

CONSULTATION PAPER AND QUESTIONNAIRE

**PROPOSALS TO STRENGTHEN SANCTIONS AGAINST
RETAILERS FOR UNDERAGE SALES OF TOBACCO
PRODUCTS**

INTRODUCTION

Purpose

1. The purpose of this consultation paper is to seek views on the Department of Health, Social Services and Public Safety's proposals for strengthening sanctions against retailers who sell tobacco products to children and young people under 18 years of age. The aim is to reduce smoking prevalence amongst children and young people by reducing the availability of tobacco products to this group.

Background

2. Smoking is the single greatest cause of preventable illness and premature death in Northern Ireland, killing around 2,300 people each year. In addition, a strong relationship exists between smoking and inequalities, with more people dying of smoking related illnesses in disadvantaged areas of Northern Ireland than in more affluent areas.
3. The Department published a Tobacco Action Plan in 2003 with three key objectives. They were; to help smokers quit, to protect non-smokers from tobacco smoke and to prevent people from starting to smoke. While the Tobacco Action Plan was aimed at the population as a whole, three target groups were identified - adults smokers living in areas of social/economic need, pregnant women who smoke, and children and young people. A working group has been established to revise the Action Plan, setting out the Department's vision for tobacco control for a further five year period. It is envisaged that focus will remain on the three target groups identified in the existing plan.
4. The Smoking (Northern Ireland) Order 2006 (the Order), the main provisions of which came into operation on 30 April 2007, introduced measures to protect the public and employees from exposure to second hand smoke. This represents a major step forward in helping to create a climate whereby non-smoking will become the norm in society.
5. Preventing children from adopting the smoking habit is key to achieving the long-term aim of a tobacco-free society. Recent evidence shows that in Northern Ireland 77% of adult smokers took up the habit in their teens and that almost 9% of our children aged 11 to 16 years are regular smokers. A 2006 study carried out in England found that for 78% of children, shops were a usual source of cigarettes. In order to help reduce youth smoking, the Department introduced the Children and Young Persons (Sale of Tobacco etc) Regulations (Northern Ireland) 2008. This legislation came into effect on 1st September 2008 and increased the minimum age of sale for purchasing tobacco products from 16 to 18.

6. The Department recognises, however, that more needs to be done to prevent children and young people from starting to smoke, and is therefore proposing to consult on measures aimed at strengthening sanctions against retailers for underage sale of tobacco products. These measures would require primary legislation to be passed by the Northern Ireland Assembly before they could be enforced.

Options for strengthening sanctions against retailers

7. Six options were considered for strengthening sanctions against retailers who persistently flout the law with regards to underage sales of tobacco products. Each option is fully explored in the accompanying Regulatory Impact Assessment (RIA) attached as **Appendix 2**. The RIA also examines the potential impacts on businesses and seeks to quantify the possible health impact of the various options. In summary the six options are:
 - (a) Do nothing
Maintain the status quo with no changes.
 - (b) Registration of tobacco retailers
A requirement for all businesses that sell tobacco products to register with a specified agency.
 - (c) Accreditation
Also known as a non-mandatory licence – involves a voluntary scheme with no compulsion for businesses to join.
 - (d) A negative licensing system
Not technically a licensing scheme but the creation of an additional penalty for infringement of the law on underage sales, where the right to sell tobacco could be suspended or withdrawn.
 - (e) A positive licensing system
To be administered by either the NI Courts Service or by District Councils. Retailers would be obliged to apply for a licence before legally selling tobacco products. Compliance with tobacco control legislation would be linked with the right to sell tobacco products.
 - (f) Combining a registration scheme with a negative licensing system
This option would provide Environmental Health Officers with a full list of retailers selling tobacco products and would also introduce an additional penalty for retailers who regularly break the law on underage sales.

