

NFRN

The voice of the independent retailer

Head Office

NFRN

Consultation response on standardised packaging of tobacco

Tobacco Packs Consultation
Department of Health
7th Floor
Wellington House
133-135 Waterloo Road
London
SE18UG

Cc: Secretary of State for Business, Innovation and Skills, Rt Hon Dr Vince Cable; Enterprise Minister, Mark Prisk MP; Secretary of State for Health, Rt Hon Andrew Lansley; Shadow Secretary of State for Health, Andy Burnham MP; Chair of the All Party Parliamentary Small Shops' Group, Priti Patel MP; Chair of the All Party Parliamentary Group on Small Business, Brian Binley.

To whom it may concern,

RE: CONSULTATION ON STANDARDISED PACKAGING OF TOBACCO PRODUCTS

Please find enclosed the National Federation of Retail Newsagents (NFRN) response to the consultation on proposals to introduce plain packs for tobacco.

The NFRN has long supported the aims of the Department of Health to “improve public health by reducing the use of tobacco”, particularly to minors.

So it is with great regret that the parameters of this consultation only allow us to support Option 1 – do nothing and maintain the status quo – as this does not accurately represent our position in consistently calling upon the Department of Health to take action to:

1. Only make policy on the back of rigorous and evidence based policy;
2. Legislate to make proxy purchasing of tobacco illegal for minors, as it is with alcohol, and to bring the rest of the UK in line with Scotland;
3. Restore and formalise its funding to PASS to ensure the scheme is properly funded in a recognition of the crucial work it does;
4. Formally endorse ID card schemes approved by PASS, such as Citizencard;
5. Significantly increase the sentences and fines available to the courts, the police and HMRC to properly prosecute and disincentivise criminals from perpetuating the growing illicit, illegal and counterfeit tobacco market;
6. Grant HMRC and Trading Standards ring-fenced funding specifically to target the growing tide of illicit, illegal and smuggled tobacco, which must be measured against targets of removing sophisticated and organised criminal gangs from operating in the market.

Through this consultation response we will set out our fundamental opposition to these proposals on the grounds that plain packaging will:

1. Not work on a health basis and will be bad for legitimate and regulated independent businesses;

2. Gift market share to the unregulated, illicit market;
3. More than double transaction times and quadruple error rates in product selection by staff; and as a knock on effect
4. Significantly increase retailers' vulnerability to crime whilst they are increasingly distracted retailing tobacco products.

A thorough review of the “evidence-basis” provided by the Department of Health for plain packaging indicates a clear and unacceptable bias demonstrable through instances where evidence quoted:

1. Has been taken out of context and misrepresented;
2. Does not appear in the original reports that are cited;
3. Are taken from reports that clearly state fundamental fallibilities in their own research methodologies and are therefore not appropriate to base such contentious proposals on;
4. Is not independent. 20 of the 37 studies included in the Systematic Review include work by the authors of the review and the remainder are penned by authors with well-established links to groups who explicitly support plain packaging.

We welcome the ability to publish upfront any links we may have to the tobacco industry as our inability to do so during the last consultation left an information void which was manipulated by some unscrupulous anti-tobacco groups and charities to suggest independent businesses had been bought or duped into responding to the tobacco display ban debate. This is not only untrue but an insult to the intelligence of small business owners who chose to respond.

Our statement, first published in a letter to Chair of the All Party Parliamentary Group on Smoking and Health, Stephen Williams MP, on 11th March 2011 is clear:

Our income, and therefore the funds we have available for our activities, comes primarily from our members who each pay an annual membership fee of £260. We also receive an income from various commercial activities undertaken for the benefit of members, this includes our subsidiary companies, NFRN Commercial Ltd and Newtrade Publishing Ltd. We are involved in a wide range of commercial undertakings from straightforward trading relationships, through to schemes to provide practical help to our members in developing their businesses. We also run a number of events like our annual awards scheme, the NFRN Awards, CTN World, our national trade exhibition and the Independent Achievers Academy, which promotes retail best practice. All these schemes are run on a commercial basis and do attract income but I would stress that any income that is generated is spent specifically on these activities and not used to fund any other.

