



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

### Response from Action on Smoking and Health

1. ASH (UK) is a health charity working towards the elimination of harm caused by tobacco. ASH receives core funding from the British Heart Foundation and Cancer Research UK and has received project funding for work to support implementation of the Tobacco Control Plan for England from the Department of Health. ASH does not accept commercial funding.

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

2. Sir Cyril Chantler stated in his covering letter to the Secretary of State: *“it is in my view highly likely that standardised packaging would serve to reduce the rate of children taking up smoking”* and *“the body of evidence shows that standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but important reduction over time in the uptake and prevalence and thus have a positive impact on public health.”*
3. A report by Professor David Hammond for the Irish Department of Health<sup>1</sup> 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.”*
4. We welcome the response of Jane Ellison MP, Minister for Public Health, to the Chantler Review. She said that the report found standardised packaging was *“very likely to have a positive impact”* on public health. She went on to say: *“In the light of the report and the responses to the previous consultation in 2012, I am minded to proceed with introducing regulations to provide for standardised packaging”* and that she wished to *“proceed as swiftly as possible”*. She also reported that the Government’s Chief Medical Officer,

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<sup>1</sup> Hammond, D. [Standardized Packaging of Tobacco Products. Evidence Review. Prepared on behalf of the Irish Department of Health.](#) March 2014.

Dame Sally Davies, had written to her supporting the conclusions of the Chantler Review and the introduction of standardised packaging.<sup>2</sup>

5. We therefore consider that the case for standardised packaging has been made, and that the Government should lay Regulations on standardised packaging, under Section 94 of the Children and Families Act, before Parliament as soon as possible. Given that notification to the European Union of the intended Regulations will take six months, there is now only a short time available to do this before the 2015 General Election.
6. The Government should resist efforts by the tobacco industry and its surrogates to delay decision-making and laying of the regulations before Parliament. As outlined below, there is now strong evidence that the industry's arguments are either weak or without foundation<sup>3 4 5</sup> while their data on illicit have been shown to be highly misleading.<sup>6</sup>

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

### **Standardised packaging needs to be part of a comprehensive strategy**

7. Tobacco control policies must be pursued in parallel and not seriatim if they are to have their best possible effect in reducing prevalence rates. The optimum date for implementation of standard packaging would be May 2016 at the same time as implementation of the EU Tobacco Products Directive (TPD), which includes updated larger health warnings and graphic warnings on the front of the packs.
8. Standardised packaging was introduced in Australia as part of a comprehensive strategy. This included larger health warnings (75% rather than the 65% in the TPD), mass media campaigns and reducing affordability by increasing taxation. Australia is committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years, starting in December 2013<sup>7</sup>, a far higher increase than the current escalator in place in the UK which is only 2% above inflation. The Australian strategy has been very successful with a significant increase in calls to the quitline, and a significant decline in tobacco consumption immediately following implementation of plain packaging.<sup>8</sup>
9. To introduce a mass media campaign equivalent to Australia at the time of the introduction of plain packaging, would, on a per capita basis, cost the equivalent of £33.7

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<sup>2</sup>[Hansard](#). HoC column 1018 et seq. (3rd April 2014)

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

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

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

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

<sup>7</sup> Griffiths E, Cullen S. [Smokers slugged in Government's plan to raise \\$5.3 billion.](#) ABC News, 1 August 2013

<sup>8</sup> [Tobacco: Key facts and figures](#) Australian Government, Department of Health

million a year in the UK, a far higher amount than is currently being spent here. In relation to mass media campaigns it is important to note that new evidence from the UK shows that mass media campaigns are highly effective in reducing smoking prevalence and consumption,<sup>9</sup> that both the negative and positive emotive campaigns used in the UK are effective in this respect<sup>10</sup> and the suspension of campaigns significantly reduced quitting activity (calls to quit lines and use of smoking cessation literature and websites).<sup>11</sup> Yet currently in the UK mass media campaigns are not consistently being screened at a level that would maximise their effectiveness.<sup>12</sup>

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

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

### **Impact of standardised packaging on the illicit market**

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

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<sup>9</sup> Sims M, Salway R, Langley T, Lewis S, McNeill A, Szatkowski L, Gilmore A. [Effectiveness of tobacco control television advertising in changing tobacco use in England: a population-based cross-sectional study](#) *Addiction* 2014; 109: 986–94.

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

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

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

### ***Misleading nature of tobacco industry data on illicit***

12. Research and leaked industry documents have now established that claims by industry that rates of illicit tobacco use are increasing markedly in the UK and will increase further following standardised packaging should be seen simply as part of the tobacco industry's public relations campaign to prevent introduction of the policy.<sup>13</sup> Analysis shows that the number of press articles citing industry data on illicit increased suddenly once standardised packaging emerged on the policy agenda, that industry data significantly exaggerate the scale of illicit and claim trends are upwards when independent data show the opposite.<sup>13</sup> Further, evidence cited in industry submissions to support its claims that standard packaging will increase illicit has been shown to be very poor quality and effectively manufactured by the industry to support its case – all such 'evidence' was produced by industry or those funded by it and none was peer-reviewed.<sup>3</sup>
13. Part of this strategy has been to fund a growing number of third parties – organisations and individuals (notably ex-policemen) - who provide a more credible voice in debates, produce reports which are presented as independent while reinforcing industry messages. Yet the links to industry have rarely been disclosed.<sup>3 14</sup>
14. More broadly, growing evidence from a number of jurisdictions now suggests that tobacco company commissioned data and evidence on illicit, including that published by leading accountancy firms, will tend to over-estimate the scale of the illicit trade, exaggerate the upward trend (either by exaggerating current levels or by revising historical figures downwards) and mis-represent the nature of the trade in order to down-play the extent of tobacco industry involvement.<sup>15 16 17 18 19 20 21</sup>

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<sup>13</sup> Rowell A, Evans-Reeves KA, Gilmore A. [Tobacco industry manipulation of data on and press coverage of the illicit tobacco trade in the UK](#). Tobacco Control, 2014.

<sup>14</sup> See for example:

[http://www.tobaccotactics.org/index.php/Tobacco\\_Industry\\_Responds\\_to\\_UK\\_Plain\\_Packaging\\_Consultation](http://www.tobaccotactics.org/index.php/Tobacco_Industry_Responds_to_UK_Plain_Packaging_Consultation)

<sup>15</sup> Van Walbeek C, Shai L. [Are the tobacco industry's claims about the size of the illicit cigarette market credible? The case of South Africa](#). Tobacco Control Published Online First 11 June 2014  
doi:10.1136/tobaccocontrol-2013-0514412014

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

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

<sup>18</sup> Stoklosa M, Ross H. [Contrasting academic and tobacco industry estimates of illicit cigarette trade: evidence from Warsaw, Poland](#). Tobacco Control Published Online First 13 August 2013

<sup>19</sup> Analysis of KPMG LLP report on use of illicit tobacco in Australia 2013 Full year report. Quit Victoria, Cancer Council Victoria. 12 April 2014 [http://www.cancervic.org.au/downloads/mini\\_sites/Plain-facts/analysis-kpmg-illicit-tobacco.pdf](http://www.cancervic.org.au/downloads/mini_sites/Plain-facts/analysis-kpmg-illicit-tobacco.pdf)

<sup>20</sup> [Illicit trade of tobacco in Australia: A report prepared by Deloitte for British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited](#) Quit Victoria, Cancer Council Victoria. March 2011 [updated November 2011]

<sup>21</sup> [Illicit trade of tobacco in Australia: Report for 2011: A report prepared for British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited. A critique by Quit Victoria](#). Cancer Council Victoria. May 2012.

