the characteristics of the product we produce (which are considered as premium characteristics) would no longer be required if the proposed new legislation came into force and the result would be the down grading of raw material choice to a more mainstream packaging raw material. The simple result for our operation would be a significant loss of business in one hit (as opposed to the slower decline expected in relation to reduction in general consumption) that would put us into a financially unstable position. We also explained during the previous consultation response that the only alternative market that we could realistically look to source replacement business from, would be the general packaging market and due to our specialist niche producer status in relation to the economies of scale of the general packaging market, our ability to react in a positive way would be very limited.

  Without wishing to repeat the entire section of the 2012 consultation response, up to about 10-15 years ago our quality and sales strategy had been based around general packaging with a heavy reliance on traditional food and cereal packaging applications.

  It was quite clear in the late 90s that this strategy would not provide for a viable or sustainable business which would allow the Mill to continue in operation. During this period a sustainable strategy was developed which included a plan to rebalance the sales from the Mill and make specialist tobacco packaging a more significant part of our business mix. It was the successful implementation of this business plan that created the foundation for all of the subsequent investment in the UK facility and our current sustainable position.

  The implementation of the proposed legislation, will put our operation back to late 90's status and our future will be far from certain.

- We also note that the Regulatory Policy Committee Opinion Document on the Impact Assessment, published 29th May 2014, ref RPC14-DH-1229(2), gives the Impact Assessment an Amber rating and states *"The IA will be fit for purpose, provided the Department addresses the points set out in the opinion"*. There are several question's raised within the Opinion Document over the Impact Assessments statements in relation to packaging manufacturers and in the point titled **Impact on Manufacturing**, the following statement is made *"Also, the IA does not discuss sufficiently the impact of the requirements on the manufacturing companies and their employees, and which impacts should be considered direct or indirect. The IA should provide a discussion of the impact on those companies involved in the packaging and branding of tobacco and clarify which costs are direct and which indirect"*. We have offered and encouraged at every opportunity through this process the possibility of site visits or meetings in London to promote understanding of the impact on our business and would make this offer again now, should the Department of Health wish to include our concerns in the Impact Assessment.

Question 3: Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?
Answer – We have nothing to add to this question.

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

- We acknowledge the comments made within the Impact Assessment in relation to the difficulties in differentiating between Australia's Plain Packaging initiative and other initiatives introduced at the same time, when looking for evidence of effectiveness of the Australian Plain Packaging Policy (although we believe the same difficulties should be recognised when referencing the Australian Plain Pack initiative in a positive manner). We also recognise that various quotes and studies have already been made on the subject from various different angles, however, given that the Australian Government have proposed a review of this initiative that would start at the end of this calendar year and they represent the only opportunity to gather factual evidence through live experience, we would suggest that there is value to be gained in waiting for the outcome of the review. We would also suggest that it would be beneficial to not only look at the impact on Australian consumer habits but also the impact on business from the broader supply chain perspective (including raw material suppliers).
- Although not necessarily specifically relevant to the Impact Assessment, we would also question why we do not include as an option in the consultation, studying the approach that Germany as a Country takes towards tobacco control. A report published by the Federal Centre for Health Education (Bundeszentrale für gesundheitliche Aufklärung, BZgA) confirms that in the last decade Germany has seen the number of 12 to 17 year olds that take up smoking drop by half to an all-time low (within the 30 year recording period) and they attribute sustained education and prevention campaigns as the principle reason for this success.

[redacted]

IGGESUND
HOLMEN GROUP

Conclusion

Whilst the topic is important to us from a business perspective, we should say that we are under no illusion that if it comes to a choice between impact on business and genuine public health benefits, the decision is a simple one.
We would also acknowledge that when it comes to new legislation, that it's not possible to base judgement on guarantees of success against intended objectives alone and probability of success must be taken into consideration against potential negative impact.

The principle objectives of standardised packaging has been stated as being to improve public health by discouraging young people from taking up smoking, supporting quitting among smokers who want to quit and helping people who have quit to avoid relapse back to smoking.

The original Impact Assessment stated however that a policy to introduce standardised packaging would *"need to be justified and based on expected benefits over and above existing tobacco control measures"*, so given that there is a range of new legislation in the pipeline already, including a complete roll out of display bans, new proxy purchasing regulations and the EU's TPD2 legislation, all of which aims to have a positive impact on public health and none of which has had time to demonstrate its effectiveness.

Plus there is an opportunity, given time to learn more from Australia's activities and possibly also methods that have already been identified in Germany that have a proven track record for achieving the principle objective aimed for through standardised packaging. There is a justification, in our opinion, to combine options 1 and 3 in the legislation proposal, which is to both embrace the TPD2 legislation already in the pipe line and also defer any further decisions pending collection of evidence based on experience with plain packaging in Australia (possibly with the inclusion of a new objective of examining the approach of our closer neighbours in Germany).

This approach would, in our opinion, both promote the continuation of the principle objectives of tobacco control and ensure that the risk to business is proportionate to the probability of success of the objective.

As you draw your conclusions on this topic, should you require any more detail on our process and the contribution we make to the process of deterring illicit activity (as outlined in the original consultation response), or indeed the risks we see to our future activity from the plain packaging proposal, we would be happy to offer further information in writing or in person.
Should you feel it beneficial to visit our site in Workington, Cumbria to gain a better understanding of the scale of the potential consequences to business, we would be only too happy to see you.

Yours sincerely

[redacted]
Sales Manager Tobacco
Iggesund

[redacted]

EL 207

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Introduction

Imperial Tobacco Australia ("**ITA**") appreciates the opportunity to submit our views to the UK Department of Health as part of its consultation on the introduction of regulations for standardised packaging of tobacco products.

ITA is a wholly owned subsidiary of Imperial Tobacco Group PLC ("**ITG**"), the world's fourth largest international tobacco company. ITG manufactures and sells a range of cigarettes and other tobacco products. ITG has sales in over 160 countries worldwide (including the UK) and is the world leader in the premium cigar, fine-cut (roll-your-own) tobacco and rolling papers sectors.

ITA holds a share of approximately 23% of the Australian cigarette market and approximately 60% of the loose and fine-cut tobacco market. We employ 360 people in Australia and are a significant contributor to the Australian economy through the collection of excise duties on tobacco products and GST.

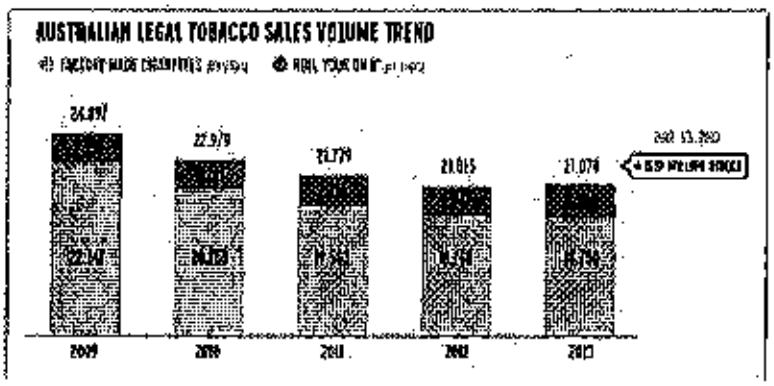
We do not presume to advise the UK Government on what direction to take but rather to share our experience of standardised or "plain" packaging, which was fully implemented on 1 December 2012 in Australia, and to note that evidence available to date indicates that no change has been effected.

This submission should be considered in addition to the submission of Imperial Tobacco UK ("**ITUK**"), with whom ITA works closely.

The Australian experience

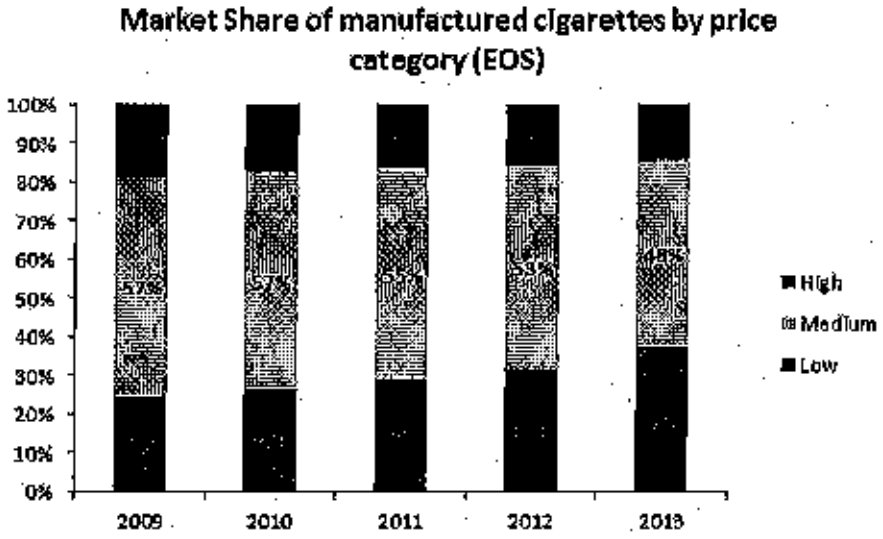
Contrary to the predictions of the Australian tobacco control lobby, ITA has not seen an industry-wide out of trend volume decline since the introduction of plain packaging of tobacco products in Australia. The tobacco market largely continues to perform based on historical trends, showing no impact from plain packaging. In fact, Australian legal tobacco sales are up +59 million sticks in 2013 compared to 2012. Factory Made Cigarettes ("**FMC**") declined by less than -0.1%, and Fine Cut Tobacco ("**FCT**") grew by +3.4%.[1] This is illustrated in the following chart that uses Industry Exchange of Sales Data:

[1] Industry Exchange of Sales – FCT volumes have been converted to a stick equivalent amount applying the Australian Government's conversion rate of 0.8



This data shows a slight reversal of a long term historical trend and is driven by consumers down-trading from FMC to relatively more affordable FCT products and illicit trade.

The down-trading trend is also noticeable when we look within the FMC segment and see a clear shift from medium price to lower priced cigarettes, indicating that down-trading between price segments seems to become more prevalent in a plain packaging environment[2].



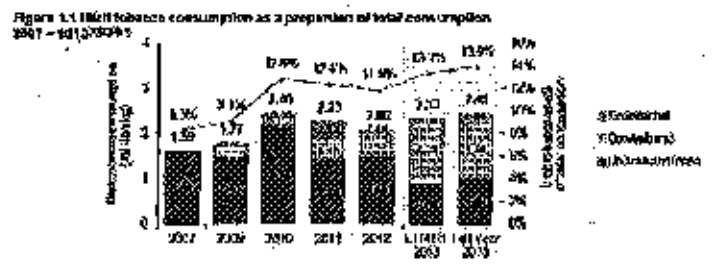
A Rise in Illicit Trade

The other clear trend is that since plain packaging was introduced, illicit trade has increased. We do not suggest that plain packaging is entirely the cause, but submit

[2] Industry Exchange of Sales – segments based on KPMG Illicit tobacco in Australia - 2013 Half Year Report (October 2013), p11

that "commoditisation" via plain packaging encourages consumers to re-evaluate and change their source of purchase.

According to the most recent KPMG report, in the 12 months to the end of December 2013, the level of illicit tobacco consumption grew from 11.8% to 13.9%[3] of total consumption. An increase in illicit trade benefits only the criminals involved, and we estimate that this increase in illicit tobacco consumption represents lost excise to the Australian Government of in excess of $1 billion. Tracking data indicates this trend is continuing.



The *Illicit Cigarette and Tobacco Detection Summary January to June 2013* report ("**The Report**") produced by the Australian Customs and Border Protection Service ("**ACBPS**") confirms that tobacco detections have increased between 2007 and 2013, with illicit tobacco seized doubling over that period.[4]

In addition, the 2012-13 annual report of the ACBPS notes that *"detection figures over this year, as well as the previous two years, indicate a gradual increase in detections of illicit cigarettes..."*[5]

The Report indicates that Task Forces Polaris, Yelverton and Trident have been responsible for the seizure of 249 tonnes of illicit tobacco and 92 million cigarettes for the year up to May 2013, preventing the evasion of approximately $140 million in tax revenue from those seizures alone.[6]

Whilst data does indicate that tobacco smuggling has increased since the introduction of plain packaging for tobacco products in Australia, it is important to note that *"seizure statistics cannot do more than represent a percentage of the illicit goods smuggled into a country..."*[7]

Consumers, faced with a choice between purchasing necessities and legal cigarettes, are likely to turn to the illicit market for their cigarette supplies. Once consumers have a regular source of supply of illicit tobacco products it becomes extremely difficult to get them to return to purchasing legal tax-paid goods.[8]

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[3] KPMG Illicit tobacco in Australia - 2013 Full Year Report (April 2014)
[4] ACBPS Intelligence and Targeting Division, Border Targeting, *Illicit Cigarette and Tobacco Detection Summary January to June 2013* p 3
[5] ACBPS 2012-13 Annual Report, p 91
[6] http://www.customs.gov.au/webdata/resources/files/ACBPSAnnualReport2012-13.pdf
[7] International Tax and Investment Centre, The Illicit Trade in Tobacco Products and How to Tackle It, second edition, p 9
[8] ITIC Guidebook, 2nd edition

The Deloitte *Illicit trade of tobacco: Report for 2011*[9] identified that a key reason for the purchasing decisions of illicit tobacco by consumers was price. Illicit tobacco is typically at least 50 - 75% cheaper than legal tobacco products.

The data clearly indicates that illicit trade is worsening in a plain packaging environment. Particularly intriguing is the change in the mix from unbranded tobacco known as 'chop chop' to branded contraband packs. In particular the illicit whites segment of contraband has increased by approximately 250%.

The emergence of illicit whites - branded cigarettes from small manufacturers with poor supply chain controls and manufactured primarily for smuggling into high price countries - is of particular concern. 2% of cigarettes consumed in Australia are illicit whites, up from 0.5% in 2012.

Recent seizures of illicit cigarettes in Australia demonstrate how the Singapore Port and Free Trade Zones are abused in order to facilitate the smuggling of cigarettes. Cigarettes are brought into the Port of Singapore from countries such as the Philippines, Indonesia and Vietnam and stored in a Licensed Warehouse where they are prepared for re-export. In order to avoid detection upon arrival in Australia, the cigarettes are shipped under false or mis-declared Bills of Lading that are only required to be submitted once the vessel containing the cigarettes has departed Singapore. This makes identification of the true nature of the cargo of illicit cigarettes and the intended destination extremely difficult.[10]

The Manchester cigarette brand is manufactured in Dubai and is illegally smuggled into Australia. It does not comply with any Australian tobacco regulation, including plain packaging legislation. It is currently the largest illicit white brand in Australia, with a market share of 1.4%.[11] Alarmingly, between 2012 and 2013, consumption of Manchester cigarettes quadrupled. Availability also increased; in 2012 availability was only identified in Sydney and Melbourne; by 2013, Manchester cigarettes were available in 15 out of the 16 Australian cities that were analysed. The latest available tracking data also indicates the relative market share of Manchester continues to grow.

In a worrying trend, Manchester is seemingly developing its own brand equity: illicit consumers are no longer simply asking for "a cheap cigarette" but specifically for the Manchester brand by name.

Illicit trade results in lost government revenue, undermines public health initiatives to curb tobacco consumption and is often linked to organised crime and terrorist activities. The criminal groups involved in smuggling illegal products are uncontrolled and unaccountable, and have no qualms about selling tobacco products to children. Evidence of this was recently found in Melbourne, Victoria where a series of raids on crime gangs netted drugs, firearms, cash, ammunition and vehicles, in addition to

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[9] Deloitte "Illicit trade of tobacco in Australia: Report for 2011 (published May 2012), p 26 based on November 2011 Roy Morgan Research Tobacco Usage Study

[10] ITIC Guidebook, 2nd edition

[11] Illicit Tobacco in Australia 2013 Full Year Report", KPMG LLP, 3 April 2014

35,000 tobacco plants destined for production into unbranded tobacco or chop chop.[12]

Incidence Data Shows No Departure from Long Term Trends

The Australian Government's Institute of Health and Welfare (AIHW) recently released the latest data in relation to smoking prevalence (here). The data clearly shows that reduction in prevalence has not departed from long term trends as a result of the introduction of plain packaging. Geoff Neideck of the AIHW was quoted in the Sydney Morning Herald as saying "the results were continued a long term trend (sic)," and that "the plain-packaging laws should be seen in the context of changing attitudes and cultural practices."

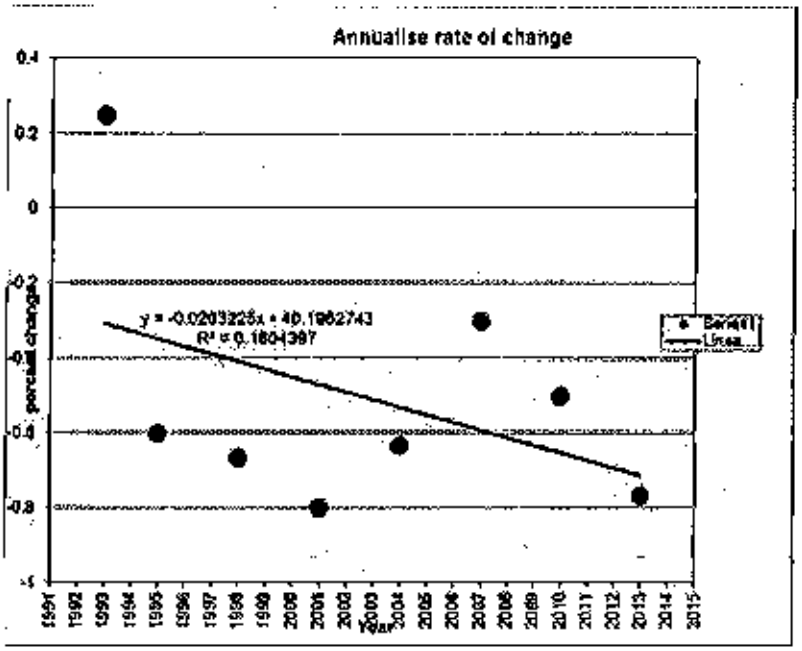
The data itself is slightly difficult to analyse given that the time periods between reports have not been standard. The first two data sets in the series covered two year periods whilst the balance covered three year periods. To correctly interpret the data, the results should be annualised to remove distortion. Further, it is not statistically valid to simply divide by the base (or by a declining base) to create percentage declines. In the first scenario, sampling errors are greatly compounded to produce erratic data. In the second scenario, calculating percentages of percentages off a declining base will give an overstated rate of change that is not statistically defensible.

Correctly interpreting the data requires three steps – annualising the rate of change to remove the time period inconsistency, undertaking a regression analysis on the standardised data to show predicted long term averages and examination of the variance between observed and predicted points. The graph on the following page provides a visual depiction of the rate of change together with the predicted path across the full data set.

It can clearly be observed that the variance between predicted and observed outcomes in 2013 is statistically insignificant.

That is, the 2013 data showed that the declining incidence rates are entirely in line with long term trends. Far from showing that plain packaging has been effective, the AIHW data calls the efficacy of the policy into stark question.

12 http://www.abc.net.au/news/2014-03-18/melbourne-police-target-middle-eastern-gangs/5327324?section=vic



Conclusion

ITA notes that plain packaging in Australia is still in its infancy having only been fully implemented on 1 December 2012. The Australian Government is yet to conduct its formal review which will begin on or around 1 December 2014.

In the short time that it has been in place the following trends have been noted:

1. Market volumes have been largely unaffected and continued broadly in line with historical trends. In fact, as previously noted Industry Exchange of Sales volumes increased by approximately 3.1% in the 2013 calendar year, the first full year of trading following the introduction of plain packaging.
2. Down-trading has been noted from Factory Made Cigarettes to Fine Cut Tobacco, as well as between price segments in the legal cigarette market.
3. Finally, the illicit market has also grown on the back of down-trading, increasing from 11.8% to 13.9% during the period in which plain packaging legislation was introduced. Current estimates are that this has cost the Australian Government in excess of $1 billion in lost tax revenue. This has included rapid growth of illicit white cigarettes driven by a brand called Manchester.

ITA would be pleased to respond to any questions the UK Government may have regarding this submission. Questions should be addressed to Andrew Gregson (Head of Corporate Affairs, ITA) using the following email address: andrew.gregson@au.imptob.com.

ITA would also welcome the opportunity to make further submissions once further reliable data emerges concerning the level of illicit trade in tobacco products since Australia introduced plain packaging legislation in December 2012.

EL208

Plain Packaging – Overview

Canadian Cancer Society
July 28, 2014

Plain packaging would prohibit brand colours, logos and graphics on tobacco packages, thus eliminating the package as mini-billboards that promote tobacco. Required health warnings would appear on packages, but the branded part of the package would have a standard colour for all brands, such as the drab brown required in Australia (see images next page). Package dimensions would be standardized, thus eliminating Slims and Superslims packs targeting women.

Plain packaging would (1) eliminate promotional aspects of packaging; (2) curb deceptive messages conveyed through packaging; (3) enhance the effectiveness of health warnings; (4) reduce tobacco use.

Plain packaging would build on existing packaging regulation that requires health warnings, that requires toxic emission messages on package sides, and that prohibits misleading descriptors "light" and "mild".[1]

International developments

Australia – Plain packaging legislation adopted Dec. 1, 2011 and fully implemented Dec. 1, 2012.[2] Constitutional challenge dismissed by High Court of Australia August 15, 2012.[3] A ruling in a World Trade Organization challenge is expected in about late 2015.
Ireland – Government Bill introduced in Parliament June 11, 2014.[4]
United Kingdom – Enabling legislation approved by Parliament March 13, 2014.[5] Draft implementing regulations published June 26, 2014 with consultation closing August 7, 2014.[6]
New Zealand – Government Bill introduced in Parliament February 11, 2014.[7] Government intends to delay proclamation until after WTO decision regarding Australia.
Finland – Government national action plan (June 2014) includes plain packaging as planned measure.[8]
European Union – new *Tobacco Products Directive* adopted April 3, 2014 explicitly states that 28 EU countries have option of implementing plain packaging.[9]
South Africa – Health Minister stated July 24, 2014 that he wants to implement by 2015.[10]

WHO Framework Convention on Tobacco Control (FCTC) – Guidelines under the FCTC, the international tobacco control treaty, recommend that governments implement plain packaging.[11] There are 179 countries that are Parties to the FCTC, including Canada.[12]

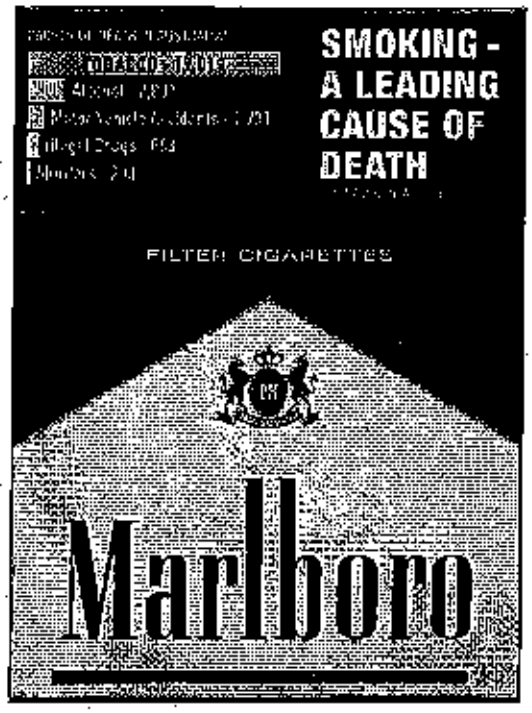
Evidence supports plain packaging

- There is compelling evidence, including extensive studies, supporting implementation of plain packaging. An excellent updated March 2014 evidentiary overview, reviewing 75 empirical studies, was prepared by University of Waterloo Professor David Hammond for the Irish Government.[13]
- If plain packaging would not work to reduce smoking, then why is the industry so strongly opposed?
- Australian smoking prevalence has fallen significantly following implementation of plain packaging,[14] prompting Citibank to alert investors that "Australia data provides ammunition for plain packaging elsewhere".[15]

The Canadian situation

- Plain packaging was recommended in 1994 by House of Commons Standing Committee on Health.[16]
- Plain packaging could be required by regulation under federal *Tobacco Act*.[17]

Examples of Plain Packaging from Australia



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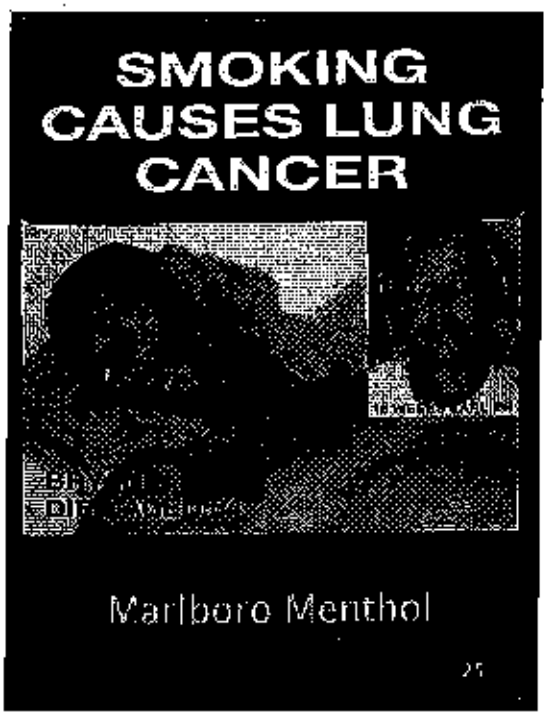

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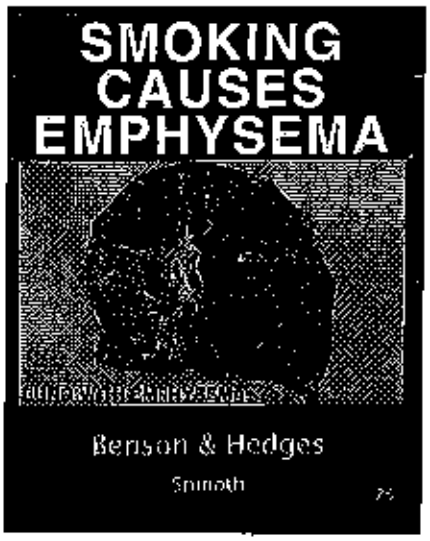

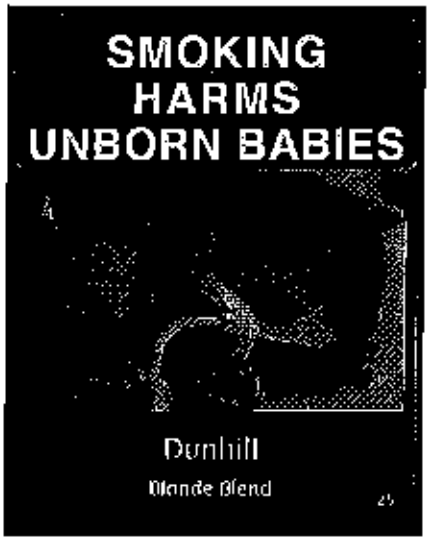

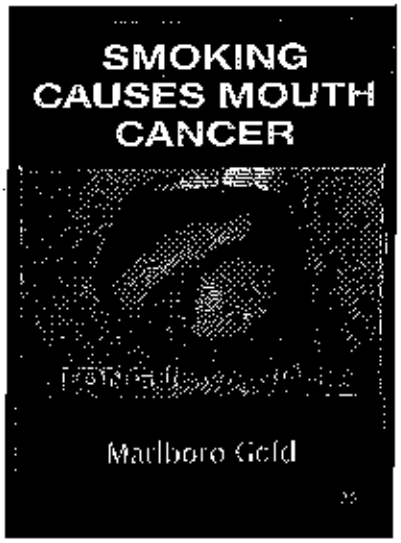

Packages of Benson & Hedges, Dunhill and Marlboro cigarettes in plain packages from Australia

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Introduction

There is ample evidence to justify the set of new warnings proposed in the *Tobacco Products Labelling Regulations (Cigarettes and Little Cigars)* as being more effective than the set of warnings currently on packaging.

The body of evidence continues to grow and is even more substantial than in the past. This submission contains an extensive (but not exhaustive) evidentiary compilation, and has been prepared in part to respond to the tobacco industry's position that there is insufficient evidence to justify the new regulations.

The new regulations will increase knowledge and depth of appreciation of the health effects and characteristics of tobacco products, will reduce deception, will reduce the promotional impact of tobacco packaging, and will advance public health by reducing tobacco use.

This submission should be considered in conjunction with a previous submission tabled with the House of Commons Standing Committee on Health: Canadian Cancer Society, "Compilation of Selected Evidence Regarding the Impact of Tobacco Package Warnings and Labelling: A Submission to Members of Parliament for Use During Consideration of Regulations Under the *Tobacco Act*" May 2000.

Introduction

Les données scientifiques disponibles, selon lesquelles les mises en garde proposées dans le *Règlement sur l'étiquetage des produits du tabac (cigarettes et petits cigares)* seraient plus efficaces que les messages figurant actuellement sur les emballages, justifient amplement l'adoption de cette nouvelle réglementation.

Les preuves à l'appui de telles conclusions ne cessent de s'accumuler et sont même plus solides que jamais. Le présent mémoire en dresse une longue liste (mais non exhaustive) et a été rédigé entre autres en réponse aux prétentions de l'industrie du tabac, qui invoque une insuffisance de données scientifiques étayant le bien-fondé du nouveau règlement.

Or, le nouveau règlement permettra de mieux connaître et évaluer les caractéristiques des produits du tabac et leurs effets sur la santé, limitera la désinformation, atténuera l'impact promotionnel des emballages, et contribuera positivement à la santé publique par la réduction du tabagisme.

Ce mémoire devrait être pris en considération en même temps qu'un autre argumentaire présenté au Comité permanent de la santé de la Chambre des communes en mai 2000, intitulé « Compilation de preuves concernant les avertissements et l'étiquetage des emballages de produits du tabac : Mémoire présenté aux députés dans le cadre de l'examen des règlements s'appliquant en vertu de la *Loi sur le tabac* ».

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Consultation Response

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

The Law Society of Scotland's response

August 2014

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors to ensure we benefit from knowledge and expertise from both within and out with the solicitor profession.

The Health and Medical Law and Intellectual Property Law Sub-Committees have had the opportunity to consider the Scottish and UK Governments' joint Consultation on the Introduction of Regulations for Standardised Packaging of Tobacco Products and have the following comments to put forward in response to the questions posed in the consultation document. The views of each Sub-Committee are outlined separately below.

Introductory Comments

The decision of whether to introduce standardised packaging for tobacco products is ultimately a policy decision. We recognise that this is an issue on which strong opinions are held. It would not be appropriate for us to comment on the merits of the proposed policy. However, we do support the intent behind any initiative which seeks to promote public health and reduce illness and disease. If the Government decides to introduce standardised packaging it is essential that a workable framework is in place to provide legal certainty to all affected stakeholders.