We have over 200 relationships with a wide variety of supplier companies such as Mars Confectionery, Payzone, Camelot, Frontline, Diageo, Booker, Barclaycard, Smiths News, Menzies Distribution, Warburtons, Walls Ice Cream, Nescafe and Cadbury. Tobacco companies are also included in this list as you would expect, given that they supply products that account for approaching 30% of sales in our member's shops. It would be improper to disclose specific details of our income from suppliers but I am happy to inform you that tobacco companies account for only a very small proportion of our total income (5%). I would

also add that our relationships with tobacco companies precede the display ban debate by many years and the commercial value of these relationships has not significantly changed since those debates started.

Finally, I do want to make it absolutely clear...that no supplier, in fact no one who is not a retailer and a member of the NFRN, exercises any authority over our decisions and actions. That is within the sole preserve of our members and is exercised through our Annual Conference and National Council by members elected from our branch network around the country. We are an organisation that is run by members for members and no incomes received from suppliers confer any degree of control over our positions or activities.

We were extremely shocked and disappointed by the smear campaign repeatedly launched against the NFRN (even after the publication of this very clear statement), our members (who exercised their democratic right to respond to the tobacco display ban consultation to return the single highest number of responses) and some of the MPs who supported their small business constituent concerns during the tobacco display ban campaign by Government-funded charities and their All Party Parliamentary Group.

We hope that our ability to republish this statement upfront will allay any attempts to perpetuate such smears throughout the plain packaging consultation. The NFRN respects others' rights to respond (although we may fundamentally disagree with their views or research) and hope that these rights will be mutually respected.

It is hugely disappointing that the debate continues to be framed as health vs big tobacco issue, and that the legitimate concerns of independent retailers continue to be artificially linked to those of the "big tobacco" camp. This is most acutely demonstrable in viewing the Impact Assessment's calculation of whether plain packaging proposals were in the scope of One In, One Out (OIOO) – in stating that the policy qualifies with "expected...higher costs for retailers" but that this was negated by the "loss of profits for tobacco companies". The NFRN is appalled that domestic retailer losses are counted as tolerable in order to damage multi-national tobacco manufacturers and this speaks to a fundamental attitude of the Department of Health to focus myopically on damaging tobacco manufacturers rather than looking at the causes of smoking and developing evidence based and proportionate policy to address the prevalence of smoking.

We hope that the Department of Health will conduct this plain packaging consultation with due respect for the concern of independent businesses and resist pressure to see independent business concerns as those of big tobacco manufacturers, who we consider are more than capable to speak for themselves.

We are disappointed that this Government, and the last, has chosen to pursue nanny-stateist policies that ultimately disproportionately effect small business. We refer specifically to the recent tobacco display ban regulations which were brought in by circumventing best practice principals of producing detailed impact assessments (which a petition signed by 72 MPs called for); not running policies past the Reducing Regulation Committee and the Regulatory Policy Committee; and without identifying a "one-out" to mitigate the impact of regulation on small business.

We were extremely disappointed that these increasingly hysterical proposals to introduce plain packaging for tobacco have been published the same month the display ban has come into force for larger stores in England and Wales. This means that plain packaging proposals were being drafted even before the ink was dry on the very contentious display ban proposals.

This is an unmistakable slap in the face to independent retailers who campaigned so passionately against the proposals and have been reassured on numerous occasions that the Government is 'on their side', wants to reduce regulation and is aware that the regeneration of our economy lays in the hands of the small business sector. Retailers rightly feel in this instance that the Government's actions in proposing plain packaging undermines this rhetoric.

We sincerely hope that the Department for Health will take independent retailers' concerns seriously and work with the NFRN to reduce levels of underage smoking, encourage smokers to quit and target the illicit, illegal and counterfeit tobacco sector rather than continuing down this path of interventionist regulation which the NFRN sees as responsible for the "lost momentum" of the "rates of smoking [that] have declined over the past decades".

Sincerely,

A handwritten signature in cursive script that reads "A. D. Smith". The signature is written in black ink and is positioned above the typed name and title.

Alan Smith
National President, NFRN

Which option do you favour?

- **Do nothing about tobacco packaging (i.e. maintain the status quo for tobacco packaging);**
- **Require standardised packaging of tobacco products; or**
- **A different option for tobacco packaging to improve public health.**

The NFRN fundamentally objects to the wording of these options, which suggests the consultation choices are to:

- a) Do nothing;
- b) Support standardised packaging as proposed in the consultation; or
- c) A different form of standardised packaging.