15. Although empty pack surveys can provide some indication of the extent of non-domestic tobacco use, the limited methodological detail available on the tobacco industry's empty pack surveys which usually form the basis of its data suggest that the design of these surveys tends to result in exaggerated estimates of the extent of illicit trade.<sup>15 18</sup>
16. In a public climb-down following criticism of its previous data which suggested that in 2012 rates of illicit in the UK had suddenly increased countering previous trends, KPMG's latest report, this time commissioned by all four transnational tobacco companies, has revised its illicit estimate for the UK illicit trade downwards stating that *"alternative data sources suggest this [the 2012 estimate] may have overstated non-domestic incidence for the full year"*<sup>22</sup> They claim that additional data which were not previously available to them *"suggest there has been a more gradual decline from 2011 to 2013"* (pages 300-302). It is a moot point whether these figures would have been revised without academic criticism of KPMG's data for industry both in the UK<sup>15</sup> and Australia<sup>23</sup> and this revision undermines the industry's public claims about illicit.
17. Growing evidence also suggests that the tobacco manufacturers continue to facilitate the illicit trade in their products and at best are failing to control their supply chains.<sup>24 15</sup> In October last year the Chair of the Public Accounts Committee said that: *"The supply of some brands of hand-rolling tobacco to some countries in 2011 exceeded legitimate demand by 240%. HMRC must be more assertive with these manufacturers. So far it has not fined a single one of them."*<sup>25</sup>
18. Even the industry's own data indicates that around a fifth of illicit cigarettes across the EU are PMI's own brands, a level which outstrips counterfeit PMI product approximately five times<sup>15</sup> while Imperial Tobacco's brand *Classic* which, until recently, it was producing in Ukraine, was so consistently found in the illicit market it was labelled as an illicit white product.<sup>26</sup>

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

19. In addition to the highly misleading nature of industry data on illicit outlined above, there is no plausible mechanism of action because all the key security features on existing packs of cigarettes would also be present on standardised packs, and additional markings will be required under the EU Tobacco Products Directive. These include unique identifiers, coded numbering and covert anti-counterfeit marks. Jane Ellison, Parliamentary Under-Secretary of State for Health, said in a November 2013 Parliamentary debate that: *"I am grateful to those hon. Members who have made the point that if we were to adopt standardised packaging, it would not mean plain*

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<sup>22</sup> KPMG. [Project Sun- A study of the illicit cigarette market in the European Union. 2013 Results.](#)

<sup>23</sup> [Analysis of KPMG LLP report on use of illicit tobacco in Australia: 2013 Full year report.](#) Quit Victoria, Cancer Council Victoria, April 2014.

<sup>24</sup> House of Commons Committee of Public Accounts. HM Revenue & Customs: Progress in tackling tobacco smuggling. [HM Revenue & Customs: Progress in tackling tobacco smuggling.](#) 4 Sept. 2013

<sup>25</sup> [PAC publishes report on tackling tobacco smuggling.](#) Public Accounts Committee press release. 10<sup>th</sup> October 2013

<sup>26</sup> Directorate-General for Internal Policies; Policy Department Budgetary Affairs. [Workshop Cigarette Smuggling: Briefing papers.](#) European Parliament 22 January 2014.



*packaging. Approaches such as anti-smuggling devices could be built into standardised packaging, if we choose to go down that route.”*<sup>27</sup>

20. The production costs of illicit cigarettes (including packaging) are very low. In Paraguay costs can be as low as 5 US cents a pack, a Jin Ling pack in Kaliningrad or a Chinese counterfeit pack may cost about 20 cents a pack to produce. Counterfeiters are also able to produce quality, and apparently genuine, packaging at low prices in a short time. It follows that outside packaging is a very poor indicator of whether a pack of cigarettes is licit or illicit.<sup>28</sup> The only obvious circumstances in which external packaging could be useful in this respect is precisely if standardised packaging is introduced – which would of course enable easy visual identification of “cheap white” brands (ones with no licit market in the UK) and diverted licit brands (where the first destination market was in a country without standardised packaging, and the product has been diverted into illicit channels).
21. Number codes will develop further into an international standard system because of the requirements of Article 15 of the revised EU Tobacco Products Directive and Article 8 of the Illicit Trade Protocol, a subsidiary treaty under the WHO Framework Convention on Tobacco Control, to which the UK is a Party.
22. Article 15 of the Tobacco Products Directive states that: *“Member States shall ensure that all unit packets of tobacco products are marked with a unique identifier. In order to ensure the integrity of the unique identifier, it shall be irremovably printed or affixed, indelible and not hidden or interrupted in any form, including through tax stamps or price marks, or by the opening of the unit packet.”*<sup>29</sup>
23. Article 8.3 of the Illicit Trade Protocol states that: *“With a view to enabling effective tracking and tracing, each Party shall require that unique, secure and non-removable identification markings (hereafter called unique identification markings), such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol for that Party”.*<sup>30</sup> The Illicit Trade Protocol also specifies that any track and trace system should be fully independent of the tobacco industry.
24. It should be noted that Philip Morris International has developed a coding system called “Codentify”, which the company has licensed for free to JTI, Imperial Tobacco and BAT. The four tobacco multinationals have set up a “Digital Coding and Tracking Association”, based in Zurich to promote Codentify globally as the track and trace system of choice despite serious limitations in the Codentify system and the industry’s involvement contravening the Illicit Trade Protocol.<sup>31</sup> According to PMI, the system is based on unique twelve digit codes and it would be a simple matter to identify “fake” codes on illicit packaging. PMI’s promotional material claims that *“Codentify”.... “makes the leap into the digital age and can meet the demands of governments that want to improve tax revenue collection, the robustness of verification processes and supply chain security ... When it comes to protecting government tax revenues, securing the supply chain and*

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<sup>27</sup> [Hansard](#): Backbench business debate. HoC Column 477. (7 November 2013)

<sup>28</sup> Joossens L. [Smuggling, the Tobacco Industry and Plain Packs](#), Cancer Research UK, November. 2012

<sup>29</sup> [Revised EU Tobacco Products Directive](#): Article 15

<sup>30</sup> [Text of the Illicit Trade Protocol](#): Article 8.3

<sup>31</sup> Joossens L, Gilmore A. [The transnational tobacco companies’ strategy to promote Codentify, their inadequate tracking and tracing standard](#). Tob Control Published Online First: 12 March 2013. doi:10.1136/tobaccocontrol-2012-050796.