General Comments

Health and Medical Law Sub-Committee:

We acknowledge that any policy and decision making that helps towards enhancement of the wellbeing of children in Scotland is paramount and forms one of the key tenets of European health policy[1] and also that much of the discussion surrounding the introduction

[1] WHO- Europe . European strategy for child and adolescent health and development. (2005) report Number: EUR/05/5048378

of standardised tobacco packaging has focused particularly on the benefits this may have upon people under the age of 18[2].

The WHO Framework Convention on Tobacco Control (FCTC) seeks to combat the undisputed harmful health effects of tobacco and smoking at a global level by addressing multiple and diverse issues relating to tobacco control and smoking cessation. The FCTC includes "demand reduction" measures relating to advertising, promotion, sponsorship, packaging and labelling[3] and the recommended introduction of plain tobacco packaging in Articles 11 and 13[4],[5]. The United Kingdom ratified the FCTC in 2004 and it came into force in 2005.

The revised EU Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products requires to be implemented by Member States no later than 20 May 2016. The Tobacco Products Directive 2001/37/EC[6] is repealed from the same date. Directive 2014/40/EU became EU law on 19 May 2014 meaning that that EU Member States may continue to rely on Directive 2001/37/EC until 20 May 2016 but that they are entitled now to take the benefit of any flexibilities in Directive 2014/40/EU.

Directive 2014/40/EU contains provisions on packaging and labelling and gives the option to, but does not oblige, Member States, to introduce standardised packaging. Standardised packaging is permissible if:

- it is justified on public health grounds

[2] See for example Kings College London website, Standardised packaging of tobacco: Report of the independent review undertaken by Sir Cyril Chantler, http://www.kcl.ac.uk/health/10035-TSO-2901853-Chantler-Review-ACCESSIBLE.PDF p.3 at para.1.5. [Access July 15 2014]. Hereafter referred to as the Chantler Review.
[3] World Health Organization(2009). History of the WHO Framework Convention on Tobacco Control. Geneva. World Health Organization.
[4] World Health Organization (2008) Elaboration of guidelines for implementation of Article 11 of the Convention. Third session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control. Durban, South Africa, 17–22 November 2008. Available: http://www.who.int/fctc/guidelines/article_.pdf. [Accessed 2014 July 14].
[5] World Health Organization (2008) Elaboration of guidelines for implementation of Article 13 of the Convention. Third session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control. Durban, South Africa, 17–22 November 2008. Available: http://apps.who.int/gb/fctc/PDF/cop3/FCTC_COP3_9-en.pdf. [Accessed 2014 July14.]
[6] European Union Directive L127/1

- proportionate
- does not constitute a hidden impediment to trade.

This is further addressed below.

Many of the "demand reduction" measures mentioned above have now been incorporated into Scots Law by the Tobacco and Primary Medical Services (Scotland) Act 2010 and The Sale of Tobacco (Display of Tobacco Products and Prices) (Scotland) Regulations 2013. These measures include the prohibition of the display of tobacco products at the point of sale with full compliance by all the retail industry, due in April 2015. We note that such a range of prohibitive measures has brought the issue of standardised tobacco packaging into a heightened focus for parties who either support or are against the introduction of Regulations.[7]

It is therefore clear that a substantial regulatory framework already exists in Scotland and the rest of the UK in relation to tobacco control. As is noted further below, whether the introduction of the proposed additional measures is legally sustainable is a matter that is being subjected to challenge.

Intellectual Property Sub-Committee:

Standardised packaging, if introduced, will inhibit tobacco companies from being able to distinguish their products from those of other competitors. As this is the key function of a trade mark the question arises as to whether such a measure could be viewed as equating to a *de facto* deprivation of the tobacco sector's ability to use their trade mark (and as a result their main form of branding). It has been suggested that the impact of this could be considerable in various ways including: to introduce confusion amongst consumers who may lack the means to differentiate between types of products; to deprive tobacco companies from benefiting from their previous investments in their brands and trade marks; and that it might render the UK open to a complaint at the World Trade Organisation ("WTO") (for the reasons noted at question 2 below).

[7] Chantler Review p4 para. 7

The new Tobacco Products Directive (2014/40/EU) obliges Member States to take steps to improve public health but it does not prescribe what must be shown on tobacco packaging nor does it require the introduction of plain packaging. Considerable restrictions on tobacco advertising are already in place in Scotland.

Examples of some other allegations that may be made (we make no comment on their substance) include:-

1. A violation of the UK's obligations under the Trade-Related Aspects of Intellectual Property Rights ("TRIPS") Agreement (referred to at question 1 below). Although Article 8 of TRIPS allows for measures necessary to protect public health, this provision is subject to compliance with other provisions of TRIPS. In particular, Article 20 prohibits unjustifiable encumbrances on the use of trade marks;
2. A breach of the Paris Convention for the Protection of Industrial Property;
3. A breach of the International trade protection rules in terms of the WTO Agreement on Technical Barriers to Trade;
4. A deprivation of property without compensation contrary to the First Protocol of the European Convention on Human Rights.
5. A deprivation of property without compensation contrary to Article 17 of the Charter of Fundamental Rights of the European Union (However, this is only relevant if the Directive itself is challenged, because Article 51 of the Charter provides that the Charter only applies to EU measures and national implementations of such measures); and
6. A violation of the free movement of goods (Article 26 of the Treaty on the Functioning of the European Union ("TFEU")) on the basis that a requirement for trade mark owners to invest in producing specific packaging for use in the UK may amount to a hidden barrier to trade.

The technology required to replicate branded packaging is likely to be more sophisticated than that required to replicate standardised packaging. The industry may take the view that the proposed measures risk easing the ability to produce counterfeit tobacco products and that the measures could also make it more difficult for customs enforcement officials to detect counterfeit packs. There are some views however to the effect that these issues could be addressed through the introduction of measures to improve existing anti-counterfeit enforcement and to devise specific training on means of detection.

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

Health and Medical Law Sub-Committee:

The Chantler Review notes the limitations upon the evidence currently available[8], not least because, prior to December 2012 when Australia introduced its plain packaging legislation[9], no jurisdiction had implemented any similar Regulations. However, since then, it appears to us that research in this area is an ongoing process with the production of research and data which will continue to inform. Unsurprisingly, much of this has been conducted in Australia but the opportunity is being taken by other countries, including the UK, to reflect upon the experience in Australia to date. It is also envisaged that any outcomes may only be ascertainable following the conclusion of more long term study and review. It is also recognised that it may be difficult to gauge, given the range of tobacco control measures, exactly which ones are having an effect. The Chantler Review does conclude, on the basis of what research is currently available that *"the body of evidence shows that standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but important reduction over time on the uptake and prevalence of smoking and thus have a positive impact on public health"*[10].

The absence of clear quantifiable evidence showing a link between standardised packaging and an uptake reduction may raise the issue of proportionality as noted above. If the Government proceeds with implementing the Regulations, we suggest that the effectiveness and progress of standardised packaging should be monitored. As these measures would be part of a larger framework of legal measures on smoking cessation and tobacco control, this would be helpful to gauge the contributory effect of standardised packaging. This would also be useful to evaluate any unintended adverse consequences on health and wellbeing.

[8] Chantler Review, p4 at para. 9.
[9] Tobacco Plain Packaging Act 2012, no 148 2011
[10] Chantler Review, p6 at para. 18.

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

Intellectual Property Sub-Committee:

The following matters are all in the public domain and will no doubt be well known to Government. However, we believe that they are important developments worth re-emphasising given their relevance to the overall legality of what is proposed in the UK as a member of / party to the International organisations/agreements concerned.

On 13 March 2012, Ukraine lodged a complaint with the WTO in relation to Australia's implementation of plain packaging requirements on tobacco products and packaging. Ukraine has claimed that Australia's measures appear to be inconsistent with Articles 1, 1.1, 2.1, 3.1, 15, 16, 20 and 27 of TRIPS; Article 2.1 and 2.2 of the Agreement on Technical Barriers to Trade (TBT"); and Article III:4 of the General Agreement on Tariffs and Trade ("GATT") 1994. In short, it is contended that the measures are discriminatory, more trade restrictive than necessary and unjustifiably infringe upon trade mark rights. Similar complaints have now also been raised by Dominican Republic, Honduras, Cuba and Indonesia.

On 5 May 2014, the WTO Director-General composed a panel to consider these complaints. The panel is still undertaking its examination. The date in which a determination will be made is unknown although this should be no later than November 2014 in accordance with Article 12.8 of the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) which provides that the timescale to produce a final report should, as a general rule, not exceed 6 months. However, in practice this timescale is often not adhered too. The panel's findings will also be open to appeal.

There has also been Australian litigation where tobacco companies unsuccessfully claimed that plain packaging in effect confiscated their intellectual property without compensation and constituted an "*unconstitutional acquisition of plaintiffs' property comprising the Trade Marks, Copyright Works, the Get Up, licensing goodwill, the Designs, the Patents,*

packaging goodwill, packaging rights and intellectual property licence rights, otherwise than on just terms."[11]

The Directive 2014/40/EU of the EU Parliament and of the Council of 3 April 2014 on the approximation of the laws, Regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC) prescribes what must be shown on tobacco packaging but it does not require the introduction of plain packaging. As the proposals may affect trade between EU Member States, the issue of their proportionality (having regard to free-movement Articles 34 and 36 of the TFEU) exists. The new Directive reiterates this. Article 24 provides:

"1. Member States may not, for considerations relating to aspects regulated by this Directive, and subject to paragraphs 2 and 3 of this Article, prohibit or restrict the placing on the market of tobacco or related products which comply with this Directive.

2. This Directive shall not affect the right of a Member State to maintain or introduce further requirements, applicable to all products placed on its market, in relation to the standardisation of the packaging of tobacco products, where it is justified on grounds of public health, taking into account the high level of protection of human health achieved through this Directive. Such measures shall be proportionate and may not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. Those measures shall be notified to the Commission together with the grounds for maintaining or introducing them."

The Directive's preamble gives further clarity on this by providing:-

"Tobacco and related products which comply with this Directive should benefit from the free movement of goods. However, in light of the different degrees of harmonisation achieved by this Directive, the Member States should, under certain conditions, retain the power to impose further requirements in certain respects in order to protect public health. This is the

[11] British American Tobacco Australasia Limited and Ors v. The Commonwealth of Australia http://www.hcourt.gov.au/cases/case-s389/2011

case in relation to the presentation and the packaging, including colours, of tobacco products other than health warnings, for which this Directive provides a first set of basic common rules. Accordingly, Member States could, for example, introduce provisions providing for further standardisation of the packaging of tobacco products, provided that those provisions are compatible with the TFEU, with WTO obligations and do not affect the full application of this Directive."

It follows that it is in principle permissible for a Member State to introduce plain packaging and comply with EU law and the above Directive. However there are some qualifications to this including the proviso that any measures comply with TFEU and WTO obligations and possibly that they are justified on public health grounds. The outcome of the above WTO complaint should provide more clarity on compliance with at least one of these provisos

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

Health and Medical Law Sub-Committee:

We note that the proposed Regulations cover only cigarettes and hand rolling tobacco. They do not, for example, extend to cigars, pipe tobacco or the various forms of oral tobacco. The consultation paper suggests that this may be because young people generally use cigarettes rather than these other forms of tobacco. However, we note that the Chantler Review did not distinguish between different types of tobacco products[12]. Cultural trends, particularly in young people, evolve and are powerful in their nature. This should be monitored, together with the effects of any Regulations implemented to ensure that there are no unintentional consequences of making other tobacco products relatively more attractive, appear safer or more acceptable. A consistency of approach would perhaps be both more logical and equitable.

Regulation 4 – This establishes detailed restrictions on the material, shape, opening and contents of cigarette packets but neither this regulation, nor the Regulations generally, set limitations on the size and shape of cigarette packets. This may allow for diversity in

[12] Chantler Review, p12 at para. 1.17

relation to the shape and size of the cigarettes themselves. For example, studies appear to show that an elongated or 'slim' cigarette is more attractive, particularly to young people[13]. Again, perhaps a consistency of approach in setting the dimensions of a cigarette box would address this.

Intellectual Property Sub-Committee:

Regulation 16 - This provides that compliance with the Regulations constitutes a proper reason for non-use of a trade mark. The consequence of the Regulations is that companies will be unable to use their trade mark. This will mean that the trade mark will remain registered but not be able to be used. This provides the basis for the relevant trade mark to be immune from revocation and removal from the Register for non-use.

Regulation 7(1) - For greater clarity, we suggest that Regulation 7(1) be amended to make it clear that Schedule 3 relates to exceptions to Regulation 7 paragraphs (2) and (3).

The draft Regulations have been prepared in the context of the UK intellectual property legal framework. However, separate regimes will exist between the UK position and the Communities Trade mark regime. The draft Regulations do not establish how these systems will coherently co-exist. We suggest that the draft Regulations should address this. We note in particular that EU Trade Mark Directive 2008/95 recital (10) states that *"It is fundamental, in order to facilitate the free movement of goods and services, to ensure that registered trade marks enjoy the same protection under the legal systems of all the Member States."* Whilst this Directive deals with national trade mark systems as opposed to the Community Trade Mark regime, the latter is dealt with under the CTM Regulation 207/2009 which takes direct effect in the Member States. Article 14 of this Regulation provides that infringement of a Community Trade mark *"shall be governed by the national law relating to infringement of a national trade mark..."* As a result, the EU Trade Mark Directive recital (10) above is relevant to the CTM regime in relation to infringement.

[13] http://www.independent.co.uk/life-style/health-and-families/health-news/teenagers-think-slim-cigarettes-are-safer-says-report-8931612.html [Accessed July 15 2014]

Similarly, there is no clarification on how proposals will co-exist with the Madrid International Trade mark System, where the UK has been designated as a State where protection is sought. We suggest that the draft Regulations should address this.

Additional Comments

One option open to the Government is for it to consider delaying taking steps to implement the proposed Regulations pending the outcome of the WTO complaint investigation referred to above. However, it is acknowledged that the timeframe for the ultimate findings to be produced is somewhat uncertain. There is also the very real prospect of appeal in that forum which would add further to the delay.

For further information and alternative formats, please contact:

www.lawscot.org.uk

EL210

Department of Health

Llywodraeth Cymru
Welsh Government

The Scottish Government
Riaghaltas na h-Alba

Department of Health, Social Services and Public Safety

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

a. Are you responding (required):

☐ As a member of the public (go to question b)

☐ As a health or social care professional (go to question b)

☒ On behalf of a business or as a sole trader (go to question c)

☐ On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

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

Name of organisation (required):

[redacted]

Name of person providing submission (required):

[redacted]

Job Title (required):

Chief Executive Officer

Contact address of organisation (required):

[redacted]

[redacted]

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

☒ Yes

☐ No

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

☐ Tobacco retailer (supermarket)

☐ Tobacco retailer (convenience store)

☐ Tobacco retailer (other type of shop or business)

☐ Specialist tobacconist

☐ Duty free shop

☐ Wholesale tobacco seller

☐ Tobacco manufacturer

☐ Retailer not selling tobacco products

☐ Pharmaceutical industry

☒ Business involved in the design or manufacture of packaging

☐ Other (please provide details below)

If other, please tell us the type of business:

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

☐ NHS organisation

☐ Health charity/NGO (working at national level)

☐ Local Authority

☐ Local Authority Trading Standards or Regulatory Services Department

☐ Local tobacco control alliance

☐ Retail representative organisation

☐ Industry representative organisation

☐ Other type of business representative organisation

☐ University or research organisation

☐ Other (please provide details below)

If other, please tell us the type of organisation:

f. **Does your response relate to** (required):

☒ United Kingdom

☐ England only

☐ Scotland only

☐ Wales only

☐ Northern Ireland only

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

☐ No

☒ Yes (please describe below)

If yes, please describe:

Packaging materials manufactured by [redacted] are specified and indirectly paid for tobacco producers

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

Consultation questions

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

Insufficient evidence was collected on the likely impact of standardised packaging on the illicit trade and its share of the market.

Conclusions on the ease of counterfeiting in paragraphs 5.7 and 5.8 did not take into account the broader complexity of packaging, including the range of packaging components, design variety and design changes.

The argument regarding whether consumers are "duped by counterfeit" in 5.9 is illogical. Consumers are no doubt well aware that they are buying from an illicit channel but that does not mean they assume that the product itself is counterfeit. The counterfeit risk is in counterfeit product being passed off as genuine but duty unpaid contraband.

Consideration of the impact of commoditisation on illict trade share fails to take into account experience with RYO tobacco, an intrisically less differentiated product category where the illicit trade share is in excess of 35%.

In the absence of an expert report on the illicit trade impact, conerns have been dismissed based on more assertion and a premature and subjective interpretation of developments in Australia.

Regarding the potential direct impact of standardised packaging on smoking consumption, Chantler failed to consider the evidence specifically in respect of young people, as the review terms of reference required.

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

The Australian government is planning a review of standardised packaging to commence at the end of 2014. Any decision in the UK should await the outcome of that review.

New data is available from ISCIC shows significant progress in the level of smoking prevalence amongst young people. Additional regulatory measures relevant to youth smoking have been enacted since 2012, on proxy purchasing and smoking in cars. These should be taken into account in assessing the justification for standardised packaging.

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

The draft packaging specifications are extremely simple and easy to counterfeit. No provision has been made for resisting a major new assault on the market by illicit suppliers. There is a risk of increased sales of cheap product through unregulated channels with a particular impact on lower socio-economic groups and young people.

Packaging could be substially standardised without completely eliminating brand identity. For example, a small area could be set aside for manufacturers to display the brand name and logo, with flexibility regarding fonts and colours. This would reduce commoditisation and discourage down-trading to cheaper, illicit product.

It is recommended that an easily-recognisable but difficult-to-counterfeit authentication feature is added. This is already mandated by the FCTC and EU TPD2 Article 16 (not to be confused with track-and-trace, which is an entirely different matter). [redacted] is a leading UK suppliers of such solutions and can provide advice.

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

Key assumptions are not set out in the relevant section of the IA Summary.

The calculated net impact of the policy is overwhelmingly sensitive to the projected reduction in quit rates amongst existing smokers, which in turn relies on the expert estimates generated by Pechey et al. This work is out of date and does not take into account the current regulatory base line in the UK or the initial data on changes in smoking rates from Australia. In any case, the 1% impact incorporated into the impact assessment is the medium estimate for a number of countries whereas the medium estimate for the UK alone is lower, at 0.75%. This would reduce the calculated policy impact by £5.5Bn. The expert's quotes accompanying the research

counsel extreme caution in making assumptions of any measurable impact and are not consistent with the weight whoch has been placed on the results.

The latest survey from HSCIC shows smoking prevalence amongst 15 year olds has fallen considerably, to 8%. The IA uses a base line for 2021 of 9%, which is wholly unrealistic given the trend and the expected impact of additional regulation already in the pipeline on the display ban and proxy purchasing.

Overall, the key IA assumptions on health benefits lack credibility.

Dismissal of Option 3, to await evidence from the implementation in Australia, is unjustified. The challenge of disentangling the impact of standardised packaging from other tobacco control measures is insufficient justification for dismissing the value of the only real evidence available to support this policy. In any case, isolating the impact of standardised packaging in Australia is only an issue if overall smoking trends are downwards. Smoking prevalence statistics are expected to be available in October 2014 and if these show no decline (or an increase) despite large tax rises and other measures, it will be possible to conclude that standardised packaging has so far had no favourable impact. This would confound the key assumption of the IA.

An alternative intervention to specifically address the uptake of smoking amongst young people is available in the form of intensive youth education. Experience from Germany supports its effectiveness even against the backdrop of a considerably more liberal regulatory regime for tobacco. This option has not been considered by the IA.

Impact on packaging manufacturers - paragraphs 94 and 95 of the IA consider the impact on packaging industry assets. However, this covers only the printing of the cigarette carton and ignores the impact on producers of all other packaging components, including specialist cartonboards and laminated substrates, inner frame board, inner bundle wrap and liner, overwrap film and cigarette tipping paper, as well as manufacturers of other packaging formats such as pouches and cans. It also ignores the adverse consequences for ancillary suppliers of design and reprographic services, printing cylinders and tooling.

In paragraph 100, the elimination of economic activity currently engaged in manufacturing complex packaging is quantified as a cost saving and therefore a benefit of the policy. From a packaging industry perpective, this is a perverse interpretation.

Thank you for participating in this consultation.

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

How to get involved in the consultation

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

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

Completing the online form on the Department of Health website at:
http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1

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

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

- **Emailing your response to:**

  TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

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

GL 212

trading standards institute
leading the trading standards profession

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

Department of Health consultation 2014

Response of The Trading Standards Institute

August 2014

trading standards institute

leading the trading standards profession

About The Trading Standards Institute

The Trading Standards Institute is the UK national professional body for the trading standards community working in both the private and public sectors.

Founded in 1881, TSI has a long and proud history of ensuring that the views of our broad church of Members are represented at the highest level of government, both nationally and internationally. TSI campaigns on behalf of the profession to obtain a better deal for both consumers and businesses.

Local authority trading standards services have for some years promoted public health through, for example, tobacco control activities; food standards and labelling; and reducing the illegal supply of age restricted products such as alcohol to young people. This role gained in importance recently when, as part of its health reforms, the Government repositioned public health back into English local government.

We are also taking on greater responsibilities as the result of the government's announcement in October 2010 that trading standards is one of the two central pillars of the new consumer landscape (the other being Citizens Advice) and we have taken over responsibility for business advice and education.

The TSI Consumer Codes Approval Scheme, established at the request of the government to take over from the OFT scheme, went live in April 2013 and was formally launched in June 2013.

TSI is a member of the Consumer Protection Partnership which was set up by the government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

TSI is also a forward-looking social enterprise delivering services and solutions to public, private and third sector organisations in the UK and in wider Europe.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement which deliver consistent curriculum, content, knowledge outcomes and evaluation procedures, with the flexibility to meet local authority, business and operational needs.

In compiling this response, TSI has canvassed the views of its Members and Advisers. The response has been composed by TSI Lead Officer for Health Jane MacGregor in collaboration with the TSI Lead Officers for Intellectual Property, Handley Brustad and Gavin Terry. If you require clarification on any of the points raised in the response, please do not hesitate to contact Jane at email lohealth@tsi.org.uk.

TSI does not regard this response to be confidential and is happy for it to be published.

Trading Standards Institute
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Consultation on the introduction of regulations for standardised packaging of tobacco products

Trading Standards Institute response – August 2014

Preamble

This response has been composed by TSI Lead Officer for Health Jane MacGregor following collaboration with TSI Lead Officers for Intellectual Property Handley Brustad and Gavin Terry.

TSI welcomes the opportunity to respond to this consultation. As requested, this response focuses on what is "new" and this submission has thus largely concentrated on the draft Regulations .

We would point out, however, that the comments made in the Institute's original submission in August 2012 remain unchanged.

This original submission may be seen at:-
www.tradingstandards.gov.uk/policy/policy-consitem.cfm/newsid/945

We turn now to the current consultation.

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

1. The Trading Standards Institute fully supports the introduction of standardised packaging as stated in the original response made to the Department of Health in 2012. The Institute welcomes the findings of the Chantler Review. In particular the Institute is pleased to note that Sir Cyril Chantler has stated in his covering letter to the Secretary of State: *"it is in my view highly likely that standardised packaging would serve to reduce the rate of children taking up smoking"* and *"the body of evidence shows that standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but important reduction over time in the uptake and prevalence and thus have a positive impact on public health."*

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

Tackling the supply of illicit tobacco

2. The Institute is aware that the tobacco industry regularly argues against standardised packaging for the reason that it will inevitably lead to an increase in the illicit tobacco trade. The Institute does not regard this as a valid argument. We base our view upon the understanding that the proposed regulations retain provision for all of the key

security features that are found on existing packs of cigarettes including coded numbering and covert anti-counterfeit marks. There are therefore no new challenges presented in terms of the detection of illicit product.

3. TSI members are both experienced in and committed to tackling the problem of illicit tobacco supply. Ninety one per cent of responding trading standards services have recently reported having taken action locally to deal with the supply of illicit tobacco (2014)[1] compared to 93% in 2013[2].

4. The Institute notes the provisions set out in Article 15 of the revised EU Tobacco Products Directive and Article 8 of the Illicit Trade Protocol. The development of a numbering system and effective tracking and tracing procedures are to be welcomed.

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

5. The Institute welcomes the opportunity to comment on the draft regulations. There are some suggestions outlined below to strengthen the regulations to achieve the desired outcome of protecting children and to ensure the regulations are possible to enforce once enacted.

6. In our response to the original consultation on standardised packaging, the Institute said *"standardised packaging would apply equally to all tobacco products sold in the UK wherever they are produced"*. This remains the view of the Institute in that the regulations should apply to **all tobacco products**, including pipe tobacco, cigars, cigarillos, blunts and other niche products including shisha.

7. In the opinion of the Institute there exists the potential for existing products, notably slim cigarettes, to be re-branded as, for example, cigarillos, thereby avoiding any need to comply with the regulations as currently drafted. In addition to the point made above, the Institute would therefore recommend stipulating a minimum size of cigarette.

8. The effect of Regulation 2(6) and (7) appears to be that a distance retail sale from outside the UK to a UK consumer is to be treated as it if were a supply in the UK. The business would therefore commit an offence. Previous experience of compliance monitoring of the Tobacco Advertising and Promotions Act 2002 etc (Amendment) Regulations 2006 (the purpose of which was to include provision for information societal services) demonstrated how difficult it is for local trading standards officers to enforce such legislation across international borders. This provision therefore

[1] Full survey report to be published by TSI in Autumn 2014
[2] Tobacco Control Survey of Trading Standards Services in England (2013) available online : http://www.tradingstandards.gov.uk/policy/improvingthehealthofsociety.cfm [accessed 4th August 2014]

requires further consideration in terms of responsibilities and the practicalities involved.

9. The draft regulations do not propose requirements relating to the size of cigarette packets. The Institute recommends that, as in Australia, the regulations specify the dimensions of the pack to prevent manufacturers using this as a method of product differentiation. We have seen how in recent times the pack has been used in this way with great deliberation.

10. The requirements only apply to tobacco packaging at retail level. The Institute recommends that in order to reduce confusion over definitions of "warehouses" or those premises where both retail and wholesale sales are carried out, e.g. Costco, that the regulations are extended to cover the extended supply chain.

11. The Institute questions why the penalty stated in Regulations 20 (2)(a) and 23 (2) is drafted as "upon summary conviction, etc for a term not exceeding three months". This is half the maximum penalty imposed for other offences under the Consumer Protection Act 1987. The rationale for this distinction is not understood. In the opinion of the Institute, the penalty should be the same, i.e. maximum of 6 months.

12. The Institute suggests that, to facilitate the highest level of compliance with new regulations, the Government consider funding a sustained mass media campaign around the time that standardised packaging comes into effect. Increased awareness of the new provisions across both consumer and business landscapes will assist in compliance.

13. In support of the local authority trading standards services charged with the duty to enforce these Regulations TSI recommends that appropriate guidance and training is developed and delivered in advance of implementation of the Regulations. The Regulations are detailed and prescriptive, and guidance will thus be necessary if a consistent approach is to be achieved.

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

Chantler concluded *"that the solution to illicit use is instead to have an **effective enforcement regime**, and the enforcement agencies in the UK have already demonstrated that an effective enforcement regime and appropriate sanctions can keep illicit to low levels, even in a relatively high tax jurisdiction."*

14. Local authority trading standards officers will be tasked with enforcing this new legislation. The results of the 2014 workforce survey show that trading standards services in England and Wales will have been cut by an average of 40% over the lifetime of this parliament. Trading standards staffing levels have fallen by approximately 45% since 2009.

15. The Institute therefore urges the Government to acknowledge the vital role that local authority trading standards officers play in tobacco control and to invest in appropriate levels of support to facilitate effective enforcement of these new regulations.

Conclusion

16. The Trading Standards Institute supports the introduction of Regulations to implement standardised packaging for tobacco products.

17. TSI sees the Regulations as an important positive contribution to reducing the harm caused by tobacco consumption.

18. The Government is, however, urged to recognise the resource constraints faced by trading standards at a local level and to ensure that new enforcement requirements are adequately resourced.

Trading Standards Institute – August 2014

EL 213

cebr

making business sense

7th August, 2014

Department of Health Standardised Tobacco Consultation

Dear sir/madam,

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

Cebr does not hold a view about the principle of plain packaging. But we did prepare a report on some of the likely practical implications. This was prepared for Philip Morris, and is attached.

This report was prepared before there was much evidence from the Australian experience, which there now is.

Although we have not studied the Australian evidence in detail, a cursory examination suggests that it does not contradict our findings.

The report was commissioned and paid for by Philip Morris. But Cebr stands by the conclusions which we have reached.

We hope that our report will provide a useful input to the consultation.

[redacted]

Making Business Sense

Quantification of the economic impact of plain packaging for tobacco products in the UK

Report for Philip Morris Ltd.

July 2013

Centre for Economics and Business Research Ltd.
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Disclaimer

Whilst every effort has been made to ensure the accuracy of the material in this document, neither Centre for Economics and Business Research Ltd nor the report's authors will be liable for any loss or damages incurred through the use of the report.

Authorship and acknowledgements

This report has been produced by Cebr, an independent economics and business research consultancy established in 1992. The study was led by Oliver Hogan, Cebr Head of Microeconomics, with analytical and research support from Cebr Economist Chitraj Channa. The views expressed herein are those of the authors only and are based upon independent research by them.

This study has been commissioned by Philip Morris Ltd and has utilised a combination of industry data and data available in the public domain through ONS and related sources.

The report does not necessarily reflect the views of Philip Morris Ltd.

