

EXECUTIVE NOTE

THE SALE OF TOBACCO (DISPLAY OF WARNING STATEMENTS) (SCOTLAND) REGULATIONS 2011

SSI 2011/132

The above instrument was made in exercise of the powers conferred by section 8(5) of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the Act”). This instrument is subject to negative resolution procedure.

Policy Objectives

Section 8 of the Act requires tobacco retailers to display a notice that states: “It is illegal to sell products to anyone under the age of 18” at all points of sale of tobacco products. It is a restatement of the equivalent provision in section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991. Section 8(5) gives Scottish Ministers power to prescribe the dimensions of the notice and the size of the statement on it.

These regulations stipulate that the dimensions of the notice should be not less than 297 millimetres by 420 millimetres. It is also stated that no character on the notice should be less than 36 millimetres high. These regulations are a restatement of the equivalent provision in the Protection from Tobacco (Display of Warning Statements) Regulations 1992.

These regulations will take effect from 1 April 2011. The existing regulations will continue to regulate the notices on tobacco vending machines.

Consultation

The Tobacco and Primary Medical Services (Scotland) Act 2010 has a number of regulation-making powers. A consultation on five sets of draft regulations to be made under the Act began on 27 April 2010 and ran through until 20 July 2010. The Scottish Government received nearly 500 responses to the consultation from individuals and organisations.

Financial effects

A Regulatory Impact Assessment was carried out in relation to the tobacco sales registration scheme. It was deemed that there was no additional burden on business to be considered. A copy of the RIA can be accessed at:

<http://www.scotland.gov.uk/Publications/2009/02/27120518/0>

Public Health Division
February 2011

1. **Title of Proposals: Tobacco Provisions to be contained in the Health (Scotland) Bill**

- 1.1 To Consider Further Restrictions on Prominent Display of Cigarettes at Point of Sale
- 1.2 To Review and Update Statutory Controls on the Sale of Tobacco Products
- 1.3 To Reduce Illegal Sales from Tobacco Vending Machines

2. **Purpose and intended effect**

Objectives

2.1 To reduce the attractiveness, availability and consumption of tobacco products among older children and adolescents under the age of 18 leading to a reduction in smoking prevalence.

Background

2.2 Smoking has long been recognised as the most important preventable cause of ill-health and premature death in Scotland. Around 13,500 people die in Scotland each year from smoking related diseases^a. In January 2004 the Scottish Executive published the first ever action plan designed specifically for Scotland, *A Breath of Fresh Air for Scotland*¹, with the stated goal of reducing the unacceptable toll that smoking takes on Scotland's health. The plan offers a comprehensive programme of action to tackle smoking. This includes the expansion of NHS smoking cessation services; the roll-out of test purchasing in order to strengthen enforcement around age restricted goods; and triggered Scotland's largest ever public debate on minimising the impact of second-hand smoke which led to the introduction of the smoke-free laws in March 2006. Subsequently the rise in the legal age of sale for tobacco from 16 yrs to 18 yrs was implemented in October 2007.

2.3 The Smoking Prevention Action Plan (SPAP), published in 2008², builds on and responds to, *"Towards a Future without Tobacco"*³, the report from an Expert Group, which considered a wide range of evidence from national and international research. It acknowledges the progress made and the decline in population smoking in recent years. The Scottish Government remains committed to continuing action to reduce smoking levels even further with a particular focus on preventing children and young people starting to smoke in the first place.

2.4 There is a commitment in the SPAP to introduce legislative controls to further restrict the display of tobacco products at points of sale, and to work with retailers on the implementation of these measures. The Tobacco Advertising and Promotion Act 2002 banned the advertisement of tobacco products in the UK. The Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2004 restricted the advertisement of tobacco products to only one display per shop and to stating only the name, emblem, price and size of the product.

2.5 The Smoking Prevention Working Group (SPWG) advised that despite this ban cigarettes continue to be advertised in the UK. Worryingly, studies show that there is a "positive, consistent and specific relationship"⁴ between exposure to tobacco advertising and

^a ASH Scotland

the subsequent uptake of smoking among adolescents and that it was considered that prominent displays of cigarettes at point of sale have shown a similar relationship with youth smoking. And thus, this expert group recommended that the Scottish Government prohibits the display of cigarettes at the point of sale, and that this display be replaced by a simple list of the brands available and their prices.

2.6 Display can be considered as a form of advertising, encompassing any way of showing tobacco products with a view to promoting their sale. Point of sale displays encourage positive attitudes towards smoking and help to recruit young people to smoking. Currently, displays of tobacco products predominantly take the forms of gantries behind the till or of stacks of merchandise at any point in the retail premises.⁵

2.7 Large gantries displaying tobacco products are a feature of everyday life. Tobacco industry expenditure on point of sale displays has increased as restrictions elsewhere have intensified.⁶

2.8 LACORS⁷ found that, although technical compliance with the current point of sale regulations is good, there is a growing problem with the use of counter top devices such as clocks and counter mats to draw attention to tobacco products in the retail environment. In addition, many retailers were found to have been stacking multi-packs of cigarettes that contravenes the spirit, if not the letter of the point of sale restrictions.

2.9 In a recent survey 86% of adult smokers stated that they always buy the same brand of tobacco⁸.

2.10 A number of countries/territories have restricted the display of cigarettes, such as Queensland, New Zealand, the Republic of Ireland and the Australian states of Western Australia and South Australia. Legislation has restricted both the size of the display unit as a whole and the number of packs that can be displayed of any one brand. Some territories have legislated on the position of tobacco products in relation to children's products.⁹

2.11 An outright ban on the display of tobacco products is in force in Iceland, Thailand and a number of territories in Canada and Australia. The Republic of Ireland is set to introduce an outright ban on tobacco displays on 1st July 2009 and New Zealand is currently considering this measure.¹⁰

There are estimated to be around 11,000 tobacco retailers in Scotland¹¹. Under current legislation, retailers can be prosecuted for selling tobacco to people under the age of 18 with a maximum fine of £2,500. Over the last six financial years (2002/03 – 2007/08) there were 147 charges reported to the Crown Office & Procurator Fiscal Service (COPFS) in relation to offences in terms of selling tobacco to people under the legal age. It should be noted that the following breakdown does not include charges where proceedings had not yet reached a conclusion, charges which were discontinued and charges upon which a decision had not yet been taken.

- In 28 cases no proceedings were considered appropriate;
- there were 23 convictions;
- 58 cases were dealt with by non-court disposals^b, and
- of those convicted, the average fine was £188¹².

^b 4 fiscal fines, 53 warnings and 1 referral to the Reporter to the Children's Panel (COPFS data)

2.12 To date (December 2008) there have been 48 charges in 2008/09: of these 24 have resulted in prosecution¹³. (Note: some charges have yet to be dealt with by the COPFS.)

2.13 However we know from the 2006 Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS)¹⁴ that under-18s have no difficulty in purchasing cigarettes from retailers. This has been backed up by a recent test purchase operation by Glasgow Trading Standards Officers where 12 out of 38 retailers sold cigarettes to under-18s.

2.14 The SPWG considered the issue of tobacco licensing schemes as part of its recommendations to Ministers on prevention measures. At the time of its consideration, there was little evidence on the effectiveness of either a banning order scheme (also referred to as negative licensing) or a positive licensing scheme. Legislation was passed recently in England to implement banning orders.¹⁵ The SPWG recommended to Ministers that a banning order scheme should be introduced as it would require no additional infrastructure and would therefore be more cost effective than a positive licensing scheme whilst providing additional sanctions against those who continue to flout the law. The SPWG did not consider the option of introducing a registration scheme. This measure has been introduced in New Zealand and a number of territories in Australia. Registration will come into force in the Republic of Ireland in July 2009.

2.15 In addition to being able to access cigarettes from a minority of retailers, in the 2006 SALSUS survey one in ten of the 13 and 15 year olds who are regular smokers reported buying cigarettes from vending machines. UK figures tell us that vending machines account for only 1% of the overall market in sales. It therefore appears that a disproportionate number of 13 and 15 year olds obtain cigarettes from this source.¹⁶

2.16 A requirement on premises operators to take precautions to prevent underage sales from vending machines is governed by the Children and Young Persons (Scotland) Act 1937. However, the siting of the vending machine is not at present prescribed by law but covered by a code of practice from NACMO, a trade body. Not all operators are part of the body. Experience does suggest that managers of premises where machines are present will take Trading Standard Officers' (TSOs') advice and site the machine where young people do not have unrestricted access and a member of staff can supervise sales by direct line of sight. However, TSOs advise that when the layout of a premise is changed the cigarette machines can be re-sited in inappropriate places.

2.17 As part of a wider consultation, DoH has sought views on installing mechanisms to limit the access to vending machines by under-18s, such as token or credit card use or measures such as more prescription on the siting of machines.

2.18 No other age restricted goods (e.g. alcohol, knives, fireworks) are sold via vending machines.

2.19 A number of jurisdictions across the world have completely banned tobacco sales from vending machines. These include 22 countries in Europe¹⁷, Vietnam, China, Hong Kong, Russia, Singapore, Thailand, Bermuda, and two US states.

2.20 The World Health Organization's (WHO) *Framework Convention on Tobacco Control*, which was ratified by the UK in 2004, encourages measures to ensure that tobacco

vending machines are not accessible to minors. A 2003 European Council Recommendation¹⁸ suggests that Member States should restrict tobacco vending machines to locations accessible to persons over the age set for purchase of tobacco products in national law, or otherwise regulate access to the products sold from such machines in an equally effective way. The WHO European Strategy for Tobacco Control¹⁹ goes further, stating that strategic national actions to restrict availability of tobacco to young people should include banning its sale through vending machines.

Risk Assessment

2.21 Smoking is dangerous at any age, but the younger people start, the more likely that they are to smoke longer and die early from smoking. We know that 82% of adult smokers start smoking in their teens²⁰. Without effective action hundreds more children will take up smoking every week.

2.22 Tobacco is a uniquely dangerous product and smoking is one of the most damaging factors in Scotland's poor health record. Measures to protect individuals and society from the impact of tobacco, through legislative and other forms of regulation and control are a vital component to any tobacco control strategy. There is no safe level of smoking and, while much progress has been made in reducing smoking rates they remain stubbornly high among some sectors and age groups within the population. It is believed that extending legislation is the only way to make significant progress to protect public health.

2.23 In Scotland in 2006, 12% of 15 year old boys and 18% of 15 year old girls (14% and 24% in 2004) were regular smokers²¹. Among regular smokers almost all (82%) of 15 year olds and almost around half (47%) of 13 year olds reported buying cigarettes from shops. Smoking rates in the 16 -24 age group fell between 1999 and 2004 from 31% to 25%, but then rose again to 30% in 2007²². It should be noted that the sample size for the 16-24 age group is significantly smaller than the 13 and 15 year olds and should be interpreted with caution.

Social Benefits

2.24 One of the Scottish Government's strategic objectives is that we all live longer, healthier lives and one of the national outcomes is to reduce the significant inequalities in our society. We know that significant health inequalities persist and that higher rates of mortality and morbidity are associated with deprivation. Some of the highest rates of smoking are to be found amongst the most disadvantaged communities in Scotland.

2.25 Across the UK regions, the annual ONS publication of household expenditure (2008) showed that households in Northern Ireland and Scotland reported the highest expenditure on cigarettes at £7.70 and £5.50 a week respectively²³. Data from the same survey shows that, on average, the poorest 10% of households spend 1.6% of their income on cigarettes, compared to 0.39% of the wealthiest 10%.