*fighting illicit trade, Codentify offers a highly advanced, secure and cost-effective solution for the 21st century*".<sup>32</sup>

25. It is clear that the tobacco industry is promoting contradictory messages depending on which issue it is addressing: on the one hand it claims to have a robust coding system which enables it to identify counterfeit products, and on the other it claims that pack design is vital in combatting illicit trade. While we do not support the use of a coding system which is proprietary to the tobacco industry as is the case with Codentify it is certainly the case that this or any other coding systems independent of the industry could be used on standardised packs as readily as on branded ones.
26. Not surprisingly therefore, Andrew Leggett, Deputy Director for Tobacco and Alcohol Strategy at HM Revenue and Customs has said about standardised packaging that *"we're very doubtful that it would have a material effect [on counterfeiting and the illicit trade in tobacco]"*.<sup>33</sup> This conclusion was supported by the House of Commons Home Affairs Select Committee, in its report on the illicit tobacco trade published in June 2014. The Committee reported that: *"We believe that the decision on standardised packaging should be driven by health reasons and the imperative need to reduce the numbers of young people who start smoking. We note the statement of Sir Cyril Chantler to the effect that he was not convinced that standardised packaging would bring about an increase in the illicit market; even if this were the case, we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government's drive towards introducing standardised packaging."*<sup>34</sup>

### **Evidence from Australia on Illicit Tobacco**

27. The tobacco industry has repeatedly claimed that the level of illicit trade in Australia has increased since, and as a result of, the introduction of standardised packaging. For example, BAT told investors in March 2014 that total illicit activity in Australia had risen by more than 30 per cent since the introduction of standardised packaging.<sup>35</sup>
28. These claims were examined during the Chantler Review and shown to be unsupported, a fact that was effectively admitted during Review meetings with representatives of the tobacco industry in Australia.<sup>36</sup> The Australian Government and customs officials have also rejected tobacco industry claims that illicit trade in Australia has risen since the introduction of standardised packaging.<sup>37</sup> In March 2014 the *Sydney Morning Herald* reported that there had been only one seizure of counterfeit plain packs since December 2012.<sup>38</sup>
29. In response to this article, the paper was contacted by Sonia Stewart, the former Head of Corporate Affairs & Legal for Imperial Tobacco Australia, who has now left the industry. In her job at IT Australia she had "commented numerous times in the media during 2011-

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<sup>32</sup> [Codentify:Protecting Government Revenues, Securing the Supply Chain, Fighting Illicit Trade.](#) PMI

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

<sup>34</sup> [Home Affairs Select Committee First Report on Tobacco Smuggling](#): paragraph 44

<sup>35</sup> Greenblat, E. [Plain packaging making 'no impact' on Australian smokers, say tobacco chiefs](#): Sydney Morning Herald, 4th March 2014

<sup>36</sup> Chantler Review [Notes-of-Australia-based-meetings](#): See, for example, exchange with Mark Connell of BAT Australia, page 38.

<sup>37</sup> See [p.48](#) of the Explanatory Memorandum to the Australian Excise Tariff Amendment (Tobacco) Bill 2014 and [p.6](#) of Sir Cyril Chantler's report.

<sup>38</sup> Corderoy, A. [Tobacco industry claims on impact of plain packaging go up in smoke](#). Sydney Morning Herald, 12 March 2014.

2013 about the anticipated impact of plain packaging”, claiming for example that *“the legislation will make the counterfeiters' job both cheaper and easier by mandating exactly how a pack must look”*.<sup>39</sup> She wrote to the paper that *“based on these figures from Australian Customs authorities, there doesn't appear to be any evidence that plain packaging itself has caused an increase in tobacco smuggling.”* She added: *“Imperial Tobacco did expect to see an increase in tobacco smuggling because of plain packaging, but based on the figures from Australian Customs it looks like those predictions were simply wrong.”*<sup>40</sup>

30. Research in Victoria, Australia found there was no increase in the availability of illicit tobacco in small retail outlets after the implementation of standardised packaging,<sup>41</sup> and despite predictions by the tobacco industry of a marked increase in the sale of counterfeit cigarettes, post-legislation in 2013 only 2.6% of cigarette smokers reported having purchased one or more packets in non-compliant packaging in the past three months.<sup>42</sup>

### **Tobacco Consumption in Australia**

31. The tobacco industry has also claimed that tobacco consumption in Australia has risen since the introduction of standardised packaging. Again, independent evidence does not support this proposition.
32. In November 2013 a study by the consultancy firm London Economics, funded by Philip Morris, reported that since the introduction of plain packaging in Australia their survey showed no statistically significant change in smoking prevalence. This report has been sharply criticised by, among others, the Cancer Council of Victoria<sup>43</sup>, since:
- The survey was conducted on the mistaken assumption that adult smoking prevalence ought to have markedly declined in the immediate aftermath of the policy's implementation, which was not the assumption underpinning the policy intervention.
  - The report used an online survey panel which was not representative of the general population (for example, the panel's smoking prevalence rate was higher than the Australian average).
  - The survey had a sample size of 5,000, which is nowhere near big enough to pick up the sort of declines in smoking prevalence expected from one year to the next. To measure a statistically significant decline of, for example half a percentage point, which is the sort of magnitude one might expect to see over a twelve month period, would have required a sample size of around 90,000.

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<sup>39</sup> [Australia cigarette plain packaging law upheld by court](#) BBC Business News Online, 15 August 2012

<sup>40</sup> Stewart, S. [Unpublished Letter](#) to the Sydney Morning Herald, 12 March 2014

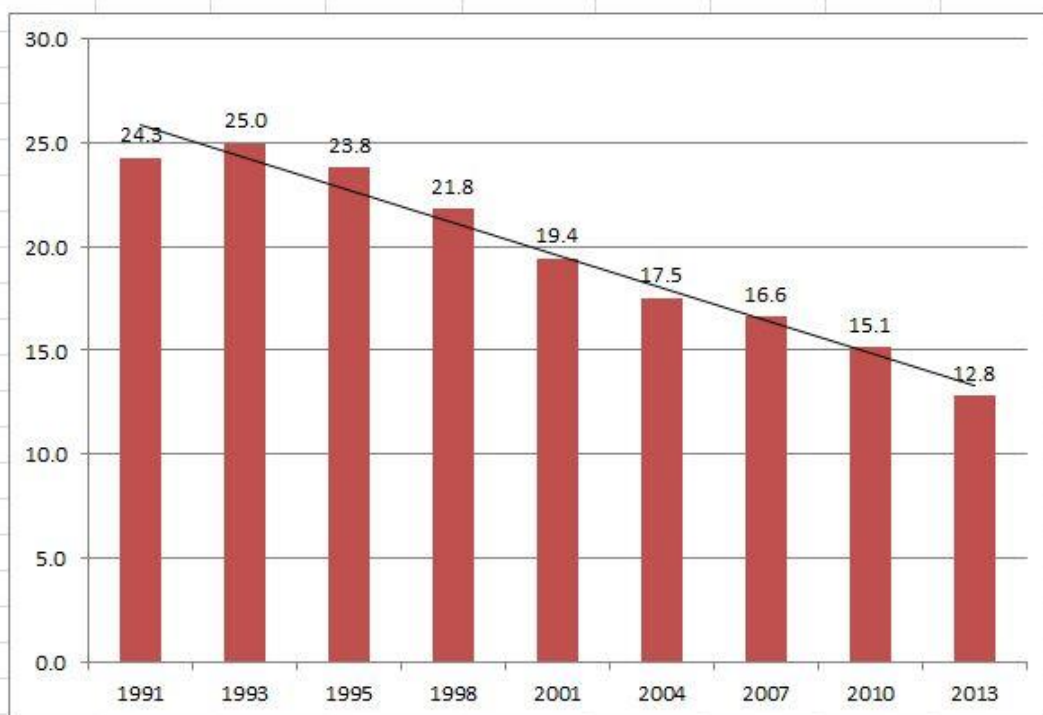
<sup>41</sup> Scollo M, Bayly M, Wakefield M. [Availability of illicit tobacco in small retail outlets before and after the implementation of Australian packaging legislation](#). Tobacco Control, published on April 10, 2014 as 10.1136/tobaccocontrol-2013-051353

