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**CONSULTATION TOBACCO AND PRIMARY MEDICAL SERVICES  
DRAFT REGULATIONS  
Freedom to Choose (Scotland)**

**INTRODUCTION**

Freedom to Choose (Scotland) is an organisation set up to oppose the smoking ban and to support a rational approach to tobacco control. It is a founder member of The International Coalition Against Prohibition, and a Member of the Human Rights and Civil Liberties Cross-Party Group at the Scottish Parliament.

Freedom to Choose (Scotland) opposes this legislation since we hold the view that, as stated in the Stage 1 Report, the ‘international evidence is inconclusive’<sup>1</sup> that the ban will effectively reduce youth smoking take-up. The New Zealand<sup>2</sup> and Danish<sup>3</sup> governments have also reached this conclusion in the light of emerging international evidence, partly about the level of contraband tobacco finding its way to the tobacco markets in Ireland and Canada.

The assumption adopted in the consultation document seems to be that there is no link between increased contraband and the display bans. To us it seems extraordinary to assume that traffickers in illicit goods will not look for further restrictions in legal trading, in order to exploit them. Regardless of whether one accepts this logic, it is undeniable (1) that Ireland has become the centre of illegal global tobacco trading and (2) that the current climate will be bad news for shops in any case since they are competing for trade with black marketers.<sup>4</sup> The problem is exacerbated for Scotland by cuts in police cover for ports.<sup>5</sup>

Our view is that the legislation will drive smokers to illegal markets, and that no drop in youth or adult smoking will result.<sup>6</sup> We further believe that the legislation will hinder both shopkeepers and customers at the checkout, and provide extra regulatory burdens, as well as expense, for shopkeepers/shop managers.

The rapidly declining smoking rate until recent years demonstrates that even when tobacco is clearly visible in shops and public places, the numbers of people taking up smoking can decline, given the right conditions. The current climate of over-reaction to the dangers of, and restrictions on tobacco (an adult choice) do not actually allow people

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the choice to give up smoking (when only one choice is portrayed as sensible or acceptable, choice is effectively removed: the options are compliance or non-compliance).

It has been pointed out how tobacco companies have enlarged the selling space (extended the 'wall') in shops since advertising was banned. Tobacco companies, like any other, will promote their products by any legal means. This should not surprise anyone. Also, referring to tobacco displays as a final loophole in tobacco advertising is nonsensical when authorities have so little control over the Internet. Absurd lengths to restrict people's exposure to tobacco openly in shops will only result in tobacco companies seeking alternative ways to expose their products, in ways that affect the young far more than seeing tobacco displays in shops.

In order to answer this questionnaire, our general position is not that we support the existing regulations, but we wish to make the case against further restrictions as suggested by some MSPs during the passage of the Bill. It is not easy to take seriously the proposition that the sight of tobacco packs during restocking (or at any other time) will be the trigger that prompts a young person to smoke.

## **1. DISPLAY OF TOBACCO AND PRICES REGULATIONS: DISPLAY OF TOBACCO**

### **1.1 Do you agree that tobacco retailers should be allowed to implement the Act by displaying tobacco and smoking related products in the way set out in the regulations?**

It is clearly important to retailers that they should be able to communicate to the customer what they have on offer. To allow retailers to sell a product but not allow them the facility to display it is perverse. The underlying aim of the regulations, to ensure that nobody should be exposed to the mere sight of tobacco unless they intend to buy it, can be described as fanatical.

We are relieved that the government has not requested the removal of gantries. We view it as unsurprising that tobacco companies will respond to restrictions by attempting to compensate for the product's loss of exposure by the use of lights or any other 'loophole' that it can – it is completely natural merchandising behaviour.

The big danger in the whole tobacco display ban project is that customers will lose the association of tobacco with shops. How are retailers to be allowed to communicate to customers that they sell tobacco? Will it be clear to visitors from abroad that newsagents sell tobacco? When today's teenagers reach maturity where will they get their tobacco

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from, being used to a furtive, hole-and-corner method of purchasing by their older friends and relatives?

We believe, as indicated above, that the legislation is not needed and hence the retailers should be able to expose their merchandise to the public, allowing the public the ability to see the range of tobacco that is on offer. We feel that the proposed arrangements will be cumbersome and a nuisance to staff and customers alike.

*If not, how would you regulate the display and advertisement of tobacco and smoking related products?*

We would not regulate the display and promotion of tobacco in shops. I won't use the word advertising, as advertising was outlawed years ago.

**1.2 Do you agree that specialist tobacconists, cash and carries and duty free shops should be allowed to implement the Act by displaying and advertising tobacco products and smoking related products in the way set out in the regulations?**

Since we disagree with the whole thrust of the legislation, we welcome the concessions made to these groups. These should be maintained.

**1.3 Do you agree that these proposed regulations set out an effective, proportionate and workable approach?**

We feel that the restocking process in shops presents a difficulty and enforcement officers must be sensitive to the other demands on businesses that are frequently busy and short-staffed. Enforcement officers must be aware of this when making judgements about how long tobacco restocking 'ought' to take. In supermarkets tobacco arrives with a standard delivery and it is important that larger merchandise is dealt with promptly especially in premises with limited warehousing. All other merchandise including tobacco must wait until staff have time to attend to it and this work may be spread between several personnel over several hours depending on other demands.