2.26 In the 2006 SALSUS report, pupils' smoking behaviour was analysed in relation to deprivation, using the Scottish Index of Multiple Deprivation (SIMD)²⁴ based on pupils' postcode. The analysis used quintiles with 1 being the most deprived and 5 being the least

deprived. Postcodes were only available for around two thirds of the sample. Of those pupils with a SIMD score, 8% of 15 yr olds in the least deprived areas reported being regular smokers compared with 14% in the most deprived. (Note that more regular smokers than non smokers were missing a SIMD score.) The results are shown in table 1.

Table 1: Smoking Prevalence and Deprivation

| Age / Gender | Whether young person smokes regularly by SIMD deprivation quintile (1=most deprived; 5=least deprived) | | | | |
|--|---|----|----|----|---|
| Deprivation quintile | 1 | 2 | 3 | 4 | 5 |
| Both sexes: % smoking regularly: 13 year olds | 13 | 13 | 12 | 8 | 6 |
| Both sexes: % smoking regularly: 15 year olds | 14 | 14 | 13 | 11 | 8 |

2.27 The most recent data from the Scottish Household Survey (2007)²⁵, presented in table 2, shows that smoking rates across SIMD quintiles remain stubbornly high in the most deprived areas.

Table 2: Smoking Prevalence and Deprivation

| Adult population (age 16 +) | Whether respondent smokes by SIMD quintiles deprivation (1=most deprived; 5=least deprived) ^c | | | | |
|-----------------------------|--|----|----|----|----|
| Deprivation quintile | 1 | 2 | 3 | 4 | 5 |
| yes | 40 | 32 | 23 | 17 | 13 |
| no | 60 | 68 | 77 | 83 | 87 |

There is considerable potential to reduce smoking prevalence and associated harm in deprived areas and to contribute to a reduction in inequalities.

2.28 Those in deprived communities are also more likely to have purchased cheap tobacco from illicit sources. A study funded by ASH²⁶ found that 1 in 4 of least affluent smokers bought smuggled cigarettes compared to 1 in 8 of most affluent^d. This access to cheap tobacco tends to exacerbate health inequalities.

| Table 3: Do you smoke cigarettes by banded household income | | | | | | | | |
|---|--------|--|-----------------|-----------------|-----------------|-----------------|-----------------|---------|
| | | Banded net annual income - 2004 Annual Report bandings (£) | | | | | | |
| Do you smoke cigarettes nowadays? | 0-6000 | 6,001 - 10,000 | 10,001 - 15,000 | 15,001 - 20,000 | 20,001 - 25,000 | 25,001 - 30,000 | 30,001 - 40,000 | 40,001+ |
| Yes (%) | 32.2 | 32.1 | 32.4 | 31.3 | 27.1 | 23.9 | 18.0 | 11.2 |

Source: Scottish Household Survey²⁷

Clearly, there is a higher proportion of smokers in households with a lower income.

2.29 In the long run it is anticipated that there will be a positive effect on public health due to a reduction in prevalence of smoking and this will have an impact on the NHS in Scotland, although as these provisions will, in the main, affect under 18 yr olds, it will take a minimum of 20 years for the full effects to be realised.

Rationale for government intervention

2.30 Economic theory assumes that consumers know best and that privately determined consumption will most efficiently allocate society's resources. However in the case of tobacco these may not hold because of information asymmetries. Smokers, especially minors (young people under 18), may have inadequate information about all the cost and benefits associated with smoking and therefore make sub-optimal decisions to begin and continue smoking. Also there are negative externalities associated with smoking; through passive smoking and through higher costs to the NHS.

2.31 Those under the age of 18 are vulnerable consumers. They have inadequate information about health consequences and about addiction. Even where they have information, adolescents may not accurately judge the risks of smoking relative to other

^c From January to May 2007 this question was asked of all the sample. From June 2007 it was asked of three quarters of the sample

^d Socio economic groups categorised as AB, C1, C2, D & E

environmental exposures. In addition adolescents and children, even with an understanding of risk, may have limited capacity to use the information wisely.

2.32 Few other risky behaviours carry the high risk of addiction that is seen with smoking. With smoking there is no way to behave more prudently, other than to quit.

2.33 Controlling access is an established strategy for reducing consumption of substances harmful to health, in particular tobacco, alcohol and illicit drugs.

2.34 Recent research shows that tobacco displays act in a similar fashion to other forms of tobacco advertising. Weiss et al (2006) found that children and adolescents who visit stores with tobacco displays frequently are more likely to experiment and start smoking²⁸. Pollay's 2007 article on merchandising concluded that point of sale displays are there to sell, not merely to convey information. He argues that point of sale displays have enormous reach – essentially all shoppers regardless of age, exposing them to what is effectively pro-smoking messages and imagery²⁹.

2.35 A survey on compliance was conducted in Australia after a phase of increased enforcement activity against offending tobacco retailers by the Tasmanian Department of Health³⁰. The Australian state of Tasmania operates a positive licensing scheme with fines of \$5,000 and \$10,000 for first and second offences respectively. The evidence showed a drop in the non-compliance rate to 5% after increased efforts and 20 prosecutions.

2.36 There is a voluntary code of conduct governing the siting of tobacco vending machines but this is insufficient to restrict young people's access to tobacco from them. According to the 2006 SALSUS survey, one in ten 13 and 15 year olds who are regular smokers reported buying cigarettes from vending machines. This means that an estimated 180,000 packets of cigarettes are bought by under 16s, annually, from vending machines in Scotland. Again, based on the SALSUS data this represents around 9% of the total sales from vending machines, a disproportionate amount.

2.37 Meeting the 2010 target of 22% will require sustained and radical action to discourage take-up and promote smoking cessation, particularly among young people.

3. **Options**

3.1 Options for changes in legislation

3.2 **Prominent Display of Cigarettes at Point of Sale**

3.2.1 *Option 1:* Do nothing

3.2.2 *Option 2:* Restrict Display of Tobacco Products and Smoking Accessories

3.2.3 *Option 3:* Ban Display of Tobacco Products and Smoking Accessories.

Details of these options and the associated costs and benefits are described in section 6.

3.3 **To Review and Update Statutory Controls on the Sale of Tobacco Products**

3.3.1 *Option 1:* Do nothing: no additional sanctions or requirement to be registered or licensed.

3.3.2 *Option 2:* Introduction of Banning Orders: allows courts the power to impose a "banning order" to prevent a retailer from selling a particular tobacco if they continually breach legislation.

3.3.3 *Option 3: Registration Scheme:* a requirement for all tobacco retailers to be registered in order to sell tobacco

3.3.4 *Option 4: Licensing scheme:* introduction of a licensing scheme, similar to that of other age restricted products

Details of these options and the associated costs and benefits are described in section 7.

3.4 **Tobacco Vending Machines**

3.4.1 *Option 1: Do Nothing*

3.4.2 *Option 2: Introduction of Age Restricting Mechanisms*

3.4.3 *Option 3: Ban Sale of Tobacco from Vending Machines*

Details of these options and the associated costs and benefits are described in section 8.

4. **Sectors and Groups Affected**

4.1 Retailers selling tobacco would be affected by any regulation of the display and sale of tobacco products.

4.2 Wholesalers who sell tobacco products through a cash and carry business model may also be affected by changes in legislation on the display and sale of tobacco products.

4.3 Vending machine manufacturers could be affected by legislation to include technological mechanisms to restrict the sales of tobacco to under-18s, including infrared remote control, ID coin mechanism or electronic age verification.

4.4 Suppliers of vending machines could be affected by a ban on cigarette vending machines.

4.5 Smokers who routinely use vending machines to purchase tobacco could be affected by a ban on cigarette vending machines.

4.6 The tobacco industry would also be affected by any change in consumption by smokers or in the prevalence of smoking.

4.7 Any reduction in the purchase of tobacco and cigarettes as a result of legislative changes may have a resultant impact on the UK Exchequer.

4.8 Local authorities would be impacted because they will be responsible for monitoring and enforcing additional regulations around the sale and display of tobacco products. This would include any registration or licensing scheme introduced and additional regulations relating to vending machines and/or pack size.

4.9 The Crown Office and Procurators Fiscal (COPFS) would be impacted if a fixed penalty notice scheme were introduced. The new process should result in only those who continually flout the tobacco sales law being reported to COPFS.

4.10 No data is available on the prevalence of smoking among young people in minority ethnic groups in Scotland. However, the 'Drug use, smoking and drinking among young people in England in 2005'³¹ survey found that 9% of pupils of White and Mixed ethnicity

were regular smokers, 5% of Black pupils were regular smokers and just 3% of Asian pupils were regular smokers.

4.11 In the long run there will be a positive effect on public health due to a reduction in prevalence of smoking and this will have an impact on the NHS in Scotland, although as these provisions will, in the main, affect under 18 yr olds, it will take a minimum of 20 years for the full effects to be realised.

5. **Risks**

5.1 Any further restrictions on the sale of tobacco could drive more smokers to attempt to purchase illicitly traded tobacco products.

6. Prominent Display of Cigarettes at Point of Sale

Options

6.1 *Option 1: Do nothing*

Option 2: Restrict Display of Tobacco Products and Smoking Accessories

Option 3: Ban Display of Tobacco Products and Smoking Accessories.

Costs and benefits

Costs

6.2 Option 1: Do Nothing

Under this option there would be no change in the manner in which tobacco products are currently displayed. There would be no cost implications and no additional health benefits.

6.3 Option 2: Restrict Display of Tobacco Products and Smoking Related Products; any change to display on retail premises has the potential to incur a cost to the retailer as it may involve changing the layout within the retail outlet. It is difficult to accurately estimate the cost of restricting display but it could be as high as, or higher than, the costs associated with refitting. It is likely that it would involve the purchase of new, smaller, gantries.

6.4 Costs to the retailer: the cost of replacing gantries was explored during the consultation on the change in advertising legislation. The costs used in the regulatory impact assessment for the Tobacco Advertising and Promotion (Point of Sale) Regulations 2004 suggested that it would cost approx £10,000 per unit (per retailer) to replace pre-existing gantries with one of a smaller size with a reduced display capacity. Applying this to over 11,000 retailers across Scotland, this gives a total cost of approx £110m. This cost excludes any fitting cost associated with a new unit and disposal of the old one. The RIA for the Tobacco Advertising and Promotion (Point of Sale) Regulations 2004 noted that manufacturers often supply gantries and between 1998 and 2002 appeared to have supplied at least 60% of all gantries in use. It was not possible at that time, nor is it now, to establish whether or not manufacturers would provide smaller gantries in the case of restrictions on display, or in fact alternative storage and dispensing units in the case of a ban.

6.5 Communication from British American Tobacco³² suggests that this figure is of the correct magnitude. They suggest around £3000 for the capital and installation cost of a small unit: £12,500 for a medium sized one and up to £28,000 to supply and fit one in a large supermarket.

6.6 Assuming that restricted displays would have a very minimal impact on sales to under-18s, (around a 1% reduction in sales to *under 18s*), this would result in a drop in income of around £72,800 per annum to retailers across Scotland, based on the price of a packet of 20 cigarettes being an average of £5.66, with the tax burden of duty and VAT worth £4.48³³.

6.7 Costs to SG: there will be initial costs associated with providing information to retailers around the necessity to comply with new regulations including their extent and the timing involved. Advertising and marketing costs are estimated to be in the region of £350,000³⁴.

6.8 Costs to the UK exchequer: any reduction in consumption of cigarettes will have an associated effect on tax revenue to the Exchequer. Using data from HMRC receipts, the revenue from tax and duty on each individual stick is around 22.5p. A reduction in consumption of 1% in the under 18s would lead to a loss of £272,000 per annum. In line with government guidance it is assumed that a reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly similar macroeconomic effects.

