

ASH Scotland response to consultation on standardised packaging of tobacco products

August 2012

1. Which option do you favour?

Require standardised packaging of tobacco products

2. If standardised tobacco packaging were to be introduced, would you agree with the approach set out in paragraphs 4.6 and 4.7 of the consultation?

Yes

ASH Scotland strongly supports the general principles of the approach to tobacco packaging set out in the World Health Organisation's guidelines to the Framework Convention on Tobacco Control (FCTC) Article 13 on tobacco advertising, promotion and sponsorship.

As the proposals in the consultation document are based upon the FCTC guidelines, we support such an approach and believe that it will be effective in reducing the ability of tobacco manufacturers to utilise product packaging to promote their product.

The Public Health Research Consortium systematic review of the evidence on standardised packaging is comprehensive and compelling, within the limitations of the type of evidence available to the reviewers (no post-implementation evidence should not be confused with 'no evidence', this will be discussed further in the responses that follow).

The history of attempts to regulate the marketing practices of the tobacco industry is littered with examples of what was thought at the time to be, 'watertight' regulation being exploited by the industry. Each new law or regulation is examined by the industry, tested for weakness, and pushed as far as possible. This was the reason that Mr Justice McCombe, adjudicating on the legal challenges from tobacco manufacturers to the Tobacco Advertising and Promotion (Point of Sale) Regulations 2004, stated in clear terms:

'I also bear in mind that the Minister took into account that flexibility and "loopholes" in the rules would be likely to be ruthlessly exploited by the industry: the evidence suggests that he was entirely reasonable in so doing.'

(British American Tobacco UK Ltd & Ors, R (on the application of) v Secretary of State for Health, 2004)

To pre-empt several areas that may be vulnerable to future exploitation by the industry, we would recommend additional strengthening measures to the approach proposed in the consultation document.

Standardisation should apply to tobacco products as well as their packaging

Currently, tobacco manufacturers have the option to use various features such as colouring, text, embossing and patterning on the cigarette itself to make their product distinct, and communicate brand values to the consumer. If packaging is standardised yet these features are uncontrolled, it is likely that the tobacco product itself will become a medium for marketing communication in the place of packaging.

Borland & Savvas (2012) have shown in a survey that features of individual cigarette sticks can influence consumer perceptions of tobacco products, and hence are likely to influence smoking behaviour. Cigarette sticks with features such as a gold band near the filter were viewed more favourably than plainer sticks. The authors also found that branded sticks were viewed as more attractive and were rated as higher quality.

For these reasons, any visible feature of the cigarette that may be used to engage in this kind of communication should be regulated. This includes features such as product dimensions, colouring, and material texture.

Borland R, Savvas S. 2012. Effects of stick design features on perceptions of characteristics of cigarettes. Tobacco Control. Mar 6. doi:10.1136/tobaccocontrol-2011-050199

Misleading brand descriptors should not be permitted

Historically, tobacco manufactures have been enthusiastic in their promotion of purportedly safer modified emission cigarettes. In the case of 'light' cigarettes, where modifications to machine-measured yields are achieved through technical measures such as filter perforations, hypothesised benefits to health were not realised due to a range of factors, including compensatory smoking behaviour (Thun & Burns 2001). Manufacturers heavily promoted such products in a manner that sought to reassure smokers who were concerned about the health risks of smoking that light cigarettes appreciably reduced hazards associated with smoking. Misperception of risk difference in light cigarettes is likely to have perpetuated smoking (Kozlowski et al 1998) as the marketing of light cigarettes is likely to have resulted in smokers who otherwise would have ceased tobacco use entirely to switch to light cigarettes instead. Many jurisdictions (including throughout the European Union in 2003) have banned brand descriptors like 'light', 'mild' and 'low tar'.

However, as detailed in the systematic review of evidence on standardised packaging published alongside the consultation, misperceptions of harm persist, facilitated by design elements of packaging, with lighter colours being perceived as containing less harmful products. Other research has shown that descriptors with positive connotations such as 'slim' can foster false beliefs about harm (Mutti et al 2011). Descriptors that have been shown to influence consumer perceptions over relative harm of tobacco products should not be permitted and the burden of proof should be on tobacco product manufacturers to demonstrate that any new descriptors do not mislead consumers before they are permitted to be used.

Kozlowski LT, Goldberg ME, Yost BA, White EL, Sweeney CT, Pillitteri JL. 1998. Smokers' misperceptions of light and ultra-light cigarettes may keep them smoking. Am J Prev Med. Jul;15(1):9-16.

Mutti S, Hammond D, Borland R, Cummings MK, O'Connor RJ, Fong GT. 2011. *Beyond light and mild: cigarette brand descriptors and perceptions of risk in the International Tobacco Control (ITC) Four Country Survey. Addiction. Jun;106(6):1166-75.*

Thun MJ, Burns DM. 2001. *Health impact of "reduced yield" cigarettes: a critical assessment of the epidemiological evidence. Tobacco Control. 10 Suppl 1:i4-11.*

Replace quantitative emissions information with more meaningful warnings and provide information on how to quit

Similar to the issues relating to consumer misperceptions around 'light' cigarettes, above, numerical machine measured yield information (tar, nicotine, and carbon monoxide values) currently present on tobacco packaging sold in the UK is likely to mislead consumers as to differences in health risks between tobacco products. Research (Gallopel-Morvan 2010, Hammond & White 2012) has shown that numerical yield information is associated with false beliefs over product harm. In the latter study upwards of 80% of participants believed that packets with lower numerical emissions information would have lower health risks than packets with higher numbers.