London, July 2013

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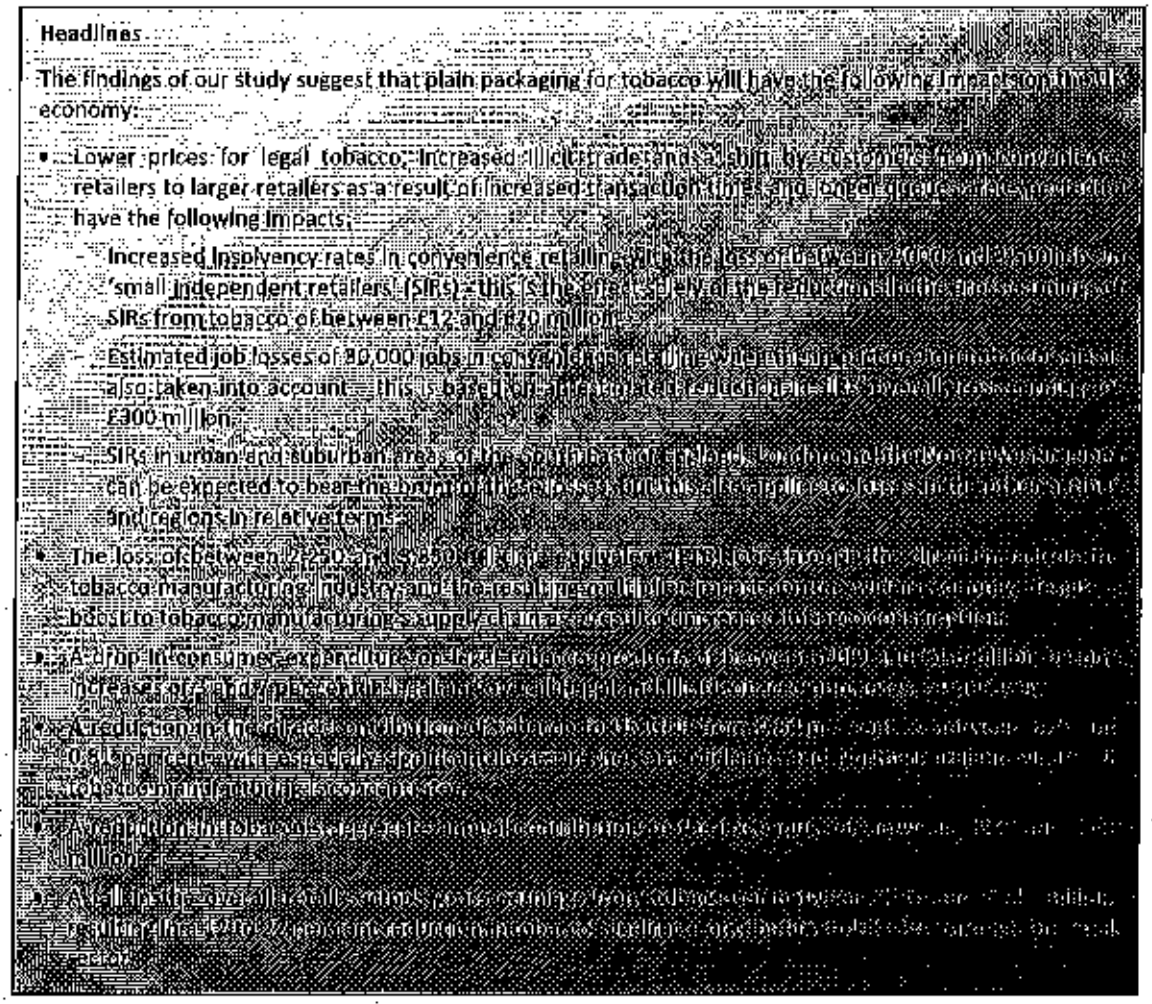
Executive Summary



Neither the Government's consultation on plain packaging for tobacco – launched in April 2012 – nor the existing literature on the subject provides quantitative estimates of the effects on the economy that could result. Cebr was asked to fill this gap with a valuation of the micro and macroeconomic impacts of plain packaging in the UK.

Our scenario-based assessment begins with an analysis of the demand for, pricing and supply of both legal and illicit tobacco. We use the resulting 'micro' scenarios within Cebr's 'macro' impact modelling framework to produce estimated ranges for the potential effects of plain packaging on key indicators including GDP, jobs and Exchequer contributions.

Using the same framework, we examine tobacco's indirect contribution to the UK economy through the retail sector and how that could be affected by plain packaging. This is before analysing the potential impact of plain packaging specifically on 'small independent retailers' (SIRs).

The key findings of our study are summarised in the following paragraphs.

Using the results of Dr Jorge Padilla's economic modelling exercise, which provided figures for the impact of plain packaging on prices and purchases of legal tobacco, and the results of a UK behavioural study by SKIM, which assessed consumer demand for illegally sold (illicit) products in a plain packaging scenario, we estimate that the value of legal cigarette sales in the UK could shrink

by between 4 and 8 per cent as a result of plain packaging. This is the result of lower prices reflecting stronger competition and the erosion of product differentiation, and is **despite increases in overall legal cigarette purchases as a result of lower prices**. The **value of legally sold hand-rolled tobacco (HRT) is also expected to fall by between 20 and 22 per cent** as a result of plain packaging but, unlike cigarettes, purchases of legally sold HRT are expected to decline.

This latter expectation is explained by a disproportionate 'feedback' effect (on legal HRT relative to cigarettes) from the illicit tobacco trade. Primary research by SKIM suggests that **consumption of illicit tobacco could**, under plausible assumptions, **increase by 30 per cent in response to plain packaging**. This drove Cebr's estimates of the increasing importance of illicit tobacco in a post-plain packaging world – from 9 per cent of all UK purchases of cigarettes to over 11 per cent and from 38 per cent of all UK purchases of HRT to 50 per cent. This **feedback effect - the consequent reduction in legal tobacco volumes as a result of substitution to illicit – is therefore disproportionately strong for HRT relative to cigarettes.** Nonetheless, overall volumes of cigarettes and HRT consumed, including legal and illicit, are expected to increase – by between 5 and 10 per cent for cigarettes and by between 9 and 12 per cent for HRT.

Despite the increase in overall tobacco purchases, the above estimates correspond with a **reduction in final demand expenditure on legal tobacco of between £0.9 and £1.6 billion**, which results in the following economic impacts of plain packaging on the UK economy:

- **A reduction in the direct contribution made by tobacco to GDP** from 0.84 per cent to between 0.78 and 0.81 per cent.
- **The loss of between 2,250 and 3,850 jobs** as a result of the impact of plain packaging on tobacco manufacturing through direct, indirect and induced impacts, **despite the boost to tobacco manufacturing's supply chain as a result of increased purchases**.
- **A reduction in tobacco's aggregate annual contribution to the Exchequer** of between £219 and £348 million.

Tobacco also benefits the economy through the retail sector that sells it on to tobacco consumers. We expect **the retail sector's gross earnings from tobacco to fall from our 2010 estimate of £850 million by between £110 and £185 million.** This reduces tobacco's indirect contribution to GDP through the retail sector by between 12 and 22 per cent of an absolute GVA contribution of £492 million.

For the UK nations and regions, our key findings include the following:

- The East Midlands economy is expected to be the worst affected by plain packaging, with a reduction in regional GVA of between £175 million and £303 million.
- Northern Ireland would, however, experience the greatest percentage reduction in the size of its economy as a result, falling by between 0.4 and 0.7 per cent as a result of the impact of plain packaging.
- Job losses in tobacco manufacturing and in the wider economy through multiplier impacts are also expected to be greatest in the East Midlands in absolute terms (between 1,002 and 1,763 FTE job losses) and Northern Ireland in relative terms (with the loss of between 0.12 and 0.22 per cent of all jobs in the Northern Irish economy).

Small independent retailers (SIRs) however could be particularly hard hit by plain packaging. This can be summarised as follows:

- **Profits from tobacco are of higher importance** to SIRs, which account for 11 per cent of all tobacco sales in the UK. The effects described above in terms of the retail sector as a whole yield estimated reductions of between £12 and £20 million in SIRs' earnings from tobacco.

- Given the current state of the retail sector and the fact that so many convenience stores are on the cusp of financial difficulties, we estimate that **this could result in some insolvencies and the loss of between 2,000 and 3,500 full-time equivalent (FTE) jobs in convenience retail.**
- There is an expectation however, based on survey evidence from Australia, that both tobacco and non-tobacco **customers will switch from smaller to larger stores as a result of increased tobacco transaction times and their effect on queue lengths.**
- On this evidence, **SIRs could be facing losses of earnings reaching as much as £300 million** once the lost non-tobacco sales are taken into account.
- **This would lead to greater numbers of insolvencies and up to 30,000 FTE employees losing their jobs in convenience retailing.** With so many local communities dependent on small independent retailers, such effects would have negative implications in terms of the wider social impact of SIRs.

Broken down by UK nation and region, these job losses in SIRs are expected to be greatest in the South East of England, London and the North West of England, with 4,466, 3,683 and 3,305 fewer jobs respectively due to the lost tobacco and non-tobacco sales that can be expected to result from plain packaging. These job losses are more likely to be concentrated in urban and suburban areas, where the options to switch to larger stores in anticipation of longer tobacco transaction times and queues in SIRs will be more readily available.

1 Introduction and background

This Cebr report aims to provide a thorough estimation of the impact that compulsory plain packaging of tobacco products will have on the UK's economy. This includes effects on the legal and illicit tobacco markets, on small and independent retailers, and on key macroeconomic variables including GDP, employment, and government finances.

1.1 Purpose and objectives of the study

The Government launched a consultation on the issue of standardised (plain) packaging for tobacco products in April 2012 and, the consultation period having closed, is now deliberating on the matter. The Department of Health impact assessment (IA) that accompanied the consultation document recognised the risks of unintended consequences of legislating for plain packaged tobacco products, including:

- Downtrading to cheaper tobacco products and declines in the price of legal products;
- Increased overall consumption of tobacco products; and
- A possible increase in the supply of illicit tobacco products.[1]

However, there are no quantitative estimates in the IA of the economic effects that these, and other relevant factors, would have in the UK. Neither did any of the literature reviewed as part of our study provide a quantitative estimate of the macroeconomic impact of plain packaging. Cebr has been asked to fill this gap.

1.2 Methodological overview

Our scenario-based assessment begins with an analysis of how tobacco consumers and the tobacco industry are likely to react to and be impacted by, plain packaging at the 'micro' level. This involves analysing the demand for, pricing and supply of both legal and illicit tobacco. We use the resulting 'micro' scenarios within Cebr's 'macro' impact modelling framework to produce estimated ranges for the potential effects of plain packaging on key indicators including GDP, jobs and Exchequer contributions.

Using the same framework, we examine tobacco's indirect contribution to the UK's economies through the retail sector and how that could be affected by plain packaging. This is before analysing the potential impact of plain packaging specifically on 'small independent retailers' (SIRs).

The sequence of the modelling and analytical processes adopted for the study is set out as follows:

1. **Analysis of legal tobacco:** in a 2010 study using economic simulation modelling, Dr. Jorge Padilla calculated the impact of plain packaging on the price and consumption of legally traded cigarettes due to a reduction in the role of branding.[2] Padilla presents a series of calculations, each based on a different set of assumptions, which provided the starting point for our analysis. We also developed a number of scenarios covering the relationship between the demand for

[1] Department of Health (March 2012), "Impact Assessment – Standardised packaging of tobacco products" Final Version.

[2] Jorge Padilla (2010), "The impact of plain packaging of cigarettes in UK: a simulation exercise", study commissioned by Philip Morris International.

cigarettes and for hand-rolled tobacco (HRT) in order to produce estimates for the tobacco market as a whole.

2. **Analysis of illicit tobacco market:** we used the results from a recent behavioural study by SKIM[3] that examined how the preference shares for legal vs. illicit cigarettes in a sample of smokers would change with plain packaging. These were used to estimate the likely changes in the volumes of illicit cigarettes and HRT purchased in a post-plain packaging world.

3. **Feedback from the illicit into the legal tobacco market:** any increase in the size of the illicit market will mean a decrease in the size of the legal market for given levels of total consumption.

4. **GDP, employment and the public finances:** we then used our estimates of the above effects to model (i) the direct economic impact, and (ii) the indirect and induced multiplier impacts, on GDP and employment as a consequence of plain packaging. We also modelled the impacts on Exchequer revenues in the context of current UK fiscal policy. The analysis of direct and multiplier impacts on GDP and employment is extended to examine separately each of the UK nations (England, Wales, Scotland and Northern Ireland) and English Government Office regions (North East of England, North West, Yorkshire and the Humber, East Midlands, West Midlands, East of England, London, South East and South West of England).

5. **Tobacco's economic contribution through the retail sector:** we analyse how tobacco contributes indirectly to the economy through the retail sector and how plain packaging can be expected to affect that indirect contribution. Following this, we narrow our focus to the deleterious effects of plain packaging on SIRs, which can be expected to be particularly hard hit due to the likelihood of customers switching from smaller to larger stores in anticipation of longer tobacco transaction times and longer queues in convenience stores. This analysis is also extended to cover the UK nations and English regions.

1.3 Limitations of the study

The expected impacts of plain packaging for tobacco are broader in scope than this study was capable of considering. There are other impacts which should be flagged therefore as limitations of this report. These other impacts include, but may not be limited to:

1. The impact of plain packaging on tobacco consumers' disposable incomes; and
2. The risk that government could be forced to pay compensation to tobacco companies.

The following two subsections outline these principal limitations of the study. The third subsection considers further potential limitations.

Disposable incomes

The reduction in tobacco prices as a result of plain packaging can be expected to provide a boost to smokers' real disposable incomes. The results of Padilla's economic modelling and of SKIM's behavioural study inform us that a certain proportion of this will be spent on further legal and illicit tobacco purchases. However, some proportion of this increase can also be expected to find its way

[3] Coelho, M., et al. (2012), "The impact of standardized packaging on the illicit trade in the UK", study commissioned by Philip Morris International.

back into retail through non-tobacco purchases. These generally yield higher gross margins for retailers than tobacco.

While this could be expected to mitigate to some extent the lost tobacco earnings due to plain packaging, any mitigation could only really be expected to occur at the aggregate retail sector level. In other words, this does not change the evidence that customers are likely to switch from smaller to larger stores in anticipation of longer tobacco transaction times and longer queues in convenience stores when plain packaging is introduced.

The boost in tobacco consumers' disposable incomes is unlikely, therefore, to mitigate the potentially stark impacts - under reasonable assumptions - of plain packaging on SIRs presented in this report.

Furthermore, the extent to which it mitigates the effects of plain packaging on the retail sector as a whole can only be expected to be limited given the prevailing economic conditions – specifically, continued widespread household 'de-leveraging' meaning any spare disposable income is used to pay off debts or saved, rising food and energy prices and the real decline in average levels of pay.

Government compensation of tobacco companies

The tobacco industry has filed lawsuits against governments challenging restrictions on the marketing of tobacco products introduced over the last few decades. Logic suggests, therefore, a not insignificant risk of legal challenges to plain packaging, possibly under Article 17 of the EU Charter of Fundamental Rights or Article 1 Protocol 1 of the European Convention on Human Rights.

According to legal experts, if plain packaging legislation was passed and the tobacco industry challenged that legislation, it would likely be struck down as illegal absent fair compensation to the tobacco industry for the deprivation of its trademark rights. That compensation could run into the billions of pounds.

The tobacco analyst at Citigroup Investment Research, using simplified discounted cash flow modelling of tobacco industry profits calculated a fair value for tobacco industry brand designs (which are lost with plain packaging) of £5 billion. An alternative estimate, based on the implicit value of the intangible assets of Gallaher when it was bought by Japan Tobacco, suggests a figure of a bit under £4 billion.[4]

This would of course, at the macroeconomic level, dwarf any of the effects of plain packaging outlined in this report as well as any mitigating impact on the aggregate retail sector of the potential increase in disposable incomes of tobacco consumers described above.

Other limitations of the study

The unregulated nature of the illicit market means that there is considerable uncertainty over estimates of its size. It is possible that the actual size of the illicit market is larger than the HMRC mid-point estimates used in this study. Furthermore, the HMRC estimates used reflect the market situation in 2010-2011 and would not, therefore, have taken into account more recent increases suggested by the MS Intelligence UK Q4-2012 Market Survey Report, which concluded that 26.4 per cent of all cigarettes consumed in the UK were non-UK duty paid. To the extent that this is the case the negative economic impacts of plain packaging, including exchequer losses, presented in this report would constitute underestimates.

[4] Adam Spielman (2008), "Submission on the future of tobacco control".

The Department of Health in the Impact Assessment supporting its consultation on plain packaging attributes a monetary value to each non-smoker that does not take up smoking and to each current smoker that quits. Plain packaging is predicted to cause an increase in tobacco consumption and it seems logical to conclude that at least some of this increase will be explained by non-smokers taking up smoking and existing smokers failing to quit. To the extent that this is the case, our modelling and analysis understates the costs associated with plain packaging because, pursuant to the Department's logic, there would be a cost associated with each person who, as a result of plain packaging, takes up smoking when they otherwise would not have or does not quit when they otherwise would.

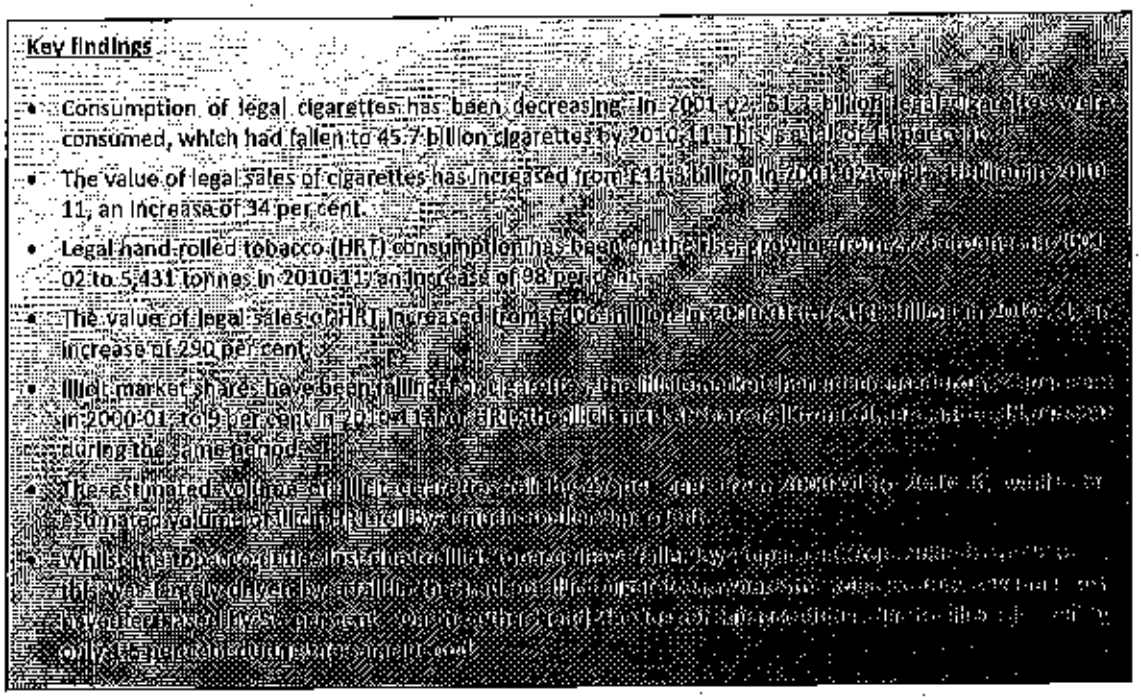
The additional minor limitation is our use of 2010 levels for each of the ad valorem and specific elements of tobacco duties in order to maintain consistency with our economic models, which are based on the 2010 national accounts. The up-to-date rates for 2013 are noted in the relevant section of the report.

1.4 Structure of this report

The remainder of the report is structured as follows:

- Section 2 provides an overview of the UK tobacco market, covering both the legal and illicit trades.
- Section 3 provides details of Cebr's estimates of the impact of plain packaging on the legal tobacco market, culminating in estimates of price reductions and the consequent falls in tobacco sales revenues despite increased purchases.
- Section 4 presents Cebr's estimates of the current 'macro' contributions of tobacco to the UK and its constituent economies.
- Section 5 assesses the likely impact on the levels and structure of these contributions depending on reactions in the market to plain packaging.
- Section 6 provides our assessment of the potential impacts of plain packaging on retailers with a focus on SIRs.

2 Overview of the UK tobacco market



This section provides an overview of the UK tobacco market, covering both the legal and illicit trades.

2.1 The legal tobacco market

To facilitate the analysis of the impact of plain packaging within our economic modelling frameworks, it was necessary to produce a 'bottom-up' estimate of aggregate expenditure on tobacco in the UK. The baseline estimate for financial year 2010 was about £17 billion,[5] based on Cebr's analysis of pricing data from HMRC and the Tobacco Manufacturers Association (TMA), HMRC volume data and Keynote's estimate that cigarettes and hand-rolled tobacco (HRT) account for over 98 per cent of the entire tobacco market, with the remainder representing sales of cigars and pipe tobacco.[6]

Cigarettes

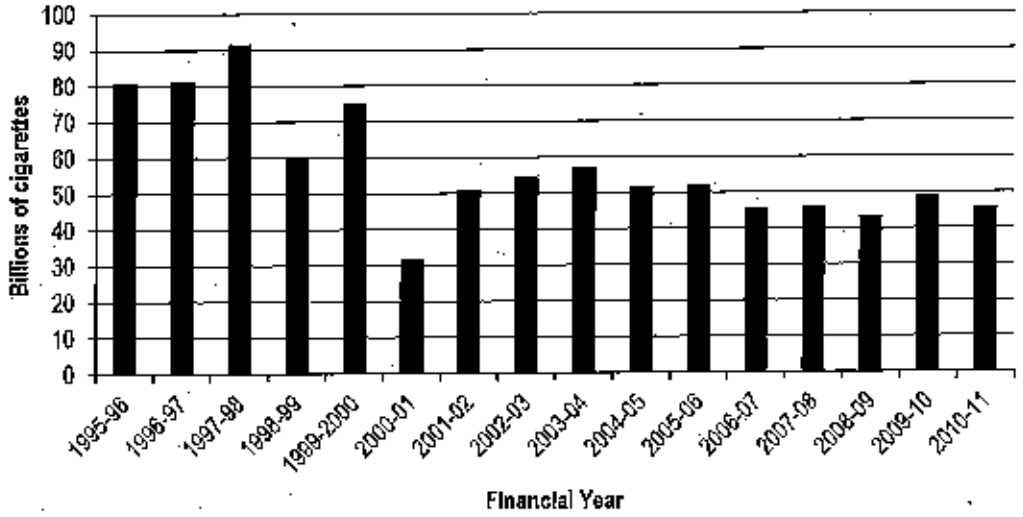
The UK saw 45.7 billion cigarettes released for legal consumption in 2010-11. As shown by Figure 1 below, the cigarette market has been in structural decline for most of the previous two decades. In 1997-98, the volume of cigarettes released for consumption was 91.7 billion sticks, more than twice

[5] This 'bottom-up' estimate is broadly consistent with ONS national accounting data, which reports total final expenditure on tobacco products of £17 billion. While the latter number would constitute the corresponding 'top-down' estimate, the 'bottom up' estimate was necessary to be able to analyse the impacts on the prices and consumption that make up total final expenditure.

[6] Keynote (2011), Cigarettes & Tobacco Market Report 2011 – Keynote's own estimate of the market size of tobacco in 2010 was £17.7 billion. We have not sought to reconcile the difference between this and our 'bottom-up' estimate, nor do we think it necessary given the proximity of our own estimate to official statistics.

as much as in 2010-11. During the period 2001-02 to 2010-11, cigarettes released had fallen by about 11 per cent overall.[7]

Figure 1: Volumes of cigarettes released for legal sale and consumption



Source: HMRC

Successive increases in the tax rate applied to tobacco products have most likely been a major driving force in reducing legal cigarette consumption. The 1990s saw the then Conservative Government follow a duty "escalator" policy on tobacco, whereby the tax on tobacco products was increased by more than the annual rate of inflation. But, reading only from this data would naturally lead one to exaggerate the decline in overall tobacco consumption because, in response to increases in the price of cigarettes, many smokers will have down-traded to HRT or to illicit tobacco products.[8] The data, as will be seen, would seem to support this proposition.

The prevalence of smoking in the UK fell from 27 per cent of the population in 2000 to 20 per cent in 2010.[9] But viewing the impact of this on tobacco consumption through the lens of cigarettes only would likewise lead one to exaggerate it.

Despite decreases in the volume of legal cigarettes sold, the total value of sales of legal cigarettes has been climbing over the past decade, as shown in Figure 2 below. The value of sales in 2010-11 stood at £15.1bn, having grown by 34 per cent from £11.3 billion in 2001-02.

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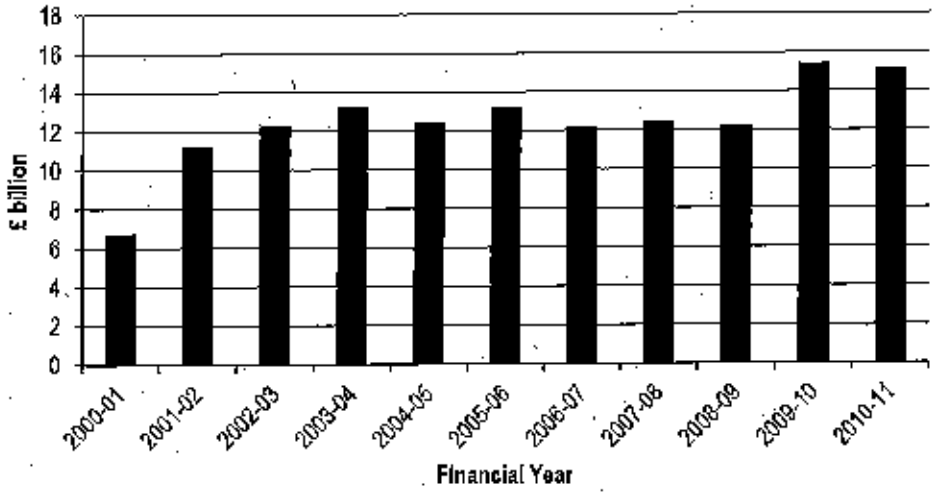
[7] We note the swings between years in cigarettes released for consumption. These are mainly driven by what is known in the industry as 'forestalling' and not by massive ups and downs in actual consumption. NAO (2010) in its Audit of Assumptions for Budget noted that "forestalling occurs when manufacturers stockpile cleared, duty paid cigarettes, in advance of an anticipated increase in excise duty or a manufacturers price increase".

[8] Significant down-trading to lower priced legally sold cigarettes has also occurred. The detail of this was beyond the scope of this report, but it is accounted for in our modelling through the use of Padilla's estimates of the cigarette price and consumption impacts of plain packaging.

[9] ONS General Lifestyle Survey (2010).

Figure 2: Value of cigarettes released for legal sale and consumption



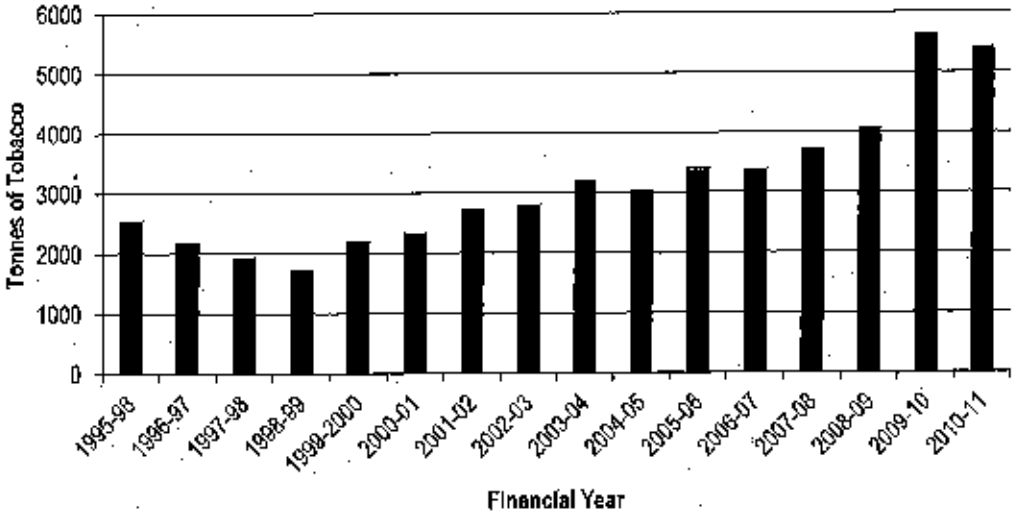
Source: HMRC, YMA, Cebr estimates

The effect of the price increases on the value of sales has, therefore, outweighed any revenue-reducing effects of the corresponding reductions in consumption.

Hand-rolled tobacco

Given the down-trading phenomenon, it is not surprising that, in contrast to the clear decline in cigarette volumes, legal HRT released for consumption has been on the rise. Figure 3 shows that in 2010-11, 5,431 tonnes of HRT were released for consumption in the UK, representing a staggering 132 per cent growth over a 10-year period.

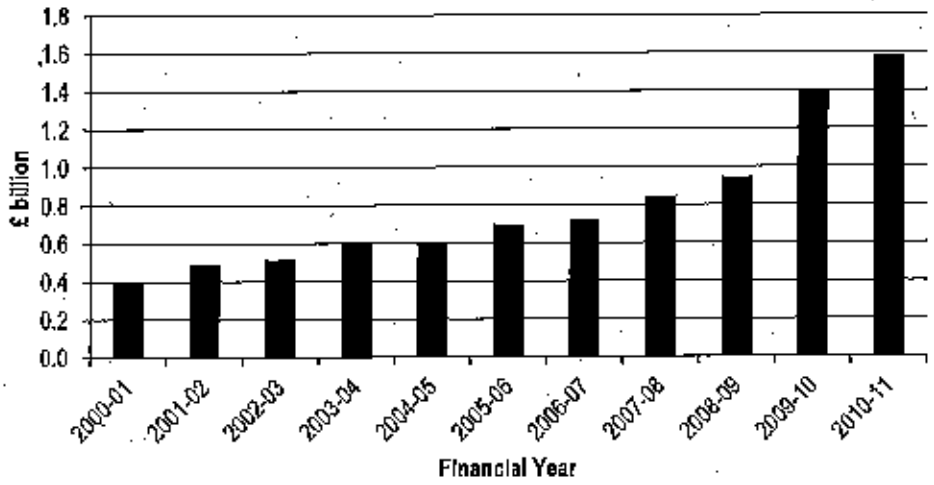
Figure 3: Volumes of HRT released for legal sale and consumption



Source: HMRC

The value of HRT sales has also increased dramatically. This is a function of the same (or similar) tax policies as those applied to cigarettes, as well as the upward trend in consumption. We estimated that HRT sales had a value of about £1.58 billion in 2010-11, an increase of 290 per cent since 2000-01, as shown in Figure 4 below.