This wording demonstrates the fundamental bias of the consultation which presents in this context 66% of options to support plain packaging.

We are therefore forced to support the option of ‘do nothing’, which does not accurately represent our position. The NFRN has long supported measures to tackle underage smoking and our members have long been prepared to support and manage the decline in smoking levels among adults. To this extent, our consistent recommendations have been to:

1. Only make policy on the back of rigorous and evidence based policy;
2. Legislate to make proxy purchasing of tobacco illegal for minors, as it is with alcohol, and to bring the rest of the UK in line with Scotland;
3. Restore and formalise Government funding to PASS to ensure the scheme is properly funded in a recognition of the crucial work it does;
4. Formally endorse ID card schemes approved by PASS, such as Citizencard;
5. Significantly increase the sentences and fines available to the courts, the police and HMRC to properly prosecute and disincentivise criminals from perpetuating the growing illicit, illegal and counterfeit tobacco market;
6. Grant HMRC and Trading Standards ring-fenced funding specifically to target the growing tide of illicit, illegal and smuggled tobacco, which must be measured against targets of removing sophisticated and organised criminal gangs from operating in the market.

Through this consultation response we will set out our fundamental opposition to these proposals on the grounds that plain packaging will:

1. Not work on a health basis and will be bad for business;
2. Gift market share to the unregulated, illicit market;
3. More than double transaction times and quadruple error rates in product selection by staff; and as a knock on effect
4. Significantly increase retailers’ vulnerability to crime whilst they are increasingly distracted retailing tobacco products.

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?

The NFRN fundamentally opposes standardised packaging and therefore by definition does not support the approach set out in paragraphs 4.6 and 4.7.

A standardised pack across the estimated 269 brand variants available in the market¹ will present retailers with a unified wall of different products, vastly increasing transaction times – not just for those wishing to purchase tobacco, but also non smokers who may be in a queue.

Preliminary results from an extensive and detailed study conducted by the Rural Shops Alliance indicates that transaction times more than double (from 11 seconds to 28 seconds) with plain packaging and the error rate among staff more than quadrupled from 6% to 25%.

This fundamentally threatens the ability of independent convenience stores to continue to provide quick and convenient shopping to its customers. Those who typically shop in our members' retail outlets buy a few essential or impulse items and expect to be served much faster than if they are visiting a supermarket where they may be doing a weekly shop and expect queues.

In undermining the convenience of a convenience store, plain packaging proposals will have a hugely detrimental impact of small shops.

We do note that the Evidence base of the consultation makes reference to a study that indicates "serving staff...may be able to serve a standardised pack in about the same time as, or more quickly than, branded packs...when selecting standardised packs, 17.3% of participants made a mistake compared with 40.4% when selecting branded packs". This statement is clearly ridiculous and an insult to the concept that the consultation has been drafted in an impartial manner or that the proposals are justified on an empirical basis and we would urge the DH to discount the study completely rather than meekly conceding that the "design of this simulation experiment means that we should be cautious in applying its findings".

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:

- **Discouraging young people from taking up smoking;**
- **Encouraging people to give up smoking;**
- **Discouraging people who have quit or are trying to quit smoking from relapsing; and / or**
- **Reducing people's exposure to smoke from tobacco products?**

No. If the Department of Health is serious about reducing levels of smoking, among both young people and adults, it must look to addressing the causes of smoking rather than

¹ <http://www.conveniencestore.co.uk/news/police-raise-fears-over-plain-packs-proposal/230365.article>

pursuing increasingly nanny-stateist policies which have presided over a period of levelling out of reductions in the numbers of smokers.

These influencing factors are exhaustively explored annually in the Smoking, Drinking and Drug Use Among Young People survey and identified as related to sex, age, the propensity to take drugs or drink alcohol, influence of friends or family who smoke, socio-economic status and truancy. Tellingly, packaging is not even mentioned.

In addition, any attempt to stop young people smoking must look at how they acquire cigarettes and policy must be introduced to cauterise these access points. The study indicates that a vast proportion 69% are given them (58% by friends); with 41% buying them from other people. It follows that, in addition to existing penalties for retailers who are caught selling tobacco to minors, legislation needs to be put in place to stop young people acquiring tobacco through proxy purchasing; making the attempted purchase of tobacco illegal by a minor; and making it an offence to supply tobacco to minors.