Emissions quantification is only useful to the consumer if it imparts accurate information that the consumer can use to inform their purchasing decisions. It is clear from recent research that it does not provide this function, and is more likely to mislead the consumer rather than truthfully inform. Because of this, we would recommend that the quantitative warnings are replaced with qualitative descriptions of the harm smoking can cause. Research has been conducted in Australia to inform their standardised packaging regulations, which provides some guidance on the most appropriate types of messages following consumer testing (Parr et al 2011).

Each pack should also provide information to assist smokers who wish to quit to access appropriate, evidence-based support by including the details of (region-specific) quit lines and websites.

Gallopel-Morvan K, Moodie C, Hammond D, Eker F, Beguinot E, Martinet Y. 2011. *Consumer understanding of cigarette emission labelling. Eur J Public Health. Jun;21(3):373-5.*

Hammond D, White CM. 2012. *Improper disclosure: Tobacco packaging and emission labelling regulations. Public Health. Jul;126(7):613-9.*

Parr V, Gagg K. 2011. *Market testing of potential health warnings and information messages for tobacco product packaging: Phase 1 Side of pack messages. GfK Blue Moon, Sydney. Available from: <http://www.yourhealth.gov.au/internet/yourhealth/publishing.nsf/Content/mr-plainpack#.UAAIXLRfFUM> [Accessed 1 July 2012]*

Utilise the opportunity provided by standardised packaging to maximise impact of pictorial warnings

As articulated by research summarised in the systematic review published alongside the consultation, the branding currently permitted on the packaging for tobacco products detracts from the impact of health warnings. Research conducted to inform the detail of standardised packaging regulations in Australia (Parr et al 2011) has reported that the most effective pictorial health warning layout of a range tested featured 75% frontal health warning (uninterrupted: that is, not split over two separate panels). The study reported that larger front of pack pictorial health warnings is '*more noticeable, easier to understand and has a stronger ability to prompt a reaction to 'stop and think' and convey the seriousness of health risks*' (Parr et al 2011, p16).

This research, conducted on behalf of the Australian Government, is in accordance with the overall research evidence on pictorial health warnings, which emphasises that larger pictorial warnings are more effective than text-only warnings (Hammond 2011).

Taken together we would recommend using the opportunity provided by regulating on standardised packaging to maximise the impact of consumer warnings in-line with current evidence. Pictorial health warnings should be introduced to the front of tobacco products and enlarged to take up 75% of the front of pack area, while the pictorial warning currently on the back of packaging should be expanded to 90% of available area.

Hammond D. Health warning messages on tobacco products: a review. 2011. Tobacco Control. Sep;20(5):327-37.

Parr V, Tan B, Ell P, Miller K. 2011. Market research to determine effective plain packaging of tobacco products. GfK Blue Moon, Sydney. Available from:

<http://www.yourhealth.gov.au/internet/yourhealth/publishing.nsf/Content/mr-plainpack#.UAaIXLRfFUM> [Accessed 1 July 2012]

‘Future proof’ standardised packaging regulation to the greatest extent possible

As described previously, tobacco manufacturers are well-able to adapt to regulatory restriction, even ones that at the time were perceived to be comprehensive. As a result, regulations governing standardised packaging should be drafted with this in mind, seeking to pre-empt future circumvention of the spirit of the law. This should limit, to the greatest extent possible, any scope for manufacturers to differentiate their products in ways that undermine the intention of standardised packaging regulations. This could include the use of textile materials in pack construction, or technical processes such as printed electronics that may become viable options for packaging-based promotion in the future. The approach taken by regulators should be aware of these approaches, and clearly state the intent of prohibiting such practices in general terms, even if it is not possible to explicitly identify each type of potential circumvention at this stage.

Limitation of standardisation to the retail environment

Section 4.7 in the consultation document states that standardised packaging requirements would not be necessary during business conducted outwith the public-facing retail environment. If branded packaging is prohibited throughout the majority of the market, there is no reason why business to business activity should require it.

3. Do you believe that standardised tobacco packaging would contribute to improving public health over and above existing tobacco control measures, by one or more of the following:

Yes

The marketing power of packaging in the retail sector in general is widely acknowledged. A recent packaging feature in the retail sector magazine, *The Grocer*, stated that '*[t]he multi-tasking nature of packaging remains the sector's triumph... [i]t is protector, communicator, brander, premiumiser ... the list goes on*' (The Grocer 2012, p3). There is a wealth of internal tobacco industry documentation that acknowledges this power, and the role it plays in the consumption of tobacco products (Centre for Tobacco Control Research, University of Stirling 2012). As a promotional tool, the industry explicitly accepts its importance, however qualifies this with the argument that such marketing only encourages brand switching within a fixed-size tobacco market and is not intended to, and in fact does not, encourage uptake among current non-smokers to expand the size of the tobacco market. Within this argument is an implausible form of targeted selectivity in the effects of marketing - we are aware of no evidence that such selectivity is possible, let alone that it has been achieved in the case of tobacco. It also seems antithetical to ensuring business growth through attraction of new customers (a concern that seems particularly pressing for an industry whose main profits come from the sale of products that shorten the lives of those who consume them).

If the application of marketing techniques to communicate tobacco brand values and forge relationships with the consumer is done in a way that creates appeal to consumers of rival tobacco company products, it will (intentionally or unintentionally) generate some degree of appeal and interest in current non-users of tobacco. Even before considering the research evidence on plain packaging specifically, there is a strong logical underpinning stemming from marketing theory that should lead us to be concerned about the sale of an exceptionally hazardous consumer product in highly designed attractive containers.

ASH Scotland believes the Public Health Research Consortium systematic review to be a high quality and comprehensive summary of the relevant research in this area, with conclusions that support all four public health improvements identified.