Department's recommended option

8. The Department's preferred policy option is that which combines a registration scheme with a negative licensing system. The four key characteristics of this option are set out below.
 - (i) Where a retailer commits **3 offences within a 2 year period** in relation to underage sales, the local district council may apply to the NI Courts Service for a prohibition order to be served on the retailer, preventing them from selling tobacco products.
 - (ii) The prohibition order may apply to the **premises** or to a **named person** in the business or **both**.
 - (iii) The prohibition order would last for a **period of up to 12 months**, to be determined by the Court.
 - (iv) A new offence of selling tobacco products under a prohibition order would be created and would be associated with a large fine and a possible custodial sentence

9. The Department is also recommending, in conjunction with this option, the introduction of a **Fixed Penalty Notice (FPN) Scheme** for retailers caught selling to underage children. This would involve Environmental Health Officers being able to apply a financial penalty for an offence relating to underage sales, without having to go through the courts.

Consultation - How to Respond

10. **The consultation will run from 14 December 2009 to 12 March 2010.** The Questionnaire seeks your views on the options outlined in the RIA which could be implemented to meet the policy objective of reducing smoking prevalence amongst children and young people.

11. In order to facilitate analysis it is important that respondents use the Questionnaire. Completed Questionnaires **must be received by the Department by 5.00pm on Friday 12 March 2010** Responses can be submitted via the online response form using the following link:
<http://www.dhsspsni.gov.uk/tobacco-retailer-sanctions-2009.htm>

12. Alternatively response questionnaires can be downloaded and e-mailed to:
<mailto:publichealth@dhsspsni.gov.uk> or posted to
**DHSSPS
Investing for Health Unit
Health Improvement Policy Branch (Tobacco Control)
Room C4.22
Castle Buildings
Belfast
BT4 3SQ
Tel: 028 90520533 or 028 90523190**

13. Before you submit your response please read **APPENDIX 1** at the end of the Questionnaire, about the **Freedom of Information Act 2000** and the confidentiality of responses to public consultation exercises.

Alternative formats

14. If you require the consultation document in an alternative format (such as in large print, in braille, on audio cassette, easy read or computer disc) and/or in another language, please contact Amy Stevenson on 028 90520533 or text phone 02890527668 to discuss your requirements.

Human Rights and Equality Implications

15. Section 75 of the Northern Ireland Act 1998 requires Departments in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity:
 - between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - between men and women generally;
 - between person with a disability and persons without; and
 - between persons with dependants and persons without.
16. In addition, without prejudice to the above obligation, Departments should also, in carrying out their functions relating to Northern Ireland, have due regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. Departments also have a statutory duty to ensure that their decisions and actions are compatible with the European Convention on Human Rights and to act in accordance with these rights.
17. The Department has carried out a preliminary screening of the proposals and as part of this screening process has concluded at this stage that an Equality Impact Assessment is not necessary, however, the Department also welcomes your views on this aspect of the proposals.

QUESTIONNAIRE

(Please tick a box)

I am responding: as an individual on behalf of an organisation

Name: Diane Herron

Job Title: Environmental Health Officer

Organisation: Belfast City Council

Address: The Cecil Ward Building

4 – 10 Linenhall Street

Belfast BT2 8BP

Tel: 02890320202 x 3374

Fax: 02890 270422

e-mail: herrond@belfastcity.gov.uk

Q1. Do you agree with the summary and recommendation reached by the Department (paragraphs 135 & 136 of the RIA) that a registration system combined with a negative licensing scheme (option 6) should be introduced in conjunction with a fixed penalty notice scheme? Have you any comments?

Yes

No

Belfast City Council agrees that a registration system combined with a negative licensing scheme should be introduced along with a fixed penalty for retailers who sell tobacco to anyone less than 18 years.

Registration would provide councils with a comprehensive list of retailers who sell tobacco without the excessive cost or administrative burden for both businesses and councils that a licensing scheme would likely introduce.

The Council believes that the negative licensing system would allow a graduated enforcement response to retailers who sell tobacco to children. It would send a strong message to those who repeatedly do not comply with the law, demonstrating that breaches will be dealt with appropriately. The Council also strongly supports the introduction of fixed penalty notices in conjunction with the recommended option. This would provide an efficient and effective way of dealing with retailers who sell tobacco to children for the first time. The fixed penalty amount should also be carefully considered to reflect the seriousness of the offence.

It is crucial that, to make the introduction of the new regime effective, an offence for a retailer breaching an order that has suspended them from selling tobacco must be explicit within the new legislation.