*If not, how would you amend the regulations to make them more effective, proportionate and workable?*

We would prefer the removal of statements like this: 'In this regulation reference to "ordinary course of business" is intended to allow trading standards to take action where they believe a retailer to be displaying tobacco for longer than necessary to carry out exempted activities.' Arrangements must be made that will avoid the need for enforcers to supervise stocking and other incidental display work with a stopwatch. The momentary exposure of tobacco during sales or stocking up will make no difference to

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youth smoking rates. Shops can be encouraged to keep tobacco out of sight when not being worked but enforcement officers should not be prosecuting shops for incidentally exposing tobacco to the fleeting view of customers during long and busy stocking up periods.

#### **1.4 Do you believe that these regulations are enforceable?**

We believe that they will be difficult to comply with and may cause resentment on the part of retail staff who must operate them. If enforcers are not sympathetic to the demands on their time, retailers may find themselves in breach in spite of their best efforts to comply. Resenting restrictive laws does not entail deliberate defiance.

#### **1.5 Do you have any other comments on these regulations?**

There are too many reflecting the extraordinary ambitions of the legislation.

### **2. DISPLAY OF TOBACCO AND PRICES REGULATIONS: DISPLAY OF PRICES**

#### **2.1 Do you agree that tobacco retailers should implement the Act by being allowed to display price lists for tobacco and smoking related products in the way set out in the regulations?**

Yes. They should have the right to convey to customers that they sell tobacco, and the range of products that they sell, with prices.

#### **2.2 Do you agree that these proposed regulations set out an effective, proportionate and workable approach?**

We don't accept the need for regulation on price lists.

#### **2.3 Do you believe that these regulations are enforceable?**

As earlier we feel that they are an inconvenience to staff and customers alike.

### **3. REGULATION OF MOVEABLE STRUCTURES AND FIXED PENALTY NOTICES no answers**

### **4. REGISTER OF TOBACCO RETAILERS REGULATION no answers**

### **5. PRESCRIBED DOCUMENTS REGULATIONS**

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5.1 Do you agree with the identity cards set out in these regulations?

Passports, driving licence and other established forms of ID are useful to confirm the purchaser's age. Young Scot and Citizencard can also be used.

5.2 Do you agree that these proposed regulations set out an effective, proportionate and workable approach?

Nothing new here. Age verification to enable sales to persons suspected of being under age is standard practice

5.3 Do you believe that these regulations are enforceable?

As much as they are currently.

4. Do you have any other comments on these regulations?

No.

## **6. DISPLAY OF WARNING STATEMENTS REGULATIONS**

**6.1 Do you agree with the dimensions of the warning statement as set out in the regulations?**

Since there is no change in the dimensions to the signage, there is no problem. No ID, No Sale signs are used in many shops, helpfully pointing to customers the existence of a company policy against under-aged sales and challenge 21 or 25 policy.

It was suggested at stage 3 that this TMA-funded signage should be outlawed: thankfully this proposal was narrowly defeated. Clearly some stakeholders do not like the sight of any sign of corporate responsibility on the part of tobacco manufacturers. This is no reason to outlaw such good practice. A clear statement of corporate policy is most helpful, and attempting to outlaw this signage shows more concern to 'prove' that tobacco manufacturers have no scruples than to control underage sales.

**6.2 Do you agree that these proposed regulations set out an effective, proportionate and workable approach?**

It seems to be widely practised already.

**6.3 Do you believe that these regulations are enforceable?**

In supermarkets, yes. Smaller shops? Don't know enough about them to comment. Is it clear whether these regulations will apply to small shops before 2013?

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#### **6.4 Do you have any other comments on these regulations?**

We wish to emphasise our disagreement with section 9 of the law prohibiting the use of tobacco vending machines. A proposed trial of radio controlled vending machines was rejected at Stage 3 on the grounds of a lack of ‘robust evidence’<sup>7</sup> that they would prevent under-age sales – even though such lack of evidence did not prevent MSPs from approving the entire Bill.

Mention of this section of the Act is missing from the Regulations – is it clear to interested parties at exactly what stage it will be illegal to operate vending machines?

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<sup>1</sup> Stage 3 Report of proceedings, 24 September 2009

<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0924-02.htm#Col120003>, Mary Scanlon MSP, col 120003.

<sup>2</sup> **New Zealand rejects call for tobacco display ban, Global Convenience Store Focus, March 2009**, [http://www.insightreport.co.uk/store\\_focus/0903/7.html](http://www.insightreport.co.uk/store_focus/0903/7.html)

<sup>3</sup> Scandinavian Governments reject tobacco Display Ban, 22 June 2010,

<http://www.acr.org.nz/documents/media-releases/Swedish%20and%20Danish%20Governments%20RejectRetail%20Display%20Ban%20-21%20June%202010.pdf>

<sup>4</sup> **From armed struggle to cigarette smuggle, Presseurop, 4 March 2010**,

<http://www.presseurop.eu/en/content/article/200751-armed-struggle-cigarette-smuggle>

<sup>5</sup> Cut in port police linked to surge in tobacco smuggling by Ulster thugs, Scotsman, 26 June 2010, <http://news.scotsman.com/news/Cut-in-port-police-linked.6385646.jp>: this article was syndicated throughout the UK via regional press.

<sup>6</sup> This is a much cited paper on the results of Canada’s tobacco display bans, and it also touches on other countries: Patrick Basham, **Canada's ruinous tobacco display ban: economic and public health lessons, IEA, July 2010** <http://www.iea.org.uk/files/upld-book517pdf?.pdf>.

<sup>7</sup> Stage 3 report, col 23116, Michael Matheson MSP.

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