The systematic review summarises 37 individual pieces of research that, taken together, form a convincing evidence-base for the effectiveness of standardised packaging. The body of research that forms this work has - in a large part, excepting studies published very recently or including in the review while in pre-publication - been open to scientific scrutiny through publication in major public health journals for some years. The scientific process is open to discourse and criticism on methods, results, or conclusions through formal publication channels with the possibility for misleading or flawed research to be amended or withdrawn.

Many of the individuals and organisations who claim there is 'no evidence' for standardised packaging do not appear to have any relevant research qualifications. They have not taken the opportunity over recent years to engage with the research in this area to raise concerns they now apparently possess over the validity of such research, its conclusions, or its policy recommendations.

It is important to note that all research has weaknesses and rarely do policy-makers have complete unambiguous certainty over the likely effect of interventions. In the public discourse over plain packaging, legitimate uncertainty has been misappropriated by opponents of plain packaging and communicated to the public and decision-makers as there being 'no evidence' for plain packaging. This is based on the observation that plain packaging has yet to be implemented in any nation. While this is a clear limitation of the current evidence, as is acknowledged in the systematic review, it is far from the same as there being 'no evidence'. To take the view that the only form of sufficient evidence is post-implementation evidence is an extremely limited intellectual standpoint. Conveniently for those ideologically opposed to plain packaging, if this view were widely held, it would result in plain packaging never being implemented

anywhere (as a prerequisite for implementation is pre-existing evidence of its prior implementation) - in addition to many other 'first time' policies never being introduced.

The process of gathering evidence from implementation Australia is likely to take many years if not decades if, as expected, the effect of standardised packaging on reducing uptake will be strongest among a cohort of young people (now very young or not yet born) who have never been exposed to this form of tobacco marketing. Even if we accepted the delay to gather this evidence, it is still likely to be contested as inconclusive by tobacco manufactures and others who oppose standardised packaging. It is probable that the threshold of scientific evidence required to persuade those ideologically or commercially opposed to standardised packaging cannot be reasonably met, despite ever accumulating supportive studies.

Most smokers start before the legal age of sale (ONS 2012) with earlier onset being associated with heavier future smoking and, consequently, poorer health outcomes. Most current smokers would like to quit (Bromley & Given 2011) and, if they could 'do it over again', they say they would not have started smoking (Fong et al 2004). A key finding of the Public Health Research Consortium systematic review was that young people and non-smokers tended to respond more negatively to plain packaging. Any benefits of delaying action to gather further evidence should be balanced against the costs of not acting while young people continue to be recruited to smoking. Engaging with escalating demands for 'more evidence' when the evidence that exists is already sufficiently compelling to have resulted in scientific consensus within the public health literature risks perpetually delaying a beneficial action while the harms of smoking continue unabated. For these reasons, and given the seriousness of the consequences that are associated with smoking, the evidence that already exists is more than sufficient to justify the immediate introduction of standardised packaging in the UK.

Bromley C & Given L (eds). 2011. Scottish Health Survey 2010 - Volume 1: Main report. Scottish Government. Available from: <http://scotland.gov.uk/Publications/2011/09/27084018/0> [Accessed 1 July 2012]

Fong GT, Hammond D, Laux FL, Zanna MP, Cummings KM, Borland R, Ross H. 2004. The near-universal experience of regret among smokers in four countries: findings from the International Tobacco Control Policy Evaluation Survey. Nicotine Tob Res. Dec;6 Suppl 3:S341-51.

The Grocer. Guide to packaging: An advertising supplement to the Grocer. William Reed Business Media. 30 June 2012.

The Centre for Tobacco Control Research. The packaging of tobacco products. March 2012. University of Stirling/Cancer Research UK. Available from: http://www.cancercampaigns.org.uk/prod_consump/groups/cr_common/@nre/@new/@pre/documents/generalcontent/cr_086687.pdf [Accessed 1 July 2012]

Office for National Statistics. 2012. General Lifestyle Survey, 2010. Available from: <http://www.ons.gov.uk/ons/rel/ghs/general-lifestyle-survey/2010/index.html> [Accessed 1 July 2012]

4. Do you believe that standardised packaging of tobacco products has the potential to:

a. Reduce the appeal of tobacco products to consumers?

Yes

Following from the response to question 3, there is strong evidence from the 28 studies contained within the systematic review (which addresses the issue of attractiveness) that standardised packaging will reduce the appeal of tobacco products to consumers. The evidence summarised in the review describes that plainer packs are consistently rated less favourably than equivalent branded packs, with perceived product qualities (such as taste and quality) also being rated less favourably. Some studies reviewed demonstrate that the 'plainer' the pack, the greater the reduction in appeal, reinforcing the case for making the packaging as uniform as possible, with no major distinguishing design features to differentiate between brands (aside from brand name). Importantly, non-smokers and young people seem to respond more negatively than smokers (consistent with the primary aim of the policy: to dissuade non-smokers from smoking uptake).

The importance tobacco companies place on packaging as a mobile ambassador for the brand is reinforced through study of internal tobacco industry documents, which show detailed understanding and analysis of how design features communicate desired aspects of the product to the consumer, and how particular groups in society may be responsive to particular messages. For example:

'If your brand can no longer shout from the billboards, let alone from the cinema screen or the pages of a glossy magazine... it can at least court smokers from the retailer's shelf, or from wherever it is placed by those already wed to it' (1999)

'Lower delivery products tend to be featured in blue packs. Indeed, as one moves down the delivery sector then the closer to white a pack tends to become. This is because white is generally held to convey a clean healthy association' (1990)

'throughout all our packaging qualitative research, we continue to validate that women are particularly involved with the aesthetics of packaging' (1992)

All from: *The Centre for Tobacco Control Research. The packaging of tobacco products. March 2012. University of Stirling/Cancer Research UK. Available from: http://www.cancercampaigns.org.uk/prod_consump/groups/cr_common/@nre/@new/@pre/documents/generalcontent/cr_086687.pdf [Accessed 1 July 2012]*

Studies published since the cut-off date for inclusion into the systematic review reinforce the overall conclusions of the review, some further elucidating specific associations packaging can have with particular groups. Hammond et al (2012) found in a sample of nearly a thousand 16-19 year old UK females that plain packs were less likely to be associated with positive images like sophistication and slimness, with respondents being significantly less likely to accept cigarettes when offered plain versus branded packs.

