EXPLANATORY MEMORANDUM TO THE

CHILDREN AND YOUNG PERSONS (SALE OF TOBACCO ETC.) ORDER 2007

2007 NO. 767

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This instrument changes the minimum age of sale for tobacco products from 16 years to 18 years from 1 October 2007.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 This instrument is made under Part 1, Chapter 2 of the Health Act 2006 (c.28). It amends the Children and Young Persons Act 1933 and the Children and Young Persons (Protection from Tobacco) Act 1991.

The main effects of the instrument are to:

- make it an offence for retailers to sell tobacco or cigarette papers to anyone under 18 (previously 16); and
- require notices in retail premises and on tobacco vending machines to reflect this change.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Secretary of State for Health has made the following statement regarding Human Rights:

In my view the provisions of the instrument are compatible with the Convention rights.

7. Policy background

7.1 Changing the age of sale for tobacco is one element of the Government's tobacco control programme to support the Public Service Agreement (PSA) target to reduce adult smoking rates to 21% or less by 2010, with a reduction in prevalence among manual and routine groups to 26% or less.

The clause to give powers to amend the age of sale for tobacco was included as an amendment to the Health Bill at Report stage. It was agreed to use delegated legislation to implement this measure to allow the Department of Health to undertake a full public consultation.

This public consultation took place from 3 July to 2 October 2006. The consultation document is available at:

http://www.dh.gov.uk/Consultations/ClosedConsultations/fs/en

Consultation respondents were overwhelmingly in favour of changing the age of sale to 18. It was felt that it would be an effective measure to combat tobacco use by making it more difficult for young people to obtain cigarettes, and denormalising tobacco use amongst young people. It was also felt that having a common age for tobacco and alcohol sales would make it easier for retailers to identify under-age purchasers.

A full analysis is of consultation responses is available on the Department's website at:

http://www.dh.gov.uk/Consultations/ResponsesToConsultations/fs/en

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 This instrument will not impose any significant new burden on Government or enforcement officers. Rural areas and members of the ethnic communities of any particular racial group are unaffected by these proposals. Charities and voluntary organisations are unaffected by these proposals.

9. Contact

Graeme Tunbridge at the Department of Health Tel: 020 7972 4588 or e-mail: graeme.tunbridge@dh.gsi.gov.uk can answer any queries regarding the instrument.

FINAL REGULATORY IMPACT ASSESSMENT FOR REGULATIONS TO BE MADE UNDER POWERS IN PART 1, CHAPTER 2 OF THE HEALTH ACT 2006 (POWER TO AMEND FOR AGE OF SALE OF TOBACCO ETC)

Policy Objective

1. To reduce smoking prevalence among older children and young teenagers.

Introduction

2. Most addicted adult smokers begin smoking as teenagers. It is important, therefore, for a tobacco control strategy to contain measures to discourage children and young people from starting smoking in the first place.

3. The current minimum legal age for sales of tobacco products is sixteen, as set out in the Children and Young Persons Act 1933.

4. In second reading of the 2006 Health Bill, Ministers announced the Government's intention to consult on raising this minimum age for sale of tobacco. A power to change the age was included in the Health Act 2006.

5. This final Regulatory Impact Assessment sets out some of the potential impacts that raising the age would have.

New legislation

6. A power to change the minimum age for tobacco sales was included in the Health Act 2006. The Act provides the Secretary of State with the power to amend, by order, the age limit in the 1933 and 1991 Acts. If, after consultation, the Government decides to increase the age limit, this will be done by using the new power to create new Regulations to amend the previous Acts as appropriate.

7. The relevant Clause in the Health Act 2006 is as follows:

> **Health Act – Part 1, Chapter 2**
>
> ***Power to amend age for sale of tobacco etc***
>
> (1) The Secretary of State may from time to time by order amend the following enactments by substituting, in each place where a person's age is specified, a different age specified in the order—
>
> (a) section 7 of the Children and Young Persons Act 1933 (c. 12) (sale of tobacco etc. to persons under 16),
> (b) section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 (c. 23) (display of warning statements in retail premises and on vending machines).