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

<sup>43</sup> [Comments on the Philip Morris funded London Economics report "An analysis of smoking prevalence in Australia: final", 2013](#). Cancer Council Victoria: Melbourne. Nov. 2013



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



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

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

Change in daily smoking since previous survey															
absolute change	0.70	-	1.20	-	2.00	-	2.40	-	1.90	-	0.90	-	1.46	-	2.34
% change	2.9%		-4.8%		-8.4%		-11.0%		-9.8%		-5.1%		-8.8%		-15.5%

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

35. The tobacco industry in Australia has reported an increase in tobacco sales from 21.015bn sticks in 2012 to 21.074bn in 2013,<sup>44</sup> and the industry and its front groups in the UK have claimed that this showed standardised packaging was not working. Excise tax must be paid before tobacco products are released for home consumption, but may be paid while stock is still in the warehouse. An analysis by Cancer Council Victoria found that it was evident from the ‘bump’ in industry monthly sales figures that some pre-stocking did occur prior to the large tax increase in December 2013 which would also have tended to increase sales figures in 2013, with retailers likely to have purchased sufficient stock to cover not just December but some weeks after 1<sup>st</sup> January 2014 as well.<sup>45</sup> In addition although the industry reported a small (0.28%) increase in sales year on year, they did not report the increase in the Australian population between 2012 and 2013. Adjusted for population, tobacco sales per person by their measure of consumption would in fact have fallen, from 920.4 per person in 2012 to 906.9 in 2013.<sup>46</sup>
36. The Australian Government’s Department of Health has released figures showing that total consumption of tobacco and cigarettes in Australia in the first quarter of 2014 was the lowest ever recorded, as measured by estimated expenditure on tobacco products:
- \$5.135 billion in September 1959;
  - \$3.508 billion in December 2012 (when standardised packaging was introduced); and
  - \$3.405 billion in March 2014.
37. This is supported by figures from the Australian Treasury showing that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when tobacco plain packaging was introduced. Clearances are an indicator of tobacco volumes in the Australian market.<sup>47</sup>
38. In June 2014, Professor Ashok Kaul of the University of Saarland and Professor Michael Wolf of the University of Zurich published research funded by Philip Morris International, purporting to show that smoking prevalence had not been reduced in Australia by standardised packaging legislation in the first year since its implementation.<sup>48</sup> Even if this analysis were correct, it would be largely irrelevant, since the primary purpose of the legislation is to discourage young people from starting to smoke, and thus contribute to reducing smoking prevalence rates over an extended period of time. A one year effect, even if the Kaul and Wolf methodology was adequate, would be unlikely to show up clearly in monthly prevalence data that is affected by a range of factors, including other tobacco control policies, seasonality, and unstable monthly estimates (some monthly sample sizes in the survey data set used by Kaul and Wolf are substantially smaller than others).<sup>49</sup>

### **Other Evidence from Australia**

39. Young JM et al, University of New South Wales and Cancer Institute New South Wales, reported in January 2014 that the introduction of standardised packaging in Australia in 2012 was associated with a sharp rise in the number of calls to the New South Wales

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<sup>44</sup> Kerr, C. [Labor’s plain packaging fails as cigarette sales rise](#): The Australian, 6 June 2014

<sup>45</sup> [Critique of tobacco industry claims about trends in sales of tobacco products](#). Cancer Council Victoria.

<sup>46</sup> [Is Smoking Increasing in Australia?](#): Guardian Datablog. 6 June 2014

<sup>47</sup> Tobacco facts and figures: Australian Department of Health. 19 June 2014

<sup>48</sup> The (Possible) Effect of Plain Packaging on Smoking Prevalence in Australia: A Trend Analysis: University of Zurich Department of Economics, Working Paper no 165

<sup>49</sup> Diethelm P, McKee M. [Tobacco industry-funded research on standardised packaging: there are none so blind as those who will not see!](#) Tobacco Control 2014 doi:10.1136/tobaccocontrol-2014-051734

Quitline service.<sup>50</sup> Statistical modelling to screen out the impact of other factors on the number of calls (such as health advertising campaigns, changes in price, etc.) suggested that the number of calls to Quitline NSW rose by 75% from the week before standardised packs were first introduced in the Australian market to four weeks later and a significant increase in calls was sustained over time.

40. Research published in June 2014 found that 'following the implementation of plain packaging, perceptions of the quality and taste of cigarettes have changed'. Thematic analysis of six focus groups with 51 participants revealed some participants reporting reductions in product quality. For example, 'I've noticed the reduction in the grading of the tobacco.'<sup>51</sup>
41. Research published in 2013 found that smokers in Melbourne and Adelaide were less willing to display their packs in public and smoke in outdoor areas since plain packaging was introduced. Researchers counted patrons, smokers and tobacco packs at cafes, restaurants and bars with outdoor seating for several months both before and after the introduction of standardised packaging. They found that pack display on tables declined by 15% after plain packaging, which was mostly due to a 23% decline in the percentage of patrons who were observed smoking. The study also found that the declines in pack display and patrons observed smoking were stronger in venues where children were present.<sup>52</sup>
42. Tobacco retailers in the UK have suggested that the introduction of standardised packaging means that it will take longer to serve customers and so convenience stores will lose custom. As the Impact Assessment concludes there is no evidence at all that this is the case from the experience in Australia; indeed transaction times have tended to decline post implementation not increase.<sup>53 54</sup> Most recently, research published at the end of May<sup>55</sup> which may not have been taken into account in the IA, reported that the claim that plain packaging would negatively impact on small tobacco retailers by making it harder to locate and retrieve cigarette packs, thereby increasing transaction times, has not eventuated in Australia.

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<sup>50</sup> Young JM et al. [Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time-series analysis](#) Medical Journal of Australia 2014; 200: 29-32

<sup>51</sup> Guillaumier A, Bonevski B, Paul C. Tobacco health warning messages on plain cigarette packs and in television campaigns: a qualitative study with Australian socioeconomically disadvantaged smokers. Health Educ Res. 2014;Vol. PubMed PMID: 24966335. Epub 2014/06/27. Eng.