Hammond D, Daniel S, White C. 2012. The effect of cigarette branding and plain packaging on female youth in the United Kingdom. Journal of Adolescent Health. [In press]. Available from: [http://www.jahonline.org/article/S1054-139X\(12\)00222-4/abstract](http://www.jahonline.org/article/S1054-139X(12)00222-4/abstract) [Accessed 1 July 2012]

b. Increase the effectiveness of health warnings on the packaging of tobacco products?

Yes

The dozen studies that addressed this issue covered in the systematic review demonstrate aspects of pack design currently permitted and available to tobacco manufacturers in packaging their products can distract attention from, or lessen the impact of, health warnings. Standardised packaging typically increased the salience of health warnings.

Qualitative research with adolescents from New Zealand (McCool et al 2012) published recently investigated if and how pictorial warnings on cigarette packs make a difference to adolescents. The research found results in accordance with the larger body of work as summarised in the systematic review, finding that the majority of adolescents spoken to regarded warnings on standardised packaging to be more effective. There is therefore good reason to believe that standardised packaging will increase visual attention and impact of health warnings.

The systematic review already includes a study that directly investigated the effect of standardised packaging on visual attention paid to health warnings in adults (Munafò et al 2011), which found that standardised packaging increased visual attention towards health warnings compared to branded packaging in non-smokers and weekly smokers.

This work has been replicated and extended in a recent study involving similar methodology (Maynard et al 2012) but with 14-19 year olds. The researchers found that standardised packaging increased visual attention paid to health warnings amongst young people experimenting with smoking and weekly smokers. Young never-smokers (unlike with adults) preferentially paid attention to health warnings regardless of whether presented on branded or plain packaging.

This research further supports the case for standardised packaging. Interventions that are effective in dissuading young experimenters and occasional smokers from becoming regular smokers have the potential to protect young people from the significant risks of long term regular tobacco use.

As discussed in the response to item 2, there is already good evidence (Hammond 2011) that health warnings are effective, and that larger pictorial warnings are more effective than smaller, text-only warnings. Hence the opportunity presented by standardising packaging - freeing useable space on the tobacco packaging - to maximise the impact of pictorial health warning by utilising them on both the front and back of the packet and increasing their size to 75% and 90% respectively, should not be missed.

Hammond D. Health warning messages on tobacco products: a review. 2011. Tobacco Control. Sep;20(5):327-37.

Maynard M, Munafò MR, Leonards U. 2012. Visual Attention to Health Warnings on Plain Tobacco Packaging in Adolescent Smokers and Non-Smokers. Addiction. Postprint; doi: 10.1111/j.1360-0443.2012.04028.x

Munafò MR, Roberts N, Bauld L, Leonards U. 2011. Plain packaging increases visual attention to health warnings on cigarette packs in non-smokers and weekly smokers but not daily smokers. Addiction. 2011 Aug;106(8):1505-10.

c. Reduce the ability of tobacco packaging to mislead consumers about the harmful effects of smoking?

Yes

As described in the response to question 2, there is no clear evidence that any current brand or design of smoked cigarette offers an appreciable reduction in health risks. Hence it is important to accurately communicate this to smokers so that cessation of smoking is not delayed through trading down to products that carry the appearance of a reduced-risk product, but are not reduced-risk in reality. Individuals may cognitively justify risky behaviour by comparison to a behaviour considered even more risky (i.e. a 'well, at least it's not as bad as...' effect). Subtleties of packaging design may take advantage of these inclinations and offer well-established and recognised cues (for example: that lighter coloured packaging equates to a safer or 'healthier' product) to suggestively hint at these benefits without making direct health claims (which are forbidden).

These effects are real. A multi-country cross-sectional survey (Brown et al. 2012) carried out in the UK, France and Germany found around a quarter of smokers in the UK believed some cigarettes to be less harmful than others. Across all three countries, of the smokers who believed that some cigarettes are less harmful 86% believed that tar/nicotine yields provided an indication of harm, and 40% felt the same for descriptors on packs such as 'smooth' or 'ultra'.

There is a legacy of confusion that lingers over brands from the former use of 'light' and 'mild' as brand variant identifiers. Despite the fact that Marlboro 'Golds' have not been marketed as Marlboro 'Lights' in Europe for nearly ten years, they can still frequently be heard to be referred to by the latter. Standardised packaging is an important step towards breaking these associations. However, as discussed in response to question 2 brand variant name should be controlled, with the burden of proof on the manufacturer to demonstrate to regulators that any particular variant name does not carry positive health connotations to the consumer.

Finally, and also as described in response to question 2, research demonstrates that quantitative emission information imparts similar, false, impressions of meaningful risk differences between smoked tobacco products. This should be rectified by the removal of quantitative information to be replaced with qualitative warnings over the health risks of tobacco products.

Brown A, McNeill A, Mons U, Guignard R. 2012. Do smokers in Europe think all cigarettes are equally harmful? Eur J Public Health. Feb;22 Suppl 1:35-40.

d. Affect the tobacco-related attitudes, beliefs, intentions and behaviours of children and young people?

Yes

A key outcome from the systematic review is that standardised packaging is likely to have its strongest effect on the attitudes and behaviours of non-smokers and young people. The evidence is consistent in this regard and more than sufficient to justify implementation.