Figure 4: Value of sales of legally purchased HRT



Source: HMRC, TMA, Cebr estimates

2.2 The illicit tobacco trade

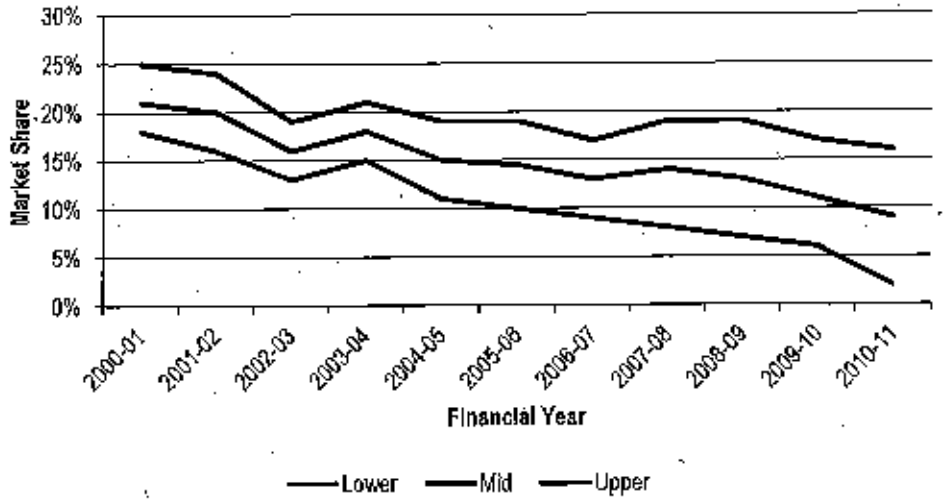
Size and volume

The illicit tobacco market is defined in terms of the unlawful production, distribution and sale of tobacco products, and is made up of a diverse range of products. Illicit cigarettes fall into three broad categories:

- *Bootlegged*: genuine branded cigarettes where the required tax has not been paid.
- *Counterfeit*: illicit cigarettes attempting to imitate a brand.
- *Illicit whites*: non-counterfeit cigarettes produced legally in one market or country, but smuggled into and sold in another market or country where they have no legal distribution.

HMRC data suggest that the market share of illicit cigarettes had declined (Figure 5) from 21 per cent in 2000-01 to 9 per cent in 2010-11 (based on central estimates).

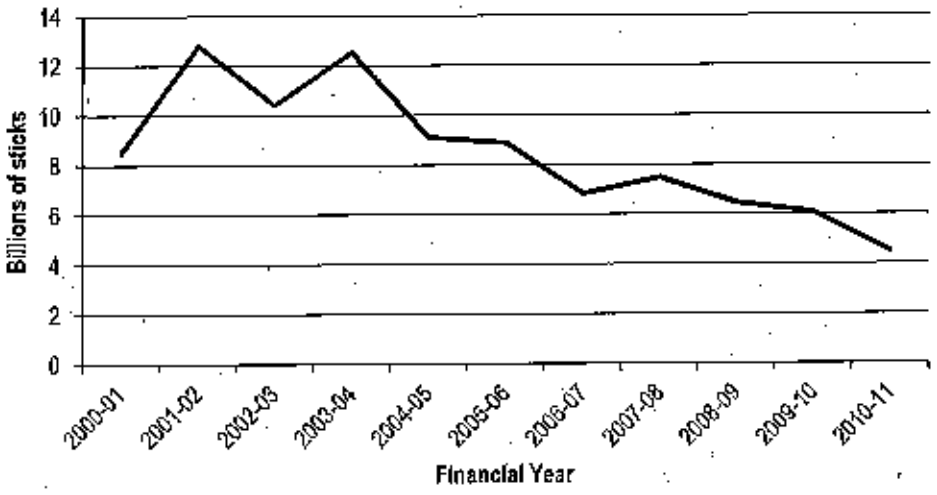
Figure 5: Estimated market share of illicit cigarettes



Source: HMRC

Across the same period, the volume of illicit cigarettes had declined from 8.5 billion sticks to 4.5 billion sticks, a fall of 47 per cent (Figure 6 below).

Figure 6: Central estimate of volume of illicit cigarettes

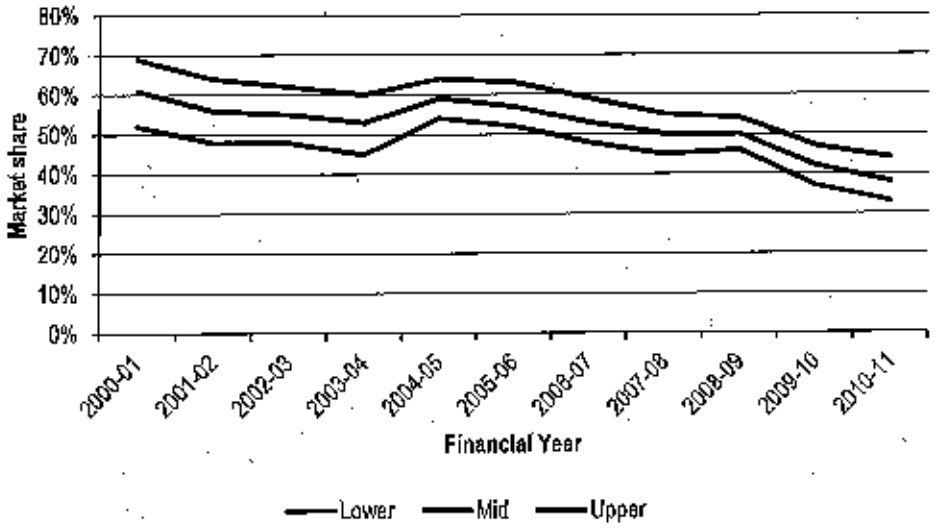


Source: HMRC, Cebr estimates

The unregulated nature of the illicit market means that there is, however, considerable uncertainty over these estimates. For example, a recent survey of empty discarded cigarette packs suggests that illicit cigarette consumption in the UK is increasing. The MS Intelligence UK Q4-2012 Market Survey Report concluded, as noted in section 1.3 above that 26.4 per cent of all cigarettes consumed in the UK were non-UK duty paid in Q4 2012.

Estimates of the market share of illicit HRT also suggest a decline over the last decade, as shown in Figure 7. HMRC's central estimate for 2010-11 was 38 per cent, significantly less than its 2000-01 central estimate of 61 per cent. The penetration of the market by illicit products has, however, been consistently higher in HRT than in cigarettes.

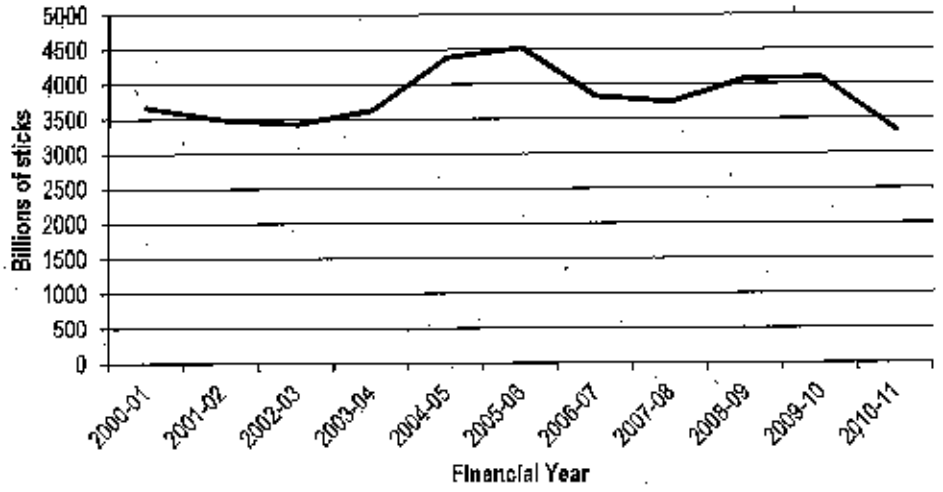
Figure 7: Estimated market share of illicit HRT



Source: HMRC, Cebr estimates

Despite a trending decline in the illicit share of the HRT market, estimates of the volume of illicit HRT show little change over the ten year period ending in 2010-11. Then, the volumes were estimated to be 3,329 tonnes in 2010-11, only 9 per cent less than the 3,665 tonnes estimated for 2000-01. As Figure 8 shows, volumes actually increased in the period 2002-06, a notable difference from the illicit cigarette market where volumes declined in this period.

Figure 8: Estimated volume of illicit HRT



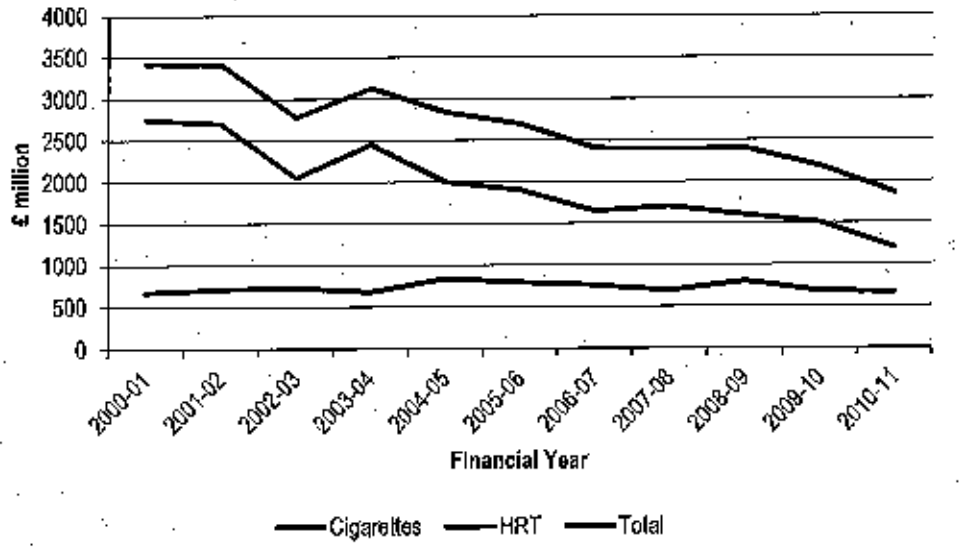
Source: HMRC

Lost tax revenues from illicit trade

Since every tobacco purchase in the illicit market is a loss of sales in the legal market, each purchase of illicit tobacco represents a financial loss of tax revenue to the government.

HMRC's central estimate of Exchequer losses as a result of the trade in illicit tobacco, as depicted in Figure 9, shows an estimate of £1.9 billion in 2010-11. This is 46 per cent lower than the £3.4 billion estimated to have been lost in 2000-01. Nonetheless, nearly £2 billion is not an insubstantial amount in the current fiscal context.

Figure 9: Estimated tax revenue lost from illicit cigarettes and HRT



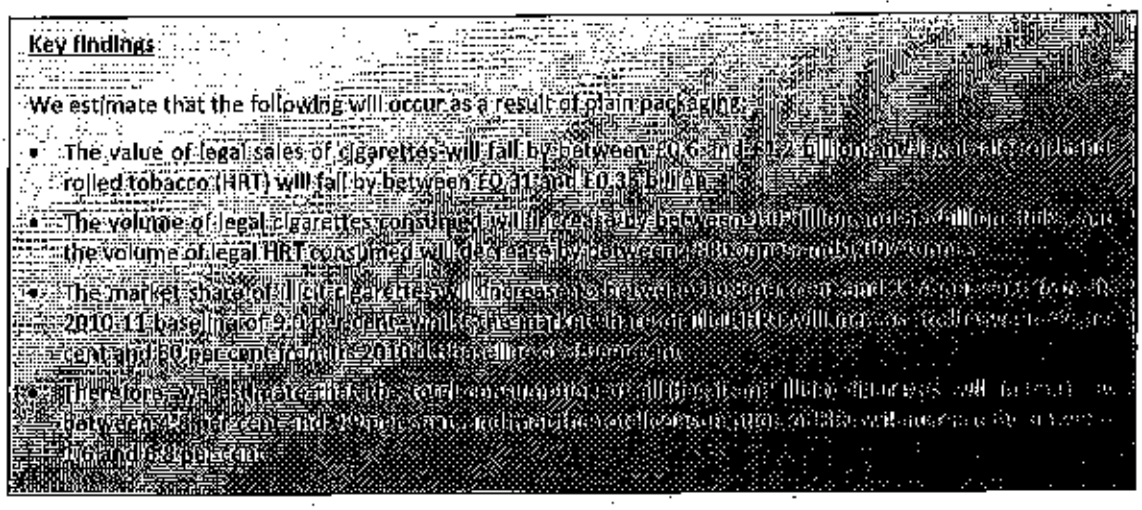
Source: HMRC

The driving force behind this fall is the decline in illicit cigarettes. Here, the tax revenues lost as a result of the illicit trade fell from £2.8 billion in 2000-01 to £1.2 billion in 2010-11, a decrease of 56 per cent.[10]

Figure 9 also reveals that the estimated tax revenues lost from illicit HRT have remained relatively constant, falling only from £670 million to £660 million over the last 10 years, a decrease of 1.5 per cent. Illicit HRT was responsible for 35 per cent of the total tax loss resulting from the illicit tobacco trade in 2010-11. This is up from 20 per cent in 2000-01.

[10] Based on central estimates from HMRC

3 Estimated impact of plain packaging on the legal tobacco market



We have used the results of Padilla's 2010 study estimating the impact of plain packaging on the price and consumption of legal cigarettes and begin by briefly reviewing this study. We then consider the direct effects of plain packaging on each of the legal cigarette and HRT markets, before analysing indirect effects through 'feedback' from the illicit market.

3.1 Brief review of Padilla (2010)

Padilla's analysis of plain packaging is based on the intended objective of the policy - to greatly reduce or eliminate the role of branding in the legal cigarette market. Cigarette manufacturers will not be able to use their packaging to differentiate their products, turning cigarettes into an increasingly homogenous product. Consumers can be expected to be more willing to substitute one brand for another which can, in turn, be expected to increase the level of price competition between manufacturers, driving down the average price.

Padilla stipulates that a second effect will occur through reduced barriers to entry as a result of the erosion of brand loyalty brought upon by plain packaging. This will allow new, so-called "no-name" entrants, with lower marginal cost than incumbents, into the market, further increasing competition and downward pressure on prices.

Finally, Padilla demonstrates that, consistent with the law of demand, a lower average price will result in higher consumption, and supports this with the results of econometric studies that estimate the price elasticity of demand for cigarettes. That is, the percentage change in cigarettes consumed for a 1 per cent change in price. A good with price elasticity between 0 and -1 is said to be relatively *inelastic*, whilst a good with price elasticity lower than -1 is said to be relatively *elastic*.

Padilla developed a demand-supply simulation model using the principles of industrial organisation theory. This model is supported by econometric estimates of the parameters required to simulate the effects of plain packaging on the price and quantity of cigarettes consumed through the model.

Padilla's results are presented in two stages. The first stage models the effect of reduced product differentiation in two scenarios – an "average" increase in substitutability, and a "large" increase in substitutability. The second stage adds to this the effect of the entry of three kinds of 'no-name' producers, each with different levels of marginal cost (MC) relative to the incumbent firms. At each

stage, the results are presented for two different assumptions for the price elasticity of demand for cigarettes: -0.5 and -1. The estimates on which we focused for use as inputs in our modelling are presented in Table 1 below.

Table 1: Padilla results used in this study, price elasticity = -1

Substitutability increase	Entry	Entrant MC ratio	Effect on average price	Effect on consumption
Average	No entry	-	-6.0%	5.3%
	Super-low brands	-25%	-8.5%	7.2%
		-50%	-9.1%	7.7%
		-75%	-9.7%	8.3%
Large	No entry	-	-11.8%	9.0%
	Super-low brands	-25%	-13.3%	9.9%
		-50%	-13.9%	10.3%
		-75%	-14.5%	10.9%

3.2 Direct impact on legal cigarette market

We used Padilla's results to determine the absolute levels of price, purchases and revenues from cigarettes in the UK after accounting for the direct effect of plain packaging.

Having reviewed other important research (notably HMRC, 2010 and Pissarides and Callum, 2004), we encountered relative consensus on a price elasticity of demand in excess of 1 (in absolute terms) for cigarettes. It made sense, therefore, to focus on the Padilla results for the -1 assumption on price elasticity of demand. Finally, we have also narrowed our focus to Padilla's "mean" scenario as opposed to his "minimum" or "maximum" scenarios.

Table 2 shows the 2010-11 figures used as our baseline, and Table 3 shows the estimated changes in price, purchases and revenues when we apply Padilla's results to data from 2010-11.

Table 2: 2010-11 baseline data

Price per pack of 20 cigarettes (£)	6.63
Purchases of cigarettes (billion sticks)	45.7
Cigarette sales (£bn)	15.14
Price per 25g of HRT (£)	7.28
Purchases of HRT (tonnes)	5,431.0
HRT sales (£bn)	1.58

Table 3 shows a projected decrease in revenues from legal cigarette sales of between £0.15 billion and £0.78 billion. The decline in sales revenue occurs because the estimated increase in the volume of tobacco sold is not enough to counteract the fall in price resulting from plain packaging.

Table 3: Estimated absolute effects of plain packaging on cigarette prices and purchases

Substitutability increase	Entry	Entrant MC ratio	Effect on average price	Effect on purchases (bn sticks)	Change in sales (£bn)
Average	No entry	-	-£0.40	2.4	-0.15
	Super-low brands	-25%	-£0.56	3.3	-0.29
		-50%	-£0.60	3.5	-0.32
		-75%	-£0.64	3.8	-0.33
Large	No entry	-	-£0.78	4.1	-0.56
	Super-low brands	-25%	-£0.88	4.5	-0.71
		-50%	-£0.92	4.7	-0.76
		-75%	-£0.96	5.0	-0.76

3.3 Direct impact on the legal HRT market

Padilla's simulation model only examined the effects of plain packaging on the legal cigarette market, thus excluding HRT. We did not uncover any numerical estimates of the effect of plain packaging on HRT price and purchases in the literature we reviewed. To overcome this shortfall, we examined a number of different scenarios in which we assumed that the effects on HRT price and purchases would be some proportion – 25, 50, 75 or 100 per cent - of the effects of plain packaging on cigarette price and purchases.

The idea that the HRT market would react to plain packaging along similar lines to the cigarette market is logical. HRT product packaging is branded in the same way as cigarettes. Below, Table 4 presents the results for the 50 per cent scenario and Table 5 for the 100 per cent scenario.

Table 4: Direct effects of plain packaging on HRT price & purchases (Scenario A, 50%)

Substitutability increase	Entry	Entrant MC ratio	Effect on average price	Effect on purchases (mn tonnes)	Change in sales (£bn)
Average	No entry	-	-£0.22	143.9	-0.01
	Super-low brands	-25%	-£0.31	195.6	-0.01
		-50%	-£0.33	209.1	-0.01
		-75%	-£0.35	225.4	-0.01
Large	No entry	-	-£0.43	244.4	-0.03
	Super-low brands	-25%	-£0.48	268.8	-0.03
		-50%	-£0.51	279.7	-0.03
		-75%	-£0.53	296.0	-0.03

Table 5: Direct effects of plain packaging on HRT price & purchases (Scenario B, 100%)

Substitutability increase	Entry	Entrant MC ratio	Effect on average price	Effect on purchases (mn tonnes)	Change in sales (£bn)
Average	No entry	-	-£0.44	287.8	-0.02
	Super-low brands	-25%	-£0.62	391.0	-0.03
		-50%	-£0.66	418.2	-0.03
		-75%	-£0.71	450.8	-0.03
Large	No entry	-	-£0.86	468.8	-0.06
	Super-low brands	-25%	-£0.97	537.7	-0.07
		-50%	-£1.01	559.4	-0.08
		-75%	-£1.06	592.0	-0.08

These tables show projected decreases in revenues from legal HRT sales of between £0.01 and £0.08 billion. Like in the case of cigarettes, the decline in sales revenue occurs because the estimated increase in the volume of HRT sold is insufficient to counteract the fall in price estimated to occur as a result of plain packaging.

3.4 Indirect effects through feedback from the illicit market

We use the results of a 2012 study by SKIM[11] and HMRC's mid-point estimates of the absolute size of the illicit cigarette and HRT markets, to estimate the effects of plain packaging through the illicit trade.

The SKIM study was a virtual behavioural experiment that presented each individual in a representative sample of UK smokers with an on-screen display, designed to mimic the cigarette display in a shop. Various scenarios were presented to the individual, and he or she was asked to select the product that they would purchase in a real life situation. Each display includes a clearly labelled selection of products available from a "street vendor" which represents illicit tobacco purchases. The report states that *"subjects were not directly informed that this is an illicit channel, but sufficient information was provided for them to reach this conclusion."*

The use of HMRC's mid-point estimate of the size is, of course, purely illustrative. HMRC's estimates of the size of the illicit market vary significantly, and it is possible that the actual size of the illicit market is closer to the upper end of the range (16 per cent for cigarettes and 44 per cent for HRT). Furthermore, the HMRC estimates used reflect the market situation in 2010-2011 and would not, therefore, have taken into account the more recent increases suggested by the MS Intelligence UK Q4-2012 Market Survey Report, noted in sections 1.3 and 2.2 above.

The study compares a baseline scenario representing the current market situation, with three other scenarios representing possible outcomes due to plain packaging:

[11] SKIM is a global markets research company.

1. **Baseline Scenario:** as in the current market situation, branded packaged cigarettes are available in regular shops and from street vendors.
2. **Scenario 1:** only plain packaged cigarettes are available in regular shops whilst a mixture of plain packs and branded packs are available from street vendors.
3. **Scenario 2:** only plain packaged cigarettes are available in regular shops, and only branded packs are available from street vendors.
4. **Scenario 3:** only plain packaged cigarettes are available from regular shops and from street vendors.

The results for each scenario, tabulated in Table 6, show the proportion of the sample that opted to purchase a product from the legal market versus the illicit market – these representing the aforementioned preference shares.

Table 6: SKIM study results

Scenario	Products Available		Preference Share	
	Regular Shops	Street Vendors	Regular Shops	Street Vendors
Baseline	Current market situation	Current market situation	63%	37%
1	Plain Packaging	Mix of Branded and Plain Packs	53%	47%
2	Plain Packaging	Branded only	51%	49%
3	Plain Packaging	Plain Packaging only	56%	44%

The results suggest that the illicit market would have the greatest market share under Scenario 2, in which street vendors sell only branded packs whilst regular shops are restricted to selling only plain packs. If plain packaging is legislated, we would expect street vendors to recognise that demand for their products is likely to be highest when they sell branded packs only. Therefore, when modelling the effects of plain packaging on the illicit market, we used the results from Scenario 2 in Table 6 above.

The proportionate increase in the preference share for illicit tobacco from the Baseline Scenario to Scenario 2 is 32.4 per cent. This was applied to the HMRC central estimate of the volume of illicit tobacco consumed in 2010-11 providing us with an estimate of the volume of illicit tobacco that will be purchased under plain packaging. The results of this analysis are tabulated in Table 7 below.

Table 7: Change in the size of the illicit market

Market	Illicit purchases (billions of sticks/tonnes)		Absolute change (bn sticks / tonnes)
	2010-11	Post-plain packaging (estimate)	
Cigarettes	4.52	5.98	+1.46
HRT	3,329	4,408	+1,079

Every additional unit of tobacco purchased illicitly will mean one less unit purchased from the legal market, with the loss of revenue for legal traders translating into a loss to the exchequer. We accounted for this by subtracting the estimated increases in the absolute size of the illicit market from our estimates of the direct absolute effect of plain packaging on purchases of legally sold tobacco to generate our estimate of the total effect of plain packaging. Our results are presented in Table 8 to Table 10 below.

Whereas the increase in cigarette purchases was estimated to fall in the range of 2.4 - 5.0 billion sticks as a result of **the 'direct' impact of plain packaging** (Table 3 above), this **is eroded by the feedback effect from the illicit market**. The results suggest that the 'net' effect of plain packaging is an increase in purchases of legal cigarettes of between 1.0 and 3.5 billion sticks, as shown in Table 8 below.

But note that, if the recent increases in the size of the illicit trade suggested by the aforementioned survey evidence are, in fact, widespread, then the projected size of the feedback effects from the illicit market in Table 7 (and the size of the resulting losses to the legitimate economy and to the exchequer) could be considered underestimates.

The corresponding fall in overall sales revenues ranges from £0.6 to £1.2 billion.

Table 8: Overall changes in legal cigarette market after feedback effects from illicit market

Substitutability increase	Entry	Entrant MC ratio	Effect on average price	Effect on legal purchases (bn sticks)	Change in sales (£bn)
Average	No entry	-	-£0.40	1.0	**-0.61**
	Super-low brands	-25%	-£0.56	1.8	**-0.73**
		-50%	-£0.60	2.1	**-0.76**
		-75%	-£0.64	2.3	**-0.77**
Large	No entry	-	-£0.78	2.6	**-1.01**
	Super-low brands	-25%	-£0.88	3.0	**-1.14**
		-50%	-£0.92	3.2	**-1.18**
		-75%	-£0.96	3.5	**-1.20**

Our estimates for legal HRT suggest that plain packaging will cause purchases of legal HRT to decrease by between 488 and 1,007 tonnes. This overall predicted fall in legal HRT purchases is in contrast to the predicted increase in legal cigarette purchases. This is explained in terms of our

finding that the increase in the size of the illicit HRT market due to plain packaging was greater in absolute size than the increase in purchases of legal HRT as a result of the price reductions (in legal HRT) expected to follow the introduction of plain packaging.[12]

The alternative scenarios (50 and 100 per cent) represented by each of Tables 9 and 10 respectively reflect the extent to which the predicted effects of plain packaging on cigarette prices and purchases will be mirrored in the HRT market.

Table 9: Overall changes in legal HRT market after feedback effects from the illicit market (Scenario A, 50%)

Substitutability increase	Entry	Entrant MC ratio	Effect on average price	Effect on legal purchases (mn tonnes)	Change in sales (£bn)
Average	No entry	-	-£0.22	-935.6	-0.31
	Super-low brands	-25%	-£0.31	-884.1	-0.31
		-50%	-£0.33	-870.5	-0.31
		-75%	-£0.35	-854.2	-0.31
Large	No entry	-	-£0.43	-835.2	-0.32
	Super-low brands	-25%	-£0.48	-810.8	-0.33
		-50%	-£0.51	-799.9	-0.33
		-75%	-£0.53	-783.6	-0.33

Table 10: Overall changes in legal HRT market after feedback effects from the illicit market (Scenario B, 100%)

Substitutability increase	Entry	Entrant MC ratio	Effect on average price	Effect on legal purchases (mn tonnes)	Change in sales (£bn)
Average	No entry	-	-£0.44	-791.7	-0.31
	Super-low brands	-25%	-£0.62	-688.5	-0.32
		-50%	-£0.66	-661.4	-0.32
		-75%	-£0.71	-628.8	-0.32
Large	No entry	-	-£0.86	-590.8	-0.34
	Super-low brands	-25%	-£0.97	-541.9	-0.35
		-50%	-£1.01	-520.2	-0.35
		-75%	-£1.06	-487.6	-0.35

When compared with the 'direct' impacts of plain packaging on legal HRT purchases (Tables 4 and 5), the 'net' impacts in Tables 9 and 10 reveal that the indirect or 'feedback' effect from the illicit

[12] To further clarify this point, for cigarettes, the predicted increase in consumption in the legal market is greater than the predicted increase in the size of the illicit market. Therefore, legal cigarette consumption rose even after accounting for the increase in the illicit market.

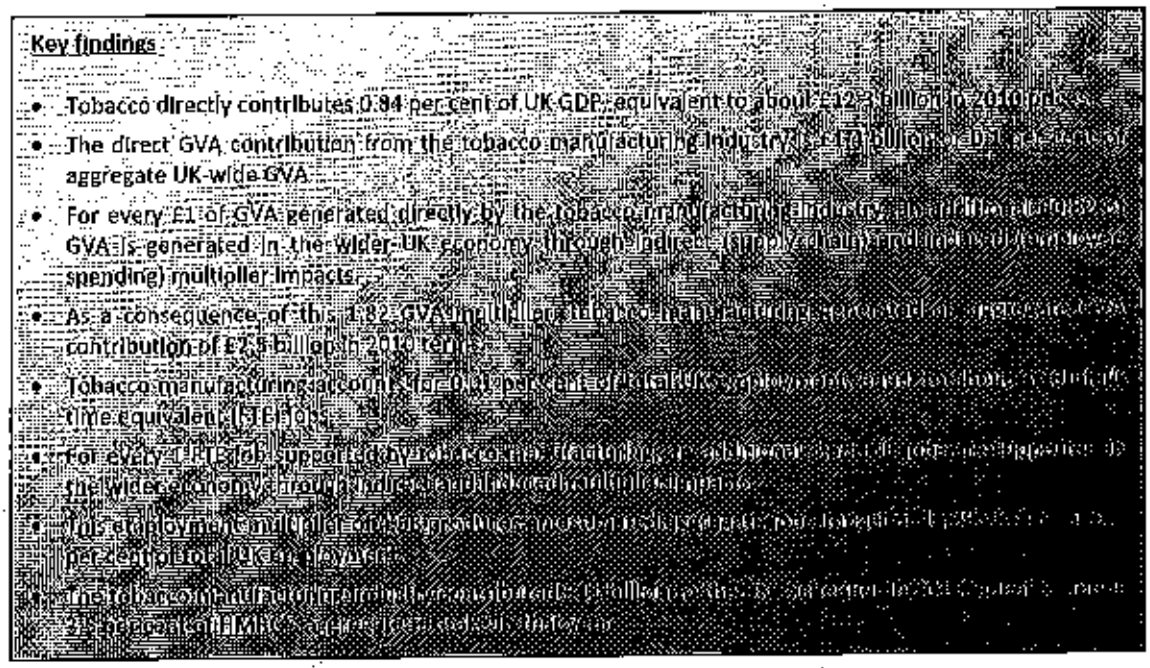
market has a significantly greater proportionate impact on revenues from legal HRT than on revenues from legal cigarettes.

These results are summarised below.

Table 11: Summary table of results of this section

Variable	Effect of plain packaging
Cigarette volumes (legal)	An increase in the range of 1 and 3.5 billion sticks purchased
Cigarette volumes (overall, legal+illicit)	An increase in the range of 2.5 and 5 billion sticks purchased
Cigarette prices (legal)	A fall in average price of between 40p and 96p
Cigarette sales revenues	A fall in the range of £0.6 and £1.2 billion
HRT volumes (legal)	A decrease in the range of 488 and 1,007 tonnes purchased
HRT volumes (overall, legal+illicit)	An increase in the range of 145 and 590 tonnes purchased
HRT prices (legal)	A fall in average price of between 22p and £1.06
HRT sales revenues	A fall in the range of £0.31 and £0.35 billion

4 The macroeconomic impact of tobacco in the UK



Before we could understand the 'macro' impacts of plain packaging, it was necessary to first understand the macro impact of tobacco itself. This section presents Cebr's independent assessment of the contribution made by tobacco to the UK's economies.

We begin with a methodological overview. This is followed by subsections 4.2 to 4.5, in which we focus on the economic output and jobs generated in the manufacture of tobacco products (direct impacts) and on what flows (through indirect and induced impacts) from these activities. Subsection 4.6 examines the Exchequer contributions from the sale and manufacture of tobacco products in the UK.

4.1 Methodological overview

The macro impact modelling underlying this report is based on the framework provided by the ONS' supply-and-use tables, the most detailed official record of how the industries of the economy interact with other industries, with consumers and with international markets in producing the nation's GDP and national income. Making use of the supply-and-use framework to analyse the contribution of tobacco is the best means of ensuring consistency with the national accounting framework.