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

- **Reduce the appeal of tobacco products to consumers?**
- **Increase the effectiveness of health warnings on the packaging of tobacco products?**
- **Reduce the availability of tobacco packaging to mislead consumers about the harmful effects of smoking?**
- **Affect the tobacco-related attitudes, beliefs, intentions and behaviours of children and young people?**

No. To successfully reduce the prevalence in smoking, policy must address the causes related to an increased propensity to smoke. These are highlighted in the annual Smoking, Drinking and Drug Use among Young People study and wholly fail to identify packaging as a cause of smoking. In failing to consult on policy measures which aim to address these causes, these proposals to introduce plain packaging will fundamentally fail to change attitudes towards smoking and levels of smoking itself.

In addition, the wording of this question presupposes that tobacco packaging does mislead consumers, which again goes to demonstrate the bias towards implementing plain packaging which permeates the whole consultation and its evidence base.

Do you believe that requiring standardised tobacco packaging would have trade or competition issues?

The NFRN has not sought legal advice on the issue and consider the matter of trade and competition issues outside of the expertise or interests of our membership.

Do you believe that requiring standard tobacco packaging would have legal implications?

While the market is entirely different, Australia is currently facing legal challenges from four tobacco manufacturers (British American Tobacco, Philip Morris International, Imperial

Tobacco and Japan Tobacco International) which would indicate that the legislation would be open to legal challenges.

However, the NFRN has not sought legal advice on the issue and consider the matter of legal infringements outside of the expertise or interests of our membership.

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

This is outside of the interests and expertise of our membership and the NFRN can therefore not comment.

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

Plain packaging presents no benefits to retailers, but several punitive costs.

Plain packaging will gift market share to the illicit and illegal market in blurring the lines of legal and illegal products, changing consumer attitudes only in respect of eroding a sense that consumers must purchase duty paid and legitimate products.

In addition, HMRC already estimates the cost of the illegitimate market to the Treasury of up to £3.6bn a year². In making it easier for counterfeiters to copy packaging, it merely removes barriers and production costs from the criminal gangs to penetrate the market further with a product which is harder to detect as fake.

In addition, uniform packaging is likely to restrict the avenues open for tobacco manufacturers to compete with one another, other than on price. Cheaper tobacco has the potential to make the product more attractive, or increase consumption levels among existing smokers. Even if it does not have an impact on increasing levels of smokers, the market will be devalued without achieving a reduction in the number of smokers that exist.

It is also likely that consumers will merely downtrade to cheaper brands if packaging no longer becomes an identifying factor, again devaluing an existing market without reducing numbers of smokers.

As outlined in the RSA study, the more than doubling of transaction times and quadrupling in the incidence of staff errors will mean that the cost in staff time for retailing tobacco will double while service levels will become four times poorer. Inevitably, this will do a huge amount of damage to the reputation of the independent retail sector for less convenient service while retailers' costs will increase per transaction making the whole sector unnecessarily and inevitably less competitive.

Perhaps most concerning of all, the doubling of transaction times affords criminals double the amount of time to commit crimes while retailers are increasingly distracted retailing tobacco.

² HMRC Measuring Tax Gaps 2011 <http://www.hmrc.gov.uk/stats/measuring-tax-gaps.htm>
Representing the Trade in The British Isles and The Republic of Ireland
National Federation of Retail Newsagents
Yeoman House Sekforde Street London EC1R 0HF
Telephone 020 7253 4225 Facsimile 020 7250 0927
Website www.nfrnonline.com

Crime figures are already shockingly high and plain packaging will play a huge role in exacerbating the vulnerability of shopworkers to crime. The BRC's most recent survey indicates that the cost of crime steeply increased in 2011 by 31%, with robberies up 20% and customer theft and fraud making up the largest share of offences at 87.8% of the cost; and 97.1% of the number of incidents (with the number of incidents estimated between 1.5-2m)³. With small businesses making up over half of UK GDP⁴ of the private sector workforce⁵ the Government cannot consider introducing legislation which will inflate these figures any further – for the welfare of both retail staff and the 4.8m small business sector in the UK.

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?

Yes. An increase in the illicit and unregulated market will be an inevitable result of implementing plain packaging, damaging only the legitimate market.