5. Do you believe that requiring standardised tobacco packaging would have trade or competition implications?

No

Standardised packaging would apply to every tobacco product sold in the UK, and would not overly advantage or disadvantage any particular manufacturer. Existing brands - providing that their brand descriptor was not suggestive of health benefits - could continue to be sold, and new brands could be brought to market. As tobacco display bans are phased in throughout the UK nations over the next few years, the minority of existing customers who are shopping for a new brand of tobacco product at any point in time will be able to peruse and select their product from an unbranded price list in any case. Implementation of standardised packaging will not alter this situation meaningfully.

6. Do you believe that requiring standardised tobacco packaging would have legal implications?

No

While it is a near certainty that standardised packaging would face legal challenge from tobacco manufactures (some manufacturers have already stated an intention to pursue legal action should standardised packaging be legislated for in the UK), this should not deter the Government from implementation.

Australia is proceeding to implement standardised packaging in December 2012, when legal challenges brought by manufacturers are still likely to be outstanding. In Australia cases have been brought under the grounds of contraventions of trade and intellectual property law. However, trade laws frequently contain exceptions for measures to protect public health. The evidence base on standardised packaging supports its introduction as a proportionate measure to respond to the epidemic of diseases caused by smoking. Legal opinion from Australia suggests that the arguments based around the acquisition of intellectual property are weak (Davison 2010), as Governments do not seek to use the registered trademarks of tobacco companies, instead they seek to prevent their lawful owners using their trademarks in one specific context.

Tobacco manufacturers have a long history of last ditch attempts to derail or delay regulatory action, which are in most cases lost or withdrawn at the last moment. Australia has decided to proceed with standardised packaging while legal challenges are still to be resolved, and we would urge the Government to not lose time in implementing this measure here.

Davison M. 2010. Plain packaging of cigarettes: would it be lawful? Australian Intellectual Property Law Bulletin. 23(5):105–8.

7. Do you believe that requiring standardised tobacco packaging would have costs or benefits for manufacturers, including tobacco and packaging manufacturers?

Yes

Through standardisation of packaging, the long-term costs to manufacturers of designing packaging will be reduced, as they will follow a prescribed template. Manufacturers will lose their ability to present their product in attractive containers of their design and choosing, however this is clearly the aim of the policy.

8. Do you believe that requiring standardised tobacco packaging would have costs or benefits for retailers?

Yes

Ultimately the aim of standardised packaging, as with many tobacco control policies, is to reduce the volume of tobacco consumption. This will, over time, reduce the degree to which retailers can be reliant upon tobacco sales. However, in the case of standardised packaging, the primary policy aim is to reduce smoking uptake amongst young people - this can be expected to have a gradual effect over many years, giving retailers time to adjust to the decline and diversify away from tobacco to other less harmful (and likely more profitable) products. Abrupt reductions in tobacco sales are not expected overnight as a result of the measures, so it will be unlikely that retailers will be much affected in the short term.

An issue that has been raised by retail groups and others opposed to plain packaging is that transaction times, at various stages of the retail supply chain, will increase due to difficulties in correctly identifying products. This argument is one that was previously heard in Australia where the Alliance of Australian Retailers (a group funded by tobacco companies to oppose the introduction of plain packaging) made claims that retail transaction times could increase by as much as 45 seconds for each sale as a result of standardised packaging. This was based on a Deloitte report where the methodology involved asking six retailers to informally estimate transaction time increases (Deloitte 2011).

As these estimates seem implausibly large, Australian researchers (Carter et al 2011) tested these estimates in a simulation experiment, finding that, contrary to the Deloitte estimate, the average transaction time for plain packs was around the same (actually slightly faster) than conventional branded packs. Selection errors were also reduced under the plain packs condition.

Retail and other groups opposed to plain packs have contended that this study is unrepresentative of the actual retail environment and that plain packaging would still increase transaction times by some unquantified degree. Considering this issue it is important to remember that the purpose of the Australian experiment was to experimentally investigate, in a controlled environment, a specific claim. While some elements of the experiment may differ from retail practice (e.g. the use of non-retail staff), this is by design as the intention of the study was to try to isolate the unique effect of standardised packaging on selection time from other potentially confounding variables that may also influence transaction times. In this respect, studying in a controlled experimental manner is an advantage. Hence many criticisms of this study as an 'abstract experiment' misunderstand the purpose of this process, and the value of using data rather than anecdote to answer relevant policy questions.

It should also be noted that some objections that have been raised to this study are confused or false and easily verifiable as such (e.g. that randomly coloured packs were used to represent brands instead of actual brand imagery - as has been suggested by the Association of Convenience Stores in their response to the standardised packaging consultation - this was not the case).

The evidence available indicates that plain packaging is unlikely to impact significantly upon transaction times. If retail or other groups wish to argue to the contrary, and believe they could design a reliable study to better reflect actual retail practice, it is incumbent upon them to bring forward evidence to support their case, as the existing evidence does not.

Carter OB, Mills BW, Phan T, Bremner JR. 2011. Measuring the effect of cigarette plain packaging on transaction times and selection errors in a simulation experiment. Tobacco Control. Sep 26. doi:10.1136/tobaccocontrol-2011-050087

Deloitte. 2011. Alliance of Australian Retailers: Potential impact on retailers from the introduction of plain tobacco, February 2011. Available from: https://www.australianretailers.com.au/downloads/pdf/deloitte/2011_01_31_AAR_Plain_Packaging2.pdf [Accessed 1 July 2012]

9. Do you believe that requiring standardised tobacco packaging would increase the supply of, or demand for, illicit tobacco or non-duty-paid tobacco in the United Kingdom?