Establishing an explicit role for tobacco in Cebr's modelling framework

Cebr's baseline economic impact models are based on 20 aggregate sectors, reflecting the 20 1-digit Sections under the Standard Industrial Classification (SIC) system. Manufacturing of tobacco products is a distinct 2-digit industry that forms a subset of the broad manufacturing sector (or Section). The task, therefore, was one of extraction, involving the separation of tobacco

manufacturing from the broader manufacturing sector and, thus, assigning tobacco manufacturing an explicit role within the modelling framework.

Having completed this assignment, we had the foundation for establishing:

- *The economic size (or direct impact) of tobacco manufacturing*, using standard measures of GVA[13] – and, from this, the percentage contribution to GDP – and employment; and

- *The wider economic impact of tobacco manufacturing on the UK economy*, using Leontief input-output modelling to estimate a full set of (matrix) multipliers capturing direct, indirect and induced impacts on output, GVA, employment and income from employment.

We use the multipliers in association with the direct impacts data to produce estimates of the aggregate impacts of the industry through its supply chain (indirect impacts) and through household consumption by the employees of the tobacco industry and its suppliers who spend their earnings in the wider economy (induced impacts).

Multiplier impacts based on Leontief input-output framework

The multiplier effect denotes the phenomenon whereby some initial increase (or decrease) in the rate of spending will bring about a more than proportionate increase (or decrease) in national income. The Keynesian approach barely requires a mention but is very much grounded in macroeconomic analysis, offering little capability to analyse impacts of entities that are smaller than the whole economy.

Input-output analysis, due largely to the work of Wassily Leontief,[14] while macroeconomic in the sense that it involves analysing the economy as a whole, owes its foundations and techniques to the microeconomic analysis of production and consumption.[15] According to ten Raa (2005), some argue that input-output analysis is at the interface of both, defining it as the study of industries or sectors of the economy.

The well-known Leontief inverse matrix, which shows the inter-industry dependencies of an economy, is the basis for producing input-output multipliers. These are some of the most important tools for measuring the total impact on output, employment and income of an industry.

The Leontief inverse matrix can also be described as the output requirements matrix for final demand, that is, it shows the input requirements from the other sectors of the economy per unit of output produced in the industry under examination in response to a final demand stimulus. The matrix can be used to produce two types of multiplier – the Type I multiplier incorporating direct and indirect (supply chain) impacts and the Type II multiplier incorporating induced (employee spending) impacts as well.

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[13] GVA or gross value added is a measure of the net value of goods and services which, in the national accounts, is the value of industrial output less intermediate consumption. That is, the value of what is produced *less* the value of the intermediate goods and services used as inputs to produce it. GVA is also commonly known as income from production and is distributed in three directions – to employees, to shareholders and to government. GVA is linked as a measurement to GDP – both being a measure of economic output. That relationship is GVA + Taxes on products - Subsidies on products = GDP. Because taxes and subsidies on individual product categories are only available at the whole economy level, GVA tends to be used for measuring things like gross regional domestic product and other measures of economic output of entities that are smaller than the whole economy, such as the tobacco industry.

[14] See, for example, Leontief, Wassily W. (1986), *Input-Output Economics*. 2nd ed., New York: Oxford University Press.

[15] See ten Raa, Thijs (2005), *The Economics of Input-Output Analysis*, Cambridge University Press.

National and regional impacts

Having completed the UK-level multiplier analysis, we produced equivalent sets of multipliers for each of the UK nations and English Government Office regions, using a system of so-called 'location quotients'. The key issue with producing regional technical coefficients (an important stage in the production of multipliers) is that regional propensities to import tend to be higher than national propensities. Location quotients involve adjusting UK-wide technical coefficients to take account of differing proportions of local demands being satisfied locally. They are interpreted as a measure of the ability of a particular industry in a particular region to supply the demands placed upon it by other industries and by final demand.

For these purposes, we applied 'Cross-Industry Location Quotients' (CILQs), which can be interpreted in the following way:

$CILQ < 1 \Rightarrow$ the supplying sector is relatively small compared to the purchasing sector at the regional level, so some of the required inputs need to be imported from elsewhere in the UK.

$CILQ \geq 1 \Rightarrow$ there is no need to adjust national coefficients as all the needs for the input can be met from within the region.

The result is a distinct Leontief inverse matrix for each of the nations and regions under consideration, from which the regional-level multipliers can be derived. These regional-level multipliers can be estimated for output, GVA and employment.

4.2 Contribution of tobacco manufacturing to GDP

Cebr estimates that **tobacco accounts for approximately 0.84 per cent of UK GDP.** While the absolute GVA contribution of the tobacco manufacturing industry is £1.4 billion, which is only 0.1 per cent of aggregate UK-wide GVA once tobacco's indirect tax contributions (the difference between GVA and GDP) are taken into account, tobacco's contribution is significantly greater than the isolated examination of what the industry contributes in GVA terms might suggest.[16]

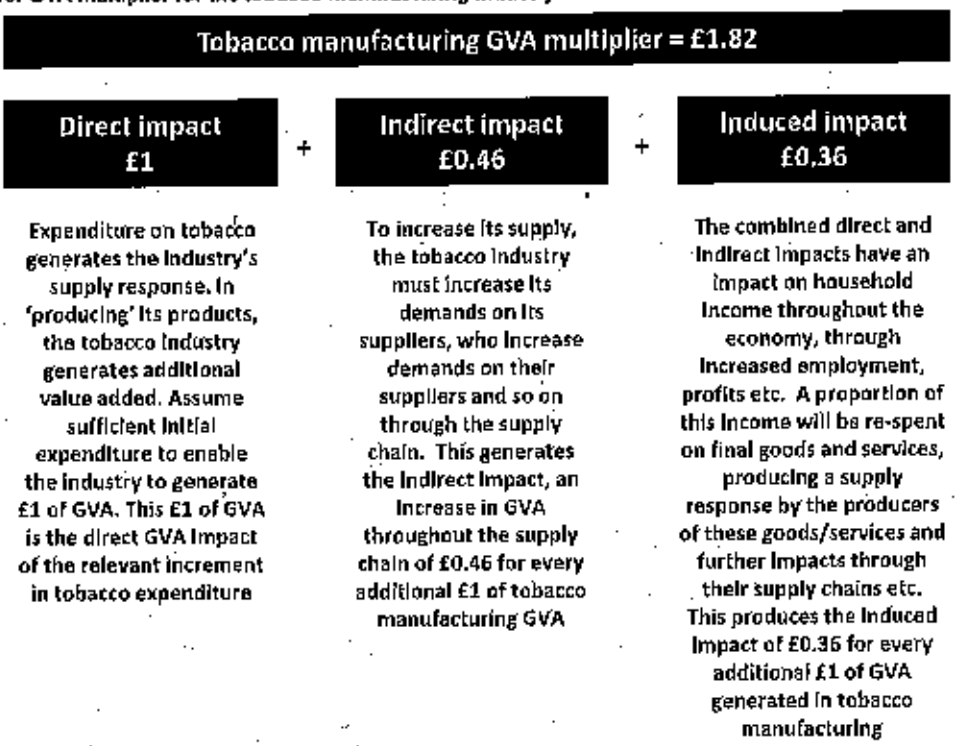
The manufacture of tobacco products, whilst generating a £1.4 billion contribution to UK GDP, also supports firms in its supply chain as well as in industries in the wider economy through spending by employees of the tobacco manufacturing industry and its suppliers. Cebr has used its in-house input-output models to produce estimates of these indirect and induced multiplier impacts of the industry.

Based on this we estimate that, **for every £1 of GVA generated directly by the tobacco manufacturing industry, an additional £0.82 of GVA is generated in the wider UK economy through indirect and induced multiplier impacts.** This GVA (or total production income) multiplier of 1.82 is decomposed and explained further in Figure 10 below.

Based on this Type II multiplier (capturing direct, indirect and induced impacts), **we estimate that tobacco manufacturing generated an aggregate GVA contribution of £2.5 billion in 2010.**

[16] The industry's aggregate tax contributions are discussed later in this section.

Figure 10: GVA multiplier for the tobacco manufacturing industry



Source: Cebr analysis

There are significant variations in the GVA contributions made by the tobacco manufacturing industry to the various national and regional economies of the UK. **Error! Not a valid bookmark self-reference.** below illustrates the importance of tobacco manufacturing to each of these economies, ranked according to its percentage contribution to the aggregate GVA of the relevant nation or region.

These estimates suggest that tobacco manufacturing is most important to the Northern Ireland economy, contributing 1.43 per cent of that nation's aggregate GVA. This is significantly greater than the 0.11 per cent contribution made by tobacco manufacturing to the UK as a whole. The industry is also significantly more important to the East Midlands economy than to the UK as a whole, with a contribution of 0.78 per cent of aggregate East Midlands GVA. The contribution of tobacco manufacturing to the economy of England is more comparable to the UK-wide contribution at 0.09 per cent.

The largest absolute sub-UK contribution made by tobacco manufacturing is, unsurprisingly, to England's economy at £979 million. Otherwise, the absolute direct GVA contributions of the industry are largest in the East Midlands and Northern Ireland. No contribution is made to the economies of the North East of England, Yorkshire and the Humber, Wales or Scotland. But this is not to say that these economies do not benefit at all from tobacco manufacturing (see below).

Table 12: The GVA contributions of tobacco manufacturing to the national and regional economies of the UK

UK nation / English region	Direct GVA contribution (£m)	Percentage of area's economy
Northern Ireland	415	1.43%
East Midlands	623	0.78%
England	**979**	**0.09%**
London	189	0.07%
South West	53	0.05%
South East	62	0.03%
North West	30	0.02%
West Midlands	15	0.02%
East of England	6	0.01%
North East	0	0.00%
Yorkshire & The Humber	0	0.00%
Wales	0	0.00%
Scotland	0	0.00%

Source: Cebr estimates based on the location of tobacco manufacturing jobs (see our estimates of tobacco manufacturing jobs by location in There is also significant variation in the employment contributions made by the tobacco manufacturing industry to the various national and regional economies of the UK. There are significant variations in the GVA contributions made by the tobacco manufacturing industry to the various national and regional economies of the UK. **Error! Not a valid bookmark self-reference.** below illustrates the importance of tobacco manufacturing to each of these economies, ranked according to its percentage contribution to the aggregate GVA of the relevant nation or region.

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Table 12 shows Cebr's estimates of the national and regional distribution of tobacco manufacturing jobs in the UK. The regional percentage shares of the UK total are also presented.

These estimates suggest that (apart from England as a whole) tobacco manufacturing is most important to the East Midlands and Northern Ireland economies. Their shares combined account for nearly 75 per cent of all tobacco manufacturing jobs in the UK.

Table 14 *below)*

Table 13 presents the results of our input output modelling at the level of the UK nations and English regions, showing our Type II GVA multiplier estimates which can be compared with the UK GVA multiplier of 1.82 illustrated in Figure 10 above. The further from 100 per cent is the percentage of 'in-region' impact, the greater the 'leakage' to other nations and regions of some of the impacts of tobacco manufacturing (Figure 12) in any particular region.

Table 13: Regional GVA multiplier estimates and percentage of 'in-region' impact

UK nation / English region	Type II GVA multiplier	Percentage of impact in-region
Total England	**1.80**	**99%**
East of England	1.76	98%
North West	1.76	97%
South East	1.76	97%
West Midlands	1.76	97%
South West	1.76	97%
London	1.70	94%
East Midlands	1.33	73%
Northern Ireland	1.30	71%

Source: Cebr analysis

Manufacturing, agriculture and professional services are the most prominent sectors in the tobacco manufacturing supply chain. Where these industries are relatively large as a share of their regional economies, the demands of tobacco manufacturing can be satisfied to a greater extent within those regions. The effects of an increase in the industry's activities can therefore, in such cases, also be captured to a greater extent within the region, leading to relatively higher regional multiplier estimates.

The estimates presented in Table 13 above suggest that (apart from England as a whole, which would naturally be expected to yield a high national multiplier) the tobacco manufacturing industry in the East, North West, South East, West Midlands and South West of England have the largest multiplier impacts of all the nations and regions. This indicates that increased tobacco manufacturing activity in these regions will create more localised impacts compared to other areas of the UK.

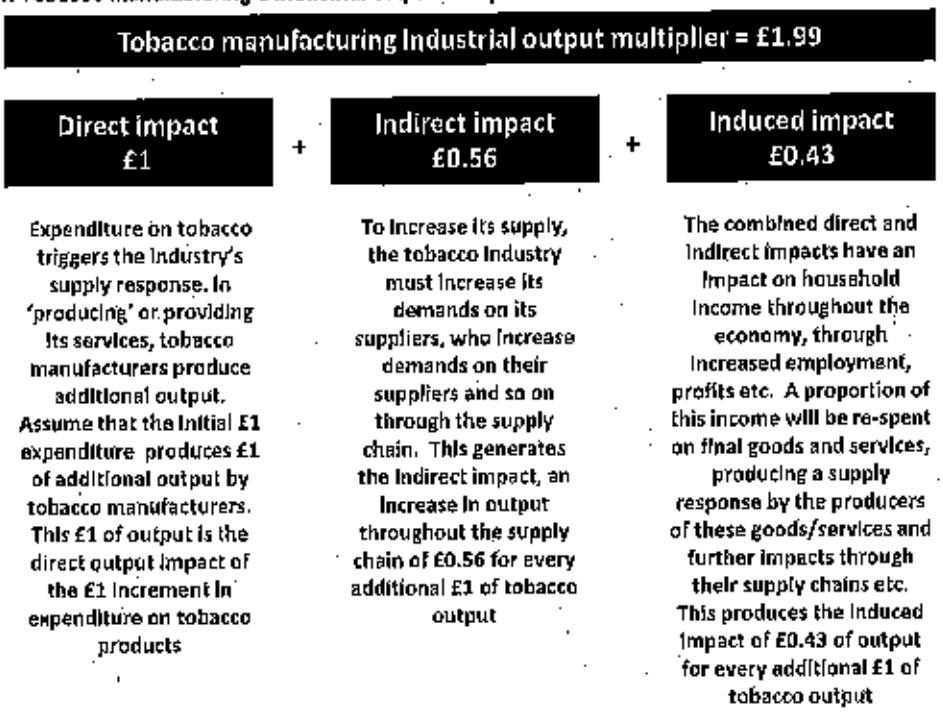
The East Midlands and Northern Ireland are associated with the lowest multiplier impacts, while the London economy also experiences leakage of impacts, albeit at a lower rate. The regional economy in these cases is less able to supply the goods and services demanded as a result of increased tobacco manufacturing activity. This means that more of these goods and services must be sourced from outside the region, reducing the multiplier effects realised within the region itself.

However, one nation or region's leakage is another's injection, so the impacts of tobacco manufacturing in nations or regions with low multiplier estimates will spill over to other nations and regions. While tobacco manufacturing is estimated not make any direct contribution to the Scottish and Welsh economies, these may well benefit from the impact leakages from, for example, Northern Ireland. That is, tobacco manufacturing in Northern Ireland source the inputs that the Northern Ireland economy cannot supply from Scotland, Wales or from parts of England.

4.3 The industrial output multiplier for tobacco manufacturing

The tobacco manufacturing industry produced £2.3 billion of industrial output in 2010, valued at basic prices.[17] The 'industrial' output multiplier associated with tobacco manufacturing is estimated at 1.99. This means that **for every £1 of industrial output of tobacco products, an additional £0.99 of output is generated in the wider economy, again through indirect and induced multiplier impacts.** This aggregate 'industry' output multiplier is illustrated in deconstructed form in Figure 11 below.

Figure 11: Tobacco manufacturing's industrial output multiplier



Source: Cebr analysis

4.4 Contribution of tobacco manufacturing to employment

Our estimates suggest that **tobacco manufacturing accounts for 0.01 per cent of total UK employment.** This equates with an estimated 3,358 full-time equivalent (FTE) jobs.

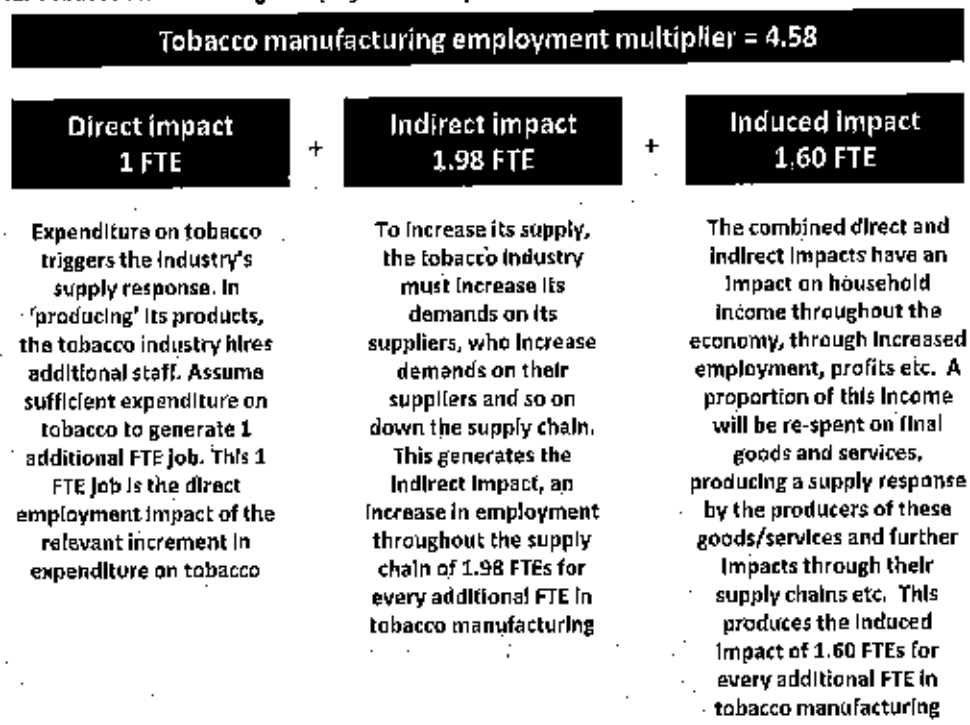
However, as with GVA, the employment impact of tobacco manufacturing is not confined to this direct jobs contribution. We used the same input-output modelling to produce an employment multiplier for the industry, finding that, **for every 1 FTE job supported by tobacco manufacturing, an additional 3.58 FTE jobs are supported in the wider economy through indirect and induced multiplier impacts.**

[17] Basic prices exclude taxes and subsidies on products. As such they reflect the amount received by the producer for a unit of goods or services and are the preferred method of valuing output within the supply-and-use framework.

This produces an estimated **total FTE employment impact of tobacco manufacturing of 15,391 FTE jobs** in 2010 – or 0.1 per cent of total UK employment.

This employment multiplier of 4.58 is illustrated and explained further in Figure 12 below.

Figure 12: Tobacco manufacturing's employment multiplier



Source: Cebr analysis

Cebr's estimates, as can be seen from above, suggest a very strong employment multiplier for tobacco manufacturing. This reflects the relatively high labour productivity of the industry as well as the relatively high labour intensities of the industries from which tobacco manufacturers source their intermediate inputs.

Specifically, the relatively high labour productivity of tobacco manufacturing means that increasing employment by 1 FTE in this industry is likely to produce much greater increases in output than could be achieved by increasing employment by 1 FTE in other sectors of the economy. Consequently, an expansion of output by tobacco manufacturing requires suppliers to hire more workers per unit of additional input supplied than tobacco needs to hire per unit of additional output produced.

There is also significant variation in the employment contributions made by the tobacco manufacturing industry to the various national and regional economies of the UK. There are significant variations in the GVA contributions made by the tobacco manufacturing industry to the various national and regional economies of the UK. **Error! Not a valid bookmark self-reference.** below illustrates the importance of tobacco manufacturing to each of these economies, ranked according to its percentage contribution to the aggregate GVA of the relevant nation or region.

These estimates suggest that tobacco manufacturing is most important to the Northern Ireland economy, contributing 1.43 per cent of that nation's aggregate GVA. This is significantly greater than the 0.11 per cent contribution made by tobacco manufacturing to the UK as a whole. The industry is also significantly more important to the East Midlands economy than to the UK as a whole, with a contribution of 0.78 per cent of aggregate East Midlands GVA. The contribution of tobacco manufacturing to the economy of England is more comparable to the UK-wide contribution at 0.09 per cent.

The largest absolute sub-UK contribution made by tobacco manufacturing is, unsurprisingly, to England's economy at £979 million. Otherwise, the absolute direct GVA contributions of the industry are largest in the East Midlands and Northern Ireland. No contribution is made to the economies of the North East of England, Yorkshire and the Humber, Wales or Scotland. But this is not to say that these economies do not benefit at all from tobacco manufacturing (see below).

Table 12 shows Cebr's estimates of the national and regional distribution of tobacco manufacturing jobs in the UK.[18] The regional percentage shares of the UK total are also presented.

These estimates suggest that (apart from England as a whole) tobacco manufacturing is most important to the East Midlands and Northern Ireland economies. Their shares combined account for nearly 75 per cent of all tobacco manufacturing jobs in the UK.

Table 14: The employment contributions of tobacco manufacturing to the national and regional economies of the UK

UK nation / English region	Direct jobs contribution	Regional share of UK tobacco manufacturing employment
England	**2,357**	**70.2%**
East Midlands	1,500	44.7%
Northern Ireland	1,000	29.8%
London	454	13.5%
South East	148	4.5%
South West	128	3.8%
North West	73	2.2%
West Midlands	37	1.1%
East of England	14	0.4%
North East	1	0.0%
Yorkshire & The Humber	0	0.0%
Wales	0	0.0%
Scotland	0	0.0%

Source: TMA website, Annual Reports and Accounts of TMA members and Philip Morris, Cebr analysis

[18] The GVA in a region (or indeed a nation) is otherwise known as Gross Regional Domestic Product.

Error! Not a valid bookmark self-reference. displays the results of our input output modelling at the level of the UK nations and English regions, showing our Type II employment multiplier estimates which can be compared with the UK employment multiplier of 4.58 illustrated in Figure 12 above. The further from 100 per cent is the percentage of 'in-region' impact, the greater the 'leakage' to other nations and regions of some of the full impacts of tobacco manufacturing activities in any particular region.

Table 15: National and regional Type II multipliers for tobacco manufacturing and percentage of in-region impact

UK nation / English region	Type II employment multiplier	Percentage of impact in-region
Total England	4.52	99%
East of England	4.37	98%
North West	4.35	97%
South West	4.35	97%
South West	4.34	97%
West Midlands	4.34	97%
London	4.02	94%
East Midlands	2.28	73%
Northern Ireland	2.08	71%

Source: Cebr analysis

Northern Ireland and the East Midlands are associated with the lowest employment multiplier impacts. The regional economy in these cases is less able to supply the goods and services demanded as a result of increased tobacco manufacturing activity. This means that more of these goods and services must be sourced from outside the region which, in turn, means that some of the jobs that are indirectly supported by tobacco manufacturing are supported outside the region in which the tobacco is manufactured. To continue with the previous example, it may well be that tobacco manufacturing in Northern Ireland and the East Midlands indirectly supports jobs in adjacent nations and regions, including those in which there is no tobacco manufacturing.

Tobacco manufacturing in the remaining English regions are associated with high multiplier estimates relative to those for Northern Ireland and the East Midlands, reflecting not only the size of the economies involved but the lack of significant scale in tobacco manufacturing in those remaining regions.

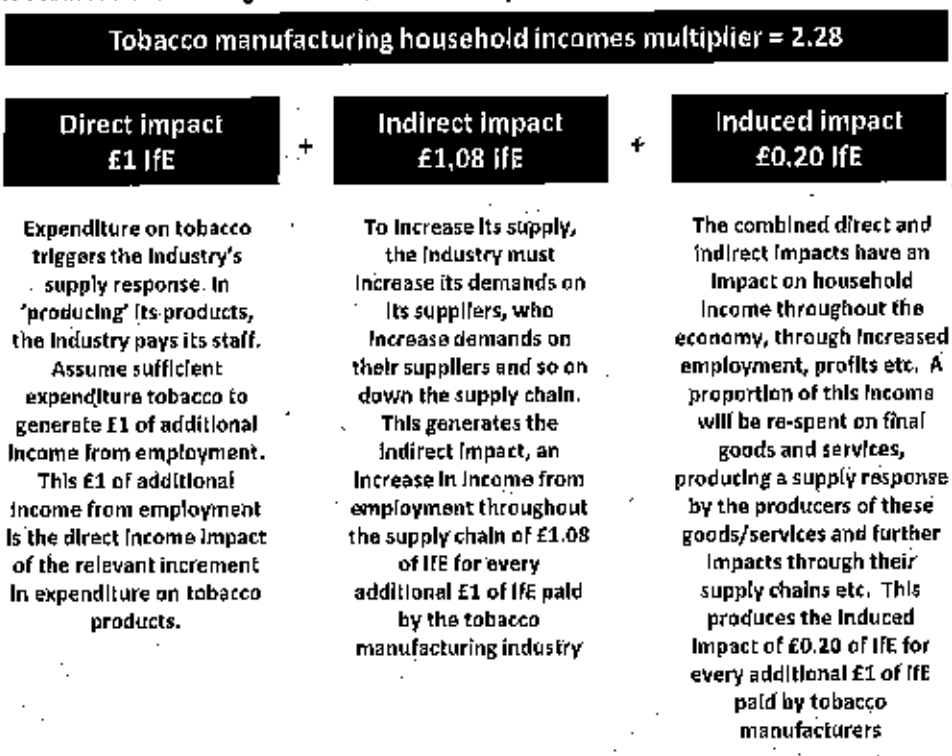
4.5 Impact on income from employment of tobacco manufacturing

Based on official earnings data taken from the Annual Survey of Hours and Earnings (ASHE), the tobacco industry is estimated to incur a median cost per FTE employee of £43,302 in 2010 (£45,827 in 2012). This compares to the median across the UK as a whole of £25,879 in 2010 (£26,462 in 2012). On this measure, tobacco manufacturing makes a significant positive contribution to average household incomes in the UK.

Based on our input-output modelling we estimate that, **for every £1 of income from employment (IfE) generated in the tobacco manufacturing industry, an additional £1.28 of IfE is generated in the wider economy through indirect and induced multiplier impacts.**

In other words, for every median gross salary of £43,302 paid to tobacco manufacturing employees in 2010, a further £55,585 of gross salary was earned elsewhere in the economy. This income from employment multiplier of 2.28 is illustrated in deconstructed form in Figure 13 below.

Figure 13: Tobacco manufacturing household incomes multiplier



Source: Cebr analysis

4.6 Exchequer contributions

Cebr's estimates suggest that **tobacco contributed £11 billion to the UK Exchequer in 2010.** This is a significant **3.5 per cent share of HMRC's aggregate tax take** in that year. This aggregate contribution is broken down in Table 16 below.

Table 16: Contributions of tobacco to the UK Exchequer, 2010 estimates[19]

Tax category	Tax type	Tax paid (£m)
Indirect taxes	Duties and VAT	10,879
Taxes on production	Business rates / Employer's NICs	2
Taxes on income	Employee income tax / NICs	46
	Corporation tax	74
TOTAL TAX PAID		**11,001**

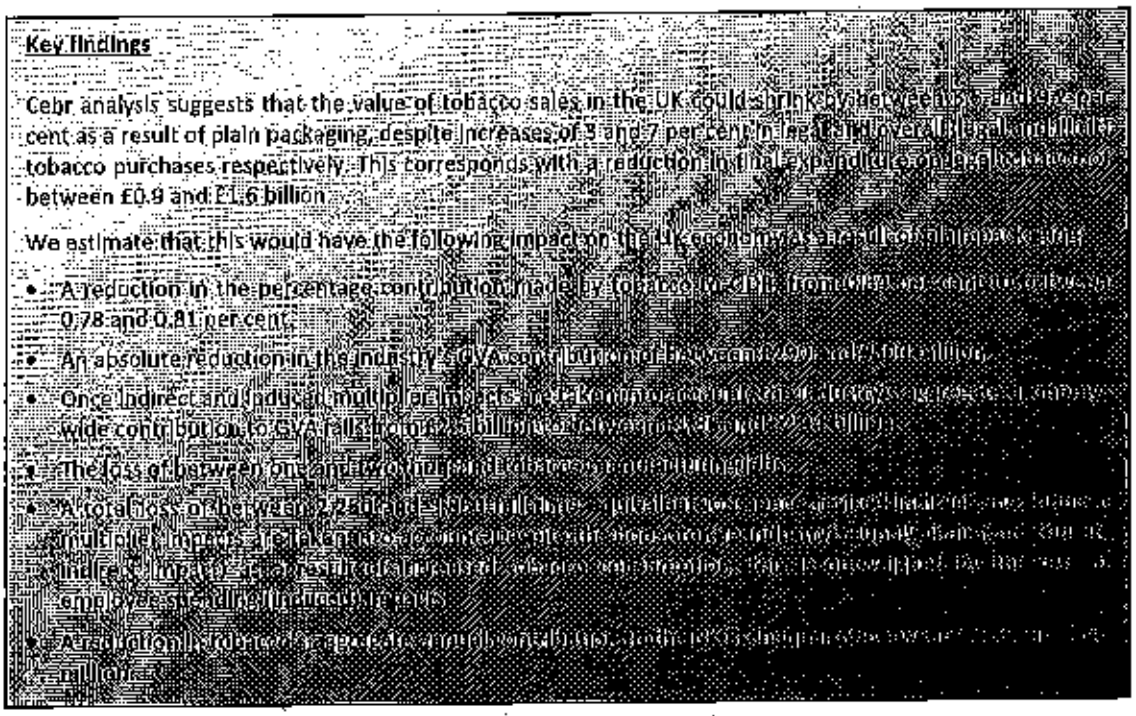
Source: ONS, HMRC, Cebr analysis

The bulk of this contribution comes through indirect taxes on tobacco products, with an aggregate tobacco duty and VAT contribution of £10.9 billion. Taxes on production, which include business rates and employer's national insurance contributions (NICs) paid by the tobacco manufacturing industry are small at £2 million.

After indirect taxes, taxes on income from tobacco manufacturing provide the next largest share of tobacco's total tax contribution, including £74 million in corporation tax in 2010 and £46 million in employee NICs and income taxes.

[19] The amounts in this table for taxes on income and production do not include the revenues that flow through businesses in the retail sector engaged in the sale of tobacco. Their estimation was beyond the scope of the study and would, once isolated for tobacco, be negligible relative to the contributions made by tobacco manufacturing. However, the retail sector is analysed in terms of tobacco and plain packaging in section 6 of this report.

5 The impact of plain packaging on these macroeconomic contributions



We have used the predicted drops in the value of sales of legal tobacco as our starting point in estimating the likely impacts of plain packaging on tobacco's contribution to the UK economy. The estimates presented in section 3 suggest a fall in legal tobacco sales revenues of between £0.9 and £1.6 billion depending on the scenario being examined.

What this means for the UK in economic terms can be estimated using our understanding of the contribution made by tobacco to the UK economy, of which we presented our estimates in the last section. This section does just that.