7. Costs to Local Authorities: Trading Standards would have an essential role in advising businesses on how to comply with legislation. Trading Standards Services visit 10% of tobacco retailers for test purchasing purposes, a further 10% for business advice (under the enhanced enforcement programme already agreed) and an estimated further 10% for other Trading Standards duties. The Scottish Government would fund a national campaign to help Trading Standards Officers inform tobacco retailers of the implementation of this new legislation and avoid costs falling on local government. Nevertheless there would be an increase in demand for advice to businesses from trading standards in the run up to introduction which may not lead to a need for additional resources but would cause a reprioritisation of duties and resources. A longer lead-in time for implementation would ease any pressure.

7.1 Option 3: Ban Display of Tobacco Products and Smoking Accessories

An outright ban would involve either having cigarettes under the counter or having them covered at all times other than when products are being retrieved for a customer. An outright ban on the display of tobacco products is in force in Iceland, Thailand and a number of territories in Canada and Australia. New Zealand is currently considering this measure³⁵ and the Republic of Ireland is set to introduce an outright ban on tobacco displays on 1st July 2009.

7.2 There are a variety of potential costs that might be taken into consideration under the proposal to ban the display of tobacco products at points of sale. These include potential costs of refitting premises with dispensing units and increased time taken for transactions (and potentially increased costs of treatment of age-related illnesses due to an expected reduction in smoking related death).

7.3 Costs to retailers: there would be a necessity for retailers to change the storage and possibly placement of cigarettes within their shops. To estimate the costs faced by retailers from having to refit their sales outlets, data was obtained from a number of sources. Industry responses included those from Scottish Grocers' Federation (SGF), the National Federation of Retail Newsagents (NFRN) and the Scottish Retailers Consortium (SRC). Also available are estimates used by the Department of Health in their consultation document³⁶.

7.4 The number of affected premises in Scotland was derived from aggregated Scottish SIC classifications for retail, wholesale and pubs and clubs involved in the sale of tobacco, excluding hotels and restaurants. This data had previously been gathered by the SG to inform the consultation on raising the age of purchase. The estimate used was 11,000 outlets, which may be overestimating but we are aware that there are a number of types of premise which retail cigarettes. (DoH used a figure of 90,807 premises to estimate costs in their consultation for England.)

7.5 Costs to individual retailers will vary according to the size of the premises, the nature of the new sales unit (or alteration to the existing one) and the extent of the shop refitting. A range of cost estimates have been obtained from a number of trade organisations. In general the costs were provided based on the assumption that some form of “under the counter” storage unit would be required.

7.6 Cost estimates to individual retailers ranged from a minimum of £900 provided by NFRN to a maximum estimate of £25,000 (SRC estimate).

7.7 For small shops such as local newsagents and small convenience stores the NFRN estimates a cost of between £900 and £1,400.

7.8 The SGF estimate that for their members, the costs could range from £5,000 to £10,000.

7.9 At the top of the range, the SRC estimate that the level of shop fitting required by their members could cost up to £25,000. This would apply to large supermarkets requiring a major refit of the area of their premises.

7.10 The total impact on retailers across Scotland is difficult to quantify and will depend on the number of retailers who incur particular costs. An estimate of the potential range of capital costs involved has been made. Costs are based on industry responses. Detailed information on the distribution of retail outlets by size is not available from a single source and as a result it may be that the number of retail outlets is an overestimate. Supermarket numbers are based on Scottish Food and Drink Retailer Profile³⁷. The number of grocers is taken from the number of “convenience” stores quoted by SGF³⁸. NFRN have 1,600 members, but it is assumed that there are additional small premises which are not members of any trade organisation.

| Size of retail unit. | Low : e.g corner shop/newsagent | Mid range: e.g grocers shops | High: e.g large supermarkets | Total | Discounted |
|---------------------------|---------------------------------|------------------------------|------------------------------|-------|------------|
| Cost to individual outlet | £900 - £1,400 (NFRN) | £2,000 - £10,000 (SGF) | Up to £25,000 (SRC response) | | |
| No of premises | 4600 | 5600 | 800 | 11000 | |
| Low estimate | £4m | £11m | £8m | £23m | £21m |
| High estimate | £6m | £56m | £20m | £82m | £73m |
| Mid point | £5m | £34m | £14m | £53m | £47m |

Assuming a 2 year lead-in time for supermarkets and a 4 year lead-in time for smaller premises this gives a discounted value of £21 – £73m (mid point £47m).

7.11 These estimates are likely to be at the upper end of costs for retailers. It should be noted that they are based on figures supplied by the industry and are not adjusted in any way. In particular if there is a lead-in time, the Canadian experience suggests that innovative, lower cost solutions for concealing displays will be developed³⁹. It should also be noted that retailers may already re-fit tobacco displays regularly. The Association of Convenience Stores advised DoH that tobacco gantries are replaced every 3-5 years currently and implementation plans could be such to allow tobacco retailers to refit as part of planned refurbishment.

7.12 DoH have recently advised that, based on the Canadian experience costs may be much lower than those used here. One company in particular (Solution 4 Display) provided the Department with an estimate of £550 per store, which was confirmed by the Canadian Association of Convenience Stores. At the cost per squared foot they quoted for a large display, the cost to small retailers in the UK (based on data from LACORS) could be as little as £200.

7.13 These capital costs do not include other costs such as the removal and disposal cost of existing gantry/display, changes to shop security, or the costs of replacement focal point display stock. These potential additional costs were identified in a report prepared by the Centre for Economics and Business Research Ltd (CEBR) for Tobacco Retailers Alliance. These have not been quantified.

7.14 The CEBR report further points out that the proposals may increase retailers' transaction times with products no longer on display, reducing the number of transactions per hour that a retailer can handle. A study *based on one retail premises*⁴⁰ estimated that conducting tobacco sales from under the counter rather than from the gantry would add up to an additional 230 minutes every seven days. This would amount to an additional 2.206m work hours per year across the estimated 11,000 premises in Scotland, at an estimated costs of £13.4m [replicating the convenience store methodology]. As the SG is not specifying where and how tobacco products are stored, and it is not known if these results are more widely applicable, this information is noted but the estimate is not included in the costing analysis.

7.15 It was not possible to model the proportion of turnover generated from footfall, however, since the targeted outcome of the legislation is to prevent young people from becoming regular smokers in the first place, this group would not be accounted for in the footfall calculation to begin with and there should therefore be no displacement included in the cost.

7.16 It should be noted that experience in Saskatchewan has shown no negative economic consequence on retailers due to the ban on tobacco displays⁴¹.

7.17 It is assumed that the main impact will be on children and young adolescents. Research found that 90 per cent of smokers know what brand of cigarettes they are going to purchase before going into a shop and less than 10 per cent change the brand they smoke annually⁴². Assuming that banning displays would reduce sales in *under 18s* by 5%, this would result in a drop in income of around £360,000 per annum to retailers across Scotland. (Although these are, by definition, from illegal sales.)

7.18 Costs to government: The regulation is intended to reduce the number of would-be smokers under the age of 18 from taking up smoking. This is likely to have benefits in the form of reduced costs to the NHS due to a reduction in smoking-related morbidity and mortality later in life. At the same time, the cost of treatment of old-age related morbidity may increase in the long-term as a greater proportion of people who chose not to smoke reach a higher life expectancy. Although it should be noted that action on smoking is part of policy measures designed to increase Healthy Life Expectancy.

7.19 Costs to SG: there will be initial costs associated with providing information to retailers around the necessity to comply with new regulations including their extent and the timing involved. Advertising and marketing costs are estimated to be in the region of £350,000⁴³.

7.20 Costs to the UK exchequer: any reduction in consumption of cigarettes will have an associated effect on tax revenue to the Exchequer. Using data from HMRC receipts the revenue from tax and duty on each individual stick is around 22.5p. The reduction in consumption by 5% of under 18s would result in a loss of £1.4m per annum. In line with government guidance it is assumed that a reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly similar macroeconomic effects.

8. Costs to Local Authorities: Trading Standards would have an essential role in advising businesses on how to comply with legislation. Trading Standards Services visit 10% of tobacco retailers for test purchasing purposes, a further 10% for business advice (under the enhanced enforcement programme already agreed) and an estimated further 10% for other Trading Standards duties. The Scottish Government has agreed to fund a national campaign to help Trading Standards Officers inform tobacco retailers of the implementation of this new legislation and avoid costs falling on local government. Nevertheless there would be an increase in demand for advice to businesses from trading standards in the run up to introduction which may not lead to a need for additional resources but would cause a reprioritisation of duties and resources. A longer lead-in time for implementation would ease any pressure.

Benefits

8.1 Option 1: do nothing

Under this option there would be no change in the manner in which tobacco products are currently displayed. There would be no associated benefits.

8.2 Option 2: Restrict Display of Tobacco Products and Smoking Accessories

The key health benefits come from a long term reduction in the adult smoking rates. Even relatively small changes in the smoking rate will yield health benefits both in terms of lives saved and reduced NHS costs.

8.3 The intended outcome of this intervention is to reduce the number of under 18 year olds who take up smoking due to awareness of tobacco products from display. Restrictions on display would help de-normalise smoking as an activity and reduce the awareness of tobacco products amongst young people. But the continuing existence of displays, albeit of a smaller size, is likely to have a minimal impact on smoking rates on young people. Any form of display can be considered a form of advertising, encompassing a way of showing products.

8.4 It is assumed that there would be a very small reduction in take up of smoking in under 18s. The long term fall in the prevalence rate is calculated based on the assumption that a fall in current consumption prevalence of cigarettes from the under 18 age group will feed through into a fall in the adult smoking prevalence rate. It is assumed that the fall in prevalence in under 18s will be maintained in adulthood.

8.5 There are a number of different ways of estimating the monetary value of benefits from reduced smoking, to the individual and to society. Restrictions on tobacco display in retail environments may not have an immediate benefit on health or smoking prevalence, but based on the evidence, it is reasonable to expect that fewer young people would start using tobacco and that smoking prevalence among young people would decline at a faster rate than otherwise. DoH developed a methodology based on the work of Henriksen et al (2004)⁴⁴ who found, using a sample of 2,100 Californian schoolchildren, that exposure to retail tobacco marketing resulted in a 50% increase in the odds of ever smoking. This finding was made even after controlling for other correlates of ever smoking, such as risk taking, maternal supervision and self-reported grades.

8.6 It is possible to apply the Henriksen findings to UK data with the caveats that; the tobacco advertising that the Californian children were exposed to appears to be less restricted than the current UK situation (which nonetheless allows some advertising); laws on underage sale may differ; and the policy under consideration includes the prohibition of display (which can be a form of advertising). Additionally, their sample of children aged 11–14 was rather different to UK schoolchildren – for example, 42% of respondents were Hispanic.

8.7 The 2006 SALSUS data shows that 13% of a sample of 13–15 year olds were regular smokers, (4% of 13 yrs olds and 15% of 15 yr olds), whereas 47% of the sample had “ever smoked”^e. There are therefore 0.27 regular smokers for each ‘ever smoker’ in the sample.

8.8 Clearly, the effect size in the Henriksen study is very large – showing a 50% increase in the odds of ever smoking and, as stated above, UK point of sale advertising is already quite restrictive, so the comparison is not entirely fair. We assume a much more modest effect from displays. In the case of the size – and therefore altering the size of - displays we have assumed 5%. (We have assumed 10% in the case of a ban). This means we are saying that if current advertising and display of tobacco products resulted in a 5% increase in the odds of ‘ever smoking’, the rate of 11–15 year old ‘ever smokers’ would be 45% (instead of the current 47%) if these were prohibited.