No

Tobacco manufacturers frequently raise the issue of illicit tobacco in response to most tobacco control regulatory measures such as duty increases and point of sale tobacco display bans. It has become something of an expected response and is a useful argument for tobacco manufacturers to deploy in several ways. It emphasises their role as a legitimate, law-abiding manufacturer, keen to work with regulatory agencies to 'solve' the problem of illicit tobacco - despite the established evidence that tobacco companies have been complicit in increasing the size of the UK illicit market through oversupply to countries with poor border control and high levels of corruption in the knowledge they would be smuggled back to the UK (Joossens & Raw 2008). Illicit tobacco products have been demonstrated to have higher levels of constituents believed to be harmful - such as heavy metals (Stephens et al 2005) - however there is no epidemiological evidence that quantifies the difference in risk between illicit and legitimate products, and it must be remembered that 'legitimate' cigarettes are exceptionally hazardous products in their own right. However, by making repeated reference to the 'more harmful' illicit product, tobacco companies are able to subtly position their own product as less harmful by comparison. If there is a true difference in health risk between illicit and legal cigarettes it is very likely to be dwarfed by the extremely large difference in health risk between smoking and not smoking.

Claims over the illicit tobacco trade by the industry persist even in the face of conflicting evidence. Tobacco manufacturers made repeated claims that display bans would displace consumption to the illicit supply chain. The UK Tobacco Manufacturers' Association website continues to state (unreferenced) that '*[w]e believe, as recent evidence in Ireland proves, that organised crime will exploit the display ban.*' (Tobacco Manufacturers' Association, <http://www.the-tma.org.uk/policy-legislation/display-ban/> [Accessed 19 July 2012]). An economic

evaluation of the point of sale display ban in Ireland (Quinn et al 2011) that evaluated tobacco sales data for Ireland before and 12 months after implementation detected no such displacement of sales from legitimate retailers.

Because of the strategic advantage the industry gains by comparison to the problem of the illicit trade, their claims should be scrutinised closely and not accepted at face value. In reality, tobacco smuggling is shaped by a range of factors relating to supply and demand. Effective enforcement has shown considerable success over the last ten years with estimates of the UK illicit market share declining by half to around 10% in most recent years (from consultation impact assessment). Although the illicit market share in hand rolling tobacco is considerably higher, progress has been made here too, the estimated illicit market share is now under 50%.

Relating to issues of supply, current fully branded packaging appears to be little obstacle to counterfeiters, and, given that more complex features of packaging design do not have to be tobacco branding (they can be graphic warnings, or overt and covert security markings), there is scope for continuing to make standardised packaging moderately complex to replicate. Given this, and the current low costs of production for illicit tobacco, it is difficult to see how standardised packaging will meaningfully reduce the costs for illicit manufactures. Investment in secure packaging systems, security markings (which assist enforcement officers in identification of illicit products), and better systems of tracking and tracing tobacco products are important elements in tackling supply side issues of the illicit trade. In addition, requiring legally produced and sold tobacco to be packaged in standardised packaging may make detection of illicit branded or non-duty paid tobacco easier to identify (should the illicit trade, particularly 'cheap whites' maintain current branded packaging to some degree).

It may also be worthwhile to require duty markings on each individual cigarette stick in addition to the packets. This is already practiced in Singapore (see: <http://www.customs.gov.sg/topNav/new/SDPC+Cigarette+Marking+Regulation.htm> [Accessed 19 July 2012]) where all duty paid cigarettes sold are required to be marked with letters indicating that they are legitimate. This marking could be specified to vary over time to make it more difficult for illicit manufactures to reliably copy, and to further aid enforcement personnel in identifying illicit product.

Related to issues of demand, tobacco manufactures argue (implicitly acknowledging the value of product branding in driving consumption) that standardised packaging will encourage an increase in cross-border shopping. However, following the introduction of pictorial warnings in 2007 to 2008 (making UK tobacco products less attractive than countries which do not require pictorial warnings) in the UK there was no obvious departure from the trend of decline in the size of the illicit market, providing no evidence for this theory. Supporting this, research with young adult smokers in Scotland (Moodie et al 2011) found that the key determinants of illicit tobacco purchase were price and availability, standardised pack design having no perceived impact on the purchase of illicit tobacco.

Significant progress has been made in reducing the size of the UK illicit market, despite tobacco industry warnings of an increase accompanying nearly every tobacco control regulatory measure. These warning have continually failed to be verified by supporting evidence. Current, branded, packaging can be replicated with relative ease, and features that make packaging more complex need not be industry branding, but could be specifically designed security markings. There is little evidence that packaging alone determines demand for illicit tobacco, price and availability instead being key, which suggests that a rigorous and well-resourced enforcement strategy is the most important component in reducing the size of the UK illicit market.

Joossens L, Raw M. 2008. Progress in combating cigarette smuggling: controlling the supply chain. *Tob Control*. Dec;17(6):399-404. Epub 2008 Sep 10.

Moodie C, Hastings G, Joossens L. 2011. Young adult smokers' perceptions of illicit tobacco and the possible impact of plain packaging on purchase behaviour. *Eur J Public Health*. 2012 Apr;22(2):251-3.

Stephens WE, Calder A, Newton J. 2005. Source and health implications of high toxic metal concentrations in illicit tobacco products. *Environ Sci Technol*. Jan 15;39(2):479-88.

Quinn C, Lewis S, Edwards R, McNeill A. 2011. Economic evaluation of the removal of tobacco promotional displays in Ireland. *Tob Control*. Mar;20(2):151-5.

10. People travelling from abroad may bring tobacco bought in another country back into the United Kingdom for their own consumption, subject to United Kingdom customs regulations. This is known as 'cross-border shopping'. Do you believe that requiring standardised tobacco packaging would have an impact on cross-border shopping?

