

DHSSPS
Investing in Health Unit
Health Improvement Policy Branch (Tobacco Control)
Room C4.22
Castle Buildings
Belfast BT4 3SQ

Date 9th January 2008

Dear Sir / Madam,

Public Consultation on Minimum Age of Sale of Tobacco Products – Northern Ireland

I am writing in response to the above consultation on behalf of the member companies of the Tobacco Manufacturers' Association (TMA) – British American Tobacco, Gallaher Ltd (a member of the JTI Group of Companies), and Imperial Tobacco Limited (UK). One or more of these companies may make submissions in their own right. This document should be read in conjunction with the completed, formal questionnaire, which is attached.

At this stage, it is important to make clear that the TMA firmly believes that children should not smoke; that smoking should be a matter of informed adult choice; and that it is for the Northern Ireland Assembly to determine the legal age at which tobacco may be sold.

A change in legislation to the age of sale of tobacco will have substantial effects beyond merely stopping a particular age group from buying tobacco, and these effects need careful consideration before the agreement and implementation of any proposals.

Specific issues in relation to the "Partial Regulatory Impact Assessment (Annex 2)", part of the Public Consultation Documents, that we wish to address are as follows:

- i) Para 4.3, Page 31 – The document states that 57% of cigarettes bought by the under 16s in England come from shops. This clearly indicates that 43% comes from other sources which would include car boot sales and street corners where smuggled tobacco is sold. It is the view of the TMA that a sizeable proportion of young people who wish to smoke will continue to do so even if an increase in the legal age of purchase is introduced, and will be more likely to buy their tobacco from smugglers as more and more shopkeepers turn them away. Therefore, in the event of an age change, consideration needs to be given to increased action by the Northern Ireland Assembly and Trading Standards to

combat smuggling activity in Northern Ireland (so that those smokers affected by a legislative change are not merely displaced to illegal vendors).

- ii) Paras 5.3 – 5.5, Page 32 – If there is any change to the age of sale, it is important that the responsibility of enforcing the change is not left to retailers alone. When the age of sale was raised to 18 in Britain in October 2007, many retailers expressed concern that there had been so little publicity about the change that the shopkeepers themselves had to take on the role of not only communicating to those aged 16 and 17 that there had been a change in legislation but also of enforcing that legislation.
- iii) Para 6.2, Page 32 – It is debatable whether increasing the age limit will make it easier for retailers to identify people who are underage. This is particularly the case with female teenagers who frequently look much older than they actually are. Again the responsibility of enforcement falls on the retailers.

In order to support shopkeepers, the TMA would welcome the Assembly's support of CitizenCard, a UK-wide proof of age scheme which provides ID for the purchase of age-restricted goods. The TMA has been a key funder of CitizenCard since its inception in 1999 and since then a total of 1.7 million cards have been issued. The TMA also supports the accompanying No ID No Sale (NINS) campaign. Sales forces from the TMA's member companies have distributed over 220,000 NINS information packs to retailers since the campaign was launched in 2004. The packs include age display posters and CitizenCard application forms for shoppers to apply for cards to prove they can buy age-restricted products. Both the posters and the forms provide retailers with a clear message when they are faced with the frequently difficult situation of turning away those who cannot prove they are at the legal age of purchase.

In addition, the NINS pack contains a "Refusals Register" where retailers can note instances where customers have been turned away for appearing under the legal age of purchase and not being able to produce a valid form of ID. The register also acts as an illustration of due diligence by the retailer as it demonstrates the shopkeeper's commitment to running a business in accordance with the law.

The TMA's support for CitizenCard and the NINS campaign illustrate the tobacco manufacturers' commitment to ensuring that tobacco is sold legitimately through the correct outlets and only to those who are permitted to smoke as laid down by the law. The TMA's member companies are committed to distributing revised NINS packs throughout Northern Ireland if the legal age of purchase is increased.