8.9 The 2 percentage point gap between these two figures – the implied effect of existing advertising and display – may be associated with $(2 * 0.27) = 0.6\%$ of the 13–15 year old sample being regular smokers. Using a birth cohort size of 60,000 births per annum, a 0.6 % percentage point reduction in the number of regular smokers aged 11–15 would result in 360 fewer smokers in each annual cohort. If the reduction persists into adulthood (which is likely, as the reduction in display will persist), the estimates equate this to 597 discounted years of life^f saved in each annual cohort (monetised as £29.9 million per annual cohort). When summed across 30 years and discounted^g the figure equals £569m.

8.10 Even if the impact were much smaller – say 1% reduction rather than 5, (a 0.5% reduction in the number of smokers, which is closer to the estimate around sales data (0.4%)) the impact per annum would still be 75 fewer smokers per annual birth cohort resulting in an additional 124 life yrs (monetised as £6.2 m per annum or £118m over 30 yrs).

^e Sum of those saying they were regular, occasional, or former smokers, or had tried once.

^f DoH calculated that each child deterred from taking up smoking = 1.66 discounted life yrs (£83,100 monetary value based on £50,000 per yr of life) (*Consultation on the future of tobacco* (2008) Department of Health)

^g Discounted at 3.5%.

8.11 A reduction in the size of displays may also aid those attempting to quit smoking. DoH also calculated the monetised value for each adult that the policy induces to quit smoking as £57,300. These potential savings have not been quantified.

8.12 Option 3: Ban Display of Tobacco Products and Smoking Accessories

The intended outcome of this intervention is to reduce the number of under 18 year olds who take up smoking due to awareness of tobacco products from display. The main measurable benefits in the form of cost savings to the NHS due to reduced morbidity and mortality rates are addressed in the cost section of the analysis. Banning displays would help de-normalise smoking as an activity and reduce the awareness of tobacco products amongst young people.

8.13 Banning the display of tobacco would mean that a number of people under the age of 18 might be stopped from buying tobacco thereby reducing the chance of becoming addicted adult smokers with a resulting increased life expectancy. In Scotland 47,000 people under the age of 18 are estimated to be smokers, based on rates reported in SALSUS 2006 and SHoS applied to the GRO mid year population figures 2007⁴⁵. It is likely that this is an underestimate as the SHoS in particular, excludes populations of young people who are, for example homeless, in prison, in the armed forces or students living away from home.

8.14 It is assumed that there would be a reduction in take up of smoking in under 18s. The long term fall in the prevalence rate is calculated based on the assumption that a fall in current consumption of cigarettes from the under 18 age group will feed through into a fall in the adult smoking prevalence rate. It is assumed that the fall in prevalence in under 18s will be maintained in adulthood.

8.15 Using the same methodology as described in paragraphs 8.8 and 8.9 the potential impact of banning displays was calculated assuming that the existence of displays at point of sale increases the odds of ever smoking by 10%.

8.16 This means we are saying that if current display of tobacco products resulted in a 10% increase in 'ever smokers', the rate of 11–15 year old 'ever smokers' would be 43% (instead of the current 47%) if these were prohibited.

8.17 The 4 percentage point gap between these two figures – the implied effect of existing advertising and display – may be associated with $(4 * 0.27) = 1.14\%$ of the 13–15 year old sample being regular smokers. Using a birth cohort size of 60,000 births per annum, a 1.1 % percentage point reduction in the number of regular smokers aged 11–15 would result in 690 fewer smokers in each annual cohort. If the reduction persists into adulthood (which is likely, as the reduction in display will persist), the estimates equate this to 1140 discounted years of life^h saved in each annual cohort (monetised as £57 million per annual cohort). When summed across 30 years and discountedⁱ the figure equals £1.08bn. Again if a more conservative assumption were made that, in line with the sales data analysis, prevalence decreased by 0.8% this would still lead to 560 fewer smokers per annual birth cohort resulting in an additional 930 life yrs (monetised as £4.7 m per annum or £884m over 30 yrs).

^h DoH calculated that each child deterred from taking up smoking = 1.66 discounted life yrs (£83,1000 monetary value based on £50,00 per yr of life) (*Consultation on the future of tobacco* (2008)

Department of Health)

ⁱ Discounted at 3.5%.

8.18 Even if the impact were much smaller still – say 2% reduction rather than 10, (a 0.2% reduction in the number of smokers) the impact per annum would still be 148 fewer smokers per annual birth cohort resulting in an additional 246 life yrs (monetised as £12.3 m per annum or £234m over 30 yrs).

9. To Review and Update Statutory Controls on the Sale of Tobacco Products Options

9.1 *Option 1: Do nothing:* no additional sanctions or requirement to be registered or licensed.

Option 2: Introduction of Banning Orders: allows courts the power to impose a “banning order” to prevent a retailer from selling a particular tobacco if they continually breach legislation.

Option 3: Registration Scheme: a requirement for all tobacco retailers to be registered in order to sell tobacco.

Option 4: Licensing scheme: introduction of a licensing scheme, similar to that of other age restricted products.

9.2 Fixed Penalty Notice Scheme

In conjunction with introducing one or more of the three alternatives to the “do nothing”, we would introduce a fixed penalty notice scheme. This would give Trading Standards Officers (TSO) the power to fine those retailers found to be selling tobacco to under-18s. The aim of this policy move is to ensure better compliance. This move is in line with recommendations made in the Macrory Review of Regulatory Penalties (2006)⁴⁶. We envisage that the fixed penalty notice scheme would enhance the current system whereby retailers can be taken to court and fined up to £2500 for continually breaking the law. The expectation is that the introduction of a fixed penalty notice scheme would mean that only the most serious of offenders would be referred to Procurators Fiscal.

9.3 If a registration scheme were to be introduced then the fixed penalty scheme could be extended to cover failure to register a premise retailing tobacco products.

Costs and benefits:

Costs

9.4 Option 1: Do nothing

There would not be any requirements to legislate under Option 1. There would be no public health benefits over a status quo option

9.5 Option 2: Introduction of Banning Orders This would not require retailers to actively apply for a licence but allows for a “banning order” to be imposed to prevent a retailer from selling tobacco, either temporarily or permanently, if they continually breach legislation. This would operate in conjunction with a fixed penalty notice scheme.

9.6 This measure has been introduced in New Zealand and a number of territories in Australia. Legislation was passed recently in England to implement this system.⁴⁷

9.7 The costs for retailers in complying with a negative licensing scheme are likely to be minimal as they will need to do no more than ensure compliance with the law on underage sales. This is something that they should already be doing – the introduction of additional sanctions for non-compliance will not impose an additional burden in terms of staff training or other compliance costs.

9.8 However, if retailers continually flout the law on underage sales after the imposition of a fixed penalty notice, it is anticipated that a retailer can be banned from selling tobacco products. The costs to the retailer could then be substantial, particularly if tobacco accounts for a large proportion of the retailer's earnings. A tobacco banning order could also mean loss of revenue from sale of other products as smokers may make other purchases when they buy tobacco.

9.9 It is assumed that the possibility of the imposition of a banning order will increase compliance with legislation by retailers. This will result in a decrease in the sales of tobacco to under 18s. A 10% reduction in sales to *under 18s* is estimated to result in a loss of £717,600 per annum.

9.10 Costs to the UK exchequer: any reduction in consumption of cigarettes will have an associated effect on tax revenue to the Exchequer. Using data from HMRC receipts the revenue from tax and duty on each individual stick is around 22.5p. A reduction in consumption of 10% by under 18s would lead to an annual loss of £2.7m. In line with government guidance it is assumed that a reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly similar macroeconomic effects.

9.11 Costs to the NHS: a more effective enforcement regime may encourage young people who already smoke regularly to try and quit. They will require smoking cessation support from cessation services. It is anticipated that the £11m allocated annually across Scotland for smoking cessation services will allow any additional demand to be met. Nicotine replacement therapy, for example, is available to young people over the age of 12 and is available on prescription.

9.12 Cost to local authorities

Trading Standards consider that the risk of a banning order is likely to encourage greater vigilance by retailers and, in time, reduce the need for TSO enforcement action. They do not envisage that there will be more than a small number of prohibition orders, so the costs involved in policing them could be met from existing resources within their current tobacco control work programme.

9.13 There is a risk that reducing the availability of cigarettes to young people through a more effective enforcement regime, could drive more young smokers to attempt to purchase illicitly traded tobacco products. The survey sponsored by ASH (England) found that 30% of 16 – 24 year olds sometimes buy cigarettes from an illicit source.⁴⁸ HMRC estimate that in 2006/07 the illicit share of the tobacco market was between 9% and 17% (mid point 13%) . The revenue loss associated with the mid point was £1.7bn⁴⁹.

9.14 The SG has made additional financing available to Scottish Local Authorities to enable them to increase enforcement of tobacco sales law and to work in partnership with HMRC /UK Border Agency to tackle illicit sales within local communities.

9.15 In November 2008, the new UK tobacco smuggling strategy was launched. This includes a commitment to strengthen co-operation with local and regional partners.

9.16 Option 3: Registration Scheme; this would operate in conjunction with a fixed penalty notice scheme and the ability for courts to impose banning orders. A tobacco sales registration scheme has been suggested by Trading Standards Officers as an alternative to a licensing scheme. This scheme would require all tobacco retailers to be registered on one national register in order to sell tobacco. It should be assumed that costs will be kept to an absolute minimum with the least possible administrative burden on retailers and local authorities. The Republic of Ireland has already legislated for a registration scheme.

9.17 Costs to retailers: the biggest share of the cost involved in introducing a registration scheme is expected to be carried by the Government. Costs to the industry will be minimal and can be expected to merely involve the on-off labour cost needed to fill in a form and are not included in the cost discussion.

9.18 It is assumed that the possibility of the imposition of a banning order will increase compliance with legislation by retailers. The additional information available to Trading Standards Officers through a registration scheme will allow better targeting of resources and it is considered that this will increase compliance over and above the existence of banning orders. It is assumed that this would be similar to a positive licensing scheme. This will result in a decrease in the sales of tobacco to under 18s. A 15% reduction in sales to under 18s is estimated to result in a loss of £1.08m per annum.

9.19 Costs to SG: there will be initial set up costs: these will include advertising and marketing to give retailers information about the necessity to comply with the scheme and the process to be undertaken. These are estimated to be in the region of £350,000⁵⁰.

9.20 There will be an initial cost attached to the creation of a database to hold national level information. This is estimated to be around £7,500⁵¹. For the establishment of the data base and the implementation of a registration scheme it has been assumed that in the first year this would require the employment of an analyst full time and 0.5 FTE of an administrative assistant. The estimated salary cost would be around £40k for year 1 of the scheme: (assuming annual salaries of £23k for an analyst and £16k for an administrative assistant + on costs). For the continuing administration and maintenance of a registration scheme and database it has been assumed that only the 0.5 FTE of an administrative assistant would be necessary. The estimated salary cost for this would be around £10k per year.

9.21 It is assumed that any additional analytical staff could be located within existing office space within the Scottish Government; therefore, accommodation costs should be minimal.

9.22 There are additional set up costs associated with employment: these relate to providing each employee with furniture and equipment (£2,000 per employee), and running costs to include IT provision and support, telephone, electricity and cleaning. These are estimated at £2,100 per employee⁵². This results in an addition £4,000 in set up costs and an on going £2,100 in running costs for the registration scheme.