Plain packaging will gift market share to the illicit and illegal market in blurring the lines of legal and illegal products, changing consumer attitudes only in respect of eroding a sense that consumers must purchase duty paid and legitimate products.

In addition, HMRC already estimates the cost of the illegitimate market to the Treasury of up to £3.6bn⁶ a year. In making it easier for counterfeiters to copy packaging, it merely removes barriers and production costs from the criminal gangs to penetrate the market further which a product which is harder to detect as fake.

In making it harder for retailers to spot the difference between legitimate and illegitimate products, it also leaves retailers unwittingly open to purchasing non-duty paid or illicit products and therefore increasing their vulnerability to criminal prosecution, fines of up to £20,000 or being subject to Restricted Premises Orders (RPOs) or Restricted Sales Orders (RSOs).

Indeed, the consultation's own Evidence Base concedes that plain packaging will increase illicit and non-duty paid tobacco. Point 78 states that "Counterfeiters are already able to produce sophisticated replica goods. If there was an increase in counterfeiting, this would represent an additional source of competition [to the legal market] and potentially exert downward pressure on prices. Against this, illicit trade might become less profitable if the price of premium brands falls as a result of standardised packaging." This statement is based on a bizarrely perverse logic that the illicit market can make the tobacco industry more competitive. Health officials appear to be saying that plain packaging will allow the illicit and legal market to compete with one another more readily in a race to reduce prices of tobacco (which it can be argued will be an incentive to purchase tobacco). This speaks to the totally shambolic evidence base making the case for plain packaging.

³ http://www.brc.org.uk/brc_show_document.asp?id=4324&moid=7614

⁴ 59% <http://www.fsb.org.uk/frontpage/assets/fsb%20crime%20report%202010.pdf>

⁵ <http://www.fsb.org.uk/frontpage/assets/fsb%20crime%20report%202010.pdf>

⁶ <http://www.hmrc.gov.uk/stats/measuring-tax-gaps.htm> HMRC Measuring Tax Gaps 2011

People travelling from abroad may bring tobacco brought 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?

Absolutely. Smokers are unlikely to embrace the added demonization of their habits and stock up on branded products while abroad. UK authorities can also expect little assistance from the EU, whose response is that the increasingly sizeable UK duty fraud or non-duty paid market is the fault of our own policies of high taxation relative the rest of Europe. HMRC estimates the existing loss to the Treasury of cross border shopping at £0.5bn and the NFRN would expect to see these losses increase with the introduction of plain packaging. If an added element of differentiation is added in the UK market, it is likely that British consumers will spend more in EU markets and less domestically without any knock on impact in reducing the number of people who smoke.

Indeed, the consultation’s own evidence basis concedes cross border trading will present an issue. Point 76 states that “both the illicit and cross-border trade are declining but there is the risk that standardised tobacco packaging may lead to some reversal of this trend. Standardised packs may provide an additional possibly powerful incentive to cross border shopping.” It is baffling that, despite this statement, the Impact Assessment has clearly stated it is excluding the illicit trade from its assessment.

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

The NFRN is fundamentally opposed to plain packaging proposals, whether they be for cigarettes or hand rolling tobacco.

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

Plain packaging has the potential to increase health inequalities and will have a disproportionately negative impact on small and microbusinesses.

Far from reducing health inequalities, plain packaging has the potential to amplify them. The Department of Health’s annual report, Smoking, Drinking and Drug Use among Young People suggests that those from lower socio-economic backgrounds are more susceptible to becoming smokers so therefore this policy disproportionately demonises this group and increases the likelihood that organised criminal gangs will increase their supply to this group with unregulated products, with the associated health risks that come with counterfeit and illicit tobacco.

In making transactions two times longer and increasing error rates four-fold, plain packaging will reduce the convenience element of service so essential to independent retailers and therefore disproportionately impact small shops. This consultation’s own evidence base concedes that the legislation will impact 66,710 shops – 58,559 of which are small. Therefore, 88% of the market is comprised, according to DH’s own figures, of small shops.

Despite this, a detailed small business impact assessment has not been done. Indeed, point 51 states “for more than 58,000 small shops selling tobacco, any additional costs of selling tobacco will be more burdensome than for large shops to the extent that they represent a greater proportion of their total sales revenue.” A case for a detailed small business impact assessment is therefore undeniable, and we are confident would reveal an unacceptable and disproportionate impact on the small business sector.