<sup>52</sup> Zacher M et al. - [Personal tobacco pack display before and after the introduction of plain packaging with larger pictorial health warnings in Australia: an observational study of outdoor café strips](#). Addiction 2014; 109: 653-663

<sup>53</sup> Wakefield M, Bayly M, Scollo M. [Product retrieval time in small tobacco retail outlets before and after the Australian plain packaging policy: real-world study](#) Tobacco Control 2013 - doi:10.1136/tobaccocontrol-2013-050987.

<sup>54</sup> Carter O, Welch M, Mills B, Phan T, Chang P. [Plain packaging for cigarettes improves retail transaction times](#). BMJ 2013; 346:f106.

<sup>55</sup> Bayly M, Scollo M, Wakefield M. [No lasting effects of plain packaging on cigarette pack retrieval time in small Australian retail outlets](#), Tobacco Control 30 May 2014. doi:10.1136/tobaccocontrol-2014-051683

43. Furthermore, Trans-national Tobacco Companies are fee-paying members of those organisations predicting adverse effects: the Scottish Grocers Federation,<sup>56</sup> Association of Convenience Stores,<sup>57</sup> National Federation of Retail Newsagents,<sup>58</sup> and the Federation of Wholesale Distributors.<sup>59</sup> The Tobacco Retailers Alliance, which has been extremely vocal in its opposition to standardised packaging is a front group of the Tobacco Manufacturers' Association, the transnational tobacco companies' trade association in the UK which is entirely funded by tobacco companies.<sup>60 61</sup> A series of PMI leaked documents reveal the integral role that such organisations play in opposition to tobacco control regulation.<sup>62</sup>

### **Other industry arguments in the UK**

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

45. Research by Hatchard et al. found that tobacco companies cited only 17 research reports directly addressing standardised packaging, of which 14 (82%) were commissioned by or linked to global tobacco companies who have a commercial interest in the policy outcome. Analysis of the independence and publication status of this research showed that its quality is significantly lower than the quality of evidence supporting standardised packaging.<sup>63</sup> The remainder of tobacco companies' evidence (60 research reports) did not address standardised packaging of tobacco products at all.<sup>5</sup>

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

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

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<sup>56</sup> [http://tobaccotactics.org/index.php/Scottish\\_Grocers%27\\_Federation](http://tobaccotactics.org/index.php/Scottish_Grocers%27_Federation)

<sup>57</sup> [http://tobaccotactics.org/index.php/Association\\_of\\_Convenience\\_Stores](http://tobaccotactics.org/index.php/Association_of_Convenience_Stores)

<sup>58</sup> [http://tobaccotactics.org/index.php/National\\_Federation\\_of\\_Retail\\_Newsagents](http://tobaccotactics.org/index.php/National_Federation_of_Retail_Newsagents)

<sup>59</sup> [http://tobaccotactics.org/index.php/Federation\\_of\\_Wholesale\\_Distributors](http://tobaccotactics.org/index.php/Federation_of_Wholesale_Distributors)

<sup>60</sup> [http://tobaccotactics.org/index.php/Tobacco\\_Retailers\\_Alliance](http://tobaccotactics.org/index.php/Tobacco_Retailers_Alliance)

<sup>61</sup> [http://tobaccotactics.org/index.php/Tobacco\\_Manufacturers%27\\_Association](http://tobaccotactics.org/index.php/Tobacco_Manufacturers%27_Association)

<sup>62</sup> [http://tobaccotactics.org/index.php/PMI%27s\\_Mobilising\\_Support\\_from\\_Retailers](http://tobaccotactics.org/index.php/PMI%27s_Mobilising_Support_from_Retailers)

<sup>63</sup> Moodie C, Stead M, Bauld L, McNeill A, Angus K, Hinds K, Kwan I, Thomas J, Hastings G & O'Mara-Eves A. [A Plain Tobacco Packaging: A systematic review](#). Stirling: Public Health Research Consortium; 2012.

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

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

48. ASH welcomes the draft regulations, which we consider, with only minor changes, to be fit for purpose. The changes we recommend are set out below.

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

49. The regulations should also apply to specialist tobacco products including cigars and cigarillos. While we note the explanation for their exclusion is their low rate of use by young people, we consider that it sets an unhelpful example if any smoked tobacco products are excluded from the regulations, since this might be interpreted as endorsement of the idea that they are in some way less harmful to health. Marketing and use of cigarillos grew sharply in the US following the passage of legislation which increased excise duty on cigarettes but not cigars. Manufacturers in the US have added a substance resembling cat litter to the filter of cigarettes so that they surpass the weight trigger that defines them as cigars attracting the lower tax rate.<sup>64</sup>

**Regulation 4(7) with respect to pack size**

50. This regulation while prohibiting packs containing less than 20 cigarettes allows manufacturers to compete on number by including more than 20 cigarettes. In Australia this has been a tactic used by the industry and extra cigarettes have been introduced into some brands for the same price as a promotional tool.<sup>65</sup> Such extra free cigarettes are known colloquially as "loosies" and Imperial Tobacco has gone further and registered a brand name called "Peter Stuyvesant + Loosie" and made 21 cigarettes to a pack.

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

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

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

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

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<sup>64</sup> See [http://www.tobaccofreekids.org/what\\_we\\_do/industry\\_watch/cigar\\_report/](http://www.tobaccofreekids.org/what_we_do/industry_watch/cigar_report/)

<sup>65</sup> Scollo M, Occleston J, Bayly M, Lindorff K, Wakefield M. [Tobacco product developments coinciding with the implementation of plain packaging in Australia](#). Tobacco Control 30 April 2014. doi:10.1136/tobaccocontrol-2013-051509



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

54. There is good evidence for example that female-oriented brand descriptors such as “slims” target beliefs about smoking behaviour among young women, and these beliefs are an important predictor of smoking behaviour in this group.<sup>66 67 68</sup>
55. However, the list in Recital (27) is not comprehensive and there is evidence that many other words are also misleading. For example:
- Smooth - population based studies have found that adult smokers perceive ‘smooth’ as a synonym for ‘light’.<sup>69</sup> A UK study found that over half of young people, including non-smokers as young as 12, believed that a cigarette brand labelled as ‘smooth’ would be less harmful.<sup>70</sup>
  - Colour names - such as gold or silver<sup>70</sup> - materials provided by Philip Morris to retailers indicated that the names ‘gold’ and ‘silver’ have been used to replace ‘light’ and ‘ultralight’ and ‘blue’ has been used to replace ‘mild’.<sup>71</sup> Prohibiting the use of such colours is not sufficient, if the colour name is allowed to stay then the association will remain. Smokers will continue to believe, erroneously, that products labelled ‘gold’ and ‘silver’ are less harmful, even if all products are the same standardised colour.
  - Numbers - as many as 80% of Canadian smokers shown packages with different numbers in the name reported that the brand with the lower number delivered less tar and could lower the risk.<sup>72</sup> And a study in the US found that almost 90%

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<sup>66</sup> U.S. Surgeon General. Factors influencing tobacco use among women. In: Surgeon General’s Report: Women and Smoking 2001: pp.453-536.