Q2. If in agreement with the summary and recommendation reached in the RIA, do you have any views on the proposed maximum length of time for the prohibition order (1 year), the conditions under which a prohibition order may be served (3 offences within a 2 year period) or the application of the prohibition order (may apply to an individual, the premises or both)? [see paragraph 8 of introduction to this questionnaire for details]

Belfast City Council agrees that a graduated enforcement response should be introduced. This could be done by issuing a fixed penalty notice on retailers for the first two offences and then applying to the Courts for a Prohibition Order for the third offence. However the Council recommends that the length of time in which the three offences can occur prior to a prohibition order being sought should be extended to 3 years. This recommendation is based on the experience of the Council in understanding the level of planning and resources that are needed for test purchasing exercises using children who volunteer.

The Council agrees that a prohibition order should be for a maximum of one year and that they should be applicable to an individual and/or a premises.

Q3. If not in agreement with the summary and recommendation reached in the RIA which of the other options do you feel should be introduced? Have you any other suggestions or views?

The Council agrees with option 6. It would however recommend that the time period over which the 3 offences can occur prior to application for a prohibition order should be carefully considered to take into account the resources required to carry out test purchasing exercises, which would be required to detect offences. The Council recommends that the time period should be extended to 3 years.

Q4. Do you agree with the decision (paragraph 128 of RIA) that the measures outlined do not require a full equality impact assessment? If you disagree, please explain why?

Yes

No

The Council agrees that the measures outlined would not require a full equality impact assessment.

Q5. Is there any other qualitative or quantitative information which you consider should have been taken into account in compiling the RIA?

Yes No

If yes, please provide details.

None

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

No.

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

If so, please provide details.

Yes, the Council considers that if the proposals are implemented effectively this will reduce the availability of tobacco to under 18s. In doing this it is hoped that fewer children will start smoking as they will be unable to easily obtain cigarettes from a shop. This will have a positive impact upon their health.

Q8. Are there any other health impacts that you consider should have been addressed? If yes, please provide details.

Yes No

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Q9. Do you consider that there are any other issues which need to be taken into account in the assessment of the impact on business? If yes, please provide details.

Yes No

No – The Council believes that for those businesses complying with the legislation, the extra burden will be negligible.

Q10. Do you agree with the summary tables outlining the ongoing costs and benefits (paragraphs 109 to 117 of RIA)? If not, please provide details.

Yes No

Yes, the Council agrees with the outlined costs and benefits in the RIA.

Q11. Do you agree that the measures will not have a disproportionate impact on retailers/businesses? If you disagree, please provide details of disproportionate impact.

Yes No

The Council agrees that the measures proposed will not have a disproportionate impact on retailers/businesses. The Council already enforces legislation in relation to selling tobacco to persons under the age of 18 and these proposals will not hinder retailers that comply with their legal duties.

Q12. Is there any other material evidence which you consider should have been taken into account in assessing the impact on retailers/business? If yes, please provide details.

Yes No

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Q13. Do you agree that the proposals will not have a disproportionate adverse impact on rural business? If you disagree, please give your reasons.

Yes No

The Council agrees that there will be no disproportionate adverse impact on rural businesses.

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

Yes No

None

Q15. Are the options which are set out in the RIA likely to have an adverse impact on any group of people in terms of the nine equality dimensions?

Yes No

If you answered yes, please state which group(s) and the reasons why:

The Council does not believe that any of the options proposed in the RIA would be likely to have an adverse impact on any group of people in terms of the nine equality dimensions.

Q16. Are you aware of any indication or evidence – qualitative or quantitative – that the recommendation in the RIA may have an adverse impact on equality of opportunity or good relations?

Yes No

If you answered “yes”, please state the reasons why and suggest how this might be mitigated:

17. Do proposals afford an opportunity to promote equality of opportunity and/or good relations?

Yes No

If you answered “yes”, please outline:

Q18. Are there any aspects of the proposals in the RIA where potential human rights violations may occur?

Yes No

If you answered “yes”, please outline:

Further Comments

Q19. Do you have any further comments on the RIA?

Yes No

If ‘yes’, please give comments:

FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation.

However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential. If you do not wish information about your identity to be made public please include an explanation in your response.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Secretary of State for Constitutional Affairs' Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at:

<http://www.informationcommissioner.gov.uk/>).

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