No

As described in response to question 9, there are no grounds to believe from experience to date that standardised packaging will result in shifting of purchasing patterns from the domestic market to cross-border shopping. Consumers are unlikely to shift their foreign travel and purchasing plans in a drastic manner, and we are aware of no evidence to support this view.

11. Do you believe that requiring standardised tobacco packaging would have any other unintended consequences?

No

It has been suggested by tobacco market analysts that standardised packaging will serve to reduce the value of premium brands and could encourage tobacco manufacturers to compete based on price alone (i.e. tobacco products become commoditized). This, it is argued, will reduce prices throughout the category and foster increased, rather than decreased, tobacco consumption following standardised packaging. However were such a shift to occur this could be readily offset by increases in duty - hence we do not consider it to be a major concern.

12. Do you believe that requiring standardised tobacco packaging should apply to cigarettes only, or to cigarettes and hand-rolling tobacco?

Cigarettes and hand-rolling tobacco

As all tobacco products are harmful to health, standardised packaging should apply to all products (cigarettes, hand-rolled tobacco, pipe tobacco, cigars, and tobacco sold for use in shisha/hookah pipes). In Australia this approach has been mandated, is practicable, and supports the underlying health policy aims.

13. Do you believe that requiring standardised packaging would contribute to reducing health inequalities and/or help us fulfil our duties under the Equality Act 2010?

Yes

Smoking is both a cause and symptom of inequality, and the disproportionate impact of smoking on the most disadvantaged in UK society is well known. Because of this, tobacco control has a large contribution to make in reducing health inequalities. Professor Sir Michael Marmot in his review of the evidence to reduce health inequalities in England concluded that *'[t]obacco control is central to any strategy to tackle health inequalities as smoking accounts for approximately half the difference in life expectancy between the lowest and highest income groups.'* (Marmot 2010)

Most comprehensive reviews of the evidence on health inequality such as the Marmot review point towards the complex causes of ill-health and health inequality, many of which relate to poverty - the 'causes of the causes'. While recognising this complexity, the empirical research clearly and consistently demonstrates that smoking, as one cause in a complex mix of cause and effect, is nevertheless an extremely powerful single cause and predictor of health inequality.

It is instructive to note that some manufacturers of tobacco products attempt to appropriate this complexity, and attempt to downplay smoking's well-established role as a causal agent in health inequality. Imperial Tobacco Limited in a recent submission to the National Institute for Health and Clinical Excellence (NICE 2011, p.99) stated:

"It is important to stress that the belief that health inequalities are a consequence of smoking is completely wrong. The root causes of health inequalities are much more fundamental."

This is a disingenuous attempt to explain away the role of their product in shaping inequalities in health. A large cohort study from Scotland (Gruer et al 2009) tracked over 15,000 people through the course of 28 years and found that, among both women and men, smoking had a stronger association with mortality than social position - never smokers from the lower social classes had better mortality outcomes than smokers from the highest social classes.

As standardised packaging is an intervention to which all smokers will be exposed, more individuals from less advantaged circumstances (where there are higher levels of smoking) will be exposed to the intervention. Standardised packaging will not 'solve' health inequalities, but as one measure that complements other aspects of a comprehensive tobacco control strategy, it will contribute toward reducing the large and persistent health inequalities caused by smoking.

Gruer L, Hart CL, Gordon DS, Watt GC. 2009. Effect of tobacco smoking on survival of men and women by social position: a 28 year cohort study. *British Medical Journal*. Feb17;338:b480. doi: 10.1136/bmj.b480.

Marmot M. Fair Society, Health Lives: The Marmot Review. 2010. Available from: <http://www.instituteofhealthequity.org/projects/fair-society-healthy-lives-the-marmot-review> [Accessed 1 July 2012]

National Institute for Health and Clinical Excellence. Tobacco -harm reduction: stakeholder comments and response table. 22 July 2011. Available from: <http://guidance.nice.org.uk/PHG/52/SHComments/pdf/English>

14. Please provide any comments you have on the consultation-stage impact assessment. Also, please see the specific impact assessment questions at Appendix B of this consultation document and provide further information and evidence to answer these questions if you can.

Timing of implementation

As described in response to question 3, the UK need not wait for post-implementation evidence from Australia before proceeding. This will result in substantial delay for a measure which all current evidence suggests will be beneficial and it should be remembered that there is also a cost for failing to act, as new generations of young people take up smoking.

Costs to manufacturers (impact assessment q1-3)

Long-term costs to manufacturers should decrease as there will be no scope for redesigning packaging to promote particular brands.

Tiessen J, Hunt P, Celia C, Fazekas M, De Vries H, Statsky L, Diepeveen S, Rabinovich L, Ridsdale H, Ling T. 2010. Assessing the Impacts of Revising the Tobacco Products Directive. Rand Europe. Available from: http://ec.europa.eu/health/tobacco/docs/tobacco_ia_rand_en.pdf [Accessed 25 May 2012]

Retail transaction time (impact assessment q5)

The evidence current available suggests that standardised packaging will not result in a significant increase in transaction times (see response to question 8). The burden of proof is upon those who believe otherwise to produce evidence to support their claims.

15. Please include any further comments on tobacco packaging that you wish to bring to our attention. We also welcome any further evidence about tobacco packaging that you believe to be helpful.

Effectiveness of comprehensive tobacco control measures

Those opposed to standardised packaging suggest alternative measures to reduce smoking prevalence, often in vague terms such as by pursuing 'better educational strategies' on tobacco. Rarely are these claims specified or supporting evidence supplied. Conveniently, the costs of researching, planning and implementing these measures are often borne by others than the ones making the claim and frequently they involve no cost to tobacco manufacturers.