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.

While the lead Department is listed as Health under the Impact Assessment, there are none listed as ‘other’ Departments being consulted on this policy. This is a huge concern for us as the concessions made for small shops within the Tobacco Display Ban legislation (specifically the 3 year delay for small shops and the 10-fold increase in permissible display) only came about through rigorous debate with the Department for Business, Innovation and Skills. We would like to clarify that BIS will have an equivalent role to play in the consideration of this consultation as the impact on business will be huge and to sideline the Department charged with advocacy of this sector is to make plain packaging a foregone conclusion.

The Impact Assessment qualifies plain packaging as ‘zero net cost’ within the scope of the One In One Out rules (**OIOO**) by pitting “expected...higher costs for retailers” (“IN”) against a “loss of profits to tobacco companies consequent upon switching to lower price brands” (“OUT”). There are several huge problems with this calculation:

1. Profit losses of multinational tobacco manufacturers cannot be used as justification for expected losses to domestic small and micro-businesses; and
2. A loss in profits from downtrading of lower price brands does not constitute a reduction in the level of tobacco consumption.

Indeed, point 88 explicitly states that the expected “reduced consumption of cigarettes is an indirect effect (as agreed for display)”. In other words, the Department for Health cannot establish a direct link between this policy and a reduction in smoking consumption, and is citing the precedent of non-evidence based policy set by the tobacco display ban as a justification. This is very dangerous grounds and runs roughshod over the concept of evidence-based policy making.

This also makes it very likely that, yet again and as with the tobacco display ban, these proposals will accept the cost to small business as tolerable and will not identify an equivalent ‘one out’ legislation to mitigate the impact on business. With the display ban, the Department of Health encountered huge issues identifying a one out for business which ultimately meant that one was never identified. We are concerned that, in listing the proposals as ‘zero net cost’, the Department of Health is merely circumventing reducing regulation policy rather than addressing it.

This action of listing the policy as ‘zero net cost’, which is patently untrue, speaks once again to the bias in the manner in which this policy debate is structured.

In the ‘Policy Objectives and intended effects’ section, the stated policy aim is to “improve the health of those who never start to smoke” which is clearly not something measurable in any quantifiable way and once again an inappropriate inclusion in the IA.

The Full economic assessment is almost left wholly incomplete with respect to:

- “Best estimate” of “Net Benefit (Present Value £m)”
- Direct impact on business (equivalent annual) £m in costs and benefits

It clearly is wholly unsatisfactory and deeply insulting as far a ‘full economic assessment’ goes, and fails to fulfil the obligations of the Department of Health under the Code of Practice on Consultation. While one has technically been provided, it is fundamentally and unapologetically incomplete.

The analysis does however interestingly concede that a result of plain packaging could be “increased price competition between tobacco companies (i.e. a price war) [which could] potentially risk the achievement of public health benefits.” Therefore, the meagre analysis provided does concede it would force manufacturers to compete on price, potentially making tobacco cheaper and therefore more attractive.

Rather worryingly, the analysis states that “there is insufficient evidence on which to include analysis in this IA” on the impact that plain packaging will have on increasing the illicit market. Again, this speaks to an inbuilt and obvious bias throughout the consultation to implement plain packaging by simply ignoring evidence bases for the prolific negative impacts of the proposals.

We would hope that the Department of Health is sincere in stating that “for tobacco control policies to be justified, the impact on smoking behaviour and the consequent improvement in health need to be sufficiently large to justify related costs.” If this is the case, it will be impossible for plain packaging to be introduced on the basis of the evidence provided thus far in the consultation document and its supportive papers.

The evidence base will be herewith explored with reference to the point number they refer to from the summary sheets.

2. Concedes that “in 2009, 15% of the managerial and professional group were smokers compared with 28% of the routine and manual group.” Plain packaging as a solution to this disparity therefore assumes the ‘routine and manual’ group is increasingly susceptible to the impact of packaging and therefore implicitly of a less sophisticated intelligence. This fundamental supposition is hugely patronising and ignores the true causes of smoking among these groups and will therefore fail to tackle the issue.

3. Quotes a Royal College of Physicians report (Passive smoking and children 2010) that “the total cost of childhood disease cause by second hand smoke has been estimated at £23.3m per annum in the UK”. A thorough analysis of this original report indicates that no

such figure exists, unless the figure has been misquoted. This figure therefore cannot be verified nor its methodology assessed – rendering it a wholly inappropriate figure to be included in the evidence base.