(2) But the age specified in an order under subsection (1) may not be lower than 16 or higher than 18.

Affirmative Resolution

8. Regulations governing a change to the age limit for tobacco sales will be subject to the affirmative resolution procedure.

Consultation

9. A three month consultation on under-age sale of tobacco ran from 3 July to 9 October. Support for raising the age of sale to 18 was virtually unanimous with support from a wide range of stakeholders including health organisations, retailers, Trading Standards and young people and parents. A full analysis of consultation responses is available on the Department of Health website at:

   http://www.dh.gov.uk/Consultations/ResponsesToConsultations/fs/en

10. [DN Anne anything to add?]

Rationale for Government Intervention

Options

11. This RIA looks at the available options for action on age limits to limit the retail availability of tobacco products to children and young people. The powers in the Health Act 2006 only allow for legislative action to amend the age legal sale, therefore this RIA has to be limited to a comparative look at different age levels.

12. The options looked at are:

    1. **Option one:** continuing with an age limit of 16;
    2. **Option two:** increasing the age limit to 17; and
    3. **Option three:** increasing the age limit to 18.

13. Whilst option one would not require any change, options two and three would require secondary legislation to change the age limit, using the powers available in the 2006 Health Act.

14. Changing the age limit would be part of a wider package of measures that looks to reduce the number of young smokers in England and Wales, further details of which can be found in paragraphs 37-41 of the *Consultation on Under-Age Sale of Tobacco*. Current enforcement related activity would also remain the same for each option. That is:
    - continued test purchasing;

- continued warnings and convictions for selling to under-age children; and
- effective code of practice for retailers.

Costs

Option one – age limit remains 16

15. There would be no financial costs to retaining the current minimum age.

Option two – increase age limit to 17

16. As Graph 3 on page 7 of the *Consultation on Under-Age Sale of Tobacco* shows, young smokers get around restrictions on tobacco sales. This is partly due to retailers selling tobacco products to those under the legal age and partly due to children acquiring their cigarettes from sources other than retailers, eg from friends, family.

17. In view of this, it is unlikely that raising the age limit would stop existing child smokers from smoking altogether. Raising the age limit will, however, make it more difficult for children to acquire cigarettes (particularly those under 16 who will be more visibly under any new age limit), meaning consumption levels are expected to be affected.

18. For the purposes of this RIA, it is estimated that consumption of shop-bought cigarettes amongst 11-15 year olds will decrease by up to half the level of the decrease in option 3 if the age limit is raised to 17. This is up to 7% of under-16 consumption (up to around 40m cigarettes). This is a modest figure but this option only sees the age limit rise by 1 year. This decrease is based on the assumption that raising the minimum age by a year will make it somewhat easier for retailers to recognise older children and younger teenagers.

19. It is estimated that the tobacco industry would lose between zero and £0.85m per year and there would be a loss of tax revenue of between nil and £8.1m per year.

20. It is difficult to be certain about the impact of an age increase on stopping children from taking up smoking. There is a lack of conclusive evidence from other countries where the age limit has been increased, as it is extremely difficult to assess the number of people who do not start smoking in the first place or find reasons for this.

21. It is possible that increasing the age limit will have no long-term effect on smoking prevalence. It is, however, also possible that increasing the age limit , as part of the Government's overall tobacco control programme, may mean some people never start smoking in the first place. To assess the likely effects of increasing the age limit to 17, we have therefore used a range, from nil effect to a long-term decrease in adult smoking prevalence of up to 0.25 percentage points (half the impact of increasing the age to 18).

22. Such a decrease in prevalence would have a long term impact on the tobacco industry (annual losses of anything between zero and £2.5 million) and on tax revenues (annual losses of anything between zero and £22.7 million).