This is unfortunate, as it has shaped dialogue in a way that suggests there are only competing alternatives, not complementary measures in reducing smoking. In fact, the value of most of the 'alternatives' proposed by opponents of standardised packaging are already widely acknowledged in tobacco control.

The World Health Organization's Framework Convention on Tobacco Control (FCTC) has an Article devoted to the importance of education, and innovative research on new public health educational methods in tobacco, such as the ASSIST programme (Campbell et al 2008) has been pioneered in the UK. This work and these approaches are important, and are complementary to whole-population interventions such as standardised packaging, not competing alternatives.

The FCTC recognises that complex social issues such as tobacco use must be addressed with complex, multi-faceted, evidence-based interventions. There is no single best solution, or single alternative. We know from experience that adopting a comprehensive approach to reducing the supply and demand for tobacco products is the approach most likely to lead to long-term success. There is room in this approach for measures such as standardised packaging and educational interventions, enforcement of the illicit supply chain, and many others.

A recent study in the European Journal of Public Health (Levy et al 2012) used a simulation model to examine the effect of tobacco control policies on smoking uptake and cessation in the UK over the last ten years. The comprehensive approach that has been adopted to date has seen a 23% relative reduction in smoking prevalence. By 2040 the actions taken in comprehensive tobacco control over the last ten years will have averted an estimated 210,000 premature deaths. We should continue on this successful path, with standardised packaging being an important next step.

Campbell R, Starkey F, Holliday J, Audrey S, Bloor M, Parry-Langdon N, Hughes R, Moore L. 2008. An informal school-based peer-led intervention for smoking prevention in adolescence (ASSIST): a cluster randomised trial. Lancet. May 10;371(9624):1595-602.

Levy DT, Currie L, Clancy L. 2012. Tobacco control policy in the UK: blueprint for the rest of Europe? Eur J Public Health. Jul 23. [Epub ahead of print]

Public support for standardised packaging

Standardised packaging is popular with the general public. In opinion polling we have conducted in Scotland (Yougov 2012), adult respondents were shown an example image of a standardised pack, based on the current Australian regulations. When asked if they support or oppose implementing plain, standardised packaging, 69% of non- and ex-smokers supported the measure (42% of smokers) - 64% across all those polled. Opposition to standardised packaging was low, especially among non- and ex-smokers (only 8%), but also among smokers (only 21%).

All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 1055 Scotland adults. Fieldwork was undertaken between 27 February and 16 March 2012. The survey was carried out online. The figures have been weighted and are representative of all Scotland adults (aged 18+).

Correction to Association of Convenience Stores (ACS) submission to standardised packaging consultation

We note that, in the ACS submission, they state that *'[h]owever, a 2011 survey carried out by ASH Scotland revealed that only 29% of young people who smoke buy tobacco from shops'*. This statement is misleading in several ways. This survey was not carried out by ASH Scotland, rather it was a statement referenced to the Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS), a large population survey of 13 and 15 year olds in Scotland.

The 29% figure refers to 15 year old *occasional* smokers, not regular smokers. In that year of the survey (2008) only 6% of 15 year olds were occasional smokers while 15% were regular smokers. The most appropriate group to make this comparison is regular smokers, who are likely to have the most established patterns of purchase.

In the most recent data (2010) the proportion of 15 year old *regular* smokers who buy from shops is 54%, much higher than the figure given by the ACS (29%). For 13 year olds, this figure is 46%.

The full tables of results from both reports are available online at:

<http://www.drugmisuse.isdscotland.org/publications/abstracts/salsus.htm> [Accessed 1 July 2012]

Standardised packaging should be implemented in addition to, not instead of, display bans

UK nations are at various stages of implementation of tobacco display ban legislation. Tobacco display bans are an effective measure to reduce the impact of tobacco marketing in one particular environment - retail. However, as smokers carry tobacco products around with them as they go about their lives, tobacco products can become mobile advertisements for their brand and manufacturer, in homes and public places throughout the country. Standardised packaging provides additional benefit in ending this practice.

As UK regulations on display bans have typically been drafted in terms that allow existing gantries to be retained, rescinding display ban legislation at this stage would leave tobacco products at prime position at the point of sale and a focal point in the retail environment.

This is undesirable. In a recent study of the removal of tobacco displays in Ireland (McNeil et al. 2011), young people were less likely to think that more than 20% of people their own age smoked following the display ban, demonstrating the effect having tobacco in a prominent, visible place can have on perceptions of social norms around smoking.

McNeill A, Lewis S, Quinn C, Mulcahy M, Clancy L, Hastings G, Edwards R. Evaluation of the removal of point-of-sale tobacco displays in Ireland. Tobacco Control. 2011 Mar;20(2):137-43.

Tobacco industry monitoring

Inclusion in the standardised packaging consultation of a declaration of direct or indirect links to the tobacco industry from respondents is welcome. In the United States and Canada (with Australia planning to do the same), tobacco manufactures are required to report promotional expenditure. If such a scheme were implemented in the UK, policy-makers would have better information to inform impact assessments, and future interventions.

Hence we believe the UK should require mandatory reporting of tobacco sales data and promotional expenditure, including payments to third parties such as public relations companies and trade bodies, in line with WHO FCTC Article 5.3 guidelines.

More information on the US and Canadian practices:

US Bureau of Consumer Protection, Cigarette sales and marketing expenditure reports: <http://business.ftc.gov/legal-resources/516/34> [Accessed 21 May 2012]

Health Canada, Tobacco Industry Reporting: Tobacco Reporting Regulations: <http://www.hc-sc.gc.ca/hc-ps/pubs/tobac-tabac/tir-rft/report-eng.php> [Accessed 21 May 2012]