5.1 Assumptions

The introduction of plain packaging is expected to result in brand dilution and greater price competition amongst tobacco producers. Reduced product differentiation can be expected to result in reduced brand loyalty and the need to compete more fiercely on price to keep customers loyal and maintain market share. The price of tobacco will be driven downwards, which could, if the law of demand holds, have the unintended effect of increasing overall tobacco purchases.[20]

Not all of the economic contributions outlined in the previous section will necessarily be affected nor indeed by the same amount. Where the negative economic effects of the projected loss in revenues from legal cigarette and hand-rolled tobacco (HRT) sales are felt depends on the actions of market participants. Depending on the scenario being examined, Cebr's projections of the economic impact

[20] "Plain Packaging and Its Unintended Consequences," Montreal Economics (August 2011)

of plain packaging start with a £0.9 to £1.6 billion loss in sales revenues, as presented in section 3 above.

But because legal cigarette purchases (which account for most of the tobacco market) are predicted to increase, the volume of intermediate inputs required to support expanded production would have to increase. We assumed, therefore, that tobacco manufacturers, by taking advantage of greater economies of scale in the supply chain, increase their expenditure on intermediate inputs by 2.5 per cent in response to a 10 per cent increase in output. This was, in the absence of hard data, assumed for illustrative purposes.

5.2 Reduced contribution to GDP

Cebr's estimates suggest that **the percentage contribution of tobacco to GDP will fall from 0.84 per cent of UK GDP to between 0.78 and 0.81 per cent following the introduction of plain packaging.** This is a function of the net loss of duties and VAT on tobacco (due to falling tobacco prices and the prominence of the ad valorem element of tobacco duty) as well as falling sales revenues and the squeeze on gross margins (due to increasing demands on suppliers) resulting in tobacco manufacturing adding less value (in monetary terms) to the economy.

Specifically, the **absolute GVA contribution of the tobacco manufacturing industry is expected to fall by between £290 and £502 million from the 2010 contribution of** £1.4 billion. This would amount to a 21 to 36 per cent fall in the value added by tobacco manufacturing. Such reductions are likely to have implications for jobs, employee incomes and on the working practices of employees themselves, particularly in the medium to long term.

Plain packaging would also have the effect of reducing the industry's indirect and induced multiplier impacts. The revised multiplier impacts from Cebr's input-output modelling suggest **a drop in the industry's aggregate GVA contribution from £2.5 billion to between £1.86 and £2.14 billion** (a reduction of between £394 and £674 million).

This is despite an increase in the GVA multiplier from 1.82 (see Figure 10 above) to between 1.94 and 2.08 under the minimum and maximum sales revenue impact scenarios. These revised multipliers reflect the greater input requirements (in £ terms) per £1 of output of tobacco manufacturing following plain packaging.[21]

Error! Not a valid bookmark self-reference. below presents Cebr's estimates of the national and regional breakdown of the direct GVA losses from tobacco manufacturing as a result of plain packaging. While the largest absolute losses can be expected in the East Midlands (£130 million to £224 million), Northern Ireland is the biggest loser in relative terms, where reductions of anything up to 0.5 per cent in the total size of this nation's economy can be expected. The East Midlands economy can be expected to shrink by anything up to a quarter of a percentage point. Outside of these two regions, the losses to national and regional economies are negligible in relative terms, nowhere exceeding 0.1 per cent.

[21] The increases in the individual input requirements per unit of output (otherwise known as 'technical coefficients') reflect, in arithmetic terms, (i) the fall in the value of tobacco industry output (caused by the fall in price of tobacco following plain packaging); (ii) the increase in output in volume terms (caused by increased consumption) and the fact that more intermediate inputs are required to produce these higher volumes of output. The first reduces the size of the denominator in each technical coefficient. The second increases the size of the numerator.

Table 17: Absolute losses of GVA contributions of tobacco manufacturing as a result of plain packaging and percentage reductions in the size of national and regional economies

UK nation / English region	Change in direct GVA contribution (£m)		Percentage reduction in size of national and regional economies as a result of direct GVA losses	
	Minimum	Maximum	Minimum	Maximum
Northern Ireland	-86	-149	-0.296%	-0.512%
East Midlands	-130	-224	-0.162%	-0.280%
England	**-203**	**-352**	**-0.018%**	**-0.032%**
London	-39	-68	-0.014%	-0.024%
South West	-13	-19	-0.011%	-0.019%
South East	-11	-22	-0.007%	-0.012%
North West	-6	-11	-0.005%	-0.009%
West Midlands	-3	-5	-0.003%	-0.006%
East of England	-1	-2	-0.001%	-0.002%

Source: Cebr analysis

Table 20 builds in the adjusted multiplier impacts to produce aggregate losses of national and regional GVA due to plain packaging. The East Midlands economy can be expected to be the worst affected in absolute terms, with a reduction in regional GVA of between £175 million and £303 million. The Northern Ireland economy would, however, still see the greatest percentage reduction in its overall size, falling by anywhere between 0.4 and 0.7 per cent. The losses to the other regional economies and to England as a whole are again nowhere greater than 0.1 per cent and are, consequently negligible in relative terms.[22]

Table 18: Aggregate losses of regional GVA as a result of plain packaging including adjusted multiplier impacts

UK nation / English region	Change in aggregate GVA impact (incl. adjusted multiplier effects) (£m)		Percentage reduction in size of national and regional economies as a result of direct and adjusted multiplier GVA losses	
	Minimum	Maximum	Minimum	Maximum
Northern Ireland	-116	-202	-0.387%	-0.692%
East Midlands	-175	-303	-0.218%	-0.380%
England	**-275**	**-470**	**-0.025%**	**-0.043%**
London	-52	-89	-0.019%	-0.032%
South West	-15	-25	-0.015%	-0.025%
South East	-17	-29	-0.009%	-0.016%
North West	-8	-14	-0.007%	-0.012%
West Midlands	-4	-7	-0.004%	-0.008%
East of England	-2	-3	-0.001%	-0.002%

Source: Cebr analysis

[22] We note, however, that because this table does not take account of losses to nations and regions that are the beneficiaries of impact leakages from other regions, the estimated losses can be considered underestimates, except in the cases of the East Midlands and Northern Ireland economies – the most significant sources of leakage. Calculating these additional losses is not possible in the absence of hard data but, if it was, losses to the nations and regions not featured in this table could also be expected (namely, the North East of England, Wales and Scotland).

Behind these numbers sit Cebr's estimates of the adjusted multiplier impacts of tobacco manufacturing as a result of plain packaging. These are smaller than in the base case for the East Midlands and Northern Irish economies. Despite increases in the volumes of tobacco manufactured, the ability of the rest of these economies to supply the intermediate goods and services demanded as a result of increased tobacco manufacturing activity remains unchanged in absolute terms and actually falls in relative terms.

5.3 Loss of Jobs

Our model predicts **the loss of between one and two thousand full-time equivalent (FTE) jobs in tobacco manufacturing as a result of lower tobacco sales revenues.**

The industry's aggregate employment contribution once indirect and induced multiplier impacts are included is projected to also fall from 15,391 FTE jobs to between 11,545 and 13,315 jobs. **This is an aggregate loss of between 2,250 and 3,850 jobs,** despite substantial increases in the employment multiplier from 4.58 (as illustrated in Figure 12 above) to between 6.02 in the minimum scenario and 8.91 in the maximum scenario.

Therefore, the need for tobacco manufacturers to expand output and increase demands on their suppliers, thus enhancing the indirect impact of the industry following plain packaging is outweighed by the loss of induced employee spending impacts due to job losses and reductions in revenue from tobacco sales.

Table 19 shows Cebr's estimates of direct job losses in tobacco manufacturing in the nations and regions of the UK as a result of plain packaging. The largest absolute losses can be expected in the East Midlands (between 525 and 921 jobs). Northern Ireland will, however, also be the biggest loser in relative terms with the loss of between 0.07 and 0.12 per cent of all jobs. The absolute losses in the East Midlands amount to percentage reduction of between 0.04 and 0.07 per cent.

Table 19: Absolute losses of direct jobs in national and regional tobacco manufacturing as a result of plain packaging

UK nation / English region	Change in direct jobs contribution	
	Minimum	Maximum
Total England	-824	-1,447
East Midlands	-525	-921
Northern Ireland	-350	-614
London	-159	-279
South East	-52	-91
South West	-45	-79
North West	-26	-45
West Midlands	-13	-22
East of England	-5	-9

Source: Cebr analysis

Table 20 builds in Cebr's adjusted multiplier impacts to produce aggregate job losses in the nations and regions due to plain packaging. The East Midlands economy can again be expected to be the

worst affected in absolute terms, with a reduction in the number of jobs of between 1,002 and 1,763, a percentage reduction of between 0.07 and 0.13 per cent. The Northern Ireland economy would still fare worse in relative terms however, with aggregate falls in FTE employment of between 0.12 and 0.22 per cent. The losses to the other regional economies and to England as a whole can be expected to be negligible.[23]

Table 20: Aggregate national and regional job losses as a result of plain packaging including adjusted multiplier impacts

UK nation / English region	Change in aggregate jobs impact (incl. adjusted multiplier effects)	
	Minimum	Maximum
Total England	-1,570	-2,678
East Midlands	-1,002	-1,763
Northern Ireland	**-661**	**-1,166**
London	-290	-496
South East	-96	-164
South West	83	-142
North West	-47	-81
West Midlands	-24	-40
East of England	-9	-16

Source: Cebr analysis

5.4 Impact on the Exchequer

The aggregate tax loss as a result of plain packaging is estimated to range between £219 and £348 million. The maximum losses arise from the scenario reflecting the smallest expected reduction in revenues from legal tobacco sales. This is due to the structure of tobacco duties.

Tobacco duties on cigarettes have two elements: (i) an *ad valorem* element levied at 24 per cent of the retail price;[24] and (ii) a fixed element of £119.03 per thousand cigarettes.[25] VAT is also levied at 20 per cent of the retail price including tobacco duties. The expected fall in price of cigarettes as a result of plain packaging would cause revenues under (i) to fall but the increase in purchases will result in increased Exchequer takings from (ii). Duties on HRT are levied at a fixed rate per kilogram, so the expected fall in the volume of legally sold HRT following plain packaging would also depress tax takings.

The scenario reflecting the largest expected reductions in tax revenues from legal tobacco sales predicts smaller price reductions and, hence, smaller increases in legal tobacco volumes. The gains through the fixed element are, therefore, outweighed by the loss through the ad valorem element. In the other scenario, the price reductions are larger but the volume increases are greater, resulting in lesser losses of product taxes to the Exchequer under this scenario.

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[23] Note again though that this table does not take account of losses to nations and regions that are the beneficiaries of impact leakages from other regions. The estimated losses can be considered underestimates for that reason, except in the case of the East Midlands and Northern Ireland – again the largest sources of leakage.

[24] This is the 2010 level. The level in 2013 is 16.5 per cent. See section 1.3 above.

[25] Again, this was the 2010 level, which has now been increased to £167.41. See section 1.3 above.

Corporation tax contributions are also likely to be affected. The results in Table 12 reflect a hypothetical scenario in which tobacco manufacturers swallow a small proportion of the price reductions in the form of reduced net profits, which in turn reduces corporation tax contributions.

At least £16 to £28 million can be expected to be lost in income taxes and employees' NICs.

Table 21: **Contributions of tobacco manufacturing to the UK Exchequer, hypothetical short term post-PP, 2010 estimates**

Tax category	Tax type	Minimum scenario Tax revenue loss (£m)	Maximum scenario Tax revenue loss (£m)
Indirect taxes	Duties and VAT	-323	-175
Taxes on production	Business rates / Employer's NICs	0	0
Taxes on income	Employee income tax / NICs	-16	-28
	Corporation tax	-9	-16
TOTAL TAX LOST		**-348**	**-219**

Source: ONS, HMRC, Cebr analysis

These losses can be equated with:[26]

- The annual gross salaries of 5,656 to 8,987 police officers; or
- The annual gross salaries of 6,147 to 9,768 teaching professionals.

[26] Salary data is based on median annual earnings for each profession sourced from ASHE 2010.

6 The impact of plain packaging on the retail sector

Key findings

Tobacco also benefits the economy through the retail sector that sells it on to consumers. We expect the retail sector's gross earnings from tobacco to fall from our 2010 estimate of £850 million by between £100 million and £185 million. This reduces tobacco's indirect contribution to GDP through the retail sector by between 12 and 22 per cent of an absolute GVA contribution of £492 million.

Small independent retailers (SIRs) however could be particularly hard hit by plain packaging, as can be explained in summary as follows.

- Profits from tobacco are of higher importance to SIRs which account for [illegible] of all tobacco sales in the UK. The effects described above relating to the retail sector as a whole would translate into reductions of between £12 and £20 million in SIRs' profits from tobacco.
- Given the current state of the retail sector and the fact that many convenience stores are on the cusp of financial difficulties, we estimate that [illegible] between 2,000 and 3,500 full time equivalent jobs in convenience retail.
- There is an expectation however based on [illegible] tobacco customers will switch from smaller to larger stores in anticipation of longer transaction times and their effect on the longer queues.
- On this evidence, SIRs could be facing [illegible] from tobacco sales [illegible].
- This would [illegible] convenience retailing with [illegible] negative implications [illegible].

We analyse how tobacco contributes indirectly to the economy through the retail sector and how plain packaging can be expected to affect that indirect contribution. Following this, we narrow our focus to the deleterious effects of plain packaging on small independent retailers (SIRs), which can be expected to be particularly hard hit due to the likelihood of customers switching from smaller to larger stores in anticipation of longer tobacco transaction times and longer queues in convenience stores.

6.1 Impact of plain packaging on tobacco's indirect contribution to the UK economy through the retail sector

Using national accounting data, we estimate that tobacco sales account for about £850 million in earnings for the entire retail sector.[27, 28]

[27] What we mean by the 'entire retail sector' is the 2-digit industry 47: Retail trade services, except of motor vehicles and motorcycles under the SIC classification system. This estimate is based on an indicative average retail margin on the sale price of tobacco (or purchaser's price in national accounting terms) of 5 per cent. The reality is more complex of course, with different margins for different types of brands in the premium, mid-priced and economy categories, as well as on different types of tobacco products. This 5 per cent assumption is a Cebr construct used for illustrative purposes in the absence of any real data on retailer margins.

The retail sector's GVA-to-output ratio is 58 per cent, and assuming this ratio applies to the gross earnings of retailers from the sale of tobacco, then **tobacco's indirect contribution to GDP through the retail sector would amount to about £492 million.**

The retail activity supported through the sale of tobacco comes with its own set of multiplier impacts. Cebr's input-output models suggest a combined indirect and induced GVA multiplier of 2.22 for the retail sector. That is, for every £1 of GVA generated by the sector, another £1.22 is supported in the wider economy through supply chain (indirect) and employee spending (induced) impacts. Given the multi-product setting in which most tobacco is sold means that tobacco, as much as any other product in the mix, can claim to contribute to these direct and multiplier impacts of the retail sector.

Our model predicts retailer earnings could be expected to fall by between £109 and £184 million from their baseline level of £850 million. This would translate into a **reduction in tobacco's indirect contribution to GDP through the retail sector of between £60 and £110 million.**[29]

These estimates are based on pro rata reductions in the share of the price received by retailers as tobacco prices fall following the introduction of plain packaging. In other words, the percentage margin is assumed to remain unchanged, with the estimated loss of earnings to retailers being driven by lower prices for tobacco, despite higher demand.

6.2 Focus on the impact on small independent retailers

There is an expectation that retail customers may shift away from SIRs in anticipation of longer tobacco transaction times and hence longer queues as a result of the introduction of plain packaging. An Australian study has examined the proportion of customers who were either "somewhat likely" or "very likely" to switch away from using small retailers if mandatory plain packaging was introduced.[30]

To examine this issue, we defined SIRs as those with a sales area of less than 3,000 square feet and that fall into one of two groups – "Non-affiliated Convenience Retailers" and "Independent Forecourt Convenience Retailers".[31] These two groups contributed 5.2 per cent of the total value of sales of the entire UK grocery retail industry in 2011.[32] But these groups (which we have defined as SIRs) made up 27 per cent of the stores in the industry in the same year. SIRs' presence, in other words, is stronger than their contribution to aggregate grocery retail turnover might suggest.

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[28] Based on the fact that national accounting data suggest a total of £3 billion allocated to 'distributors' trading margins' on tobacco, the corollary is that about £2.15 billion of transport costs are borne in the distribution of tobacco from manufacturers to retailers (via wholesalers where relevant).

[29] Clearly, a similar analysis can be applied to the industries that supply the logistical services required to distribute manufactured tobacco to the retail market. There may also be elements of the wholesale sector that would be affected. However, this analysis was beyond the scope of the current study.

[30] Deloitte (June 2011), "Plain packaging and channel shift".

[31] 'Non-affiliated convenience retailers' is a term used by the Institute of Grocery Distribution which excludes convenience multiples (convenience specialists and supermarket based chains e.g. Tesco Express and Sainsbury's Local), co-operatives (e.g. The Co-operative Group) and symbol groups (e.g. SPAR, Londis, Premier). 'Independent forecourt convenience retailers' are the dealer owned small convenience stores found at petrol stations.

[32] IGD, Catalist, Cebr estimates.

Using these data, we estimated that the SIRs group accounted for about 10 per cent of total tobacco sales of the entire retail sector.[33] Using this percentage with the results of our analysis in 6.1 above suggests that plain packaging could result in:

- A loss of gross earnings by the SIRs of between £12 and £20 million from a baseline estimate of £92 million gross earnings from tobacco;
- A loss of between £7 and £12 million in GVA terms.

The ACS has produced data on the 2012 employment profiles of convenience stores, of which the SIRs, as defined for the purposes of this report, are a subset.[34] Based on these data, we estimate that 182,301 people in Great Britain are currently employed by SIRs.[35] Given the current state of the retail sector and the fact that so many convenience stores are on the cusp of financial difficulties, we estimate that **the loss of tobacco earnings described above could result in some insolvencies and the loss of between 2,000 and 3,500 full-time equivalent (FTE) jobs in convenience retail**.

The national and regional breakdown of these anticipated losses is presented in Table 22 below. The South East, London and the North West are expected to experience the greatest absolute job losses as a result of SIRs' lost tobacco sales, while England as whole can be expected to account for 81 per cent of these job losses. (The totals in this table are greater than the estimates for Great Britain above due to the inclusion of the impact in Northern Ireland.)

Table 22: Loss of jobs in SIRs as a result of lost tobacco sales following the introduction of plain packaging

UK nation / English region	Loss of jobs in SIRs as a result of lost tobacco sales	
	Minimum	Maximum
North East	-87	-153
North West	-220	-386
Yorkshire and the Humber	-167	-293
East Midlands	-151	-265
West Midlands	-190	-333
East of England	-122	-213
London	-246	-430
South East	-298	-521
South West	-182	-319
Total England	-1,664	-2,912
Wales	-121	-211
Scotland	-215	-377
Northern Ireland	-50	-88
TOTAL	-2,050	-3,588

Source: ACS Local Shops Report, Cebr analysis

[33] This is based on Cebr's estimate (based, in turn, on IGD data) that 19.9 per cent of the total value of sales made by the types of convenience stores that fall within our definition of SIRs are of tobacco, the absolute value of which was expressed as a proportion of tobacco sales across the entire retail sector (see section 2 above).

[34] The ACS data on the 2012 employment profiles of convenience stores was found in the *ACS Local Shops Report 2012*.

[35] This is based on an estimate of 23,474 SIRs (out of 49,840 convenience stores in total) and an average of 7.5 people employed per convenience store. This latter average is based on the *ACS Local Shops Report* estimate that 372,465 people were employed in these 49,840 convenience stores.

But these estimates only include the expectations of the effects of plain packaging through lost tobacco sales. Building in assumptions about the expected tendency to switch from SIRs following the introduction of plain packaging and the fact SIRs could suffer losses of revenues from both tobacco and non-tobacco customers, these estimates increase substantially to:[36]

- A loss of gross earnings by the SIRs of over £300 million from a baseline estimate of £1.6 billion gross earnings from tobacco and non-tobacco sales;
- A loss of £175 million in GVA terms from a baseline estimate of £926 million GVA generated through SIRs' tobacco and non-tobacco sales.

This would lead to greater numbers of insolvencies and up to 30,000 FTE employees losing their jobs in convenience retailing. With so many local communities dependent on SIRs, such effects would have negative implications in terms of the wider social impact of SIRs. Plain packaging would also increase the likelihood of business failures at a time and in circumstances in which retail space occupancy rates on the High Street are already noticeably depressed.

The national and regional breakdown of the estimated job losses in SIRs as a result of lost tobacco and non-tobacco sales is presented in Table 23 below. This shows a very similar pattern to that presented in Table 22 above, except the magnitudes are much greater. Specifically, the South East, London and the North West are expected to experience the greatest job losses, while England would suffer the lion's share.

Table 23: Loss of jobs in SIRs as a result of lost tobacco sales following the introduction of plain packaging

UK nation / English region	Loss of jobs in SIRs as a result of lost tobacco and non-tobacco sales
	Minimum
North East	-1,307
North West	-3,305
Yorkshire and the Humber	-2,508
East Midlands	-2,271
West Midlands	-2,864
East of England	-1,830
London	-3,683
South East	-4,466
South West	-2,732
Total England	**-24,956**
Wales	-1,812
Scotland	-3,231
Northern Ireland	-753
TOTAL	**-30,753**

Source: Cebr analysis

[36] These estimates do not account for reductions in non-tobacco sales to tobacco customers that switch away from SIRs. The estimates presented can, therefore, be considered underestimates.

Finally, we would note that the more remote is a SIR, the less likely it is to suffer these negative impacts of plain packaging. This is because their customers will have fewer options to switch to larger stores in anticipation of longer tobacco transaction times and queues in SIRs. The loss of SIRs and the loss of jobs they provide are, therefore, more likely to be concentrated in urban and suburban areas, where options to switch to larger stores will be more readily available.

EL 214

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

Response from Bristol Health and Wellbeing Board

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

The report of the Chantler Review, which was published in April 2014, concluded that if standardised packaging was introduced, it would have a positive impact on public health.

"Having reviewed the evidence it is in my view highly likely that standardised packaging would serve to reduce the rate of children taking up smoking and implausible that it would increase the consumption of tobacco. I am persuaded that branded packaging plays an important role in encouraging young people to smoke and in consolidating the habit irrespective of the intentions of the industry. Although I have not seen evidence that allows me to quantify the size of the likely impact of standardised packaging, I am satisfied that the body of evidence shows that standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but important reduction over time on the uptake and prevalence of smoking and thus have a positive impact on public health"

We support any measures that contribute towards broad policy objectives to improve public health by:

- discouraging young people from taking up smoking;
- encouraging people to quit smoking;
- helping people who have quit, or who are trying to quit, to avoid relapse back to smoking;
- reducing the appeal or attractiveness of tobacco products;
- reducing the potential for elements of the packaging of tobacco products other than health warnings to detract from the effectiveness of those warnings;
- reducing opportunities for the packaging of tobacco products to mislead consumers about the effects of using them;
- reducing opportunities for the packaging of tobacco products to create false perceptions about the nature of such products;
- having an effect on attitudes, beliefs, intentions and behaviours relating to the reduction in use of tobacco products;
- reshaping social norms around tobacco use to promote health and wellbeing;

We are confident that the conclusions reached by the report are well-founded and the case for standardised packaging has been made. The Government should act without haste to lay Regulations on standardised packaging, under Section 94 of the Children and Families Act as there is only a short time frame available to do this before the 2015 General Election.

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

There is no evidence to support arguments that standardised packaging will make it easier to produce counterfeit packaging.

The arguments must also be treated separately. It is concluded in the Chantler review that standardised packaging will be of considerable benefit. Therefore simply ensure that solutions are utilised to ensure opportunities to counterfeit products are minimised with the industry and consumers bearing the cost. The focus must remain on implementing the regulations.

The new European Tobacco Products Directive (TPD) has been adopted and it will need to be transposed into UK law by 20 May 2016. The TPD sets out a number of new requirements that will apply to all tobacco and related products across the EU, including:

- Tracking and tracing requirements for tobacco products and the requirement for security features to tackle illicit trade.

Standardised packs would therefore still have special coded identifiers which we now use to assist enforcement authorities distinguish legal from illicit tobacco.

Other advertising and promotional activities:

The emergence of a burgeoning market in e-cigarettes and similar vaping products is not covered by the draft legislation and presents a future challenge.

These products have the potential to reduce smoking-related disease and death, but concerns remain about their safety and quality, their marketing, the involvement of tobacco industry, impact on smokefree legislation, and whether the products will re-normalise tobacco smoking. There are concerns raised by public health professionals, medical associations and charities who seek to de-normalise smoking that e-cigarettes may reverse this trend and act as a 'gateway' to smoking by attracting non-smokers (especially children) to tobacco.

Suggested factors that could encourage this include:

- the sale, advertising, marketing and promotion of e-cigarettes, especially to young audiences, including the glamorisation of e-cigarettes by celebrity endorsements
- flavoured e-cigarettes that may appeal to children, for example, bubble gum, fruit and chocolate flavours
- vaping in public places.

The Committee of Advertising (CAP) and the Broadcast Committee of Advertising Practice (BCAP) consultation on marketing of E cigarettes launched a public consultation on 27 February 2014 on the rules governing the advertising of electronic cigarettes to seek opinions from stakeholders on what would be appropriate.

We await with interest the outcomes of this consultation and support any recommendations which impose strict controls on the marketing of E cigarettes in line with those in place for tobacco products.

Promotion of smoking via social media; Tobacco Companies attempt to subvert restrictions on tobacco marketing.

Article 13 of the Framework Convention on Tobacco Control (FCTC) requires signatories to 'undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship'. The FCTC defines advertising and promotion very broadly, as

'...any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.'

The Implementation Guidelines for the FCTC specify that:

'...a comprehensive ban...applies to all forms of commercial communication, recommendation or action and all forms of contribution to any event, activity or individual with the aim, effect, or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.'

Eg. Imperial Tobacco's "Smoke Spots" campaign

The Smoke Spots websites in the UK (www.smoke-spots.co.uk) , Germany and Austria demonstrate a new and concerning way that Imperial Tobacco is promoting its products—both directly and indirectly, through promotion of smoking and smoking locations, in contravention of the FCTC's ban on direct and indirect promotion of tobacco and tobacco use. The website is currently being further promoted by means of an advertising campaign across cities in the UK eg ads on bus shelters.

This combined with the purchase of E-cigarette manufacturers/suppliers by large tobacco manufacturers may lead to a considerable increase in the Corporate branding which may be interpreted as advertising, promotion or sponsorship e.g. the website referred to above is extensively influenced by Imperial Tobacco's corporate colours.

It is, however, clear that these new campaigns utilising corporate branding are potentially a developing area that commands regulatory control.

This new legislation should be part of a comprehensive strategy on tobacco control that links with the EU Tobacco products Directive and maximises on the Public Health benefits through:

- Mass media campaigns

- Making stop smoking services mandatory
- Supporting enforcement activity through provision of adequate funding
- Increasing tax on tobacco above the current tax levels
- Reducing tax on Nicotine Replacement Therapy products on prescription
- Placing levies on the tobacco industry to fund health costs caused by tobacco consumption and environmental costs caused by littering of tobacco related products.

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

We welcome the draft Regulations. They are comprehensive. Specialist Tobacco Products Exemption should be removed

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

Furthermore, in the Australian regulations, the dimensions of the cigarettes and packs are stipulated, and we suggest that this may be useful in preventing any attempt to circumvent the intent of the regulations by introducing an element of branding. In particular we would like to see the UK prohibit the sale of 'slim' cigarettes. We also recommend that the UK prohibit the use of misleading brand variant names such as 'slim', 'natural', 'organic', 'without additives', 'without flavours', as well as 'smooth', 'gold' and 'silver'.

Size & Quantity of Packs

The regulations do not prescribe size requirements in respect of size of packs. This could this be a chance to circumvent the intent of the regulations by introducing an element of branding? The opportunity should be taken to introduce provisions standardising the dimensions of the packaging, thus limiting further the scope upon which manufacturers may compete.

It is noted that Regulation 4(7) is drafted so as to require a minimum of 20 cigarettes. As drafted this will enable manufacturers to compete on number i.e packs containing 21 or 22 cigarettes. This is not in the spirit of standardised packaging regulations and would advocate the wording of the regulation be modified to ensure packs can only contain 20 cigarettes.

Ensuring that manufacturers are limited to pack sizes of 20 means that cost of pack is prohibitive to young persons.

The combination of lack of prescribed pack size and unrestricted number above 20 would still afford the industry a great deal of scope to market and promote products.

Smoking related products such as cigarette papers and filters are outside the remit of the requirements of the draft regulations and these products are not caught by TAPA. These products are intrinsically linked with the smoking of tobacco products and mixtures. It is preferable they should be included in tobacco control measures which restrict the marketing, advertising and promotion of tobacco products.

We support the commitment of the government outlined in the consultation that should a final decision be made to proceed with standardised packaging:

- The regulations that will be made for standardised packaging will also implement Articles 13 and 14 of the TPD (Regulations 4, 8 and 10 of the draft regulations)
- We propose implementing requirements for standardised packaging in May 2016 to coincide with the transposition deadline for the TPD to minimise burdens on business.

This commitment will also ensure burdens on regulators are minimised.

Niche tobacco products, while caught by the draft regulations and other tobacco control measures, may be viewed as 'problematic' for regulators from an enforcement perspective due to many factors. Whilst these products may only constitute a small percentage of tobacco products supplied in the UK they can present challenges to trading standards in areas where prevalence of niche tobacco use exists in local population.