Option three – increase age limit to 18

23. Increasing the age limit to 18 would have a larger effect on cigarette consumption than option two. As mentioned above, we have based the estimates of the impact of a rise in the age of sale to 17 on being up to half the impact of increasing the age to 18. It is estimated that consumption of cigarettes among 11-16 year olds would fall by as much as 14% if the minimum age were raised to 18. This estimate is based on a number of factors: children under 16 smoke about 600m cigarettes a year. For two in every three children, the 'usual source' is 'shops'. However, this includes street markets that are less likely to observe age limits and more likely to be a source of smuggled stock not paying UK duty and vending machines that are weakly supervised. Shops proper where the customer pays a shop assistant – supermarkets, newsagents, convenience stores and newsagents – account for about 57% of cigarettes sold. It is assumed that raising the age to 18, the consumption of duty-paid cigarettes would fall by half the proportion currently bought in shops to 28% of tobacco bought by this age group. And we assume that some half of these will obtain their cigarettes through other sources, such as family or friends, who themselves get their cigarettes from retailers. This means some 14% lower consumption, or 85m fewer cigarettes.

24. The price of a typical pack of 20 cigarettes is about £4.60. There is a specific duty of £102.39 per 1000, an ad valorem duty of 22% of the retail price, and value added tax of 17.5% on a base of the price net of tax. However, on a base of the retail price, the rate of VAT is about 15%. The tax revenue per stick is then about 19 pence.

25. The corresponding reduction in tax revenue would be between zero and £16m pa. This estimate depends on a range of factors, most of them uncertain. It could be almost nothing or much larger, but it may be useful to note the order of magnitude which emerges from specific, realistic assumptions.

26. The industry would also lose profit. For Imperial Tobacco, and probably other suppliers, it is estimated that half UK sales before duty represents profit. The profit per stick is then about 2p. Retailers will also lose profit but negligibly. The loss to the industry on up to 80m sticks is then between zero and £1.7m.

27. This reduced prevalence/consumption in under-16 smoking will feed through to reduced adult smoking rates in the long-term. A 14% reduction in 11-15 year old prevalence (currently 9%) equates to around 1.3%age points lower prevalence. If we assume that some two-thirds of these now non-smokers under16 go on to be smokers, the reduction in adult smoking prevalence in the long-term might be up to around 0.5%age points. Such a decrease in prevalence would have a long-term impact on the tobacco industry (annual losses of anything between zero and £4.9 million) and on tax revenues (annual losses of anything between zero and £45.3 million).

28. Children who currently purchase cigarettes from retailers may also purchase other non-tobacco products at the same time. It is possible that if cigarette sales fall in shops, related

sales of non-tobacco products will fall as well. There is no evidence from elsewhere that this will happen, however. Equally possible is that younger children will in fact have extra money to spend on non-tobacco products if their cigarette consumption decreases.

29. If the age limit was raised, legally required signage would also have to be changed in shops. However, only the age would need to be changed (for example using a sticker or label) not the whole sign, so costs would be negligible.

30. Any change to the age limit would require an effective communications campaign, to ensure that retailers, enforcers and smokers knew about the change. We have estimated that such a campaign would cost the Department of Health around £1 million. This would be a one off cost.

Benefits

Option one – age limit remains 16

31. There would not be any requirements to legislate under Option One, which would remove both the administrative burdens of new regulations and costs to central Government in communicating a change of policy. There would be no public health benefits to a status quo option.

Option two – increase age limit to 17

32. Increasing the legal age for tobacco sales would demonstrate that the Government is serious about cutting the number of young smokers in England and Wales. It would be a useful way of communicating the serious health risks associated with tobacco and a step towards de-normalising smoking among young people.

33. In line with this thinking, the Canadian Ministerial Advisory Council on Tobacco Control recently argued that the primary benefit of 'sales to minors' laws is not an actual reduction in the supply of tobacco to young people, but its role as a form of risk communication and tobacco control messaging[1].

