



Tobacco licensing – a briefing paper

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This briefing paper has been adapted from *Smoking and the Bandits – tackling rogue traders and under-age tobacco sales*, a consultation paper prepared by ASH Scotland for Christine Grahame MSP in support of her proposed Tobacco Sales Licensing (Scotland) Bill

Executive summary

On the 1st October 2007 the Scottish Government increased the minimum age for the purchase of tobacco from 16 to 18 in line with the rest of Great Britain. While ASH Scotland welcomed this move, we consider that an age increase on its own is unlikely to do much to restrict the availability of cigarettes to the under-18s. Surveys show that when the minimum age was 16, children as young as 13 had little difficulty in gaining access to cigarettes, with many of them buying them from local shops. If the Scottish Government is serious about tackling under age smoking, it must enable far greater enforcement of existing laws than is currently taking place. One way for this to happen is for the government to introduce a system of positive licensing for tobacco sales.

Tobacco sales licensing schemes have been successfully introduced in a number of other countries, notably the United States, Singapore, Canada and Australia. Licensing schemes fall into one of two categories: positive and negative licensing. Under a positive licensing scheme, retailers are obliged to apply for and be granted a licence before they can legally sell tobacco. A negative scheme does not require a licence to be held, but as for positive licensing, the right to sell tobacco can be suspended or withdrawn if a retailer sells or supplies tobacco products to under-age customers.

ASH Scotland supports the introduction of a positive licensing scheme – we believe that it is likely to be more effective than a negative licensing scheme because positive licensing:

- sends a clear message to the retailer that selling tobacco (a lethal substance that kills one in two long-term users) is a conditional privilege and not an absolute right
- ensures that those selling tobacco are fully appraised of their legal responsibilities
- provides for the possibility of administrative enforcement options, including fixed penalty notices and licence suspension or withdrawal, rather than lengthy, cumbersome and expensive legal action through the courts
- allows for all retailers holding a tobacco retail licence to receive targeted information related to the sale of tobacco.

ASH Scotland considers that negative licensing misses an opportunity to engage retailers in the regulation of tobacco sales until an offence has already taken place. The deterrent effect provided by requiring retailers to actively apply for a licence is lacking under such a scheme. While a system of positive licensing might cost more to implement and maintain, its distinct advantages more than outweigh any additional costs. The greater deterrent effect provided by positive licensing could even result in lower overall costs.

Trials have shown that positive tobacco licensing, when backed up with active enforcement activity, can have a dramatic impact on retailer compliance with minimum purchase age laws. In one Australian state, enforcement of a positive licensing scheme led to compliance rates of 90%, considerably higher than had been the case before the licensing scheme was introduced.

The forthcoming Smoking Prevention Action Plan, due to be published shortly by the Scottish Government, is likely to include measures designed to reduce the availability

of tobacco products to children and young people. ASH Scotland is calling for these measures to include a system of positive licensing for retail tobacco sales.

Running parallel to the Scottish Government's smoking prevention policies, a Member's Bill proposed by Christine Grahame MSP seeks to introduce a system of licensing for retail tobacco sales. ASH Scotland is supporting Ms Grahame's proposed bill,¹ and initial reports from Ms Grahame indicate significant support for positive licensing from many of those who took part in the proposed bill's recent consultation exercise. ASH Scotland hopes that these responses, combined with the strong public support for positive licensing expressed in a recent public opinion survey (see Appendix for details) will encourage the Scottish Government to embrace positive licensing themselves.

Introduction

There has been considerable progress in recent years in tackling the harmful effects of smoking on Scotland's health. Smoking cessation services have been established helping thousands of smokers to give up, the historic ban on smoking in public enclosed places came into force on 26th March 2006, and on 1st October 2007 the Scottish Government increased the legal age for the purchase of tobacco products from 16 to 18 in a move unanimously supported by the Scottish Parliament. These initiatives protect the public from the harmful effects of second hand smoke and help to prevent young people from becoming smokers in the first place.

The recent age increase to 18 brings tobacco into line with alcohol, recognising that tobacco is a harmful product and further restricting its availability. Yet while the age increase will prevent some children from buying cigarettes and tobacco, there is no evidence that an age increase alone will be effective in preventing sales to under-18s.² For that to happen, the law must be rigorously and effectively enforced.