<sup>67</sup> Hammond D, Doxey J. Deadly in pink: the impact of cigarette packaging among young women. Tob Control 2011; 20: 353-360 doi:10.1136/tc.2010.038315

<sup>68</sup> Carpenter CM, Wayne GF, Connolly GN. [Designing cigarettes for women: New findings from the tobacco industry documents.](#) Addiction 2005; 100:837-851.

<sup>69</sup> King B, Borland R. [What was "light" and "mild" is now "smooth" and "fine": new labeling of Australian cigarettes.](#) Tobacco Control 2005;14(3):214-5.

<sup>70</sup> Hammond D, Dockrell M, Arnott D et al. [Cigarette pack design and perceptions of risk among UK adults and youth.](#) European Journal of Public Health 2009; 19:631-7.

<sup>71</sup> Hammond, D. Use of Tobacco Marketing Descriptors to Convey Modified Risk. Submission to the US Food and Drug Administration. 2010.

<sup>72</sup> Hammond D, Parkinson C. [The impact of cigarette package design on perceptions of risk.](#) Journal of Public Health 2009; 31(3):345-53.

of participants reported that a brand with the number '6' in the name would have lower risk than an otherwise identical pack but with the number '10' instead.<sup>73</sup>

56. A requirement to prohibit misleading words or features is set out in Article 13 of the TPD, and is contained within Regulation 10 of the draft regulations on standardised packaging. Regulation 10 does not, however, specify which brand names and variants are prohibited.
57. It is essential that the measures required to ensure that specific brand names and variants which are found to be misleading can be prohibited, including, but not limited to, those set out in recital (27), are transposed into UK legislation. Furthermore the responsibility should rest with the industry to demonstrate that any brand names, variants or descriptors are not misleading before they can be put on sale in the UK.

### **Review process**

58. In Australia, in the build up to the legislation, tobacco companies engaged in strategies of reassuring customers, re-energising the names of brands, and expanding product ranges to provide extra value for money and retain consumer interest, e.g. menthol capsule cigarettes, packaging re-design, adding bonus cigarettes to packets, changing names so that they are longer and take up more room on plain packets.<sup>74</sup> The Government should monitor such activity and where appropriate review and revise the regulations.

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

#### **Illicit trade and cross border shopping**

59. For the reasons stated in answer to Q.2 above we do not think the evidence justifies inclusion in "*other key non-monetised costs*" of "*possible losses from a potential increase in consumption of illicit product and/or product legitimately bought outside the UK*".
60. The UK previously introduced a major change in packaging and labelling in advance of the rest of Europe by introducing coloured picture warnings on packs from 1 October 2008. As shown in table 8 of the IA this did not lead to an increase in cross border shopping. Indeed both cross border shopping and illicit trade declined over the period between introduction and full implementation from October 2008 to September 2010. As the IA acknowledges this is because the greatest influence on cross border shopping is down to external factors such as the £/€ exchange rate and the number of passenger journeys and therefore, just as with graphic warnings, standardised packaging is unlikely to have a significant impact.

#### **Impact on Retailers**

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<sup>73</sup> Bansal-Travers M, Hammond D, Smith P, Cummings KM. [The Impact of Cigarette Pack Design, Descriptors, and Warning Labels on Risk Perception in the U.S.](#) AJPM 2011; 40(6): 674-82

<sup>74</sup> Scollo M, Occleston J, Bayly M, Lindorff K, Wakefield M. [Tobacco product developments coinciding with the implementation of plain packaging in Australia.](#) Tobacco Control, 30 April 2014. doi:10.1136/tobaccocontrol-2013-051509

61. Tobacco sales are undergoing long-term decline. At its peak in the 1950s adult male smoking prevalence was 80%.<sup>75</sup> Female smoking prevalence continued to rise and reached a peak of 45% in the mid-1960s.<sup>75</sup> Since then smoking prevalence amongst both men and women has declined significantly and is now under 20%. Government policy is designed to sustain and increase this trend.

## HM Revenue and Customs Tobacco Bulletin - November 2013



### 6 Historic Clearances

Financial Year	Cigarettes		million sticks	Other Tobacco Products			000 kg
	Home Produced	Imported	Cigarettes Total	Cigars	HRT	Other	Total
1991/92	83,362	10,134	93,496	2,107	4,058	2,081	8,247
1992/93	83,939	10,141	94,080	1,955	3,822	2,027	7,805
1993/94	67,229	7,285	74,514	1,724	3,161	1,785	6,670
1994/95	75,442	9,735	85,177	1,679	3,036	1,565	6,280
1995/96	71,769	9,059	80,828	1,501	2,558	1,347	5,405
1996/97	71,846	9,500	81,346	1,453	2,204	1,221	4,877
1997/98	79,976	11,707	91,683	1,548	1,946	1,146	4,641
1998/99	54,739	5,637	60,376	1,084	1,736	919	3,738
1999/00	64,443	10,486	74,929	1,369	2,194	990	4,553
2000/01	26,666	5,273	31,938	970	2,343	704	4,018
2001/02	45,581	5,691	51,272	816	2,746	632	4,194
2002/03	48,606	6,131	54,737	962	2,806	656	4,424
2003/04	52,297	4,812	57,109	988	3,213	626	4,827
2004/05	47,224	4,444	51,668	778	3,044	522	4,344
2005/06	47,539	4,811	52,350	744	3,409	494	4,647
2006/07	41,754	4,007	45,760	645	3,388	416	4,449
2007/08	42,258	3,682	45,940	569	3,741	388	4,697
2008/09	39,739	3,441	43,180	504	4,076	363	4,943
2009/10	44,839	4,258	49,097	555	5,640	415	6,611
2010/11	42,335	3,343	45,678	466	5,431	359	6,256
2011/12	39,829	2,984	42,813	456	6,236	333	7,025
2012/13	35,202	2,730	37,932	421	6,215	301	6,937

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

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

<sup>75</sup> Wald, N. & Nicolaidis-Bouman, A. UK Smoking Statistics (2d ed.). OUP, 1991.