34. Increasing the legal age to 17 would mean that a small but significant number of young people might be stopped from buying tobacco thereby reducing the chance of becoming addicted adult smokers with all the health risks of smoking. 140,000 16 year olds are reported to be regular smokers.[2]

35. As part of the Government's overall tobacco control programme and as an element of a package of measures focusing on young smokers, increasing the age limit for tobacco

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[1] Ministerial Advisory Council on Tobacco Control, Canada. *Challenging conventional wisdom on youth access to tobacco: redefining youth access interventions* [online] 2002 Available from: http://www.hc-sc.gc.ca/hl-vs/pubs/tobac-tabac/ccwyatp-rqipatjp/index_e.html
[Accessed 25 October 2005]

[2] Smoking, Drinking and Drug Use Among Young People in England 2004(unreported figures from survey).

sales to 17 may have a minor impact on smoking prevalence but less than that for option 3. We have estimated that this is around half of the decrease that it would be if the age were raised to 18.

36. The long term knock-on effect of any reduction in smoking prevalence would be reductions in smoking related morbidity and mortality. This would mean long term reductions in costs to the NHS for treating smoking related illnesses (long term annual savings of anything between nil and £3 million) and long term gains to the economy from lives saved (long term annual savings of anything between nil and £113 million).

37. Children that stop or don't start smoking would also have increased income to spend on other products. It is hard to quantify this effect but it should go some way to compensating retailers on any reduction in tobacco sales from youngsters.

Option three – increase age limit to 18

38. The general benefits for raising the legal age for tobacco sales set out for option two (see paragraphs 50 to 52) are also the same for option three, though with a higher increase to 18 the positive effects are likely to be magnified. The key health benefit is generated by decreased adult smoking rates.

Health benefits

39. Assuming that setting a minimum age of 18 reduces smoking among adults by 0.5%age points, the full effect of prevalence would take a lifetime to come through. Eventually, however, up to 1,700 lives a year would be saved. The eventual saving to the NHS could be between nil and £6m and in gains to the economy from lives saved between nil and £226m, though it would take 20 years or more for the saving to come through.

40. The World Health Organisation recommends a minimum legal purchase age of 18 for tobacco products. Raising the age limit to 18 in England and Wales would mirror this recommendation and also policy in a number of countries worldwide.

Retailer/enforcer benefits

41. Raising the age for tobacco sales to 18 would bring the age limit into line with a number of other restricted goods available at retail.

42. Having a uniform minimum age for tobacco products, alcohol, fireworks, solvents, and gas lighter refills would also simplify enforcement. Retailers would have one age limit for the majority of restricted goods, whilst one age limit of 18 would also make it easier to produce signage and training materials to cover all the age-restricted products.

43. As for option two, increased spending on non-tobacco products would help to compensate retailers for reductions in spending on tobacco.

Summary tables of ongoing costs and benefits

44. Below is a summary table of the estimated costs and benefits of raising the minimum age of sale. These figures are estimates based on information we have at present and the table is to be used as a guide rather than a definitive costing of options.

45. The General Household Survey suggests that 16-19 year smokers smoke on average 11 cigarettes a week,. We have assumed that the 16-17 yr olds smoke slightly less - say an average of 10 per week. This equates to 70 per week and 3.5 packets of 20 cigarettes per week. 3.5 x 52 weeks x 290,000 = 52.8 million packets of 20 cigarettes are bought by 16-17 year olds each year (though in practice they tend to buy packs of 10s).