9.23 Costs to the UK exchequer: any reduction in consumption of cigarettes will have an associated effect on tax revenue to the Exchequer. Using data from HMRC receipts the revenue from tax and duty on each individual stick is around 22.5p. A reduction in consumption of 15% by under 18s would result in a decrease of duty and VAT of £4.01m per annum. In line with government guidance it is assumed that a reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly similar macroeconomic effects.

9.24 Costs to the NHS: a more effective enforcement regime may encourage young people who already smoke regularly to try and quit. They will require smoking cessation support from cessation services. It is anticipated that the £11m allocated annually across Scotland for smoking cessation services will allow any additional demand to be met. Nicotine replacement therapy, for example, is available to young people over the age of 12 and is available on prescription.

9.25 Costs to local authorities: Trading Standards would have an essential role in advising businesses on how to comply with legislation. Trading Standards Services visit 10% of tobacco retailers for test purchasing purposes, a further 10% for business advice (under the enhanced enforcement programme already agreed) and an estimated further 10% for other Trading Standards duties. The Scottish Government would fund a national campaign to help Trading Standards Officers inform tobacco retailers of the implementation of this new legislation and avoid costs falling on local government. Nevertheless there would be an increase in demand for advice to businesses from trading standards in the run up to introduction which may not lead to a need for additional resources but would cause a reprioritisation of duties and resources. A longer lead-in time for implementation would ease any pressure.

9.26 There is a risk that reducing the availability of cigarettes to young people through a more effective enforcement regime, could drive more young smokers to attempt to purchase illicitly traded tobacco products. The survey sponsored by ASH (England) found that 30% of 16 – 24 year olds sometimes buy cigarettes from an illicit source.⁵³ HMRC estimate that in 2006/07 the illicit share of the tobacco market was between 9% and 17% (mid point 13%). The revenue loss associated with the mid point was £1.7bn⁵⁴.

9.27 The SG has made additional financing available to Scottish Local Authorities to enable them to increase enforcement of tobacco sales law and to work in partnership with HMRC /UK Border Agency to tackle illicit sales within local communities.

9.28 In November 2008, the new UK tobacco smuggling strategy was launched. This includes a commitment to strengthen co-operation with local and regional partners.

9.29 Option 4: Positive licensing: this would operate in conjunction with a fixed penalty notice scheme and the ability for courts to impose banning orders. This option might have the greatest immediate impact on reducing the number of illegal underage sales by providing a clear incentive for retailers to comply with the law. The possibility of licence revocation would provide a strong incentive to comply with the law. However it is the option which would impose additional costs on both business and Scottish local authorities.

9.30 Costs to retailers: positive licensing would create an additional administrative burden on small business. It might impose a particularly significant burden on small shops like

newsagents and convenience stores. Under a positive licensing scheme, retailers would need to apply to the local authority for a licence to sell tobacco with the designated fee, in a similar way to that for alcohol, and pay the costs of meeting the licensing requirements. (An appropriate cost for a licence would need to be agreed, bearing in mind that many retailers are small businesses.)

9.31 The DoH consultation⁵⁵ assumed a cost of £50 for a licence and an additional administrative cost of £50 to retailers. This may be conservative. In Scotland this would mean a cost of approx £1.107m.

9.32 It is assumed that the possibility of the imposition of a banning order will increase compliance with legislation by retailers in a similar fashion to registration. The additional information available to Trading Standards Officers through a licensing scheme will allow better targeting of resources and it is considered that this will increase compliance over and above the existence of banning orders. This will result in a decrease in the sales of tobacco to under 18s. A similar assumption about impact is made to that for the registration scheme of a 15% reduction in sales to under 18s. This would result in an estimated loss of £1.08m per annum.

9.33 Costs to SG: as with a registration scheme there would be costs associated with advertising and marketing to give retailers information about the necessity to comply with the scheme and the process to be undertaken. This process is likely to be considerably more complex than the registration scheme and therefore the cost is anticipated to exceed that estimate of £350,000 but has not been quantified at this time.

9.34 Costs to the UK exchequer: any reduction in consumption of cigarettes will have an associated effect on tax revenue to the Exchequer. Using data from HMRC receipts the revenue from tax and duty on each on an individual stick is around 22.5p. A reduction in consumption of 15% by under 18s would result in a decrease of duty and VAT of £4.01m per annum. In line with government guidance it is assumed that a reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly similar macroeconomic effects.

9.35 Costs to the NHS: a more effective enforcement regime may encourage young people who already smoke regularly to try and quit. They will require smoking cessation support from cessation services. It is anticipated that the £11m allocated annually across Scotland for smoking cessation services will allow any additional demand to be met. Nicotine replacement therapy, for example, is available to young people over the age of 12 and is available on prescription.

9.36 Costs to local authorities: a positive licensing scheme would also impose costs on local authorities. Licensing schemes are costly to administer because of the number of staff needed to process the paperwork. It would impose a significant additional administrative burden on local authorities in processing the applications and issuing licences not least because of the large number of retailers involved (over 11,000).

9.37 It is very difficult to put a cost estimate on administering a positive licensing scheme for tobacco retailers without detail of how the scheme would operate. However extrapolating from the figures used by the DoH⁵⁶ suggest a figure in the region of £1.7m should all retailers apply for a licence.

9.38 There is a risk that reducing the availability of cigarettes to young people through a more effective enforcement regime, could drive more young smokers to attempt to purchase illicitly traded tobacco products. The survey sponsored by ASH (England) found that 30% of 16 – 24 year olds sometimes buy cigarettes from an illicit source.⁵⁷ HMRC estimate that in 2006/07 the illicit share of the tobacco market was between 9% and 17% (mid point 13%). The revenue loss associated with the mid point was £1.7bn⁵⁸.

9.39 The SG has made additional financing available to Scottish Local Authorities to enable them to increase enforcement of tobacco sales law and to work in partnership with HMRC /UK Border Agency to tackle illicit sales within local communities.

9.40 In November 2008, the new UK tobacco smuggling strategy was launched. This includes a commitment to strengthen co-operation with local and regional partners.

Benefits

9.41 Option 1: Do Nothing

Under this option no additional sanctions or requirement to be registered or licensed would be imposed. However an enhanced enforcement programme is being funded by the Government and should therefore form part of assessments under this option. In addition, the Government will continue to work with all relevant stakeholders to promote and embed a “no proof, no sale” culture through encouraging the Young Scot “*National Entitlement Card*”.

9.42 **Option 2: Introduction of Banning Orders:** Trading Standards consider that the risk of a prohibition order is likely to encourage greater vigilance by retailers and, in time, reduce the need for TSO enforcement action. They do not envisage that there will be more than a small number of prohibition orders, so the costs involved in policing them could be met from existing resources within their current tobacco control work programme. This option would have the ability to issue FPNs and banning orders for failure to comply with the law on underage sales but without the drawbacks associated with bureaucracy and paperwork for local authorities and the accompanying regulatory burden on business and retailers.

9.43 It is assumed that there would be a reduction in take up of smoking in under 18s. It is assumed that only half of the fall in expenditure on cigarettes from shops will translate into a fall in consumption. The long term fall in the prevalence rate is calculated based on the assumption that a fall in current consumption of cigarettes from the under 18 age group will feed through into a fall in the adult smoking prevalence rate.

9.44 Replicating methodology used by the DoH to estimate the impact of a vending machine ban, assume that the potential to impose banning order reduces sales by 10% in under 18s. It is further assumed that consumption only reduces by 5% - i.e. assumed that 50% continue to source from elsewhere. Using data from SALSUS and SHS, the average number of cigarettes smoked (across the 13 – 17 age group) per day is calculated as 8.3. A 5% reduction would then be 0.42.

9.45 Using a Scottish birth cohort, it is assumed that the reduction persists throughout the cohort’s life. DoH calculations suggest smoking one less cigarette per day from a young age

results in 0.12 life years gained per person (monetised as £5950^j). The reduction here would be equivalent to 0.049 life yrs saved per person (monetised as £2494). Using a birth cohort of 60,000 and a smoking prevalence of 22% (16– 17 yr olds rate) 658 lives would be saved every year (value £32.9m).

9.46 Discounted over 30 years this gives a Net Present Value (NPV^k) of £627m over 30 yrs.

9.47 Option 3: Registration Scheme

A nationwide registration scheme would allow for better informed enforcement (check-ups, test purchases, communication with retailers) when at the same time posing no extra cost in allocating retailers for such purposes. The ability of better enforcement can be expected to an extent to give a greater incentive to comply to retailers which in turn should lead to the desired outcome of reduced consumption of tobacco products by under 18 year olds.

9.48 Registration combines all of the elements of a banning order scheme, with an element of positive licensing, but without the costs and administration burden to retailers and local authorities that a positive licensing scheme would impose.

9.49 In 2007 there were 7 successful prosecutions for selling to persons under 16, 2 in Sheriff summary and 5 in District Courts⁵⁹. Prosecutions in the Sheriff court cost between approx £250 and £2200 per case in court and prosecution costs alone⁶⁰, depending on the plea. Prosecution costs for district courts range from £80 to £400: (court costs are not available for district courts).

9.50 This excludes the preparation time taken before the case is taken to court. TSOs can spend a number of days to a number preparing a case⁶¹. This is a significant resource cost. If they were able to issue a fixed penalty notice this could result in considerable resource saving.

9.51 It also excludes the costs of preparation for cases in which the COPFS take no proceedings or those which result in a non-court disposal.

9.52 It is assumed that there would be a reduction in take-up of smoking in under 18s. It is assumed that only half of the fall in expenditure on cigarettes from shops will translate into a fall in consumption. The long term fall in the prevalence rate is calculated based on the assumption that a fall in current consumption of cigarettes from the under 18 age group will feed through into a fall in the adult smoking prevalence rate. It is assumed that the increasing compliance of retailers would result in a 7.5% reduction in consumption under 18s.

9.53 Replicating the methodology used by the DoH to estimate the impact of a vending machine ban, assume that the potential to impose banning orders plus a registration scheme increases ability for TSOs to ensure compliance reduces sales by 15% in under 18s. Further assume that consumption only reduces by 7.5% - i.e. assume that 50% continue to source from elsewhere. Using data from SALSUS and SHS, the average number of cigarettes smoked (across the 13 – 17 age group) per day is calculated as 8.3. A 7.5% reduction would then be 0.62.

^j Using DoH valuation of a year of life as £50,000

^k Discounted at 3.5%: note health benefits are sometimes discounted using a lower discount rate.

9.54 Using a Scottish birth cohort, it is assumed that the reduction persists throughout the cohort's life. DoH calculations suggest smoking one less cigarette per day from a young age results in 0.12 life years gained per person (monetised as £5950^l). The reduction here would be equivalent to 0.075 life yrs saved per person (monetised as £2494). Using a birth cohort of 60,000 and a smoking prevalence of 22% (16– 17 yr olds rate) 988 lives would be saved every year (value £49.4m).

9.55 Discounted over 30 years this gives a NPV^m of £940m over 30 yrs.

9.56 Option 4: Positive licensing: the third option would be to introduce a licensing scheme, similar to that of other age restricted products. It should be assumed that the cost of a license to the retailer is proportionate to the perceived harm caused to children and young people of a retailer breaking the terms of a licence, i.e. selling to under-18s, whilst giving consideration to the costs of other licences of age restricted products, such as alcohol, and the cost of administering the scheme to local authorities

9.57 A positive licensing system might have some specific benefits. This option might have the greatest immediate impact on reducing the number of illegal underage sales by providing a clear incentive for retailers to comply with the law. The possibility of licence revocation would provide a strong incentive to comply with the law.

9.58 A positive licensing system might also generate income through licence fees for local authorities to appoint additional trading standards officers to monitor compliance with the law, although local authorities might not necessarily use such extra income in that way.