Since the Children and Young Persons (Scotland) Act³ was passed in 1937, it has been illegal to sell tobacco to anyone under the age of 16. But surveys have shown that large numbers of children continue to smoke, and that a significant proportion of them experience little or no difficulty in buying their own cigarettes.⁴ Merely raising the minimum purchase age to 18 is unlikely to change this situation.

The use of tobacco brings with it not only health impacts for the user, but also wider negative societal impacts. In 2004, around one in four deaths – almost 13,500 in total – were attributable to smoking.⁵

At the present time there is considerable political momentum building within Scotland for stronger measures designed to prevent young people from becoming smokers. The Scottish Government is due shortly to publish a Smoking Prevention Action Plan, Christine Grahame MSP is proposing to bring a member's bill before the Scottish Parliament that would introduce a system of licensing for tobacco sales, and a recent survey of Scottish public opinion (see Appendix) demonstrated considerable support for positive tobacco licensing.

ASH Scotland considers that the health benefits to be gained by effective measures to tackle the easy availability of cigarettes to children and young people means that a system of positive licensing is an opportunity that Scotland can ill afford to pass up.

Background

A survey conducted in 2006 showed that around 15% of 15 year olds are regular smokers⁶; any measures to reduce the numbers of under-age smokers should lead to lower numbers of adult smokers in the future and correspondingly lower rates of smoking-related diseases including cancers and heart disease. This in turn will result in very significant social benefits, improvements in general quality of life, as well as greatly reduced healthcare costs. It seems likely that the financial costs of introducing and implementing greater regulation of tobacco sales will be considerably outweighed by the long-term financial benefits.

Smoking has long been recognised as the biggest single preventable cause of ill-health and premature death in Scotland, accounting for almost 13,500 deaths every year, nearly one in four of all deaths in Scotland.⁷ It is known that smoking tobacco is linked to diseases of the heart and blood vessels, the lungs, stomach, kidneys and

other organs. As a result, smoking-related illnesses cost the NHS in Scotland an estimated £200 million each year,⁸ with the total annual cost of smoking to the Scottish economy estimated to be £837 million.⁹ Among men in 2004, 40% of all cancer deaths and 91% of lung cancer deaths were attributable to smoking. For women, the figures were 29% and 88% respectively.¹⁰ For men and women aged between 35 and 69, 22 years of life were lost on average per death from smoking.¹¹

Smoking clearly represents an enormous public health challenge for Scotland. Reducing the availability of cigarettes to young people by introducing a system of positive licensing for tobacco sales would do much to deliver health, financial and social benefits to Scotland.

Smoking among children and young people

There are many factors involved in a child's or young person's decision to smoke. Social and cultural pressures, issues relating to self image, the behaviour of families, friends and peers as well as the highly addictive nature of nicotine are all key factors. Children and young people may start smoking out of a sense of defiance, or to assert their growing independence.¹² Among young women, concerns over body weight can be a significant risk factor for smoking.^{13 14} However, easy access to cigarettes is also important.¹⁵ Tackling this availability by raising the age at which young people can buy cigarettes and tobacco is a welcome step in the right direction.

There is, however, no evidence that simply increasing the age at which tobacco products can legally be purchased is effective in tackling smoking among children and young people. The Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) National Report for 2006 outlines the levels of smoking activity among 13 and 15 year olds of both genders: 4% of 13-year olds are classified as "regular smokers" (defined as smoking one cigarette or more per week), while by age 15 this has risen to 15%. Girls in both age groups are more likely than boys to be regular smokers.