9. Quotes “a report prepared for the tobacco manufacturer Philip Morris in 1989 set out that ‘consumer perceptions are based on pack design, price points and usage patterns, not images created by advertising’.” From an analysis of the original document, there are many problems with this:

- A reliance upon a study from 1989 is clearly no basis for policy making in 2012 as the socioeconomic, economic and cultural conditions are completely different.
- This quote is completely taken out of context and its meaning and intention are therefore lost. This quote came from a pitch document by an advertising agency to win an account with Philip Morris as a comment on the state of the tobacco advertising market in 1989 not a professional and strategic recommendation to invest a marketing strategy in packaging. The full quote is: “Advertising, particularly in the UK, has become irrelevant, abstract or stereotyped. It lacks total empathy with potential target groups. Consumer perceptions are based on pack designs, price points and usage patterns – not images created by the advertising.”

This inclusion therefore constitutes a deliberate attempt to misuse evidence and mislead readers by the writers of the consultation document and its supportive evidence.

17. Concedes that “Despite the limitations of the studies included in the review, the authors concluded that “there was consistency in the study findings regarding the potential impacts of plain packaging.” This is a ridiculous statement that a study is being used as evidence despite its own authors conceding its fundamental “limitations”.

18. Concedes evidence on plain packaging is “inevitably indirect”. It is wholly inappropriate for a government to make Primary Legislation solely on the basis of indirect evidence.

22. From an analysis of the original report on ‘smoker identity’, it concedes its own “study limitations [which] produced an irregular response distribution [needed to] conduct analysis” which was also “not able to determine which specific brand elements most contributed to deteriorations in smoker perceptions of the packs.” Furthermore, it conceded that “respondents were not representative of the general population in terms of demographic characteristics.” The report, therefore, cannot be relied upon as a part of an evidence basis for implementing plain packaging.

46. Indicates that legislation will impact 66,710 shops – 58,559 of which are small. Therefore, 88% of the market is comprised, according to DH’s own figures, of small shops – and yet a detailed small business impact assessment has not been done. Indeed, point 51 states “for more than 58,000 small shops selling tobacco, any additional costs of selling tobacco will be more burdensome than for large shops to the extent that they represent a greater proportion of their total sales revenue.” A case for a small business impact assessment is therefore undeniable and yet has not been completed as part of the case made for plain packaging by the Department for Health.

49. Quotes a study on whether plain packaging will increase serving times and states “serving staff...may be able to serve a standardised pack in about the same time as, or more quickly than, branded packs...when selecting standardised packs, 17.3% of participants made a mistake compared with 40.4% when selecting branded packs.” This statement is clearly ridiculous and the methodology of this study is thoroughly questionable. When Department for Health officials use such clearly ludicrously biased studies as ‘evidence’ it makes a mockery of any suggestion that the measures are justified on an empirical basis.

67. Concedes that a result of introducing plain packaging could be “a fall in prices and an increase in consumption [although] in the long term prices might be higher partly as a result of reduced competition.” An assumption therefore is that plain packaging will put a few manufacturers out of business and concentrate the market to the point where the remaining market players are so dominant they can dictate a high market price. This situation is highly improbable and a huge assumption for an evidentiary document to make.

76. States that “both the illicit and cross-border trade are declining but there is the risk that standardised tobacco packaging may lead to some reversal of this trend. Standardised packs may provide an additional possibly powerful incentive to cross border shopping.” It is baffling that, despite this statement, the Impact Assessment has clearly stated it is excluding the illicit trade from its assessment.

78. States that “Counterfeiters are already able to produce sophisticated replica goods. If there was an increase in counterfeiting, this would represent an additional source of competition [to the legal market] and potentially exert downward pressure on prices. Against this, illicit trade might become less profitable if the price of premium brands falls as a result of standardised packaging.” This again is a totally ludicrous statement – Health officials appear to be saying that plain packaging will allow the illicit and legal market to compete with one another more readily in a race to reduce prices of tobacco (which it can be argued will be an incentive to purchase tobacco). In addition, increased pressure to reduce prices by the increasing ‘competitiveness’ of the illicit market could have the possible consequence of encouraging counterfeiters to further lower the quality of their already questionable blends (which have been shown to contain toxic poisons and rat droppings). Successive studies have shown that underage smokers are far more likely to buy illicit tobacco⁷ so in gifting market share to counterfeiters, plain packaging proposals could have the exact opposite effect of its aims and exacerbating the incidence of underage smokers.