9.59 In 2007, there were 7 successful prosecutions for selling to persons under 16, 2 in Sheriff summary and 5 in District Courts⁶². Prosecutions in the Sheriff court cost between approx £250 and £2200 per case in court and prosecution costs alone⁶³, depending on the plea. Prosecution costs for district courts range from £80 to £400: (court costs are not available for district courts).

9.60 This excludes the preparation time taken before the case is taken to court. TSOs can spend a number of days preparing a case⁶⁴. This is a significant resource cost. If they were able to issue a fixed penalty notice this could result in considerable resource saving.

9.61 It is assumed that there would be a reduction in take up of smoking in under 18s. It is assumed that only half of the fall in expenditure on cigarettes from shops will translate into a fall in consumption. The long term fall in the prevalence rate is calculated based on the assumption that a fall in current consumption of cigarettes from the under 18 age group will feed through into a fall in the adult smoking prevalence rate.

9.62 The estimation of benefit assumes that the impact of a positive registration scheme would be similar to that of a registration scheme. This assumes a reduction in consumption of 7.5% in under 18s.

9.63 As calculated in paragraph 6.42 this results in a saving of 988 per annum (value £49.4m).

^l Using DoH valuation of a year of life as £50,000

^m Discounted at 3.5%

9.64 Discounted over 30 years this gives a NPVⁿ of £940m over 30 yrs.

9.65 All 3 schemes potentially result in the loss of the ability to sell tobacco for repeated flouting of the underage law. The key differences between the options are the difference in the rate of compliance assumed with each option and the costs to businesses, and local authorities and the Scottish Government.

ⁿ Discounted at 3.5%:

10. Tobacco Vending Machines

Options

- 10.1 *Option 1: Do Nothing*
- Option 2: Introduction of Age Restricting Mechanisms*
- Option 3: Ban Sale of Tobacco from Vending Machines*

Costs and benefits

Costs

10.2 Option 1: Do Nothing

Keeping current legislation and restrictions would impose no additional costs to industry or government. The costs and benefits of this option should be considered in the context of other measures being introduced by the Government, such as work with CoSLA and Trading Standards Officers to enhance enforcement of tobacco sales laws

10.3 Option 2: Introduction of Age Restricting Mechanisms

There are approximately 6,552 vending machines installed in Scotland. This is a pro rata share by population of a UK figure of 78,000 supplied by NACMO to the DoH for use in their consultation. An estimated 36 to 39 million cigarettes being sold through this outlet in Scotland. Using data from SALSUS and SHS it is possible to provide estimates of the number of cigarettes bought from vending machines by young people under 18. SALSUS data tells us that 10% of young smokers buy cigarettes from vending machines. Applying this to the total number of cigarettes estimated to be smoked by each age group gives us a total of 14.2 million cigarettes.

10.4 The 14.2 million cigarettes purchased by under 18 year olds constitute roughly 36% - 40% of the vending machine market.

10.5 Costs to retailers: a number of alternatives have been suggested to replace conventional vending machines with machines allowing for age access control. The DoH has identified a number of mechanisms to restrict the sales of tobacco to under-18s, including infrared remote control, ID coin mechanism or electronic age verification.

10.6 One such option put forward is radio frequency remote control units which, at a unit cost of £125, would bring a one-off cost of £819,000. Added to this would be time costs to both staff and consumers (from operating the vending machines) of between £61,700 and £66,800.

10.7 As SALSUS data and reports of test purchasing indicate that under 18s are able to source cigarettes from retail outlets it is assumed that 70% of vending machine sales will be displaced elsewhere, even if there is full compliance with an age restriction. Assuming a 30% reduction in the amount of cigarettes sold to under 18s due to this measure, by this means a loss to retailers of £260,000 in lost revenue.

10.8 Costs to the UK exchequer: any reduction in consumption of cigarettes will have an associated effect on tax revenue to the Exchequer. Using data from HMRC receipts the revenue from tax and duty on each individual stick is around 22.5p. A 100% reduction in the amount of cigarettes sold to under 18s by this means would impose an additional loss to the treasury of approximately £3.2m in lost VAT and duty revenue. However it is anticipated that

it is more likely that around 70% of sales would be displaced. This would lead to a reduction to the exchequer of £950,000 in lost VAT and duty revenue. In line with government guidance it is assumed that a reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly similar macroeconomic effects.

10.9 Costs to the NHS: reducing access to cigarettes through more effective controls on vending machines may encourage young people who already smoke regularly to try and quit. They will require smoking cessation support from cessation services. It is anticipated that the £11m allocated annually across Scotland for smoking cessation services will allow any additional demand to be met. Nicotine replacement therapy, for example, is available to young people over the age of 12 and is available on prescription.

10.10 Cost to SG: there will be initial set up costs: these will include advertising and marketing to give retailers information about the necessity to comply with the scheme and the process to be undertaken. These are estimated to be in the region of £350,000⁶⁵.

10.11 Costs to the local authority: Trading Standards would have an essential role in advising businesses on how to comply with legislation. Trading Standards Services visit 10% of tobacco retailers for test purchasing purposes, a further 10% for business advice (under the enhanced enforcement programme already agreed) and an estimated further 10% for other Trading Standards duties. The Scottish Government would fund a national campaign to help Trading Standards Officers inform tobacco retailers of the implementation of this new legislation and avoid costs falling on local government. Nevertheless there would be an increase in demand for advice to businesses from trading standards in the run up to introduction which may not lead to a need for additional resources but would cause a reprioritisation of duties and resources. A longer lead-in time for implementation would ease any pressure.

10.12 There is a risk that reducing the availability of cigarettes through age restrictions on machines, could drive more young smokers to attempt to purchase illicitly traded tobacco products. The survey sponsored by ASH (England) found that 30% of 16 – 24 year olds sometimes buy cigarettes from an illicit source.⁶⁶ HMRC estimate that in 2006/07 the illicit share of the tobacco market was between 9% and 17% (mid point 13%) . The revenue loss associated with the mid point was £1.7bn⁶⁷.

10.13 The SG has made additional financing available to Scottish Local Authorities to enable them to increase enforcement of tobacco sales law and to work in partnership with HMRC /UK Border Agency to tackle illicit sales within local communities.

10.14 In November 2008, the new UK tobacco smuggling strategy was launched. This includes a commitment to strengthen co-operation with local and regional partners.

10.15 Option 3: Ban Sale of Tobacco from Vending Machines

There were around 1.3 million vending machines in the UK in 2007 selling £3.58 bn worth of products⁶⁸. This represents an estimated 4.8% of household expenditure on food and non alcoholic beverages although it should be noted that no other age restricted products (e.g. alcohol, knives, fireworks) are sold via vending machines. Cigarette vending machines represent one of the top 3 main sectors of the vending machine market. Although they now represent a steadily declining percentage of the market⁶⁹. A number of jurisdictions across the

world have completely banned tobacco sales from vending machines. These include Vietnam, China, Hong Kong, Russia, Singapore, Thailand, Bermuda, two US states and 22 countries in Europe.⁷⁰

10.16 The UK market is increasingly dependent on overseas machine manufacturers for new machines. Distributors and operators are mainly UK companies⁷¹. Sinclair Collis, a cigarette vending machine operator, advises that they operate in Scotland, employing 14 staff. The likely impact on these employees of a ban on cigarette vending machines is, as yet, unclear.

10.17 Assuming a retail price per packet of 20 cigarettes of £5.66 and a tax burden per packet of £4.48 this gives a residual of £1.18 per packet. A complete ban on vending machines would cause a potential loss to the industry and retailers assuming that not all of the sales will be offset by purchases from other sources. In addition to the assumed 30% reduction from under 18s (which are illegal purchases) it is assumed that a further 35% of the sales (50% of sales to over 18s) would not be displaced elsewhere. This leads to a reduction in overall cigarette sales of around 0.3% and a reduction to retailers of sales revenue of around £1 million.

10.18 Costs to the UK exchequer: any reduction in consumption of cigarettes will have an associated effect on tax revenue to the Exchequer. Using data from HMRC receipts the revenue from tax and duty on each individual stick is around 22.5p. Using the same assumption as outlined in paragraph 8.16, a loss to the Treasury of around £3.8m is estimated. In line with government guidance it is assumed that a reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly similar macroeconomic effects.

10.19 Additionally the DoH assumes that there was a loss of convenience to the adult consumer. Using an assumption of a marginal willingness to pay of £1 per packet the annual loss of convenience to legitimate cigarette users would be £1.3m.

10.20 Costs to the NHS: reducing access to cigarettes through a ban on vending machines may encourage young people who already smoke regularly to try and quit. They will require smoking cessation support from cessation services. It is anticipated that the £11m allocated annually across Scotland for smoking cessation services will allow any additional demand to be met. Nicotine replacement therapy, for example, is available to young people over the age of 12 and is available on prescription.

10.21 There is a risk that reducing the availability of cigarettes through a ban on vending machines, could drive more young smokers to attempt to purchase illicitly traded tobacco products. The survey sponsored by ASH (England) found that 30% of 16 – 24 year olds sometimes buy cigarettes from an illicit source.⁷² HMRC estimate that in 2006/07 the illicit share of the tobacco market was between 9% and 17% (mid point 13%) . The revenue loss associated with the mid point was £1.7bn⁷³.

10.22 The SG has made additional financing available to Scottish Local Authorities to enable them to increase enforcement of tobacco sales law and to work in partnership with HMRC /UK Border Agency to tackle illicit sales within local communities.

10.23 In November 2008, the new UK tobacco smuggling strategy was launched. This includes a commitment to strengthen co-operation with local and regional partners.

Benefits

10.24 Do Nothing:

Keeping current legislation and restrictions would impose no additional costs to industry or government.

10.25 Option 2: Introduction of Age Restricting Mechanisms

The main benefits are likely to be in terms of health – from a public health perspective - a reduction in morbidity and mortality due to a reduction in smoking rates. The main population group likely to benefit are young people who currently use vending machines as their preferred method of buying cigarettes. Retaining the availability of machines but restricting access to over 18s would maintain the convenience for adult smokers but minimise the loss of revenue to both retailers and HM Customs and Excise.

10.26 It is assumed if the sale of cigarettes were restricted to adults aged 18 and over with identification then there would be resulting decrease in the number of under 18s able to access this as a source of tobacco. The long term fall in the prevalence rate is calculated based on the assumption that a fall in current consumption prevalence of cigarettes from the under 18 age group will feed through into a fall in the adult smoking prevalence rate. It is assumed that the fall in prevalence in under 18s will be maintained in adulthood.

10.27 It is assumed that 10% of sales in under 18s are currently from vending machines, based on data from SALSUS. The estimated change to sales assumes that, firstly, there is unlikely to be full compliance with the requirement for identification. Given the experience of young people's ability to circumvent age restrictions on goods, it is assumed that 25% of those currently purchasing from vending machines continue to do so. This would mean a reduction in sales of 2.5% (assumed to translate into a reduction in consumption).

10.28 It is further assumed that for the remaining 7.5% of smokers under 18s, *and assuming no other restriction which might increase compliance with under age sales*, there is displacement to sales elsewhere. Informed by the SALSUS data and the reporting of recent test purchasing, it is assumed that of those prevented from vending machines by compliance with the age restriction, 70% would buy from retail outlets instead.

10.29 The total reduction in sales is assumed to be around 2.2%. This would lead to a reduction in the sale of cigarettes to under 18s of 3.2 million cigarettes (approx 160,000 pkts of cigarettes) annually.