Surveys have demonstrated that children as young as 13 had very little difficulty in buying cigarettes, particularly from small shops and newsagents. Almost half of 13 year old smokers, and over 80% of 15 year olds bought their own cigarettes, particularly from newsagents and sweet shops.¹⁶ The 16 year age limit was widely disregarded, and it is unlikely that an increase in the legal smoking age to 18 will be any more effective without additional enforcement measures. The potential benefits of raising the age of purchase, such as reduced uptake of smoking among young people, reduced numbers of cigarettes smoked by regular under-age smokers, increased smoking cessation among young smokers and easier refusal of sales by retailers, outweigh concerns that making tobacco a purely "adult" product could actually increase its attraction for children and young people under the age of 18.¹⁷

Young smokers often underestimate the health risks of their smoking habit: a survey in the United States found that almost half of 13 year old smokers believed that smoking 20 cigarettes a day would not cause them great harm.¹⁸ Furthermore, even teenagers who do understand the theoretical risks of smoking frequently lack the foresight to use this information wisely. It is difficult for a 15 year old to imagine being 30, let alone 55.¹⁹ It is unsurprising therefore that warnings about the health impacts of smoking in later life so often fail to deter children from smoking, particularly when weighed against the perceived – and much more immediate – attractions of smoking.

Data from the General Household Survey of 2005 show that about 40% of regular male smokers have consistently begun smoking before the age of 16, with this percentage rising to around 68% by the age of 18. Only around 15% wait until they are over the age of 20 to commence smoking. While the data for males has been very consistent, the data for regular female smokers shows that an ever larger proportion of them have begun smoking at an early age. In 1992, the percentage of regular female smokers beginning before the age of 16 was 28%; by 2005 this had risen to 38%. The proportion waiting until they were 20 to begin smoking fell from 25% to 19% over the same period.²⁰

There is also a clear link between age of starting smoking and cigarette consumption for both male and female regular smokers. Over half of regular male smokers consuming 20 cigarettes or more per day began their habit before 16, but only one third of those smoking less than 10 a day began at this early age.²¹

Early smoking commencement is linked both with continued smoking into adulthood, and with greater consumption of tobacco. There is also evidence that the earlier smokers take up the habit, the worse the long term health risks become: a child who starts smoking at age 14 or younger is five times more likely to die of lung cancer than someone who starts smoking at age 24 or older, and no less than fifteen times more likely to die of lung cancer than someone who never smokes.²²

Preventing young people from smoking until they are 18 may therefore ultimately lead to lower numbers of adults smoking, with lower cigarette consumption per smoker, and with dramatically reduced negative health consequences.

Smoking and deprivation

Smoking among young people contributes to a cycle of ill-health and deprivation among disadvantaged communities in many parts of the country. There is a very strong correlation between smoking rates and socio-economic deprivation: smoking rates among the most deprived decile of the population are almost four times higher than rates among the least deprived decile.²³ The ratio is even greater among pregnant women from the most and least deprived sections of society: among the most deprived quintile, smoking rates are up to six times higher than among the least deprived quintile.²⁴

It is estimated that around half of the reduced life expectancy faced by poor communities is accounted for by tobacco use²⁵, and that as a proportion of their total expenditure, the poorest households spend over five times more on tobacco than the richest.²⁶ A UK government inquiry into health inequalities found that in more than 70% of two-parent households on income support, parents smoked. In such households, around 15% of disposable income was spent on cigarettes. Children in smoking households on income support were found to be much more likely to lack basic amenities, including food, shoes and coats, than those in non-smoking households on income support.²⁷

Parental smoking is a major risk factor for smoking initiation: it is known that children from households where one or more parents smoke are between two and three times more likely to become smokers than their peers who grow up in non-smoking households.²⁸ While young people of all backgrounds experiment with tobacco, around half of the smokers from better-off backgrounds are likely to quit in their twenties, while about three quarters of those from working class backgrounds are likely to carry on and become lifelong smokers.²⁹

The relationships between deprivation, smoking and ill-health are complex, and it is important to recognise that the easy availability of cigarettes from shops is only one of a number of factors that lead many young people to begin smoking. But as part of a range of measures designed to prevent smoking initiation among young people, the introduction of an effectively enforced positive tobacco licensing system would contribute to developing a culture in which early onset smoking is no longer seen as the default position for many of those growing up in disadvantaged communities.