83. States “if lost consumer surplus is seen as the value of individuals’ freedom to express themselves through their choice of branding, then there may be compensating gains from the use of substitute forms of self-expression (i.e through..branded clothing and footwear).” Again, completely perverse logic is applied to justifying plain packaging suggesting smokers would swap their silk cut for sketchers.

⁷ NEMS Market Research Study, Tackling Illicit Tobacco in the North of England
<http://www.nemsmr.co.uk/casestudy.aspx?ID=44>

87. and 88. state that costs will be born by retailers and losses will be made by tobacco companies, and then goes on to balance these against one another to justify the 'zero net cost' justification to ignore the OIOO principle by designating retailer losses an 'IN' and tobacco manufacturer losses as an 'OUT' justification to the principle. This is a totally ludicrous calculation that once again patently shines a light on the inbuilt bias justifying plain packaging.

91. Contradicts the 'increased competition' argument made in point 78. in stating "standardised tobacco packaging will limit competition through limiting product differentiation." An evidentiary document needs to be consistent and not contradict itself.

125. Is perhaps the most worrying point – a panel of 30 tobacco control experts have been surveyed to illicit their 'subjective' thoughts on whether plain packs will reduce levels of smokers and calculate numerically by what percentage point this could be by. What is most concerning is that the two of the six internationally accepted standards for participation in such studies are being set aside as 'impracticalities'. These principals are "impartiality and lack of economic or personal stake in potential findings". This is tantamount to relying upon the subjective (not scientifically quantifiable) opinions of people who are not impartial and have an economic or personal stake in the study findings. To date, this study has not even been published for analysis and speaks to a legislative process which is not transparent or impartial.

Consultation-stage impact assessment questions

Questions 1-4; and 8-10 and 12 are not of relevance to NFRN members.

Would retailing service be affected, and if so, why and by how much, if standardised packaging were introduced?

To answer this, we rely upon the results of a thorough and detailed study undertaken by the Rural Shops' Alliance, which indicates that transaction times will more than double (from 11 seconds to 28) and that staffing errors more than quadruple (from 6% to 25%).

This means that retailers will double the cost of staffing per transaction on a product that is already very low in profit margin (at an average of 5%) and that the reliability of service is made four times less dependable.

How could standardised packs be designed to minimise costs for retailers?

The NFRN is fundamentally opposed to plain packaging and therefore there is no design compromise which could mitigate the detrimental impact that the policy would have on independent retailers.

Would retailers bear any other costs if standardised tobacco packaging were introduced?

Retailers would double their staffing costs per transaction as it will take more than twice as long to retail tobacco products. On a product which carries a very low profit margin (at about 5%) this is patently an unacceptable burden on small shops.

The Evidence Base concedes that the illicit and non-duty paid market will increase, therefore inevitably the market transfer from the legitimate market to the illegitimate market would present a huge cost to small shops, 30% of whose turnover is based on tobacco sales.

Would consumers trade down from higher-priced to lower priced tobacco products if standardised tobacco packaging were introduced?

The Evidence Base of the consultation itself concedes that consumers will trade down. Point 67 states that a result of introducing plain packaging could be “a fall in prices and an increase in consumption [although] in the long term prices might be higher partly as a result of reduced competition.” An assumption therefore is that plain packaging will put a few manufacturers out of business and concentrate the market to the point where the remaining market players are so dominant they can dictate a high market price. This situation is highly improbable and a huge assumption for an ‘evidence’ document to make.

It is self-evident that if cost is the only mechanism left for manufacturers to compete with one another, a price war will ensue lowering the value of the market without reducing the number of smokers. In addition, consumers are likely – without any other means of differentiation of brand – to simply accept purchasing the cheapest products. Point 67 alludes to this, relying on a market contraction i.e. some manufacturers go out of business as the market will be rendered so unprofitable. This consideration speaks to the fundamental attitude of the Department of Health to focus myopically on damaging tobacco manufacturers rather than looking at the causes of smoking and developing evidence based and proportionate policy to address the prevalence of smoking.