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

Introduction

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

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

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

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

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

¹ ASH Scotland

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

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

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

Consultation Questions

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

In his review Sir Cyril Chantler concluded that

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

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

Chantler Review: The Health Evidence

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

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

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

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

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

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

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

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

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

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

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

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

The Recent Health Evidence

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

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

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

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

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

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

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

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

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

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

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

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

The NHS concluded that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Plain Packaging in Australia

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Intellectual Property Compensation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Operational Impact on Retailers

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

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

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

¹⁵ HIM! (2008) Convenience Tracking Programme.

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

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

Illicit Trade in the UK

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

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

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

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

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

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

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

Public Health

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

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

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

5. Conclusions

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

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

John Lee
Public Affairs Manager
August 2014

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