OPTION ONE – STATUS QUO						
	Expected ongoing costs		**Expected ongoing benefits**		**Net ongoing effects**	
	Decreases in consumption	**Decreases in prevalence**	**Decreases in consumption**	**Decreases in prevalence**	**Decreases in consumption**	**Decreases in prvalence**
Industry						
Costs to tobacco industry	Nil	Nil	Nil	Nil	Nil	Nil
Taxes						
Losses to the Exchequer	Nil	Nil	Nil	Nil	Nil	Nil
NHS						
Treatment of smoking related diseases	Nil	Nil	Nil	Nil	Nil	Nil
Citizens						
Lives saved	Nil	Nil	Nil	Nil	Nil	Nil
TOTAL	Nil	Nil	Nil	Nil	Nil	Nil

OPTION TWO – INCREASE THE AGE LIMIT TO 17

	Expected ongoing costs		Expected ongoing benefits		Net ongoing effects	
	Decreases in consumption	**Decreases in prevalence**	**Decreases in consumption**	**Decreases in prevalence**	**Decreases in consumption**	**Decreases in prevalence**
Industry						
Costs to tobacco industry	Nil to -£0.85m	Nil to -£2.45m	Nil	Nil	Nil to +£0.85m	Nil to -£2.45m
Taxes						
Losses to the Exchequer	Nil to -£8m	Nil to -£22.65m	Nil	Nil	Nil to +£8m	Nil to -£22.65m
NHS						
Treatment of smoking related diseases	Nil	Nil	Nil	Nil to +£3m	Nil	Nil to +£3m
Citizens						
Lives saved	Nil	Nil	Nil	Nil to +£113m	Nil	Nil to +£113m
TOTAL	Nil to -£8.85m	Nil to -£25.1m	Nil	Nil to +£116m	Nil to +£8.85m	Nil to +£91m

OPTION THREE – INCREASE AGE LIMIT TO 18						
	Expected ongoing costs		**Expected ongoing benefits**		**Net ongoing effects**	
	Decreases in consumption	**Decreases in prevalence**	**Decreases in consumption**	**Decreases in prevalence**	**Decreases in consumption**	**Decreases in prevalence**
Industry						
Costs to tobacco industry	Nil to -£1.7m	Nil to -£4.9m	Nil	Nil	Nil to +£1.7m	Nil to -£4.9m
Taxes						
Losses to the Exchequer	Nil to -£16m	Nil to -£45.3m	Nil	Nil	Nil to +£16m	Nil to -£45.3m
NHS						
Treatment of	Nil	Nil	Nil	Nil to +£6m	Nil	Nil to +£6m

smoking related diseases						
Citizens						
Lives saved	Nil	Nil	Nil	Nil to +£226m	Nil	Nil to +£226m
TOTAL	Nil to - £17.7m	Nil to -£50.2m	Nil	Nil to +£232m	Nil to +£17.7m	Nil to +£182m

Risks

Option one – age limit remains 16

46. It is clear from this RIA that most adult smokers start their habit when young. No action on policies to dissuade children from accessing tobacco and taking up smoking means children continuing to become addicted adult smokers with the attendant smoking-related morbidity and mortality. It also continues to fall behind international progress; WHO guidelines; and sends a misleading message to children and young people about the relative risk and harm of tobacco.

Option two – increase age limit to 17

47. Increasing the age limit to 17 would be difficult to enforce. Apart from air weapons, no other products available at retail currently have an age limit of 17. Any benefits to retailers and enforcers of increasing the age to 18 would be completely lost with this option. It would also create significant additional regulatory burdens. Raising the age from 16 to 17 is unprecedented elsewhere. Such a change would send out an ambivalent public health message that tobacco does not carry the same health risks as other products such as alcohol.

48. Raising the age to 17 would be a modest increase. This, coupled with concerns around enforcement difficulties, may mean in practice that there would be no resultant decreases in consumption and prevalence.

Option three – increase age limit to 18

49. The positive effects of raising the age limit to 18 are dependent upon the change being implemented and enforced. This risk would be mitigated with a robust communications campaign leading up to the change.