Licensing schemes

There are a number of activities and products for which a minimum age limit has been set by law. These include gambling, the purchase of alcohol, tobacco, knives and fireworks, and the supply of certain age-restricted videos and computer games. Alcohol and gambling are further regulated by licensing schemes in order to minimise the potential social harm caused by these activities.^{30 31} Gambling and the consumption of alcohol can both be enjoyed in moderation with minimal negative long term consequences. But because of the health and social costs caused by the minority of individuals who gamble and drink to excess, gambling and the sale of alcohol are subject to licensing systems. However, the sale of tobacco remains almost totally free from regulation, despite there being no safe level of consumption.³² Cigarettes are the only product that will prematurely kill one in two long-term users when regularly used as intended.³³

There are two main forms of retail licensing: positive and negative. A **positive** licensing system requires that all retailers who wish to sell tobacco make a formal application for a licence, similar to the system currently in place for the sale of alcohol. Such a system actively links compliance with tobacco control legislation with the right to sell tobacco products. Should a retailer be shown to be selling tobacco to under-age customers, this licence can be withdrawn, either permanently or for a finite period of time. In contrast, a system of **negative** licensing permits any retailer to carry on selling tobacco without requiring them to apply for a licence. An outlet that has been shown to sell tobacco to under-age customers can be subject to a prohibition order preventing them from selling tobacco, either temporarily or permanently. They are therefore free to sell tobacco until or unless they are shown to have flouted the age restriction and sanctions are applied.

The primary policy objectives of any future licensing system must be to facilitate the provision of:

- appropriate knowledge/information to enforcement officials to enable them to adequately enforce the laws regulating tobacco sales
- appropriate and adequate information to retailers regarding their obligations and
- efficient and effective sanctions for use against retailers who contravene relevant tobacco point of sale laws.³⁴

Positive licensing achieves all three objectives. All retailers would have to engage with the licensing system, providing a comprehensive database of all tobacco outlets that enforcement officials would be able to access in order to carry out their work more effectively. The licence application process would also inform retailers about their responsibilities and would require them to accept these obligations. Finally, the suspension or withdrawal of a licence would provide an effective sanction for any retailer found to have broken the law.

In contrast, negative licensing achieves only the third objective – providing an efficient and effective sanction against retailers. In fact, it could be argued that although the withdrawal of a nominal licence would provide an effective sanction, the threat of withdrawal would not constitute such an effective deterrent as it would with a licence that has had to be actively applied for in advance.

Negative licensing singularly fails to address the first two points. It does not provide any additional knowledge or information to enforcement officials, nor can it act as a way of providing information to retailers about their legal obligations. The main disadvantage of negative licensing is that retailers have no contact with the system until or unless a breach of the law has already been shown to have taken place.

Another area where a positive licensing scheme will be more effective than a negative scheme is in relation to illicit sales of tobacco. Across the UK, one in six cigarettes and around half of all hand rolling tobacco is estimated to be sold illicitly.³⁵ The requirement for all tobacco retailers to hold a valid licence – a requirement offered only by positive licensing – would provide additional powers to the authorities working to tackle the sale of smuggled and counterfeit tobacco products. Organised tobacco smuggling not only harms honest shopkeepers, it is also estimated to cost the UK taxpayer around £3 billion annually and undermines government taxation policies designed to reduce smoking rates.³⁶ Any additional powers that could help to tackle this huge problem would be to the benefit of both groups, as well as to the overall health of the nation.

Whilst a negative licensing system may cost less to establish and run than a positive licensing system, it will almost certainly be significantly less effective in preventing illegal sales of cigarettes to children. ASH Scotland considers that only a positive licensing system:

- can provide an opportunity for targeted education and information to retailers
- is consistent with the message that selling tobacco is a conditional privilege rather than an unconditional right
- can provide the possibility of licence conditions and ensure that those who sell tobacco products are fully aware of their legal responsibilities
- can support an active enforcement regime
- can help tackle the growing problem of illicitly traded tobacco.

While a negative licensing system would be preferable to the status quo, a positive licensing system would be far more effective. The forthcoming smoking prevention action plan provides the Scottish Government with the opportunity to ensure that cigarettes are not sold to under-age customers by introducing a system of positive licensing for retail tobacco sales backed by effective enforcement measures.

The need for more effective enforcement

The Scottish Government, in line with the UK Government, increased the minimum purchase age for tobacco from 16 to 18 on the 1st October 2007, a welcome move, although one that is unlikely of itself to bring about a significant change in the incidence of under-age sales. Currently the only formal obligation on shops and other retail outlets selling tobacco products is that a statement on the illegality of sale of tobacco to the under-18s must be prominently displayed at the point of sale.