64. The impact of underlying trends in sales for independent retailers needs to be taken into account too, particularly given the rise of small outlets set up by large retailers in the UK. An economic analysis of the impact of point of sale display legislation in Ireland using AC Nielsen data concluded that no statistically significant change in cigarette pack sales was observed following implementation of the legislation over and above seasonal and underlying trends, and that small and independent retailers are facing a broader and longer-term decline in sales generally which is most likely due to other causes. We would expect to see the same pattern occurring in the UK both as a result of the implementation of point of sale display legislation and standardised packaging, and recommend to DH that such data should be gathered for the UK as part of the evaluation of the impact of the legislation. In contrast to tobacco industry predictions in Australia, there is no evidence to suggest that smokers have defected from smaller to larger stores to make their tobacco purchases in the wake of standardised packaging legislation.<sup>76</sup>
65. The Impact Assessment page 28 p.112 states ‘anecdotally the [retail] profit margins on the sale of tobacco may be relatively low.’ This is corroborated by information provided to ASH by a retailer in Gateshead, John McClurey, a member of the ASH advisory council. According to John McClurey profit margins on cigarettes average around 4.5% compared to profits on other products on sale in his shop which average around 22%. This means that while tobacco currently amounts to around 50% of his sales turnover it is a much smaller proportion of his profits. In fact he estimates that currently tobacco sales only amount to about 20% of his profits with 80% of his profits coming from the sale of non-tobacco products. To illustrate the point John McClurey has told us that if a customer buys a packet of chewing gum he makes around 17 pence in profit compared to 14 pence on a price-marked packet of 10 John Player Special. Plus, a price-marked pack of 10 JPS cigarettes costs £3.50, while a packet of chewing gum only costs 50 pence, so the customer buying chewing gum as opposed to cigarettes has £3 left over to spend on other items.
66. For a shop where tobacco only accounts for 20% of turnover, which is the average estimated in the ACS report referenced in the IA, the proportion of profits would be even smaller at around 5% for tobacco compared to 95% for non-tobacco products.
67. Comprehensive data on prices and profit margins is available from wholesalers such as Bookers who can be contacted via their website <https://www.booker.co.uk/help/contactus.aspx>. Data on the proportion of tobacco sales accounted for by different types of outlet is available from AC Nielsen which can also provide data on the trends in sales of tobacco between different types of retailers over time. We recommend that the DH get in touch with Bookers and AC Nielsen for more information.

### **Consumer Surplus**

68. In economic theory, consumer surplus is usually defined as the difference between the total amount that consumers are willing and able to pay for a good or service and the total amount that they actually do pay.
69. In point 160 of the IA it is accepted that the theory of consumer surplus is more difficult to apply both ‘in principle and practice’ to an addictive product like tobacco. The rationale for including “*lost consumer surplus*” as a potential cost of standardised packaging does

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<sup>76</sup> Scollo M, Zacher M, Durkin S, Wakefield M. Early evidence about predicted unintended consequences of standardized packaging of tobacco products in Australia: A cross-sectional study of place of purchase, regular brands and use of illicit tobacco. *BMJ Open*. In Press

not stand up to scrutiny. In paragraph 21, this is defined as *“the loss of the ability of those who continue to smoke to gain the intangible benefit associated with smoking a particular brand that only the packaging of that brand, as it is currently available, can produce”*. We note that no attempt is made to describe the alleged *“intangible benefit”*, for the very good reason, we would suggest, that it is illusory.

70. A more detailed analysis of the issues around consumer surplus prepared in response to the consultation stage Impact Assessment by the economist Dr Matthew Levy of the London School of Economics for the Department of Health is included at Appendix A. Some, but not all, of his concerns have been taken into account in the revised IA.
71. In any case if, in practice, standardised packaging were to lead to some brand switching by consumers, from high price to low price cigarette brands, or if the tobacco industry were to respond to the introduction of standardised packaging by cutting prices, this should be dealt with quickly by additional increases in tobacco taxation, above those currently required by the duty escalator.

## Conclusions

72. Standardised packaging is backed by the Smokefree Action Coalition, which is an alliance supported over 250 organisations including medical Royal Colleges and other medical organisations, health and children’s charities such as the British Heart Foundation and Cancer Research UK, the Chartered Institute of Environmental Health, the Trading Standards Institute and others.<sup>77</sup> The consensus of medical professionals, public health and other relevant experts is that standardised packaging would make an important positive contribution to reducing the harm caused by tobacco consumption.
73. Standardised packaging is also popular with the public. A poll on the issue by YouGov, conducted for ASH in March 2014, found that overall 64% of adults in Great Britain were in favour of standardised packaging with only 11% opposed. There was majority support across age groups, genders and social classes.<sup>78</sup> It is clear that most people believe that this policy, combined with other tobacco control initiatives, is an important way to prevent the next generation of young people from starting to smoke.
74. Section 94 of the Children and Families Act 2014 was passed overwhelmingly in both the House of Lords (nem con) and House of Commons (24 MPs voted against), following a strong cross-Party campaign in support of the policy. It therefore demonstrably has majority support in Parliament.
75. Opposition to standardised packaging has been driven and financed by the tobacco industry which requires young people to start smoking in large numbers every year as its previous consumers quit or die prematurely from smoking-related disease.<sup>79</sup>

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<sup>77</sup> [Smokefree Action Coalition](#)

<sup>78</sup> The poll total sample size was 12,269 adults. Fieldwork was undertaken by YouGov between 5th and 14th March 2014. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+). Respondents were shown what a standard pack could look like, including larger health warnings as in Australia.

<sup>79</sup> The pro-smoking group FOREST, which receives virtually all its funding from the tobacco industry, has hired the marketing agency Kreate to collect “digital signatures” for the “Hands off Our Packs” petition to the Prime Minister. Kreate describes itself as “an experiential agency that specialises in the delivery and staffing of face-to-face experiences”. Agencies have also been commissioned directly by BAT to run a six week, “anti-plain packs roadshow”, aiming to sign up 100,000 people to oppose plain packs. The company is reported to have allocated £500,000 to the activity. Over 100 people a day will be working on this campaign. ASH recommends



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

76. Following the six week consultation on the draft regulations, the Government will then have to notify the European Union of the draft Regulations, under the Technical Standards and Regulations Directive 98/34/EC. This process can take up to six months.<sup>80</sup> Therefore, time is now short if Parliament is to get the opportunity to vote on the Regulations before the General Election. If this opportunity were now to be missed, it would be widely understood as a public health disaster and as suggesting that the tobacco industry, whose appalling conduct in the debate over standardised packs has now been clearly documented, still has excessive influence at the heart of Government.

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that consultation responses generated in this way should be regarded by the Government as constituting a single response on behalf of the tobacco industry.

## **DH Impact Assessment with respect to Standardised Packaging and Consumer Surplus**

Matthew R Levy, PhD

Lecturer, Department of Economics

London School of Economics and Political Science

Following our meeting last week this note sets out my comments on the consumer surplus considerations presented in the Department's consultation stage Impact Assessment on standardised packaging of tobacco products.

I am an economist at LSE with a research interest in studying consumer demand in the presence of habit formation (both positive and negative). My own research has highlighted the role of specific psychological biases on consumer behaviour. I am also currently engaged in a research collaboration which seeks to directly address several of the issues outlined below, with the goal of providing robust estimates of welfare-relevant parameters for cigarette consumption to policy-makers.

As we discussed, I am concerned that as a result of implicit assumptions that smokers' preferences are fixed, dynamically consistent, and perfectly forward-looking, the Impact Assessment as revised may greatly over-state the loss in consumer surplus generated by the actions under consideration. The opinions expressed in this note are strictly my own.