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

No specific observations/comments but would support views outlined in para 35 of draft ASH response which has been circulated

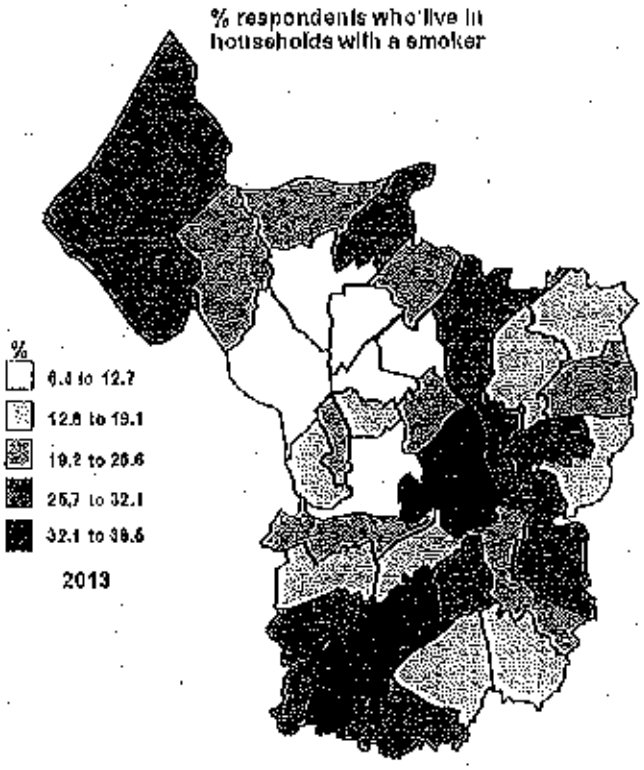
Conclusions:

- Sound and compelling evidence to support the introduction of standardised packaging as part of broad policy objectives to reduce the incidence and prevalence of smoking, improving the health and wellbeing of children and young people, and reducing premature mortality. They will complement and enhance the extensive tobacco measures which have already been implemented into UK law over the last decade and enforced by local authority TS Departments.
- Standardised packaging would remove the attractive promotional aspect of existing tobacco packaging. A review by Stirling University found strong evidence that standardised packaging would reduce the attractiveness and appeal of tobacco products, increase the noticeability and effectiveness of health warnings and messages and reduce the use of design techniques that may mislead consumers about the

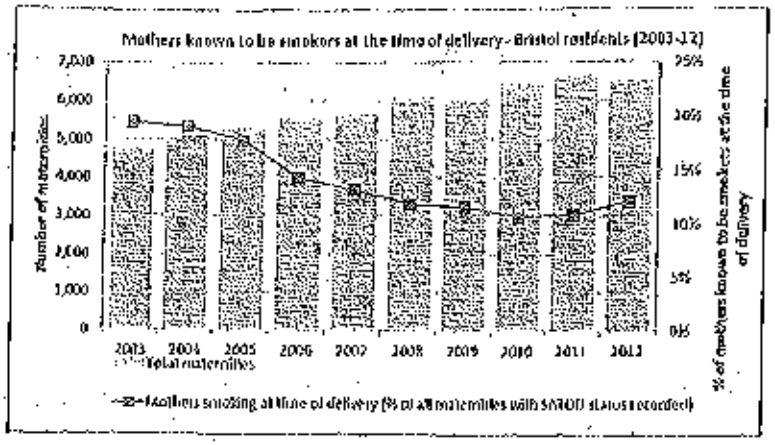
harmfulness of tobacco products. (Plain Tobacco Packaging: A Systematic Review, University of Stirling, 2012) http://phrc.lshtm.ac.uk/papers/PHRC_006_Final_Report.pdf

- Our 2013 Quality of Life survey shows that there are still 21% of Bristol residents living in a household with a smoker. There is no room for complacency, as many of those affected by this will be young people. Chantler Review "There is a conclusive body of evidence that standardised packaging, over time, will contribute to a reduction in the prevalence of smoking, including reducing the rate of children taking up smoking" Introducing this measure is a must from a public health perspective

Smoking – Bristol Quality of life survey 2013



- Children born to mothers who smoke are six times more likely to start smoking compared with those born to mothers who are smokefree. Our latest data indicates an increasing trend currently at 12.7% of women in Bristol who are smoking at time of delivery- nationally this is 12%. Locally we need to reverse this trend and the introduction of standardised packaging will support this.



Source: Local NHS maternity providers – Bristol; via Public Health Intelligence Unit

- In the southwest Bristol have the highest rate of smoking related hospital admisslons and the second highest rate of smoking attributable deaths in adults.
- There are in excess of approximately 73,000 smokers in the City of Bristol. It is estimated the introduction of standardised packs would lead to a 3.5% reduction in smokers which equates to approximately 2555 persons.
- It is estimated that Tobacco product sales in Bristol is worth approximately £162 million. Therefore the 3.5% reduction in the number of smokers that standardised packaging will achieve is worth approximately £4.6 million- money that could re-circulated into the Bristol economy.
- The data from SW YouGov poll in 2011 showed that 45% of people in the South West were in favour of standardised packs whilst 29% opposed, respondents in both opinions included smokers and non-smokers.
- It is important to emphasise that the public health benefits of standardised packaging need to be maximised by supporting enforcement through adequate funding of Trading Standards services, regional illicit tobacco initiatives, and the partnership work with the HMRC and the Border Agency. See para 35 of ASH response for other factors which are necessary to maximise effect of this measure.

- If the Government is committed to the introduction of this legislation then must act with haste to make it a reality before the next General Election in 2015.

EL 215

[redacted]

From:
Sent:
To:
Subject:

Dear Sir,
Just to let you know I am unable to get your web site up.
I am not happy with plain packets of cigs.
Think you will be playing in to the hands of the counterfeiters.

[redacted]

EL 219

Department of Health

Llywodraeth Cymru
Welsh Government

The Scottish Government
Riaghaltas na h-Alba

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

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

a. Are you responding (required):

☐ As a member of the public (go to question b)

☐ As a health or social care professional (go to question b)

☐ On behalf of a business or as a sole trader (go to question c)

☒ On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

[redacted]

Address of respondent (required):

Public Health Directorate, NHS Grampian, Summerfield House, Eday Road, Aberdeen, AB30 1AN

Contact email address (required):

[redacted]

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

Name of organisation (required):

NHS Grampian

Name of person providing submission (required):

Job Title (required):

Tobacco Control Coordinator

Contact address of organisation (required):

Public Health Directorate, NHS Grampian. Summerfield House, Eday Road, Aberdeen. AB30 1AN

Contact email address (required):

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

☒ Yes

☐ No

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

☐ Tobacco retailer (supermarket)

☐ Tobacco retailer (convenience store)

☐ Tobacco retailer (other type of shop or business)

☐ Specialist tobacconist

☐ Duty free shop

☐ Wholesale tobacco seller

☐ Tobacco manufacturer

☐ Retailer not selling tobacco products

☐ Pharmaceutical industry

☐ Business involved in the design or manufacture of packaging

☐ Other (please provide details below)

If other, please tell us the type of business:

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

☒ NHS organisation

☐ Health charity/NGO (working at national level)

☐ Local Authority

☐ Local Authority Trading Standards or Regulatory Services Department

☐ Local tobacco control alliance

☐ Retail representative organisation

☐ Industry representative organisation

☐ Other type of business representative organisation

☐ University or research organisation

☐ Other (please provide details below)

If other, please tell us the type of organisation:

f. **Does your response relate to** (required):

☒ United Kingdom

☐ England only

☒ Scotland only

☐ Wales only

☐ Northern Ireland only

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

☒ No

☐ Yes (please describe below)

If yes, please describe:

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

Consultation questions

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

The findings and conclusions of the report clearly require action to be taken to improve public health. We belive that a system of standardised packaging for all tobacco products is correct and proportionate action.

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

Evidence continues to mount since the evidence for the Chantler review was gathered:New figures from Australia have shown that the prevalence of smoking among adults fell by 15% in the second half of 2013, from 15.1% to 12.8%, a year after standardised packaging was introduced in December 2012.This appears to be independent of the effect of Australian taxation on tobacco products.

Australia sees large fall in smoking after introduction of standardised packs, Kmietowicz Z . BMJ 2014; 349 doi: http://dx.doi.org/10.1136/bmj.g4689 (Published 17 July 2014)

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

Because the regulations as drafted only cover cigarettes they may be less than optimally effective. The viciously addictive nature of nicotine makes it important that marketing of any and all tobacco products is reduced as far as possible. Regulations which are drafted to do this will be the mark of a government truly committed to improving population health. It's difficult to see why healthy public policy would do less.

It is good that the regulations place restrictions on package design. Australian experience demonstrates the effectivenss of this approach. However, the regulations that have been proposed do not regulate package or product size or shape. In this

they do not follow the Australian example and leave open the option of developing very slim packages and products. These are aimed a women and young people, both priority groups for smoking prevention work. Failing to address this will make the measures less than optimally effective and wasteful of public money. Our regulations should follow the Australian example and regulate the size and shape of products and packs.
Australian tobacco control measures have been incredibly effective, it is very difficult to see why lesser measures would be effective here.

We believe that plain packaging should be extended to cover tobacco related products and accessories such as cigarette papers, matches and lighters. Regulations which prevent the migration of tobacco marketing into these related media would potentiate the effectiveness of the proposed action.

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

Electronic cigarettes are now marketed in ways that glamourize smoking. This looks like tobacco marketing through the back door. Plain packaging regulations must apply to these products too, their addictive nature means that they could act as a gateway to life-long nicotine addiction and vulnerability to smoking.

Thank you for participating in this consultation.

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

How to get involved in the consultation

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

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

Completing the online form on the Department of Health website at:
http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1

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

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

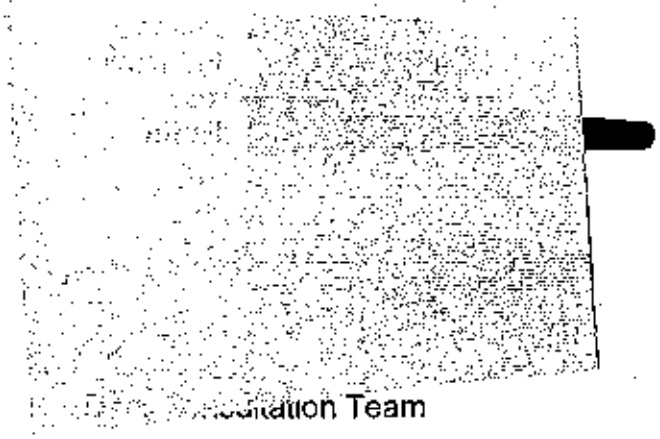
- **Emailing your response to:**

  TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

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

EL 217.



Durham County Council

4 August 2014

...ultation Team

Consultation on the introduction of regulations for standardised packaging of tobacco products. Response on behalf of Durham County Council

We welcome the opportunity to respond to the above consultation. For ease of reading, our main points have been numbered in the letter.

Durham County Council serves a population of approximately 513,200. We are committed to reducing the health harms caused by tobacco and reducing smoking prevalence, which includes reducing the uptake of smoking amongst children and young people. We have a dedicated tobacco alliance with partner organisations and a five year tobacco control action plan that is supported and delivered by these partners across the county. The tobacco alliance of County Durham is also part of a North East network of alliances, and during the 2012 consultation County Durham submitted the most responses in the north east from partner organisations calling for packs to be standardised. Durham County Council is also the lead commissioner of Fresh – the North East Office of Tobacco Control, on behalf of the 12 North East local authorities. The commissioning of the regional Fresh programme demonstrates both our, and the North East's commitment to implementing evidence based tobacco control that will impact on the health and wellbeing of our communities.

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

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

2. Smoking is the leading cause of health inequalities. The richest smokers die earlier than the poorest non-smokers as found in Gruer at al (2009)[1] who concluded that the scope for reducing health inequalities related to social position is limited unless many smokers in lower social positions stop smoking.

[1] http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2645845/

Children and Adults Services
Durham County Council, County Hall, Durham DH1 5UG
Main Telephone 03000 26 0000 Minicom (0191) 383 3802

3. Tobacco use is the leading cause of premature death and preventable disease. In the North East, 5,500 deaths occur each year as a result of tobacco use, of which approximately 820 are deaths of County Durham residents.

4. Around 9,000 young people in the North East start to smoke every year and we need to do all we can to ensure that this number reduces considerably. Repeated surveys of North East smokers have found the average age of trying cigarettes and starting to smoke is 15 years.

5. We particularly welcome Chantler's dismissal of the tobacco industry scaremongering about the alleged impact of standardised packaging on the illicit tobacco trade. Chantler is not convinced by the tobacco industry's argument that standardised packaging would increase the illicit market, especially in counterfeit cigarettes. Recent figures from Australia have indicated that the illicit market has not increased since the introduction of the measure and that tobacco use is at an all-time low[2].

6. We consider that the case for standardised packaging has been made and that regulations should be laid before Parliament in advance of the 2015 General Election.

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

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

8. We know that support for standardised packaging is at an all-time high with 69% of people in the North East in favour[3] and only 9% opposing. Nationally, public support is equally high, and perhaps surprisingly more smokers support standard packs (32%) than oppose (30%) with the remainder ambivalent or undecided. Fresh's experience of talking to smokers on this issue suggests most smokers are very keen for their children not to start smoking.

9. Further measures to regulate tobacco are popular with the public – only 12% of people in the North East think the government is doing too much to tackle smoking[4].

10. There is still a worrying lack of awareness about the impact that smoking has on health. Research gathered during the development of our regional 'Don't be the 1' campaign suggests that 90% of North East smokers underestimate the risk that smoking kills one in two of all long term smokers. When informed of the true risk[5] 65% admitted they find this worrying and 43% said it is "very worrying."

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[2] http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-kff

[3] YouGov 2014

[4] YouGov 2014

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

11. 82% of smokers in the North East wish they had never started and 68% say they would like to be able to quit.

12. Fresh submitted the results of focus groups of smokers and non-smokers aged 18-24 during the original consultation, during which examples of Australian standardised packs were rated as likely to be more harmful and less attractive than branded packs. Many young people felt their greatest potential lay in dissuading young experimenters, occasional smokers and non-smokers (the stated aim of the policy rather than existing adult smokers). Discussions with young people since then have revealed further the potential impact standardised packs could have, including this film featuring two young female smokers from our region, Gateshead, Tyne and Wear comparing examples of Australian standardised packs with current branded cigarettes. Quotes from the young smokers included:

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

    "It'll probably make us want to quit smoking... like I'd probably try more than what I ever have."[6]

13. In Australia, research has shown that social norms in smoking behaviour are already beginning to change as a result of the implementation of standardised packaging. There has been a sharp rise in the number of calls to the Quitline New South Wales service[7] and that smokers are less willing to display their packs in public or to smoke in outdoor public places particularly where children are present[8].

14. Figures released by the Australian government in July have shown adult smoking rates have fallen significantly between 2010 and 2013[9]. In 2010 daily smoking prevalence amongst those aged 14 or older stood at 15.1% and has now fallen to 12.8%. The latest survey was conducted before the Australian Government's tobacco tax increases in December 2013, ruling out price as the primary reason for the dramatic fall in smoking during this 12-month period. Standardised packaging is the only major policy change over this time period and is therefore the most likely reason for the significant fall in smoking prevalence.

Tobacco industry opposition to standardised packaging - misusing data on illicit tobacco

15. The tobacco companies are spending considerable efforts in opposing any moves towards the introduction of standardised tobacco packaging.

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[6] http://www.youtube.com/watch?v=R1AEH4PemIw

[7] https://www.mja.com.au/journal/2014/200/1/association-between-tobacco-plain-packaging-and-quitline-calls-population-based

[8] http://onlinelibrary.wiley.com/doi/10.1111/add.12466/abstract

[9] http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/

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

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

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

17. The tobacco industry also claims that standardised tobacco packaging will be cheaper to counterfeit. In fact, the production costs of illicit cigarettes, including packaging, are very low, at around 20 US cents a pack[10]. Counterfeiters are able to produce quality and apparently genuine packaging at low prices in a short time, therefore outside packaging is a very poor indicator of whether a pack of cigarettes is licit and illicit. Furthermore, if standardised packaging was introduced, enforcers would easily be able to identify counterfeit and smuggled branded packs and illicit white packs.

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

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

20. HMRC estimates that in 2000 around 20% of cigarettes and 60% of hand-rolling tobacco (HRT) smoked in the UK were smuggled, costing over £3 billion a year in lost tax revenue[11].

10

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

HMRC data suggests that by 2012/13 (the latest year for which this information is available) the illicit market in cigarettes had fallen to around 9% of the UK market, and in HRT to around 36% of the market with an associated revenue loss of £2 billion (midpoint) down from £3 billion in 2000[12].

21. A report commissioned jointly by the four transnational tobacco companies (British American Tobacco, Imperial, JTI and Philip Morris International)[13] provides estimates of the scale and development of the illicit cigarette market in Europe and reports that consumption of counterfeit and contraband *declined* in the UK by 6.2% despite other industry data suggesting an increase.

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

- the proportion of smokers buying illicit tobacco had dropped from 24% to 17%
- the size of the illicit tobacco market had shrunk from 15% to 9%
- the proportion of smokers who buy illicit tobacco believing that 'everybody does it' shrunk from 45% to 28%
- the proportion of adults who are uncomfortable with the illicit tobacco trade rose from 57% to 70%[14].

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

- the proportion of young people who bought cigarettes from sellers such as neighbours, car boots and ice-cream vans from 42% to 27%
- the proportion of young people who bought fake cigarettes, down from 28% to 22%
- the proportion of young smokers who bought single cigarettes, from 67% to 49%[15].

Tobacco industry opposition to standardised packaging – misinformation from Australia

24. Further examples of misinformation include the release of misleading figures on tobacco consumption in Australia where standardised packs have been introduced.

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11 http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_MiscellaneousReports&propertyType=document&columns=1&id=HMCE_PROD1_031246

12 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249543/131009_Publication_of_Tobacco_Tax_Gap_estimates_2012-13.pdf

13 http://www.pmi.com/eng/media_center/media_kit/Documents/SUN%20Report%202013.pdf

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

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

In November 2013, a study by a consultancy firm, funded by Philip Morris, reported that since the measure was introduced, there had been no significant change in smoking prevalence[16]. However, the study used an online survey panel which was not representative of the general population and had a higher than average smoking prevalence, and the sample size used was not sufficient to determine statistically significant changes[17].

25. More recently, statistics from Australia released in June 2014 claimed that cigarette sales had increased in Australia since the introduction of standardised packaging. A number of these articles appeared in one key newspaper in Australia that had opposed standardised packs, which then picked up coverage in national newspapers in England. However, figures from the Australian Bureau of Statistics (ABS) show that in March 2014 tobacco consumption in the country was the lowest ever recorded. Analysis in Australia suggests these statistics had been completely misreported in an attempt to discourage the UK from proceeding with standardised packaging.[18] The recent figures released by the ABS show that total consumption of tobacco and cigarettes is currently the lowest ever recorded, dropping from $3.508 billion in December 2012 (when standard packs were introduced) to $3.405 billion in March 2014[19]. After population growth is taken into account tobacco sales per person have continued to decrease from 920.4 cigarettes in 2012 to 906.9 in 2013[20]. The Commonwealth Treasury has further advised that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when standardised packaging was introduced.

26. Tobacco retailers in the UK, often backed by tobacco-funded organisations, have suggested that the introduction of standardised packaging means that it will take longer to serve customers and that convenience stores will lose custom. However, research in Australia[21] has shown that *"retailers quickly gained experience with the new legislation… The long retrieval times predicted by tobacco industry-funded retailer groups and the consequent costs they predicted would fall upon small retailers from plain packaging are unlikely to eventuate."*

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

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[16] http://londoneconomics.co.uk/wp-content/uploads/2013/11/London-Economics-Report-Australian-Prevalence-Final-Report-25-11-2013.pdf

[17] http://www.cancervic.org.au/downloads/tobacco_control/2013/Critique_by_Cancer_Council_Victoria_on_report_by_PMI_26.11.13.pdf

[18] http://www.abc.net.au/medlawatch/transcripts/s4026465.htm

[19] http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-kff

[20] http://www.theguardian.com/society/datablog/2014/jun/06/is-smoking-increasing-in-australia

[21] http://tobaccocontrol.bmj.com/content/early/2013/05/25/tobaccocontrol-2013-050987.abstract

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

28. However there are some issues with the draft regulations that we would like to see addressed.

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

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

31. The draft regulations do not propose requirements relating to the size of cigarette or tobacco packets. Instead, the only stipulation in terms of size is 'cuboid' and this is open to interpretation. This is a real concern and a potential weakness in the regulations. Dimensions should be provided to ensure consistency and to prevent the tobacco manufacturers from determining the size themselves and using it as a means of product differentiation. In Australia, the minimum dimensions for a 20 pack of cigarettes are stipulated as follows and we recommend the UK government follows this model:

Physical features of cigarette packs
The dimensions of a cigarette pack, when the flip-top lid is closed, must not be:
(a) height — less than 85 mm or more than 125 mm; and
(b) width — less than 55 mm or more than 82 mm; and
(c) depth — less than 20 mm or more than 42 mm.

32. The requirements prevent packaging from producing a noise or scent but do not prohibit any smell arising from a permitted additive. Tobacco manufacturers will be innovating packaging now to ensure they can work around these regulations therefore we feel than any scent other than that which normally arises from tobacco products should be prohibited.

This is particularly relevant for menthol cigarettes which, under the directive 2014/40/EU, have an exemption until 2020. The development of capsule cigarettes shows that the tobacco industry is still innovating in this area.

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

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

35. Ours and other Trading Standards officers will be tasked with enforcing this legislation. Trading Standards departments are playing an increasing role in public health and in tobacco control in particular. We feel therefore that it is important that the UK government invests in this vital service and provides it with the leadership and powers it needs to sustain this vital function.

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

General comments

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

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

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

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

"consumer surplus [identified as a cost] represents the loss of the ability of those who continue to smoke to gain the intangible benefit associated with smoking a particular brand that only the packaging of that brand, as it is currently available, can produce."

The reality is that all cigarettes, regardless of brand or price, will kill one in two of its long-term users. Making products more affordable or more attractive cannot be judged to be a benefit.

39. We support any effective measures to maintain the costliness of tobacco in particular adjusting rates on tobacco duty above those currently required by the duty escalator, given that price is the single most effective policy lever for reducing smoking prevalence available to governments. Peto (2013)[22] has recommended an approach to taxation that would have a significant impact on consumption: tripling inflation-adjusted specific excise taxes on tobacco which would approximately double the average price of cigarettes (and more than double prices of cheaper brands) which would reduce consumption by about a third and actually increase tobacco revenues by about a third. We can fully expect the tobacco industry to respond to standardised packaging by dropping prices to make smoking more affordable.

40. The impact assessment considers the potential costs that may arise through increases in the demand for and the supply of illicit tobacco. However, we draw the consultation team's attention to:

- the findings of Chantler who is not convinced that standardised packaging would increase the illicit market and found no evidence that standardised packaging is easier to counterfeit.
- evidence from Australia which has shown there to be no increase in the illicit tobacco trade since the measure was introduced while tobacco consumption has fallen
- the conclusion of the Home Affairs Committee inquiry into tobacco smuggling which recommended that any risks in this area could be mitigated by increasing enforcement action
- Peto's view[23] that use of specific excise taxes on tobacco (rather than ad valorem taxes), stronger tax administration, and practicable controls on organised smuggling can limit the problem. Even with some smuggling, large tax increases can substantially reduce consumption and increase revenue especially if supported by better tax enforcement
- the impact that health-related social marketing can have on reducing smoking at population level and, in turn, reducing the illegal tobacco market, as seen in the North East, North West and South West where the illicit tobacco market share has reduced significantly

[22] http://www.nejm.org/doi/full/10.1056/NEJMra1308383
[23] http://www.nejm.org/doi/full/10.1056/NEJMra1308383

We recognise this is a comprehensive response and hope that our commitment and vision to reduce smoking in County Durham is evident.

EL 218

[redacted]

From: [redacted]ndence
Sent:
To: Tobacco Packaging
Subject: FW: Plain packaging of Tobacco.

Department of Health

[redacted]

From: [redacted]
Sent: 05 August 2014 19:52
To: Tobacco Correspondence
Subject: Plain packaging of Tobacco.

By insisting on plain packaging, it will allow illicit tobacco goods from any source, good or bad to be offered to the smoker. The smoker loses out and the Government will lose out on tax revenue. Where is any tangible benefit to be gained?. Similar methods in other countries have had little if any effect on tobacco consumption but have introduced tobacco products which do not undergo our stringent testing and are even more detrimental to the smoker.

[redacted]

EL 219

[redacted]

rrespondence

From:
Sent:
To:
Subject:

Department of Health

orth)

From [redacted] k]
Sent:
To: T
Subject: Standardised tobacco packaging

I have read the consultations and am strongly against any standard packaging as I feel this to be detrimental and could cause counterfeit tobacco getting into the marketplace. I do not feel the standardisation would lessen the amount of cigarette smokers.
Can you pease add my name to the list/petition against standardisation.
Regards

[redacted]

and scanned by the Government Secure Intranet anti-virus service Symantec.

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

EL 220

[redacted]

From: Tobacco Correspondence
Sent: 07 August 2014 14:37
To: Tobacco Packaging
Subject: FW: standardised packaging

De
of

[redacted]

From: [redacted]
Sent:
To: Tobacco Correspondence
Subject: standardised packaging

I do not believe it is reasonable to ask the legal operation of tobacco manufacturers to standardise their packaging.

This will only lead, as it has done in Australia, to more counterfeit and dangerous products coming on the market.

Why should manufacturers having, quite legally, spent millions on helping smokers to identify their their chosen brand now have to have to plain pack their legally sold products?

To standardise packaging is anti-democratic – let smokers have the right to choose which product they wish to buy and see the brand name displayed on the pack.

[redacted]

EL 221

Appendix A

Consultation questions

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

We note and agree the following;

1. A report by Professor David Hammond for the Irish Department of Health[1] backs up Sir Cyril Chantler's view. He concluded that,

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

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

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

1. I agree with ASH response in relation to this question but would add that consideration needs to be given to including wider non medicine nicotine dispensing devices in particular E Cigarettes.

2. These are a growth area used by smokers but marketed to all consumers particularly young consumers.

3. Whilst risks are at present unproved they have similar effect as tobacco in that they will render the end user with a (continued) nicotine addiction which they will satisfy with other tobacco products.

4. This issue could be addressed immediately by including these products in the intended regulations

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

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

There needs to be recognition that enforcement of these regulations will need additional funding.

Presently these regulations will be enforced by Local Authorities.

Industry to be levied to provide direct funding for enforcement in areas of proven Health Inequalities.

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

EL 222

[redacted]

From:
Sent:
To:

People have a choice about abortion which brought about 200,000 a year,and the same will happen with the suicide Bill.So why not give people choice over cigarettes.GD,a non smoker.

EL 223

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

Response from the Smokefree Bristol Alliance on behalf of Bristol City Council

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

The report of the Chantler Review, which was published in April 2014, concluded that if standardised packaging was introduced, it would have a positive impact on public health.

"Having reviewed the evidence it is in my view highly likely that standardised packaging would serve to reduce the rate of children taking up smoking and implausible that it would increase the consumption of tobacco. I am persuaded that branded packaging plays an important role in encouraging young people to smoke and in consolidating the habit irrespective of the intentions of the industry. Although I have not seen evidence that allows me to quantify the size of the likely impact of standardised packaging, I am satisfied that the body of evidence shows that standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but important reduction over time on the uptake and prevalence of smoking and thus have a positive impact on public health"

We support any measures that contribute towards broad policy objectives to improve public health by:

- discouraging young people from taking up smoking;
- encouraging people to quit smoking;
- helping people who have quit, or who are trying to quit, to avoid relapse back to smoking;
- reducing the appeal or attractiveness of tobacco products;
- reducing the potential for elements of the packaging of tobacco products other than health warnings to detract from the effectiveness of those warnings;
- reducing opportunities for the packaging of tobacco products to mislead consumers about the effects of using them;
- reducing opportunities for the packaging of tobacco products to create false perceptions about the nature of such products;
- having an effect on attitudes, beliefs, intentions and behaviours relating to the reduction in use of tobacco products;
- reshaping social norms around tobacco use to promote health and wellbeing;

We are confident that the conclusions reached by the report are well-founded and the case for standardised packaging has been made. The Government should act without haste to lay Regulations on standardised packaging, under Section 94 of the Children and Families Act as there is only a short time frame available to do this before the 2015 General Election.

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

There is no evidence to support arguments standardised packaging will make it easier to produce counterfeit packaging.

The arguments must also be treated separately. It is concluded in the Chantler review that standardised packaging will be of considerable benefit. Therefore simply ensure that solutions are utilised to ensure opportunities to counterfeit product is minimised with the industry and consumers bearing the cost. The focus must remain on the implementing the regulations.

The new European Tobacco Products Directive (TPD) has been adopted and it will need to be transposed into UK law by 20 May 2016. The TPD sets out a number of new requirements that will apply to all tobacco and related products across the EU, including:

- Tracking and tracing requirements for tobacco products and the requirement for security features to tackle illicit trade.

Standardised packs would therefore still have special coded identifiers which we now use to assist enforcement authorities distinguish legal from illicit tobacco.

Other advertising and promotional activities:

The emergence of a burgeoning market in e-cigarettes and similar vaping products is not covered by the draft legislation and presents a future challenge.

These products have the potential to reduce smoking-related disease and death, but concerns remain about their safety and quality, their marketing, the involvement of tobacco industry, impact on smokefree legislation, and whether the products will re-normalise tobacco smoking. There are concerns raised by public health professionals, medical associations and charities who seek to de-normalise smoking that e-cigarettes may reverse this trend and act as a 'gateway' to smoking by attracting non-smokers (especially children) to tobacco.

Suggested factors that could encourage this include:

- the sale, advertising, marketing and promotion of e-cigarettes, especially to young audiences, including the glamorisation of e-cigarettes by celebrity endorsements
- flavoured e-cigarettes that may appeal to children, for example, bubble gum, fruit and chocolate flavours
- vaping in public places.

The Committee of Advertising (CAP) and the Broadcast Committee of Advertising Practice (BCAP) consultation on marketing of E cigarettes launched a public consultation on 27 February 2014 on the rules governing the advertising of electronic cigarettes to seek opinions from stakeholders on what would be appropriate.

We await with interest the outcomes of this consultation and support any recommendations which impose strict controls on the marketing of E cigarettes in line with those in place for tobacco products.

Promotion of smoking via social media: Tobacco Companies attempt to subvert restrictions on tobacco marketing.

Article 13 of the Framework Convention on Tobacco Control (FCTC) requires signatories to 'undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship'. The FCTC defines advertising and promotion very broadly, as

'...any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.'

The Implementation Guidelines for the FCTC specify that:

'...a comprehensive ban...applies to all forms of commercial communication, recommendation or action and all forms of contribution to any event, activity or individual with the aim, effect, or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.'

Eg. Imperial Tobacco's "Smoke Spots" campaign

The Smoke Spots websites in the UK (www.smoke-spots.co.uk) , Germany and Austria demonstrate a new and concerning way that Imperial Tobacco is promoting its products—both directly and indirectly, through promotion of smoking and smoking locations, in contravention of the FCTC's ban on direct and indirect promotion of tobacco and tobacco use. The website is currently being further promoted by means of an advertising campaign across cities in the UK eg ads on bus shelters,

This combined with the purchase of E-cigarette manufacturers/suppliers by large tobacco manufacturers may lead to a considerable increase in the Corporate branding which may be interpreted as advertising, promotion or sponsorship e.g. the website referred to above is extensively influenced by Imperial Tobacco's corporate colours.

It is, however, clear that these new campaigns utilising corporate branding is potentially a developing area that commands regulatory control.

This new legislation should be part of a comprehensive strategy on tobacco control that links with the EU Tobacco products Directive and maximises on the Public Health benefits through:

- Mass media campaigns

- Making stop smoking services mandatory
- Supporting enforcement activity through provision of adequate funding
- Increasing tax on tobacco above the current tax levels
- Reducing tax on Nicotine Replacement Therapy products on prescription
- Placing levies on the tobacco industry to fund health costs caused by tobacco consumption and environmental costs caused by littering of tobacco related products.