Since the introduction of the increase in the purchase age, a number of press articles have reported that between a quarter and a third of shopkeepers, when subject to test purchase activity, persist in selling tobacco to under-age customers.^{37 38 39} So while the recent increase in the legal age of smoking is to be welcomed, it must be accompanied by rigorous enforcement if it is to have the desired effect of reducing the availability of cigarettes to those under the age of 18. Until recently, enforcement activity by Scottish trading standard officers was limited by the guidance of the Lord Advocate restricting the use of child test purchasers' testimony in court. As a consequence of this approach very few prosecutions were able to be brought. The Scottish Government, answering a written parliamentary question tabled by Christine Grahame MSP, revealed that there was one prosecution in 2001-02, three prosecutions in 2003-04 and two prosecutions in 2005-06. Since the decision of the Lord Advocate to allow the use of young people's evidence in prosecutions, the rate of court action has risen significantly: in 2006-07 eleven people were subject to court proceedings in respect of illegal sales of tobacco. However, in a country where 15% of 15 year olds are regular smokers and over 80% of them report buying their own cigarettes, eleven prosecutions in one year cannot represent rigorous enforcement.

There is, however, an emerging consensus that the minimum purchase age must be properly enforced if it is to have any impact on under-age smoking rates. When Shona Robison, the Public Health Minister, gave evidence to the Scottish Parliament's Health and Sport Committee on the 12th of September 2007⁴⁰ she spoke of the need for:

“more vigilance among retailers to avoid illegal sales and more effective enforcement of the law by trading standards.”

Evidence from other parts of the world that have introduced various forms of tobacco sales licensing show that any such regulation must be backed up by rigorous and regular enforcement activity if it is to be effective. A positive licensing scheme introduced in Tasmania in 1997 was followed by a wide range of compliance rates dependent on the level of enforcement activity that was carried out. A number of surveys carried out between 1998 and 2002 showed compliance rates varying from 22% to 52%. But a similar survey carried out in 2004 after an increase in the level of enforcement showed that compliance rates had increased to 95%.⁴¹ Compliance rates subsequently fell back to 74%, reflecting a drop in enforcement activity.⁴²

Positive licensing of retail tobacco sales must be seen as a means to enable more effective enforcement to be carried out, rather than an end in itself.

Tobacco licensing around the world

Tobacco licensing schemes have been introduced in a number of different countries and regions around the world. This section outlines a number of different examples and discusses the background to each.

Australia

Australia's federal system of government gives each of its states and territories considerable flexibility in the laws that it introduces and implements. As a result, there is a range of different licensing schemes in place. The following states and territories have introduced positive licensing for retail tobacco sales: Australian Capital Territory, Northern Territory, South Australia, Tasmania and Western Australia. Other states have introduced negative licensing.

Canada

Several Canadian provinces operate positive tobacco licensing, including:

- **Newfoundland** – the 1993 Tobacco Control Act was amended in 1999, introducing a positive licensing system. All tobacco retailers must hold a licence; violations of the law will lead to a suspension of the licence for three months for the first offence and six months for a second offence. Subsequent offences will result in the licence being cancelled⁴³
- **Québec** – every person who makes retail sales of tobacco products in Québec must hold a registration certificate; failure to fulfil the obligations set out in the Tobacco Tax Act may result in the licence being suspended or revoked.⁴⁴ There is no charge for a registration certificate.⁴⁵

New Zealand

New Zealand operates a negative licensing scheme, under which a retailer who has been convicted of selling tobacco to an under 18 at least twice in a two year period may find themselves subject to a prohibition order. This can stop them from selling all tobacco products for a period of up to three months.⁴⁶

Singapore

The Republic of Singapore operates a positive licensing system for tobacco sales; all tobacco retailers, distributors and importers are obliged to hold a licence. The systems is administered by a specialist tobacco regulation unit.⁴⁷ No-one with a record of selling tobacco to under-age customers is permitted to apply for a licence, and any business applying for a licence must be registered with the Singapore Registry of Companies and Businesses; this requirement is designed to exclude makeshift or temporary outlets.⁴⁸

Breaches of the tobacco sales regulations are dealt with using a demerit points system. Demerits include the suspension and revocation of the tobacco retail licence. The demerit points system works alongside and does not replace the liability to conviction for those found to have sold tobacco to under-age customers. On conviction for a first offence, a fine of S\$5,000 can be applied; subsequent convictions can result in fines of up to S\$10,000.