- The consumer surplus methodology in the Impact Assessment does not explicitly address the addictive nature of cigarettes. Instead, it assumes a static model of demand from consumers maximising the "pleasure" of smoking their preferred brand relative to its price. This approach is likely to overstate, and perhaps even incorrectly sign, the loss in consumer surplus from the policy under consideration.
- Perhaps the most important point to address is that, because cigarettes are addictive, focusing on the willingness-to-pay (WTP) for cigarettes neglects the difference in welfare between addicted and non-addicted consumers (rather, it reveals the marginal benefit consuming a preferred brand whilst remaining in an addicted state). To the extent that a regulatory intervention induces some current smokers to reduce their consumption or quit entirely, their current demand will over-state the foregone "pleasure" when they are subsequently less addicted. The evidence suggests that most cigarette smokers continue to smoke in order to avoid unpleasant withdrawal symptoms rather than to obtain pleasure from consumption. Data from 2012 indicate that 82% of heavy smokers in England would find it difficult to go without smoking for a day.<sup>81</sup> Because the physical and psychological

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<sup>81</sup> *Statistics on Smoking: England, 2012*. NHS Health and Social Care Information Centre (HSCIC)

withdrawal symptoms are transitory, however, calculations based on a static model of demand using the WTP of currently-addicted smokers will dramatically overstate the welfare effects of a policy that reduces smoking rates.

- Moreover, mounting evidence suggests that policies which reduce smoking rates will have an overall positive effect on consumer welfare. The usual starting point for consumer surplus calculations assumes that consumers are initially choosing in such a way so as to maximise their own welfare. Any intervention which restricts the choice of consumers is therefore welfare-reducing by assumption. However, evidence suggests that most current smokers do not believe that smoking is in fact welfare-maximising. Nearly 6 in 10 smokers in England say they want to quit, and nearly 4 in 10 initiate a quit attempt in any given year.<sup>82</sup> Moreover, the vast majority of smokers themselves indicate that it was a mistake to have started smoking. UK data from YouGov indicate that 85 per cent of current and former smokers agree with the statement “I regret that I started smoking”. Comparable data from the International Tobacco Control Policy Evaluation Project indicate that over 90 per cent of smokers agree with the statement “if you had to do it over again, you would not have started smoking.” These findings are inconsistent with the assumption of optimal consumer behaviour.
- Of particular importance to evaluating consumer welfare is the fact that the great majority of smoking initiation occurs during adolescence. Data from the GLF 2010 indicate that 66 per cent of smokers started smoking before the age of 18 (72 per cent for those in routine and manual households), while just 5 per cent began when aged 25 or over.<sup>83</sup> Youth smoking is often driven by transient considerations such as peer pressure, while the mortality and morbidity risks of smoking remain abstract and are not salient for teenagers. Evidence suggests that youth smokers fail to incorporate the likelihood of an enduring smoking habit when making their initial decision. For example, data from the US *Monitoring the Future* surveys indicate that among youth smokers in their final year of secondary education, only 3 per cent expect to still be smoking in five years; in actuality, two-thirds remained smokers 7 to 9 years later. Demand thus over-states consumer welfare, as youth smokers do not internalise the full costs of consumption (in health consequences and subsequent spending on tobacco due to addiction).
- Cigarette branding may play a particularly important role in youth smoking decisions by serving to make premium cigarettes serve as a “positional good”.<sup>84</sup> Evidence suggests that youth smokers are highly aware of cigarette brand identities, and are able to identify characteristics of major brands.<sup>85</sup> A policy of standardised packaging could increase consumer welfare by two channels. First, consumption of positional goods by one consumer creates a negative externality on others.<sup>86</sup> To the extent that standardised packaging reduces this externality, it directly increases consumer surplus amongst smokers. Second, and potentially more importantly, by reducing the social signalling element of cigarette smoking, standardisation reduces the number of mistaken lifelong smoking habits. Whereas the cost of such a habit would be embedded in the WTP of perfectly forward-looking youth

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<sup>82</sup> *Healthy Lives, Healthy People: A Tobacco Control Plan for England*. HM Government, March 2011

<sup>83</sup> *General Lifestyle Survey 2010*. Office for National Statistics

<sup>84</sup> Scheffels, J. “A difference that makes a difference: young adult smokers’ accounts of cigarette brands and package design” *Tobacco Control*. 2008.

<sup>85</sup> Hanewinkel et al. “Cigarette Smoking and Advertising” *American Journal of Preventive Medicine*. 2010

<sup>86</sup> Frank, R. “Consumption Externalities”. *The New Palgrave Dictionary of Economics*. 2008

smokers, their inability to predict their own future smoking status suggests that such costs are currently not being reflected. Calibrationally, the lost social signalling for youth smokers would be required to be implausibly high for the net effect of this channel to be a loss of consumer welfare. Moreover, youth smokers have ready substitutes to turn to replace the lost signalling (e.g. mobile phones, clothing, etc.) which do not carry the cost of addiction.

- Recent evidence from behavioural economics suggests that benefits from package standardisation may also accrue to adult smokers. Evidence suggests that consumers generally exhibit dynamically inconstant preferences, with the result that an inability to commit future consumption leads to sub-optimal choices immediately. In the case of cigarettes, this leads some current smokers to consume not because of the “pleasure” of smoking, but because they lack a means of committing to stop. This dynamic inconsistency generates an “internality” cost on a smoker’s own future self of a similar magnitude as the “externalities” of second-hand smoking.<sup>87</sup> To the extent that standardised packaging reduces the immediate WTP of a smoker for his or her preferred brand of cigarette, it can be analysed similarly to a tax. It is likely that not all smokers have dynamically inconsistent preferences, but even with a high degree of heterogeneity the welfare-maximising ‘tax’ in the presence of consumer internalities is positive.<sup>88</sup>
- Finally, increasing evidence from neuroscience and neuro-economics suggests that demand for addictive goods is often better thought of as a cue-triggered ‘mistake’ than rational decision.<sup>89,90</sup> Rather than revealing consumer welfare, demand made by a “cued” individual is the result of particular changes to neurological decision-making systems, which is regretted later by the same individual when in a “cool” state. In a welfare calculation, such a transaction should be considered a pure transfer from the consumer to the producer (and thus an overall welfare loss equal to the marginal cost of production). Moreover, the optimal regulatory response will rely more heavily on “cognitive” policies which lessen the role of environmental cues for addictive goods. Evidence suggests that branded elements of cigarette packaging, including branding on cigarettes themselves, ranks highly amongst cues to trigger cravings amongst smokers.<sup>91</sup> By eliminating a strong cue, standardised packaging can increase consumer welfare by an amount equal to the aggregate disutility of the cravings previously induced, plus the externalities of the associated consumption.

The Department’s careful attention to these matters, and its openness to carefully considering the assumptions underpinning its consumer surplus analysis is welcome. I would be happy to discuss the ideas set out in this note further if that would be helpful.

22 January, 2013

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<sup>87</sup> Gruber, J. and B. Koszegi. “Is Addiction ‘Rational’? Theory and Evidence”. *Quarterly Journal of Economics*. 2001

<sup>88</sup> O’Donoghue, T. and M. Rabin. “Optimal Sin Taxes”. *Journal of Public Economics*. 2006

<sup>89</sup> Bernheim, B.D. and A. Rangel. “From neuroscience to public policy: A new economic view of addiction”. *Swedish Economic Policy Review*. (2005)

<sup>90</sup> Loewenstein, G. “Out of Control: Visceral Influences on Behavior” *Organizational Behavior and Human Decision Processes*. (1996)

<sup>91</sup> Carter, O. et al “The effect of retail cigarette pack displays on unplanned purchases: results from immediate post purchase interviews.” *Tobacco Control*, 2006