10.30 The health implications are calculated replicating methodology used by the DoH to estimate the impact of vending machine restrictions. It is assumed that that 10% of sales in under 18s are from vending machines; that a reduction of 2% in sales equates to a 2% reduction in consumption. Using data from SALSUS and SHS, the average number of cigarettes smoked (across the 13 – 17 age group) per day is calculated as 8.3. A 2.25% reduction would then be 0.19.

10.31 Using a Scottish birth cohort, it is assumed that the reduction persists throughout the cohort's life. DoH calculations suggest smoking one less cigarette per day from a young age

results in 0.12 life years gained per person (monetised as £5950^o). The reduction here would be equivalent to 0.022 life yrs saved per person (monetised as £1122). Using a birth cohort of 60,000 and a smoking prevalence of 22% (16– 17 yr olds rate) 296 lives would be saved every year (value £14.8m).

10.32 Discounted over 30 years this gives a NPV^p of £282m over 30 yrs.

10.33 Option 3: Ban Sale of Tobacco from Vending Machines

The main benefits are likely to be in terms of health – from a public health perspective - a reduction in morbidity and mortality due to a reduction in smoking rates among young people. The main population group likely to benefit are young people who currently use vending machines who currently use vending machines as their preferred method of buying cigarettes.

10.34 SALSUS data provides information on smoking behaviour among 13 and 15 yr olds in Scotland. Of those who stated that they were regular smokers, 10% stated that they bought cigarettes from a machine⁷⁴.

10.35 The estimated change to sales assumes that, for under 18s there is displacement to sales elsewhere. Informed by the SALSUS data and the reporting of recent test purchasing, it is assumed that of those currently purchasing from vending machines, *and assuming no other restriction which might increase compliance with under age sales*, 70% would buy from retail outlets instead. This would lead to a reduction in the sale of cigarettes to under 18s of 4.25 million cigarettes (approx 213,000 pkts of cigarettes) annually.

10.36 The health implications are calculated replicating methodology used by the DoH to estimate the impact of vending machine restrictions. It is assumed that that 10% of sales in under 18s are from vending machines; that a reduction of 3% in sales equates to a 3% reduction in consumption. Using data from SALSUS and SHS, the average number of cigarettes smoked (across the 13 – 17 age group) per day is calculated as 8.3. A 3% reduction would then be 0.25.

10.37 Using a Scottish birth cohort, it is assumed that the reduction persists throughout the cohort's life. DoH calculations suggest smoking one less cigarette per day from a young age results in 0.12 life years gained per person (monetised as £5950^q). The reduction here would be equivalent to 0.029 life yrs saved per person (monetised as £11496). Using a birth cohort of 60,000 and a smoking prevalence of 22% (16– 17 yr olds rate) 395 lives would be saved every year (value £19.8m).

Discounted over 30 years this gives a NPV^r of £376m over 30 yrs.

^o Using DoH valuation of a year of life as £50,000

^p Discounted at 3.5%: note DoH discounts health benefits at 3.5% (current green Book Guidelines) – 2% = 1.5%. This is to take account of the fact that the monetary value per life year is expected to grow at the same rate as real economic growth. However there are counter arguments to argue that benefits should be discounted at the same rate as costs.

^q Using DoH valuation of a year of life as £50,000

^r Discounted at 3.5%: note DoH discounts health benefits at 3.5% (current green Book Guidelines) – 2% = 1.5%. This is to take account of the fact that the monetary value per life year is expected to grow at the same rate as real economic growth. However there are counter arguments to argue that benefits should be discounted at the same rate as costs.

11. Tobacco Industry

11.1 As there are no tobacco manufacturing or production activities based in Scotland, any reduction in smoking prevalence will have no associated impact on turnover or employment in Scotland.

12. Small/Micro firms impact test

12.1 The impact on small and micro businesses has also been considered. The focus is on reducing sales to children and young adolescents. Small retailers and newsagents may experience a drop in tobacco sales to their young customers, although it should be noted that these are illegal sales. Any losses in tobacco sales may be replaced by an increase in sales of non-tobacco products such as magazines and confectionery.

12.2 Specialist tobacconists: an exception to the position outlined in paragraph 11.1 is the position of specialist tobacconists in relation to a displays ban. The status of a “specialist tobacconist” was established in the Tobacco Advertising and Promotion Act 2002 (“the 2002 Act”) as “a shop selling tobacco products by retail (whether or not it also sells other things) more than half of whose sale on the premises in question derive from the sale of cigars, snuff, pipe tobaccos and smoking accessories”. To survive, specialist tobacconists must stock a wide range of rarer, less well known tobacco products, for example hand made cigars from Cuba costing anything between £3 and £40 each. These products are highly differentiated, with each cigar having its own distinct characteristics. Specialist tobacconists would argue that displaying these products is essential to allowing the customer to select a product. In addition, the purpose of the display ban is to de-normalise smoking to children and young people. Specialist tobacconists have made the case that children and young people rarely enter their shops.

12.3 The “Independent Scottish Tobacconists Association (ISSTA) was formed in July 2008 to represent the shops that qualify under the TAPA definition as Specialist Tobacconists. There are ten such premises across Scotland. They are small independent retailers.

12.4 Wholesale: another exception in terms of the display ban are wholesalers: there are approximately 50 wholesalers operating in Scotland⁷⁵. The wholesale sector in Scotland is dominated by small and medium sized enterprises. There are a number of different business models. One has mixed membership for cash and carry – both trade and individual consumers^s - these account for around 10% of the business in Scotland. The majority are purely “trade to trade”. This may be through a cash and carry operation, delivery only or both.

12.5 Cash & carry warehouses typically have a separate area in which tobacco products are displayed for sale, for security reasons. For some who operate a delivery only model the proposals on the restriction or banning of displays are not applicable. For those who operate a cash and carry model including tobacco sales, compliance costs for a ban on displays would be considerable, requiring extensive refitting and additional staff to cover the need to serve customers directly. It is intended to exempt trade to trade wholesalers from any legislation restricting or banning displays.

^s E.g. Costco: “Costco operates a chain of cash & carry membership warehouses that sell high-quality, nationally branded and selected private-label merchandise at low prices to businesses purchasing for commercial use or resale, and also to individuals who are members of selected employment groups.” http://www.costco.co.uk/what_is_costco/what_is_costco.htm

12.6 During the consultation period, representatives of small retailers and convenience stores have expressed concern that changes in the ability to display products may might be displace trade from small shops to supermarkets. As the legislation will cover all retail outlets the Scottish Government is not persuaded by these arguments.

13. **Legal Aid Impact test**

13.1 There are no legal aid impact test issues to consider.

14. **Test run of business forms**

14.1 If proposals for registration or positive licensing are adopted this would involve business in completing additional forms. These would require to be tested with members of a suitable business organisation to ensure that the forms are as clear, simple and easy to complete as possible.

15. **Competition Assessment**

15.1 No significant competition issues have been identified with any of the options. The legislative options apply equally to all retail outlets and therefore are unlikely to have any significant competition implications.

16. **Enforcement, sanctions and monitoring.**

16.1 *Displays: Enforcement and Monitoring*

If the Scottish Government opts to introduce further legislative controls on the display of tobacco products, new offences would be created, whether it be for displaying tobacco products, or with regards to the size of gantry or number of packets on display. As with all tobacco sales law, it is anticipated that TSOs would be responsible for enforcing these new controls. This would form part of the normal checks carried out by TSOs in their routine checks of tobacco sales retailers and it is not anticipated that this would add any additional burden on Trading Standards.

16.2 *Update Statutory Controls on the Sale of Tobacco Products: Enforcement & Monitoring*

If the Scottish Government were to introduce a banning order or registration scheme, Trading Standards consider that the risk of a banning order is likely to encourage greater vigilance by retailers and, in time, reduce the need for TSO enforcement action. They do not envisage that there will be more than a small number of prohibition orders, so the costs involved in policing them could be met from existing resources within their current tobacco control work programme.

Licensing schemes are costly to administer because of the number of staff needed to process the paperwork. It would impose a significant additional administrative burden on local authorities in processing the applications and issuing licences not least because of the large number of retailers involved (over 11,000).

16.3 *Sanctions*

The expectation is that the introduction of new sanctions, such as cautions, fixed penalty notices and banning orders would mean that only the most serious of offenders would be

referred to Procurators Fiscal. In 2007 there were 7 successful prosecutions for selling to persons under 16, 2 in Sheriff summary and 5 in District Courts⁷⁶. Prosecutions in the Sheriff court cost between approx £250 and £2200 per case in court and prosecution costs alone⁷⁷, depending on the plea. Prosecution costs for district courts range from £80 to £400: (court costs are not available for district courts). This excludes the preparation time taken before the case is taken to court. TSOs can spend a number of days preparing a case⁷⁸. This is a significant resource cost. It also excludes the costs of preparation for cases in which the COPFS take no proceedings or those which result in a non-court disposal. If these new sanctions were introduced it could result in considerable resource saving.

17. Implementation and delivery plan

Tobacco retailers have made representations to the Government that business should be given adequate time to prepare for any changes to tobacco sales laws. In addition, it will be important for Scottish Government and local authorities to advise and support businesses during this lead in time to help businesses understand how to comply with legislation.

18. Post implementation review

A tobacco control research and evaluation group has been commissioned by the Minister for Public Health. As part of its terms of reference, the group will look at the effectiveness of any public health provisions introduced in the Tobacco and Primary Medical Services (Scotland) Bill.

19. Recommendation and summary

Displays

Recommendation

19.1 It is recommended that the Scottish Government ban the display of tobacco products (option 3).

Summary

| | Costs | Benefits |
|------------------------------------|--|--|
| Option 1: do nothing | Retailers: no costs Local Government: no costs Scottish Government: no costs | No associated benefits |
| Option 2: restrict size of display | Retailers: c£10k one off cost Local Government: no costs Scottish Government: £350k advertising of new legal obligations | 360 fewer smokers** per year monetised as £569m saving over 30 years.*** |
| Option 3: ban display | Small retailers: £1.2k one off cost* Medium retailers: £6k one off cost* Large retailers: up to £17.5k one off cost* Local Government: no costs Scottish Government: £350k for advertising | 690 fewer smokers** per year monetised as £884m saving over 30 years.*** |

*based on responses to Regulatory Impact Assessment consultation and on the assumption that cigarettes will have to be kept under the counter.

**indicative figures based on Californian study of 2,100 students.

***based on DoH calculation that each child deterred from taking up smoking =1.66 discounted life yrs and DoH valuation of a year of a life as £50,000

Conclusions

19.2 The intended outcome of this intervention is to reduce the number of under 18 year olds who take up smoking due to awareness of tobacco products from display.

19.3 There is strong evidence to suggest that getting rid of point of sale displays of tobacco products will protect children from tobacco promotion and reduce the recruitment to smoking. Some studies have shown that retail tobacco marketing results in a 50% increase in the odds of ever smoking amongst young people.

19.4 Restricting display would help de-normalise smoking as an activity and reduce the awareness of tobacco products amongst young people. But the continuing existence of displays, albeit of a smaller size, is likely to have a minimal impact on smoking rates on young people. However this option is likely to cost the same to retailers as an outright ban and would have similar costs to the public purse as a ban.

19.5 An essential part of this process was to look at ways that Scottish Ministers could minimise the impact of any policy decisions on business, and particularly on small businesses. From extensive discussions with retail representatives, this assessment would

further recommend that Ministers should not be overly prescriptive as to how retailers should hide from sight tobacco products and that there should be a long lead in time for small retailers.