- iv) Para 6.6, Page 33 – It is worth noting that the projected drop in sales of cigarettes does not necessarily equate to a drop in consumption as the decrease noted relates only to legitimate sales and does not take into account those who obtain their tobacco from illegal sources where sales may potentially rise as a result of the age change. Tobacco smugglers do not care about the age of those who buy their products.

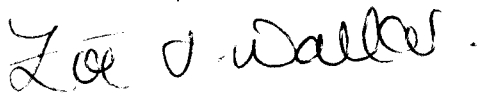
- v) Para 6.22, Page 35 - Tobacco sales account for a substantial part of the turnover of many independent retailers in Northern Ireland and it is doubtful that the loss of sales that would result from a change to the age limit would be mitigated by increased sales elsewhere in the store. Indeed, the vast majority of shoppers buying tobacco also purchase other products whilst in the store so the retailer would lose not just the tobacco sale but also the add-on purchases. The average cigarette shopper spends £8.60 per week compared to £4.92 for a non-cigarette shopper (Source: HIM CTP 2006). Of those customers buying tobacco, 20% will also buy newspapers, 18% will also buy milk and 14% will also buy bread. (Source: HIM / Albermarle 2007)

The local shop provides a vital focal point for many communities, especially the more remote ones, and everything possible should be done to support local retailers and their businesses.

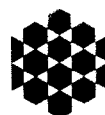
- vi) Para 8.1, Page 38 - In the summary of "Implementation and enforcement costs", we have concern relating to some of the figures quoted: while the advertising budget would appear adequate, the cost attributed to public relations and the communications of the change of legislation appear limited which again would imply that the onus of enforcing the change will be on retailers. This situation is underlined by the fact that the budgetary amount that has been assigned to training and enforcement of the change is noted as "negligible". It is unfair to expect retailers and the tobacco manufacturers to bear the brunt of communicating and enforcing a governmental change in legislation. It would be useful if as much resource as was allocated to communicating the ban on smoking in public places in Northern Ireland should be allocated to communicating any change in the legal age. In addition, enough time needs to be set aside to allow retailers and young people to become sufficiently aware of, and prepared for, the changes before the legislation comes into effect.
- vii) Para 10.2, Page 40 - As one of the TMA's member companies, Gallaher Limited will respond separately about issues relating specifically to its operations at Lisnafillan. On a general note, any change to smoking levels could have a negative impact on tobacco employment and the subsequent knock-on effect in the communities in which they live and work.

It is hoped that you will find the comments helpful in addition to those noted in the questionnaire. Should there be any questions arising from either document or if you need any further information at any stage, please do contact us.

Yours faithfully,

pp. 

CHD Ogden
Director



Department of
**Health, Social Services
and Public Safety**

An Roinn

**Sláinte, Seirbhísí Sóisialta
agus Sábháilteachta Poiblí**

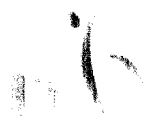
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CONSULTATION QUESTIONNAIRE

ON

MINIMUM AGE OF SALE OF TOBACCO PRODUCTS

October 2007



Investing
for Health

INTRODUCTION

Purpose

1. This Questionnaire seeks views on whether the Department of Health, Social Services and Public Safety should use the power contained in the Smoking (Northern Ireland) Order 2006, to amend, by regulations, the age of sale of tobacco products.
2. The Department carried out an Integrated Impact Assessment (IIA) screening exercise on the proposed legislation. The results, which include equality considerations and a Partial Regulatory Impact Assessment, are set out in Annexes 1 and 2 of the consultation package.

Background

3. In March 2006, the Department undertook a public consultation exercise on the content of the then draft Smoking (Northern Ireland) Order 2006. Article 14 of the draft Order included a power for the Department to amend, by regulations, the age limit for the sale of tobacco products – currently 16 years - and respondents were invited to comment on whether the Department should take this power. It was made clear that any proposal to raise the age of sale would be the subject of further consultation.
4. There was strong support for the Department taking the power, with 78% in favour of this action. The majority of those in favour felt that the Department should go further and raise the age limit immediately. The main reasons offered were that such action would enable the age of sale to be brought into line with that for alcohol sales (18 years); that it would also bring Northern Ireland into line with the Republic of Ireland; and that it might make enforcement easier, particularly in border areas.
5. The age of sale has been raised to 18 in England, Wales and Scotland with effect from 1 October 2007. The Smoking (Northern Ireland) Order 2006, the main provisions of which came into operation on 30 April 2007, contains the power for the Department to amend the age of sale of tobacco products.