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

We welcome the draft Regulations. They are comprehensive. Specialist Tobacco Products Exemption should be removed

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

Furthermore, in the Australian regulations, the dimensions of the cigarettes and packs are stipulated, and we suggest that this may be useful in preventing any attempt to circumvent the intent of the regulations by introducing an element of branding. In particular we would like to see the UK prohibit the sale of 'slim' cigarettes. We also recommend that the UK prohibit the use of misleading brand variant names such as 'slim', 'natural', 'organic', 'without additives', 'without flavours', as well as 'smooth', 'gold' and 'silver'.

Size & Quantity of Packs

The regulations do not prescribe size requirements in respect of size of packs. This could this be a chance to circumvent the intent of the regulations by introducing an element of branding? The opportunity should be taken to introduce provisions standardising the dimensions of the packaging, thus limiting further the scope upon which manufacturers may compete.

It is noted that Regulation 4(7) is drafted so as to require a minimum of 20 cigarettes. As drafted this will enable manufacturers to compete on number i.e packs containing 21 or 22 cigarettes. This is not in the spirit of standardised packaging regulations and would advocate the wording of the regulation be modified to ensure packs can only contain 20 cigarettes.

Ensuring that manufacturers are limited to pack sizes of 20 means that cost of pack is prohibitive to young persons.

The combination of lack of prescribed pack size and unrestricted number above 20 would still afford the industry a great deal of scope to market and promote products.

Smoking related products such as cigarette papers and filters are outside the remit of the requirements of the draft regulations and these products are not caught by TAPA. These products are intrinsically linked with the smoking of tobacco products and mixtures. It is preferable they should be included in tobacco control measures which restrict the marketing, advertising and promotion of tobacco products.

We support the commitment of the government outlined in the consultation that should a final decision be made to proceed with standardised packaging:

- The regulations that will be made for standardised packaging will also implement Articles 13 and 14 of the TPD (Regulations 4, 8 and 10 of the draft regulations)
- We propose implementing requirements for standardised packaging in May 2016 to coincide with the transposition deadline for the TPD to minimise burdens on business.

This commitment will also ensure burdens on regulators are minimised.

Niche tobacco products, while caught by the draft regulations and other tobacco control measures, may be viewed as 'problematic' for regulators from an enforcement perspective due to many factors. Whilst these products may only constitute a small percentage of tobacco products supplied in the UK they can present challenges to trading standards in areas where prevalence of niche tobacco use exists in local population.

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

No specific observations/comments but would support views outlined in para 35 of draft ASH response which has been circulated

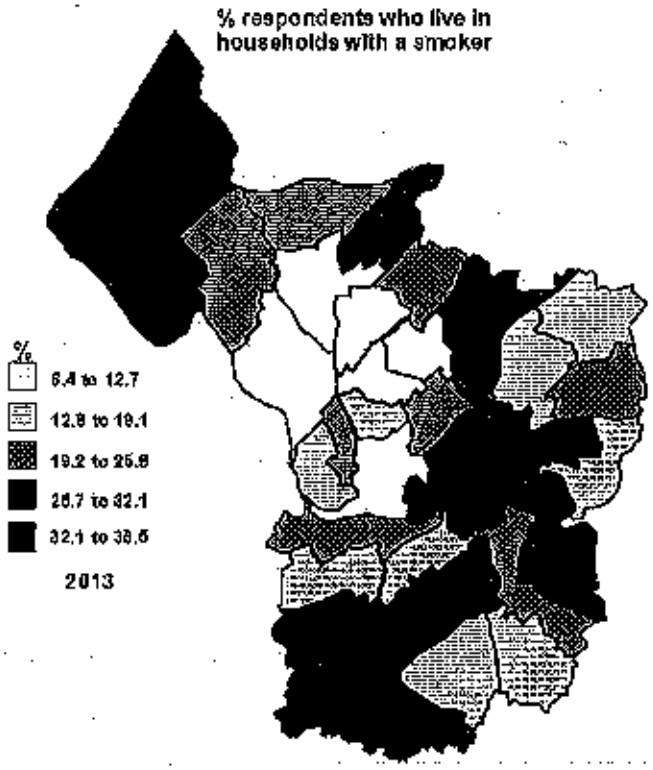
Conclusions:

- Sound and compelling evidence to support the introduction of standardised packaging as part of broad policy objectives to reduce the incidence and prevalence of smoking, improving the health and wellbeing of children and young people, and reducing premature mortality. They will complement and enhance the extensive tobacco measures which have already been implemented into UK law over the last decade and enforced by local authority TS Departments.
- Standardised packaging would remove the attractive promotional aspect of existing tobacco packaging. A review by Stirling University found strong evidence that standardised packaging would reduce the attractiveness and appeal of tobacco products, increase the noticeability and effectiveness of health warnings and messages and reduce the use of design techniques that may mislead consumers about the

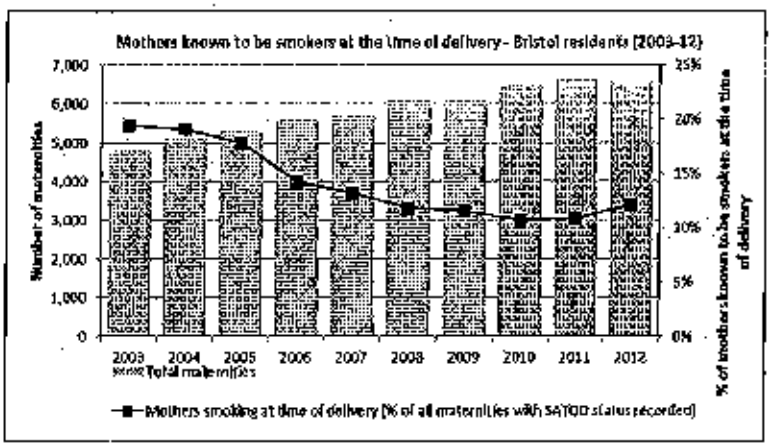
harmfulness of tobacco products. (Plain Tobacco Packaging: A Systematic Review, University of Stirling, 2012) http://phrc.lshtm.ac.uk/papers/PHRC_006_Final_Report.pdf

- Our 2013 Quality of Life survey shows that there are still 21% of Bristol residents living in a household with a smoker. There is no room for complacency, as many of those affected by this will be young people. Chantler Review "There is a conclusive body of evidence that standardised packaging, over time, will contribute to a reduction in the prevalence of smoking, including reducing the rate of children taking up smoking" Introducing this measure is a must from a public health perspective

Smoking – Bristol Quality of life survey 2013



- Children born to mothers who smoke are six times more likely to start smoking compared with those born to mothers who are smokefree. Our latest data indicates an increasing trend currently at 12.7% of women in Bristol who are smoking at time of delivery- nationally this is 12%. Locally we need to reverse this trend and the introduction of standardised packaging will support this.



Source: Local NHS maternity providers – Bristol; via Public Health Intelligence Unit

- In the southwest Bristol have the highest rate of smoking related hospital admissions and the second highest rate of smoking attributable deaths in adults.
- There are in excess of approximately 73,000 smokes in the City of Bristol. It is estimated the introduction of standardised packs would lead to a 3.5% reduction in smokers which equates to approximately 2555 persons.
- It is estimated that Tobacco product sales in Bristol is worth approximately £162 million. Therefore the 3.5% reduction in the number of smokers that standardised packaging will achieve is worth approximately £4.6 million- money that could re-circulated into the Bristol economy.
- The data from SW YouGov poll in 2011 showed that 45% of people in the South West were in favour of standardised packs whilst 29% opposed, respondents in both opinions included smokers and non-smokers.
- It is important to emphasise that the public health benefits of standardised packaging need to be maximised by supporting enforcement through adequate funding of Trading Standards services, regional illicit tobacco initiatives, and the partnership work with the HMRC and the Border Agency. See para 35 of ASH response for other factors which are necessary to maximise effect of this measure.

- If the Government is committed to the introduction of this legislation then must act with haste to make it a reality before the next General Election in 2015.

EL 224.

Department of Health

Llywodraeth Cymru
Welsh Government

The Scottish Government
Riaghaltas na h-Alba

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

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

a. Are you responding (required):

☐ As a member of the public (go to question b)

☐ As a health or social care professional (go to question b)

☐ On behalf of a business or as a sole trader (go to question c)

☒ On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

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

Name of organisation (required):

Public Health City of York Council

Name of person providing submission (required):

[redacted]

Job Title (required):

Strategic Commissioner: Teenage Pregnancy, Substance Misuse and Risky Behaviours

Contact address of organisation (required):

West Offices Station Rise YOrk YO1 6GA

Contact email address (required):

[redacted]

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

☒ Yes

☐ No

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

☐ Tobacco retailer (supermarket)

☐ Tobacco retailer (convenience store)

☐ Tobacco retailer (other type of shop or business)

☐ Specialist tobacconist

☐ Duty free shop

☐ Wholesale tobacco seller

☐ Tobacco manufacturer

☐ Retailer not selling tobacco products

☐ Pharmaceutical industry

☐ Business involved in the design or manufacture of packaging

☐ Other (please provide details below)

If other, please tell us the type of business:

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

☐ NHS organisation

☐ Health charity/NGO (working at national level)

☒ Local Authority

☐ Local Authority Trading Standards or Regulatory Services Department

☐ Local tobacco control alliance

☐ Retail representative organisation

☐ Industry representative organisation

☐ Other type of business representative organisation

☐ University or research organisation

☐ Other (please provide details below)

If other, please tell us the type of organisation:

f. **Does your response relate to** (required):

☒ United Kingdom

☐ England only

☐ Scotland only

☐ Wales only

☐ Northern Ireland only

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

☒ No

☐ Yes (please describe below)

If yes, please describe:

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

Consultation questions

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

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

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

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

With regard to the exemption for tobacco products other than cigarettes and hand rolling tobacco. All tobacco products should be included. The basis for the exemption of cigars and pipe tobacco etc. wa that they are not used by young people , however this may send out the wrong message and make these produts appear to be less harmful. The document refers to Opinions and lifestyle survey, Smoking Habits Amongst Adults, where it states "almost all cigar smokers are male and over 25, and almost all pipe smokers tend to be male and over 20." (ONS 2013). If you use the United Nations definition of youth/ young people it includes all those under 25 therefore would include the pipe smokers at least. Also it shouldn't just be about preventing uptake, it is also about encouraging and helping smokers to stop.

Thank you for participating in this consultation.

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

How to get involved in the consultation

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

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

Completing the online form on the Department of Health website at:
http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1

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

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

- **Emailing your response to:**

  TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

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

EL 225

[redacted]

From: [redacted]
Sent: [redacted]
To: Tobacco Packaging
Subject: Plain packaging

Dear Sir/Madam,

Don't do it, it's undemocratic to impose such a draconian condition on a companies legitimate product.

DLS.

EL 226

Department of Health

Llywodraeth Cymru
Welsh Government

The Scottish Government
Riaghaltas na h-Alba

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

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

a. Are you responding (required):

☐ As a member of the public (go to question b)

☐ As a health or social care professional (go to question b)

☐ On behalf of a business or as a sole trader (go to question c)

☒ On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

[redacted]

Address of respondent (required):

North Tyneside Council

Contact email address (required):

[redacted]

Now go to question f

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

Name of organisation (required):

North Tyneside Council

Name of person providing submission (required):

[redacted]

Job Title (required):

Elected Mayor of North Tyneside

Contact address of organisation (required):

Quadrant East, Silverlink North, Colbalt Business Park, North tyneside, NE2 70BY

Contact email address (required):

[redacted]

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

☒ Yes

☐ No

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

☐ Tobacco retailer (supermarket)

☐ Tobacco retailer (convenience store)

☐ Tobacco retailer (other type of shop or business)

☐ Specialist tobacconist

☐ Duty free shop

☐ Wholesale tobacco seller

☐ Tobacco manufacturer

☐ Retailer not selling tobacco products

☐ Pharmaceutical industry

☐ Business involved in the design or manufacture of packaging

☐ Other (please provide details below)

If other, please tell us the type of business:

N/A

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

☐ NHS organisation

☐ Health charity/NGO (working at national level)

☒ Local Authority

☐ Local Authority Trading Standards or Regulatory Services Department

☐ Local tobacco control alliance

☐ Retail representative organisation

☐ Industry representative organisation

☐ Other type of business representative organisation

☐ University or research organisation

☐ Other (please provide details below)

If other, please tell us the type of organisation:

f. **Does your response relate to** (required):

☐ United Kingdom

☒ England only

☐ Scotland only

☐ Wales only

☐ Northern Ireland only

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

☒ No

☐ Yes (please describe below)

If yes, please describe:

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

Consultation questions

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

North Tyneside Council was amongst the first local authorities to sign up to the Local Government Declaration on Tobacco Control, signifying the extent of support and importance placed on this locally. As such, North Tyneside Council also responded positively to the 2012 consultation on standardised tobacco packaging, along with all other eleven North East local authorities.

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

Smoking is the leading cause of health inequalities in the UK. The richest smokers die earlier than the poorest non-smokers as found in Gruer et al (1) who concluded that the scope for reducing health inequalities related to social position is limited unless many smokers in lower social positions stop smoking.

Tobacco use is the leading cause of premature death and preventable disease. In the North East, 5,500 deaths every year occur as a result of tobacco use. In North Tyneside alone, we estimate that there are over 300 deaths a year, directly as a result of tobacco.

Around 9,000 young people in the North East start to smoke every year and we need to do all we can to ensure that this number reduces to negligible levels. Repeated surveys of North East smokers have found the average age of trying cigarettes and starting to smoke to be 15.

We particularly welcome Chantler's rebuttal of the tobacco industry's allegations around the impact of standardised packaging on the illicit tobacco trade. Chantler is not convinced by the tobacco industry's argument that standardised packaging would increase the illicit market, especially in counterfeit cigarettes. Recent figures from Australia have also indicated that the illicit market has not increased since the introduction of the measure and that tobacco use is at an all-time low (2).

We consider that the case for standardised packaging has been made and that regulations should be laid before Parliament in advance of the 2015 General Election.

(1) http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2645845/
(2) http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-kff

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

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

Support for standardised packaging is at an all-time high with 69% of people in the North East in favour (3) and only 9% opposing. Nationally, public support is equally high, and perhaps surprisingly more smokers support standard packs (32%) than oppose (30%) with the remainder ambivalent or undecided. Our experience of talking to smokers on this issue suggests most smokers are very keen for their children not to start.

Further measures to regulate tobacco are popular with the public – only 12% of people in the North East think the government is doing too much to tackle smoking (4).

In spite of arguments to the contrary by those opposing standardised packaging, here is still a worrying lack of awareness about the impact that smoking has on health. Research gathered during the development of the North East 'Don't be the one' campaign suggests that 90% of North East smokers underestimate the risk that smoking kills one in two of all long term smokers. When informed of the true risk 65% admitted they find the true risk (5) worrying and 43% said it is "very worrying."

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

The North East submitted the results of focus groups of smokers and non-smokers aged 18-24 during the original consultation, during which examples of Australian standardised packs were rated as likely to be most harmful and less attractive than packs, with many young people feeling their greatest potential lay in dissuading young experimenters, occasional smokers and non-smokers (the stated aim of the policy rather than existing adult smokers). Discussions with young people since then has revealed further the potential impact standardised packs could have, including this film featuring two young female smokers from Gateshead, Tyne and Wear comparing examples of Australian standardised packs with current branded cigarettes. Quotes from the young smokers included:

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

"It'll probably make us want to quit smoking... like I'd probably try more than what I ever have" (6).

In Australia, research has shown that social norms in smoking behaviour are already beginning to change as a result of the implementation of standardised packaging. There has been a sharp rise in the number of calls to the Quitline New South Wales service (7) and that smokers are less willing to display their packs in public or to smoke in outdoor public places particularly where children are present (8).

Figures released by the Australian government in July have shown adult smoking rates have fallen significantly between 2010 and 2013 (9). In 2010 daily smoking prevalence amongst those aged 14 or older stood at 15.1% and has now fallen to 12.8%. The latest survey was conducted before the Australian Government's tobacco tax increases in December 2013, ruling out price as the primary reason for the dramatic fall in smoking during this 12-month period. Standardised packaging is the only major policy change over this time period and is therefore the most likely reason for the significant fall in smoking prevalence.

We are aware of Tobacco industry opposition to standardised packaging, particularly the tactic of misusing data on the extent of the illicit tobacco trade. My officers have identified some apparent examples of this in our local media. Yet recent evidence from all reputable surveys shows that the illicit tobacco market is on a sustained long-term decline. There is also no evidence that standardised packaging would lead to an increase in the illicit trade. Irrespective of this, we know that all tobacco – legal or illegal – will kill one in two of its long term users.

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

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

The tobacco industry also claims that standardised tobacco packaging will be cheaper to counterfeit. In fact, the production costs of current illicit cigarettes, including packaging, are already very low, at around 20 US cents a pack (10). Counterfeiters are able to produce quality replica packaging at low prices in a short time; therefore outside packaging is a very poor indicator of whether a pack of cigarettes is licit or illicit. Furthermore, if standardised packaging was introduced, enforcers would easily be able to identify counterfeit and smuggled branded packs and illicit white packs.

All security features on current packs will also be present on standardised packaging and additional international tracking and tracing mechanisms to tackle the illicit

tobacco trade are required through Article 15 of the revised EU Tobacco Products Directive and Article 8 of the WHO FCTC Illicit Trade Protocol.

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

HMRC estimates that in 2000 around 20% of cigarettes and 60% of hand-rolling tobacco (HRT) smoked in the UK were smuggled, costing over £3 billion a year in lost tax revenue (11). HMRC data suggests that by 2012/13 (the latest year for which this information is available) the illicit market in cigarettes had fallen to around 9% of the UK market, and in HRT to around 36% of the market with an associated revenue loss of £2 billion (midpoint) down from £3 billion in 2000 (12).

A report commissioned jointly by the four transnational tobacco companies (British American Tobacco, Imperial, JTI and Philip Morris International (13)) provides estimates on the scale and development of the illicit cigarette market in Europe and reports that consumption of counterfeit and contraband declined in the UK by 6.2%, despite industry-generated articles suggesting that there has been an increase.

The experience from England shows that comprehensive programmes tackling illicit tobacco can change the social norms, reducing the size of the illicit tobacco market, reducing the proportion of smokers buying illicit tobacco and increasing the public's likelihood to report intelligence. For example, in the North East between 2009 and 2013, following partnership development, three bursts of social marketing activity and enhanced intelligence and enforcement models:

- The proportion of smokers buying illicit tobacco had dropped from 24% to 17%
- The size of the illicit tobacco market had shrunk from 15% to 9%
- The proportion of smokers who buy illicit tobacco believing that 'everybody does it' shrunk from 45% to 26%
- The proportion of adults who are uncomfortable with the illicit tobacco trade rose from 57% to 70% (14).

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

- The proportion of young people who have bought cigarettes from sellers such as neighbours, car boots and ice-cream vans from 42% to 27%
- The proportion of young people who have bought fake cigarettes, down from 28% to 22%
- The proportion of young smokers who have ever bought single cigarettes, from 67% to 49% (15).

The tobacco industry has also extensively used misinformation from the Australian experience of introducing standardised packaging. This includes the release of misleading figures on tobacco consumption in Australia. In November 2013, a study by the consultancy firm London Economics, funded by Philip Morris, reported that since the measure was introduced, there had been no significant change in smoking prevalence (16). However, the study used an online survey panel which was not representative of the general population and had a higher than average smoking prevalence, and the sample size used was not sufficient to determine statistically significant changes (17).

More recently, statistics from Australia were circulated in June 2014 claiming that cigarette sales had increased in Australia since the introduction of standardised packaging. A number of these articles appeared in one key newspaper in Australia that had opposed standardised packs, and which were then picked up in coverage in national newspapers in England. However, official figures from the Australian Bureau of Statistics (ABS) show that in March 2014 tobacco consumption in the country was the lowest ever recorded. Analysis in Australia suggests the incorrect statistics were misreported in an attempt to discourage Ministers in the UK from proceeding with standardised packaging (18). The recent figures released by the ABS show that total consumption of tobacco and cigarettes is currently the lowest ever recorded, dropping from $3.508bn in December 2012 (when standard packs were introduced) to $3.405 billion in March 2014 (19). After population growth is taken into account tobacco sales per person have continued to decrease from 920.4 cigarettes in 2012 to 906.9 in 2013 (20). The Commonwealth Treasury has further advised that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when standardised packaging was introduced.

Tobacco retailers in the UK, often backed by tobacco-funded organisations, have suggested that the introduction of standardised packaging means that it will take longer to serve customers and that convenience stores will lose custom. However, research in Australia (21) has shown that "retailers quickly gained experience with the new legislation... The long retrieval times predicted by tobacco industry-funded retailer groups and the consequent costs they predicted would fall upon small retailers from plain packaging are unlikely to eventuate."

(3) YouGov 2014
(4) YouGov 2014
(5) The Doctors Study" (Doll R, Peto R, Wheatley K, Gray R, Sutherland I. Mortality in relation to smoking: 40 years observations on male British doctors. British Medical Journal 1994; 309:901-911).
(6) http://www.youtube.com/watch?v=R1AEH4Pemlw
(7) https://www.mja.com.au/journal/2014/200/1/association-between-tobacco-plain-packaging-and-quitline-calls-population-based
(8) http://onlinelibrary.wiley.com/doi/10.1111/add.12466/abstract
(9) http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/

(10)
http://www.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@pol/documents/generalcontent/smuggling_fullreport.pdf
(11)
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_MiscellaneousReports&propertyType=document&columns=1&id=HMCE_PROD1_031246
(12)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249543/131009_Publication_of_Tobacco_Tax_Gap_estimates_2012-13.pdf
(13)
http://www.pmi.com/eng/media_center/media_kit/Documents/SUN%20Report%202013.pdf
(14) http://www.illegal-tobacco.co.uk/wp-content/uploads/2014/03/NE_Illicit_Tobacco_Report_key_findings.pdf
(15) http://tobaccofreefutures.org/wp-content/uploads/2013/08/8353_TSNW-Young-Persons-Alcohol-Tobacco-Report_130605_V3.pdf
(16) http://londoneconomics.co.uk/wp-content/uploads/2013/11/London-Economics-Report-Australian-Prevalence-Final-Report-25-11-2013.pdf
(17)
http://www.cancervic.org.au/downloads/tobacco_control/2013/Critique_by_Cancer_Council_Victoria_on_report_by_PMI_26.11.13.pdf
(18) http://www.abc.net.au/mediawatch/transcripts/s4026465.htm
(19) http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-kff
(20) http://www.theguardian.com/society/datablog/2014/jun/06/is-smoking-increasing-in-australia
(21) http://tobaccocontrol.bmj.com/content/early/2013/05/25/tobaccocontrol-2013-050987.abstract

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

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

However there are some issues with the draft regulations that we would like to see addressed.

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

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

The draft regulations do not propose requirements relating to the size of a cigarette or tobacco packets themselves. Instead, the only stipulation in terms of size is 'cuboid' and this is open to interpretation. This is a real concern and a potential weakness in the regulations. Dimensions should be provided to ensure consistency and to prevent the tobacco manufacturers from determining the size themselves and using it as a means of product differentiation. In Australia, the minimum dimensions for a 20 pack of cigarettes are stipulated as follows and we recommend the UK government follows this model:

Physical features of cigarette packs:
The dimensions of a cigarette pack, when the flip-top lid is closed, must not be:
(a) Height — less than 85 mm or more than 125 mm; and
(b) Width — less than 55 mm or more than 82 mm; and
(c) Depth — less than 20 mm or more than 42 mm.

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

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

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

Local authority Trading Standards Officers will be tasked with enforcing this legislation. Trading Standards departments are playing an increasing role in public health and in tobacco control in particular. We feel therefore that it is important that the UK government invests in this vital service and provides it with the leadership and powers it needs to sustain this vital function.

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

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

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

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

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

"consumer surplus [identified as a cost] represents the loss of the ability of those who continue to smoke to gain the intangible benefit associated with smoking a particular brand that only the packaging of that brand, as it is currently available, can produce."

The reality is that all cigarettes, regardless of brand or price, will kill one in two of its long-term users. Making products more affordable or more attractive cannot be judged to be a benefit.

We support any effective measures to maintain the costliness of tobacco in particular adjusting rates on tobacco duty above those currently required by the duty escalator; given that price is the single most effective policy lever for reducing smoking prevalence available to governments. Peto (22) has recommended an approach to taxation that would have a significant impact on consumption: tripling inflation-adjusted specific excise taxes on tobacco which would approximately double the average price of cigarettes (and more than double prices of cheaper brands) which would reduce consumption by about a third and actually increase tobacco revenues by about a third. We can fully expect the tobacco industry to respond to standardised packaging by dropping prices to make smoking more affordable.

The impact assessment considers the potential costs that may arise through increases in the demand for and the supply of illicit tobacco. However, we draw the consultation team's attention to:

- The findings of Chantler who is not convinced that standardised packaging would increase the illicit market and found no evidence that standardised packaging is easier to counterfeit

- Evidence from Australia which has shown there to be no increase in the illicit tobacco trade since the measure was introduced, whilst overall tobacco consumption has fallen

- The conclusion of the Home Affairs Committee inquiry into tobacco smuggling which recommended that any risks in this area could be mitigated by increasing enforcement action

- Peto's view (23) that use of specific excise taxes on tobacco (rather than ad valorem taxes), stronger tax administration, and practicable controls on organised smuggling can limit the problem. Even with some smuggling, large tax increases can substantially reduce consumption and increase revenue especially if supported by better tax enforcement

- The impact that social marketing can have on reducing smoking at population level and, in turn, reducing the illegal tobacco market, as seen in the North East, North West and South West where the illicit tobacco market share has reduced significantly

The impact assessment also considers the costs for retailers and states that, anecdotally, the profit margins on the sale of tobacco may be relatively low. John McClurey, elected member for Gateshead Council and Independent retailer in Newcastle, maintains that:

"Most traders rely less and less on tobacco profits since the gross profit is so small. I make as much profit from a pack of chewing gum as a £6 pack of cigarettes. What

my customers save by quitting or never starting to smoke, they can spend on other things. That means more money into the local economy."

Evidence shows tobacco control policies should be comprehensive and complementary if they are to achieve maximum possible impact. Standardised packaging was introduced in Australia in conjunction with larger health warnings and sustained mass media campaigns, the per capita equivalent of which at exchange rates would be £33.7 million a year in the UK. Australia is also committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years from December 2013. Therefore consideration by the government must be given to the following areas if the full public health benefits of standardised packaging are to be realised:

- Funding a sustained mass media campaign to support the implementation of standardised packaging
- Ensuring that stop smoking services are funded adequately
- Supporting and investing in efforts to reduce the supply of and demand for illicit tobacco through partnerships between health and enforcement based on the model of the Tackling Illicit Tobacco for Better Health Partnership (24)
- Considering tax rises on tobacco products over and above the existing escalator, particularly to counteract any possible negative effects from brand-shifting or price-cutting
- Considering further levies on the tobacco industry based on local sales data and designed to fund broad tobacco control and health costs caused by tobacco consumption.

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

- Overall, the main smoking related diseases are conservatively estimated to cost the NHS across North Tyneside alone £9.4 million per year
- The cost of smoking-related hospital admissions in North Tyneside is calculated to be nearly £5.7 million per year
- An additional £2.6 million is lost to the local economy each year through increased levels of absence from work from smokers compared to their non-smoking counterparts, which accounts for over 29,600 additional lost days of productivity per year in North Tyneside.

(22) http://www.nejm.org/doi/full/10.1056/NEJMra1308383
(23) http://www.nejm.org/doi/full/10.1056/NEJMra1308383
(24) www.illegal-tobacco.co.uk

Thank you for participating in this consultation.

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

How to get involved in the consultation

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

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

Completing the online form on the Department of Health website at:
http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1

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

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

- **Emailing your response to:**

  TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

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

EL 227

Department of Health

Llywodraeth Cymru
Welsh Government

The Scottish Government
Riaghaltas na h-Alba

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

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

a. Are you responding (required):

☐ As a member of the public (go to question b)

☐ As a health or social care professional (go to question b)

☐ On behalf of a business or as a sole trader (go to question c)

☒ On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

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

Name of organisation (required):

London Borough of Enfield

Name of person providing submission (required):

[redacted]

Job Title (required):

Councillor

Contact address of organisation (required):

Enfield Civic Centre, Silver Street, Enfield. EN1 9XL

Contact email address (required):

[redacted]

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

☒ Yes

☐ No

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

☐ Tobacco retailer (supermarket)

☐ Tobacco retailer (convenience store)

☐ Tobacco retailer (other type of shop or business)

☐ Specialist tobacconist

☐ Duty free shop

☐ Wholesale tobacco seller

☐ Tobacco manufacturer

☐ Retailer not selling tobacco products

☐ Pharmaceutical industry

☐ Business involved in the design or manufacture of packaging

☐ Other (please provide details below)

If other, please tell us the type of business:

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

☐ NHS organisation

☐ Health charity/NGO (working at national level)

☒ Local Authority

☐ Local Authority Trading Standards or Regulatory Services Department

☐ Local tobacco control alliance

☐ Retail representative organisation

☐ Industry representative organisation

☐ Other type of business representative organisation

☐ University or research organisation

☐ Other (please provide details below)

If other, please tell us the type of organisation:

f. **Does your response relate to** (required):

☒ United Kingdom

☐ England only

☐ Scotland only

☐ Wales only

☐ Northern Ireland only

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

☐ No

☒ Yes (please describe below)

If yes, please describe:

The LBE pension fund has shares in tobacco companies

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

Consultation questions

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

The Chantler review was explicit; standardised packaging is likely to lead to a modest but important reduction in smoking. As the Enfield Cabinet member with responsibility for protecting and improving the health of the public in Enfield I believe that the Government has a moral responsibility to do all it can to reduce smoking and tobacco use. Introducing plain packaging will reduce the appeal of cigarettes / tobacco and help to reduce the prevalence of the greatest cause of mortality and health inequalities in Enfield and the UK.

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

LB Enfield recently commissioned a report into smoking in the Turkish population in Enfield. Our report indicates that many young people do not recognise shisha as smoking nor that it has significant health effects nor that it is addictive. I therefore welcome the plain packaging of all tobacco products as it will send a clear message to our young people that tobacco use, in all its forms has profound implications for health.

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

There is widespread consent about the implementation of measures to control tobacco use. We would urge that any regulations to packaging ensure that shisha smoking is clearly identified as smoking tobacco with severe health implications.

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

The DH will be aware of the 15% fall in smoking in adults since the introduction of plain packaging in Australia which is echoed by the increase in those aged 18-24 who had never smoked.

Thank you for participating in this consultation.

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