United States of America

State by state data on tobacco control can be accessed through the State Tobacco Activities Tracking and Evaluation (STATE) System; a comparison report generated shows that as of the first quarter of 2007, 35 states plus the District of Columbia require licences for both over-the-counter and vending machine tobacco sales. Four states require licences for over-the-counter sales, while a further three require licensing of vending machines. The remaining eight states do not currently require licensing for any tobacco sales.⁴⁹ The fines and sanctions that apply for breaches of state laws on tobacco sales to minors vary from state to state.

The large proportion of American states with tobacco licensing laws is consistent with this recommendation from the Centers for Disease Control and Prevention:

*“For tobacco control laws and regulations to be adequately enforced, universal licensure of tobacco outlet sources is necessary. A graduated system of civil penalties on the retailers, including temporary revocation of the tobacco licence in areas where tobacco retail licences are required, has been shown to be an effective enforcement strategy. Fees from licensing of tobacco vendors can be used to fund enforcement activities and to develop and maintain active, large-scale programs. States currently without licensure provisions are encouraged to require licensure of retail tobacco outlets and to revoke licences for repeated sales to minors.”*⁵⁰

Ireland

As this briefing paper was being drafted, the Irish Office of Tobacco Control was working on the implementation details of Section 37 of the Public Health (Tobacco) (Amendment) Act 2004:

“The Office shall, on the commencement of this section, cause to be established and maintained a register of all persons who carry on, in whole or in part, the business of selling tobacco products by retail.”⁵¹

The Republic of Ireland’s pioneering position in the field of tobacco control led to them bringing in Europe’s first comprehensive ban on smoking in public places. They are now following up that groundbreaking step with moves towards the first system in Europe requiring tobacco retailers to register with the authorities before they can sell tobacco products.

Worldwide

Few of these licensing schemes have been in place for more than a few years, and there does not appear to have been very much comprehensive evaluation work carried out. There is, however, some evidence that licensing schemes can be extremely effective⁵², and work best when they are backed up with effective on the ground enforcement work.

Possible financial implications

It is not easy to provide an accurate cost benefit analysis of the various forms of tobacco licensing. While it may be relatively straightforward to calculate the costs to retailers and licensing authorities of establishing and maintaining tobacco licensing arrangements, these overall costs must be balanced against the long term benefits (including very considerable financial savings) of arrangements that should prevent a significant proportion of young people from becoming addicted smokers. These benefits, while undoubtedly very great, are difficult to quantify with any great accuracy.

In 2006, the UK Department of Health (DoH) conducted a consultation exercise on under-age sale of tobacco, covering increases in the minimum legal age for tobacco purchase as well as various forms of licensing.⁵³

The DoH calculated that a positive licensing system introduced in England and Wales would incur ongoing annual costs of £53.5 million and annual ongoing benefits of £166m, leading to a net overall benefit of £112.5m annually. A negative licensing scheme would incur lower annual costs of £37.2m and benefits of £166m, leading to higher net benefits of £128.8m. Were licensing schemes with similar per capita costs and benefits to be introduced in Scotland, they may – on DoH estimates – result in estimated net benefits of £11.06m for a positive system, and £12.66m for a negative system. It is notable that the financial benefits of each scheme significantly outweigh the financial costs.

However, the DoH study makes at least two questionable assumptions. Firstly, it assumes that a positive licensing scheme would be no more effective than a negative scheme. Secondly, it assumes that neither scheme will reduce under-age sales of tobacco by more than 10%. Studies and empirical evidence from Australia call into question both assumptions. Reports from Australia suggest that a positive licensing scheme could result in far greater awareness of the consequences of under-age

sales of tobacco than a negative licensing scheme would achieve, and this would almost certainly be translated into lower under-age tobacco sales. A positive licensing scheme in Tasmania, when backed up by active enforcement, resulted in compliance with legislation of up to 95%.⁵⁴

The Tasmanian example indicates that whichever system of licensing is introduced, a significant minority of unscrupulous retailers will only be deterred from selling to under-age customers if licensing is backed up with effective and rigorous enforcement activity. Given that such enforcement is likely to be more costly than the licensing scheme itself, and that a more effective system of positive licensing could result in less enforcement being required, it is entirely possible that positive licensing could result in lower overall costs than negative.