Consultation - How to Respond

6. **The consultation will run from 29 October 2007 to 18 January 2008.** The Questionnaire sets out three options on the minimum age of sale of tobacco products about which the Department would welcome views. It also seeks views on the Integrated Impact Assessment Overview and Partial Regulatory Impact Assessment.

7. In order to facilitate analysis it is important that respondents use the Questionnaire. Completed Questionnaires **must be received by the Department by 5.00pm on Friday 18 January 2008**. Responses should be posted to:

**DHSSPS
Investing for Health Unit
Health Improvement Policy Branch (Tobacco Control)
Room C4.22
Castle Buildings
Belfast
BT4 3SQ
Tel: 028 90520534**

Alternatively responses can be submitted via the online response form using the following web link:

<http://www.dhsspsni.gov.uk/tobacco-age-of-sale.htm>

Alternative formats

8. If you require the consultation documents in an alternative format (such as in large print, in braille, on audio cassette, easy read or computer disc) and/or in another language please contact Heather Rainey on 028 90520525 or text phone 02890527668 to discuss your requirements.

QUESTIONNAIRE

Q1. Article 14 of the Smoking (Northern Ireland) Order 2006 provides the power for the Department to amend the age of sale of tobacco products, but this must not be lower than the present age of 16 years. Do you think the Department should:

continue with the present age limit of 16;

increase the age limit to 17; or

increase the age limit to 18?

Please tick the appropriate box to indicate which of the options you favour.

No Change

Increase to 17

Increase to 18

If you wish to comment on your preferred option, please do so here.

It is the view of the Tobacco Manufacturers' Association that it is for the Northern Ireland Assembly to set the age limit at which tobacco may be sold. Any change in legislation will require careful and timely preparation and implementation.

General

Q2. Do you have any views on the conclusions reached by the Department to screen out from further assessment the implications of the proposals in respect of:

- (a) **Social Impact Assessment (New TSN, Homelessness etc);**
- (b) **Rural ;**
- (c) **Environmental;**
- (d) **Human Rights;**
- (e) **Victims;**
- (f) **Community Safety & Other Areas?**

Is there any other evidence which you consider should have been taken into account in these assessments?

Re Question 1 from the chart “Assessment of impacts other than equality impact” in the section “Integrated Impact Assessment (Annex 1)”, page 16 of the Public Consultation Documents – the TMA believes that while the policy will affect the availability of tobacco to 16 and 17 year olds from legitimate outlets, it may not stop those same people obtaining tobacco products from other sources such as car boot sales or illegally from smugglers.

Re Question 25 on page 16 of the above noted document – Tobacco sales make up a fundamental part of the business of many independent retailers and regulatory changes – for example a change in age limit – will affect sales and potentially result in the closure of those stores, some of which just manage to stay afloat.

Q3. Do you agree with the decision that the proposals do not require a full equality impact assessment? (see Annex 1 of consultation package). If not, please explain why?

Yes.

Q4. Is there any other qualitative or quantitative information which you consider should have been taken into account in performing this exercise?

Consideration should be given to assessing the effect on the sales of retailers in England, Wales and Scotland following the age changes there.

Q5. Are you aware of any evidence - qualitative or quantitative - that the proposals may have an adverse impact on equality of opportunity or on good relations? If so, please provide details. Can you suggest any ways of avoiding or minimising such adverse impact?

As retailers will be on the front line of enforcing any change in the law, there is the possibility that they will receive abuse when refusing to sell tobacco to a newly disenfranchised young smoker. The chances of this happening would be substantially reduced if a full communications campaign was put in place well in advance of a change in the law to alert young people and the public about the new age limit.