Impact on small businesses

50. These proposals will impact on small retailers and newsagents, however it is not envisaged that there will be significant costs to these businesses. There may be a small

drop in sales to young customers, though informal consultation with these businesses suggest that the losses will not be significant. Losses may also be replaced by increased purchases of non-tobacco products.

51. There have been a number of informal discussions with small retailer organisations including Association of Convenience Stores and the Rural Shops Alliance and they suggest that many retailers would welcome this change. Age is quite often difficult to ascertain and there is a general feeling that 18 year olds are easier to recognise than 16 year olds. This change will bring the law into line with other products such as alcohol.

52. Small businesses do ask though that any changes are well publicised to both business and the public at least three months in advance.

Competition assessment

53. A simple competition assessment has been undertaken following Cabinet Office RIA guidance.

54. Any change to the age limit will apply in all retail settings. No significant competition issues are therefore envisaged.

55. Only a very small number of shops rely significantly on tobacco sales to 16-17 year olds, though any such retailers may be affected by options two and three more than others.

Compensatory simplification

56. Raising the age limit to 18 would actually be a simplification for retailers and enforcers, as it would bring the legal age in line with that of a number of other products such as alcohol and fireworks.

Securing compliance

57. As part of their duties in monitoring and advising retailers, local authority trading standards departments take responsibility for meeting the cost of under-age warning signage in retailing outlets. They also publish and circulate advisory leaflets for shops as well as conducting advisory visits. In line with the proposed Regulators Compliance Code. The Government wishes to reduce the number of inspections of retail outlets and shift to a risk-based approach. That is, an enforcement officer would visit retail premises only when there were complaints of under-age sale of tobacco.[3]

58. Trading Standards could alert local shops to the change as part of their regular visits to carry out other functions. This is particularly the case in outlets selling both alcohol and

[3] See Part 2 of the Regulatory Reform Bill 2006 and www.cabinetoffice.gov.uk/regulation

tobacco where a uniform minimum age of 18 would facilitate advice to retailers and enforcement of the law. Test purchasing would continue as at present. We do not consider that there is a need for increased test purchasing if the minimum age is raised.

Equity and fairness

59. We have considered whether these measures will have any disproportionate impacts on any particular group and do not consider that these measures will disadvantage any group. Evidence shows that smoking prevalence is particularly high among poorer people and in deprived areas, and higher among young people from lower socio-economic groups[4]. We are committed to doing all we can to reduce smoking rates in these groups to reduce their disproportionate burden of premature death and serious illness. We have considered the impact of these measures in relation to rural areas and consider that they will not have a different or disproportionate impact on people living in rural areas.

60. We have also considered the impact of these measures on race equality and consider that they will not have a different impact on people depending on their race.

Rural proofing

61. Raising the age of sale will have no disproportionate effects on the rural economy.

Implementation

62. There will be approximately eight months from making regulations and the change in age coming into force. During this period, there will be a communication campaign to increase awareness of the change, with information to retailers and advertisements in the trade press and magazines and internet sites aimed at young people.

Post-implementation review

63. Smoking rates amongst children will continue to be monitored in the *Smoking, drug use and drinking among young people in England* survey. The Home Office will, of course, continue to collect and monitor statistics on prosecutions. Local authorities and LACORT will monitor the activities of Trading Standards Departments in enforcing the law in this area.

Summary and recommendation

64. Option 3 – raising the age of sale to 18 - is the option that the Government will implement. This option sends out a positive message that the Government is serious about

[4] General Household Survey 2003.

cutting the number of young smokers. It also puts smoking at the same age limit as alcohol, which sends out a clear health message in itself. Increasing the age limit to 18 may, as part of the Government's wider tobacco control strategy, also lead to decreases in tobacco consumption amongst children and long-term decreases in smoking prevalence.

Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed……Caroline Flint…………………………….

Date……18th January 2007…………………………….........

Caroline Flint MP
Minister of State for Public Health
Department of Health