To Review and Update Statutory Controls on the Sale of Tobacco Products

Recommendation

20. It is recommended that the Scottish Government introduce a tobacco sales registration scheme, which would operate in conjunction with a fixed penalty notice scheme and the ability for courts to impose banning orders (option 3).

| | Costs | Benefits |
|--|--|--|
| Option 1: do nothing | Retailers: no cost Local government: no cost Scottish Government: no cost | No associated benefits |
| Option 2: introduction of banning orders | Retailers: no cost Local government: potential cost if appeal is lost Scottish Government: no cost | 658 lives saved every year** monetised at £627m saving over 30 years.*** |
| Option 3: registration scheme | Retailer: no cost Local government: no cost Scottish Government: £350k for advertising and marketing in the first year £7.5k to set up database £44k first year running costs for staff etc. £12k running costs for database each year thereafter (staff etc.) | 988 lives saved every year** monetised as £940m saving over 30 years.*** |
| Option 4: positive licensing | Retailer: £100 per licence Local government: c£1.7m* Scottish Government: no cost | 988 lives saved every year** monetised as £940 saving over 30 years.*** |

*assumes that all tobacco retailers apply for a licence

** indicative figure based on DoH methodology to estimate impact of vending machine ban

*** based on DoH calculation that each child deterred from taking up smoking =1.66 discounted life yrs and DoH valuation of a year of a life as £50,000

Conclusions

20.1 The intended outcome of this intervention is to reduce the availability of cigarettes to under-18s from tobacco retailers.

20.2 A nationwide registration scheme would allow for better informed and targeted enforcement when at the same time posing no extra cost to retailers. Retailing interests consulted throughout this process are broadly supportive of the creation of a register which, in addition to weeding out rogue traders, would have the added advantage of creating another barrier to illicit trade in tobacco products. Registration combines all of the elements of a banning order scheme, with an element of positive licensing, but without the costs and administrative burden to retailers and local authorities that a positive licensing scheme would impose.

20.3 Whilst there is an assumption that positive licensing would act as a greater deterrent than any other form of licensing, there is currently little evidence that this translates to a reduction in smoking prevalence amongst young people. Therefore whilst the recommendation is to introduce a registration scheme, it may be prudent for Scottish Ministers to review the effectiveness of this scheme and positive licensing schemes around the world within 5 years of introduction.

20.4 It is accepted in this assessment that an unintended consequence of this policy could be a displacement of under-18 purchases to illicit sources. As outlined above, new offences created by the introduction of a registration scheme will allow Trading Standards Officers for the first time to prosecute those people selling cigarettes illegally under tobacco sales law. Something about Enhanced Enforcement Scheme.

Vending Machines

Recommendation

20.5 It is recommended that the Scottish Government ban tobacco vending machines in Scotland (option 3).

Summary

| | Costs | Benefits |
|-------------------------------------|---|---|
| Option 1: do nothing | Retailer: no cost Local government: no cost Scottish Government: no cost | No associated benefits |
| Option 2: age restricting mechanism | retailer: £820k one off cost c£70k staff training local government: no cost Scottish Government: no cost Local government: potential additional enforcement activity | 296 lives* saved every year monetised as £282m over 30 yrs.** |
| Option 3: ban vending machines | retailer: complete loss of business to tobacco vending machine companies. 14 jobs lost in Scotland local government: no cost Scottish Government: no cost | 395 lives* would be saved every year monetised as £376m saving over 30 years.** |

*calculated replicating methodology used by DoH

** based on DoH calculation that each child deterred from taking up smoking =1.66 discounted life yrs and DoH valuation of a year of a life as £50,000

Conclusions

20.6 The intended outcome of this intervention is to reduce the availability of cigarettes to under-18s vending machines.

20.7 Whilst the cigarettes sold from vending machines accounts for less than 1% sold in Scotland, roughly 10% of under-18s report purchasing cigarettes from vending machines. Introducing age restricting mechanisms could prove costly to vending machine operators and those companies that site vending machines, but does not guarantee that under-18s will not

longer be able access cigarettes from vending machines. Officials also considered as part of this process whether it was still appropriate to condone selling tobacco from vending machines given that no other age restricted products, such as knives, fireworks and alcohol, were sold from vending machines.

20.8 It is accepted in this assessment that some of those under-18s who buy cigarettes will attempt to purchase from retail outlets, however it is hoped that further action in this area will reduce even further access to cigarettes by under-18s.

¹ Scottish Executive (2004) *A Breath of Fresh Air for Scotland* Available at:

<http://www.scotland.gov.uk/Publications/2004/01/18736/31541>

² <http://www.scotland.gov.uk/Resource/Doc/223415/0060163.pdf>

³ *Towards a Future Without Tobacco: A Report of the Smoking Prevention Working Group*: Scottish Executive: 2006

⁴ *Towards a Future Without Tobacco: A Report of the Smoking Prevention Working Group*: Scottish Executive: 2006

⁵ *Consultation on the future of tobacco* (2008) Department of Health

<http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH>

⁶ ASH (2008) *Beyond Smoking Kills* http://www.ash.org.uk/files/documents/ASH_691.pdf

⁷ LACORS (2006) *Report on the implementation of the point of sale regulations*. London in *Consultation on the future of tobacco* (2008) Department of Health

⁸ Cancer Research UK (2008) *BRMB omnibus survey: smokers attitudes to branding and point of sale displays*. CRUK

⁹ Data collected by OSSE: May 2008

¹⁰ Data collected by OSSE: May 2008

¹¹ Data collected by Scottish Executive to educate retailers on raising the age of purchase: Sept. 2008; includes hotels & restaurants as well as wholesale & retail outlets.

¹² Data provided by COPFS: May 2008

¹³ Data provided by COPFS: December 2008

¹⁴ *Scottish Schools Adolescent and Substance Use Survey (SALSUS)* Scottish Government: 2006 http://www.drugmisuse.isdscotland.org/publications/local/SALSUS_2006.pdf

¹⁵ Data collected by OSSE: May 2008

¹⁶ *Consultation on the Future of Tobacco Control*: Department of Health: 2008

¹⁷ *Consultation on the Future of Tobacco Control*: Department of Health: 2008

¹⁸ *Council Recommendation on the prevention of smoking and on initiatives to improve tobacco control* (2003/54/EC): European Council: 2003

¹⁹ *European Strategy for Tobacco Control*: World Health Organization: 2002

²⁰ *Smoking Kills*, Department of Health; White Paper 1998

²¹ *Scottish Schools Adolescent Lifestyle and Substance Use*: Scottish Executive: 2006

²² Gordon D & Taulbut M (2008) *Young Adult smokers in Scotland*. SCOTPHO

²³ ONS *Family Spending 2008* <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=361>

²⁴ SIMD 2004 version used

²⁵ <http://www.scotland.gov.uk/Topics/Statistics/16002/Tables2007Health>

²⁶ ASH (2008) *Beyond Smoking Kills* http://www.ash.org.uk/files/documents/ASH_691.pdf

²⁷ <http://www.scotland.gov.uk/Topics/Statistics/16002/shs-search>

²⁸ Weiss, J.W., Cen, S., Schuster, V., Unger, J.B., Anderson Johnson, C., Mouttapa, M., et.al. (2006).

Longitudinal effects of pro-tobacco and anti tobacco messages on adolescent smoking susceptibility.

Nicotine & Tobacco Research 8(3):455-465.

²⁹ Pollay R (2007) More than meets the eye: on the importance of retail cigarette merchandising. *Tobacco Control*. 16 270 -274

³⁰ Quit Tasmania Report (2004)

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- ³¹ NHS Information Centre (2006) *Drug use, smoking and drinking among young people in England in 2005* Available at: <http://www.ic.nhs.uk/pubs/youngpeopledruguse-smoking-drinking2005/report/file>
- ³² Data supplied by BAT
- ³³ HMRC receipts:
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&id=HMCE_PROD1_028433&propertyType=document
- ³⁴ Data from SG marketing team consistent with “Raising the Age”
- ³⁵ Data collected by OSSE: May 2008
- ³⁶ Department of Health: (2008) *Consultation on the Future of Tobacco Control*
- ³⁷ <http://www.scottishfoodanddrink.com>
- ³⁸ <http://www.scottishshop.org.uk/site/About.html>
- ³⁹ DH communication
- ⁴⁰ Rees D (Aug 2008) £100m staff costs for gantry changes. *Convenience Store*
- ⁴¹ Saskatchewan Coalition for Tobacco Reduction. *Letter from June Blau and Lynn Greaves to the Ontario Provincial Government Standing Committee on Financial and Economic Affairs*. Saskatchewan Coalition for Tobacco Reduction. Regina. 27 April 2005.
- ⁴² Cummings KM, Hyland A, Lewit E, Shopland D. (1007) Discrepancies in cigarette brand sales and adult market share: are new teen smokers filling the gap? *Tobacco control* 6 (suppl):S38-43
- ⁴³ Data from SG marketing team consistent with “Raising the Age”
- ⁴⁴ Henriksen L. et al. (2004). ‘Association of retail tobacco marketing with adolescent smoking’, *American Journal of Public Health*, 94 (12), pp. 2081–2083.
- ⁴⁵ <http://www.gro-scotland.gov.uk/statistics/publications-and-data/population-estimates/mid-2007-population-estimates-scotland/list-of-tables.html>
- ⁴⁶ Professor Richard Macrory (2006) Improving Compliance among Businesses:
- ⁴⁷ Data collected by OSSE: May 2008
- ⁴⁸ ASH (2008) *Beyond Smoking Kills* http://www.ash.org.uk/files/documents/ASH_691.pdf
- ⁴⁹ HMRC & UK Border Agency (2008) *Tackling Tobacco Smuggling together* HMRC
- ⁵⁰ Data from SG marketing team consistent with “Raising the Age”
- ⁵¹ This is an indicative cost based on 30 man days of specialist staff specialist staff@ £250 per day = £7500
- ⁵² Data supplied by GRO.
- ⁵³ ASH (2008) *Beyond Smoking Kills* http://www.ash.org.uk/files/documents/ASH_691.pdf
- ⁵⁴ HMRC & UK Border Agency (2008) *Tackling Tobacco Smuggling together* HMRC
- ⁵⁵ Dept of health (2006) *Consultation on the Under Age Sale of Tobacco*
http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_4139361
- ⁵⁶ Dept of health (2006) *Consultation on the Under Age Sale of Tobacco* p36
- ⁵⁷ ASH (2008) *Beyond Smoking Kills* http://www.ash.org.uk/files/documents/ASH_691.pdf
- ⁵⁸ HMRC & UK Border Agency (2008) *Tackling Tobacco Smuggling together* HMRC
- ⁵⁹ Data obtained from COPFS Nov 08: pertains where this was the main offence.
- ⁶⁰ The Scottish Government (2008) *Costs and equalities and the Scottish Criminal Justice System 2005/06*. SG Edinburgh
- ⁶¹ Personal communication with trading standards officer.
- ⁶² Data obtained from COPFS Nov 08: pertains where this was the main offence.
- ⁶³ The Scottish Government (2008) *Costs and equalities and the Scottish Criminal Justice System 2005/06*. SG Edinburgh
- ⁶⁴ Personal communication with trading standards officer.
- ⁶⁵ Data from SG marketing team consistent with “Raising the Age”
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- ⁶⁷ HMRC & UK Border Agency (2008) *Tackling Tobacco Smuggling together* HMRC
- ⁶⁸ *Keynote reports 2008; Automatic Vending: Exec summary.*
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⁷⁵ Personal communication from Scottish Wholesale Association

⁷⁶ Data obtained from COPFS Nov 08: pertains where this was the main offence.

⁷⁷ The Scottish Government (2008) *Costs and equalities and the Scottish Criminal Justice System 2005/06*. SG Edinburgh

⁷⁸ Personal communication with trading standards officer.