Q6. Are you aware of any other equality implications likely to arise from the proposals?

No

Partial Regulatory Impact Assessment (RIA)

(see Annex 2 of consultation package)

Health

Q7. Do you have any views on the assessment of health impacts?

The TMA does not want children to smoke. It believes that smoking is a matter of informed adult choice.

Q8. Are there any other potential health impacts that you consider should have been addressed?

No

Q9. Is there any other material evidence which you consider should have been taken into account in this assessment of health impacts?

No

Economic

Q10. Do you have any general comments on the overall approach that was taken in completing the RIA?

No.

Q11. Do you consider that there are other issues which need to be taken into account in the assessment of the impact on business?

Tobacco makes up a large proportion of the sales of many independent retailers in Northern Ireland. In addition, many shoppers who purchase tobacco buy other goods (eg newspapers; sweets etc) whilst in the store. Many retailers will therefore lose out twice after sales to 16 and 17 year olds are banned and this will have a knock on effect on their livelihoods.

In addition, Gallaher Ltd has its production facility at Lisnafillan, near Ballymena and the company will respond in addition to the TMA with its own assessment in its own right.

Q12. Do you agree with the analysis of the sectors and business/organisations which might be particularly affected by the proposals?

Yes

Q13. What are your views on the identification and assessment of the costs and benefits?

The TMA is concerned that an insufficient budget has been set aside for the communications of the age change and that reliance will be placed on retailers to enforce the new limit. We would urge the Northern Ireland Assembly to ensure that enough time and budget is invested in communicating the change in the law (particularly to consumers) before it needs to be enforced.

Public Expenditure and Public Service

Q14. Do you agree with the Department's view that a separate Economic Appraisal is not required?

Any change in the law will have an effect on the sales of many retailers. It would be useful to review the effects on retailers in Britain since the rise in age limit on October 1st 2007 to gain an impression of how shopkeepers in Northern Ireland would be affected.

Impact on Small Businesses

Q15. Do you agree that the proposals will not have a disproportionate impact on small businesses?

As noted in the response to Q11 above, the TMA believes the age change will have an effect on those independent retailers who overnight will lose the ability to sell to a particular age group. The livelihoods of many corner shopkeepers are already under threat from lost sales to tobacco smugglers who have no regard for what age group they target.

Q16. Are there any impacts on small businesses that you consider should have been addressed?

There are a number of impacts beyond the effect of lost sales noted earlier. These include

1. Retailers should not be expected to be the communicators and sole enforcers of this new law. Consumers and the public need to be made sufficiently aware of the change prior to enforcement.
2. Assessing the age of a shopper (especially teenagers) is often difficult for busy shopkeepers. Therefore, consideration should be given to encouraging young people who wish to buy age-restricted goods to carry a form of ID to make the identification process simpler.

Q17. Is there any other material evidence which you consider should have been taken into account in assessing the impact on small businesses?

It is worth noting that many 16 and 17 year olds who may not be able to purchase tobacco after the age change will attempt to obtain it from other sources, particularly from the illicit market. The Northern Ireland Assembly needs to ensure that sufficient budget is allocated to a clamp down on smuggling after any age change is introduced so that those newly disenfranchised young smokers are not merely displaced to other sources.

Rural Proofing

Q18. Do you agree that the proposals will not have a disproportionate adverse impact on rural business?

No - all the arguments already noted apply to rural shopkeepers. In addition, rural shopkeepers often play an enhanced role in their local communities as other retail opportunities for local people may be scarce. Therefore, every support needs to be given to ensure that the livelihoods of these focal points of many smaller communities are not jeopardized by a decrease in sales following a rise in the age limit.

Q19. Are there any rural impacts that you consider should have been addressed?

See response to Q18 above.

Q20. Is there any other material evidence which you consider should have been taken into account in this assessment of rural impacts?

See response to Q18 above.

Additional Comments

Q21. Do you have any other comments or suggestions on the Integrated Impact Assessment Overview? (Annex 1 of consultation package)

No

Thank you for taking time to complete this Questionnaire.