ASH Scotland takes the view that the costs of establishing and maintaining a system of positive licensing should be borne by the licence holders – who are profiting from the sale of tobacco – rather than by the taxpayer, while funding the more expensive enforcement activity should remain the responsibility of the state. However, ASH Scotland also strongly believes that any licensing system must be affordable and not impose a disproportionately onerous administrative burden on small businesses. A sliding scale of licence fees, similar to that proposed for alcohol licences,⁵⁵ could be used to ensure that small retailers did not subsidise larger outlets. An online licence application system would minimise both the financial cost and bureaucratic burden to all retailers.

Public opinion

A survey carried out by YouGov on behalf of ASH Scotland demonstrated that a clear majority of people are supportive of a system of positive licensing. 65% of respondents strongly supported, with a further 24% tending to support, the proposal that businesses should be required to have a valid licence to sell tobacco. Only four per cent of those questioned opposed the proposal.

There was also strong support for the use of fixed penalty notices for retailers found to have sold or supplied tobacco to under-age customers. 91% of respondents supported such a move, with only three percent opposed. Licence suspension for businesses found to have sold or supplied tobacco to under-age customers more than once was supported by 89% of those questioned, with four percent opposed. See the Appendix for survey data relating to retail tobacco licensing.

Conclusion

The recent increase in the minimum purchase age for tobacco from 16 to 18 is welcome as it recognises the serious harm caused by tobacco and limits its use to adults. However, the large proportion of under-age smokers who report buying their own cigarettes indicates that simply increasing the age at which tobacco can legally be sold is unlikely to deliver significant reductions in under-age smoking rates. For this to happen, effective enforcement of the existing law is required. Introducing a licensing scheme for retail tobacco sales is one way of enabling such improved enforcement to take place.

Evidence from other parts of the world shows that tobacco licensing schemes, together with effective enforcement activity, can lead to high compliance rates among tobacco retailers. We believe that legislation requiring the licensing of tobacco sales is not only in the best interests of the retailers and Scotland's healthcare system but

also – and most importantly – of young people themselves. If a system of positive licensing can help to prevent Scotland’s children and young people from developing harmful and costly smoking habits, UK Government figures indicate that it would provide a net saving of over £11 million per year over the long term.⁵⁶ Positive licensing for retail tobacco sales is supported by a large majority of Scots, and is an opportunity that Scotland cannot afford to pass up if we are to secure the long term health prospects of future generations.

Appendix – Public opinion data

ASH Scotland commissioned YouGov to carry out public opinion research into a range of tobacco control issues.

The survey included the following questions relating to tobacco retail licensing:

Below are a number of suggestions that have been made to reduce smoking...		
How strongly, if at all, would you support or oppose the following measures...?		
	All respondents (%)	
Requiring businesses to have a valid licence to sell tobacco which can be removed if they are caught selling to underage smokers		
Strongly support	65	
Tend to support	24	
Neither support nor oppose	7	
Tend to oppose	2	
Strongly oppose	2	
Don't know	1	
Suspending the right to sell tobacco for businesses found to have sold or supplied tobacco to under-18s more than once		
Strongly support	63	
Tend to support	26	
Neither support nor oppose	7	
Tend to oppose	3	
Strongly oppose	1	
Don't know	1	
How strongly, if at all, do you agree with the following statements...?		
Retailers should be required to pay a fixed penalty notice if found to have sold or supplied tobacco to under-18s		
Strongly agree	71	
Agree	21	
Neither agree nor disagree	5	
Disagree	2	
Strongly disagree	1	
Don't know	1	

All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 1,100 adults. Fieldwork was undertaken between 20th - 22nd February 2008. The survey was carried out online. The figures have been weighted and are representative of all Scottish adults (aged 18+).

Sources

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