

ASH response to the Government Consultation on Under-Age Sale of Tobacco

September 2006

Summary

1. Until recently, ASH has not campaigned for the raising of the legal age for the purchase of tobacco because, as a stand-alone policy, there has been little evidence to show that it would reduce teenage smoking rates. A much greater priority, in our view, was to ensure the passage of legislation to prohibit smoking in enclosed public places and workplaces which is far more likely in the long run to reduce smoking rates among both adults and young people than a measure targeted at a particular age group. ASH therefore welcomes the forthcoming ban on smoking in public places which, as the Chief Medical Officer noted in his most recent annual report, represents “the most significant and beneficial public health intervention for a generation”. Now that the smoke-free legislation has been passed, there is some merit in revisiting the issue of the legal age for the purchase of tobacco whilst maintaining comprehensive tobacco control policies including high taxation, stop smoking services and public education campaigns.
2. Having weighed up the pros and cons, ASH now supports the proposal to raise the legal age for the purchase of tobacco. However, the evidence is that, by itself, this single measure is unlikely to have a significant impact on smoking rates among teenagers and that other measures should be considered in addition to raising the minimum age. [\[1\]](#) [\[2\]](#)
3. Additional measures which should be introduced to help reduce smoking among young people include:
 - banning sales of tobacco from vending machines
 - prohibiting residual tobacco marketing at the point of sale
 - introducing graphic health warnings on tobacco packaging and at the point of sale
 - further tightening of controls on tobacco smuggling
 - further controls on the portrayal of smoking in the broadcast media
 - generic (plain) packaging
4. For the law to have maximum impact it must be properly enforced. Therefore, we strongly support the Government’s proposal to strengthen the sanctions against retailers who break the law on under-age sales. We believe retailers should be required to hold a licence to sell tobacco (positive licensing) and that the ultimate penalty for retailers who persistently break the law would be to have the licence removed. This would act as a strong deterrent against selling tobacco to minors. We believe a positive licensing system would provide a means of further controlling the sale of tobacco that would not be afforded by a negative licensing system. See paragraph 46 for the full list of detailed recommendations.

Is raising the minimum age from 16 to 18 an appropriate strategy?

5. There is little evidence to show that, as a stand-alone policy, simply raising the legal age for the purchase of tobacco reduces smoking prevalence among young people. Measures that affect the whole population, such as tobacco advertising bans, raising the price of tobacco, etc. are more likely to reduce smoking rates among both adults and young people than a measure that affects only one segment of the population.
6. Most of the major tobacco companies claim to support minimum age laws. [\[3\]](#) However, their motives for doing so should be questioned in the light of the industry's past behaviour, particularly with regard to the marketing of their products to young people. The industry is keen to present smoking as an "adult only" activity but by doing so, may increase the desirability of smoking among impressionable youth. In short, why would cigarette manufacturers support a policy that, if effective, would have an adverse impact on their profitability?
7. A major driver for children to start smoking is that they see it as an adult thing to do. Therefore, raising the legal age for the sale of tobacco to 18 is not likely to put them off [\[4\]](#) – any more than putting an 18 certificate on an "adult" film is likely to discourage a 16 year old from wanting to see it. Indeed, it could potentially have the opposite effect and make smoking appear even more desirable precisely because it is being presented as an adult activity.

Advantages of raising the minimum age from 16 to 18

8. Notwithstanding the concerns outlined above, ASH is now of the view that there is some merit in raising the minimum age for the purchase of tobacco for the following reasons:
9. It would bring the law in line with alcohol sales. It is illogical to prohibit young people from buying alcohol until they are 18 while allowing them to buy a considerably more harmful substance at 16.
10. Raising the age limit would send out a clear message that society views smoking as a dangerous activity and that children and young people should be given legal protection to discourage use of tobacco.
11. It would make it harder for young teenagers to buy tobacco thus limiting their access to cigarettes.
12. It *may* help reduce smoking prevalence in the long term (as part of an overall package of tobacco control measures) and is likely to reduce consumption among under-16s.
13. A change in the law may delay smoking uptake among some teenagers. This is important as the earlier a person starts to smoke, the greater the health risks. [\[5\]](#)
14. Raising the legal age would bring the UK (if Scotland also agrees to this measure) into line with most other developed nations of the world and would also

meet the FCTC and WHO recommendation that 18 should be the legal minimum age. [\[6\]](#)

15. It would make it easier for schools to ban smoking entirely and might reduce pressure from peers to smoke.
16. There appears to be growing support both from the general public and from a number of institutions for the legal age to be raised. For example, the Advisory Council on the Misuse of Drugs included a recommendation to raise the minimum age in its report on tackling tobacco, alcohol and other drugs by young people. [\[7\]](#)
17. There are moves by some supermarkets to voluntarily prohibit the sale of tobacco to under-18s. [\[8\]](#)

Tackling teenage smoking – what are the best methods?

18. ASH shares the Government's concerns about the continued uptake of smoking among teenagers. Despite school-based education campaigns warning of the dangers of tobacco use it appears that the best that can be achieved from such campaigns is that they may delay onset of smoking among some children. [\[9\]](#) This is beneficial in itself, since the risk of developing certain diseases, particularly lung cancer, is greater the earlier a person starts smoking.
19. However, reviews of the evidence show that the most effective way of reducing smoking among young people is to pursue policies which affect the whole population, such as the ban on tobacco advertising and raising the tax on tobacco products. ² By the Government's own estimate, the forthcoming ban on smoking in workplaces and public places is expected to reduce smoking prevalence by 1.7% compared to a long-term reduction of just 0.5% as a result of raising the legal age for the purchase of tobacco. [\[10\]](#)
20. Now that the UK has implemented, or is in the process of implementing all of the key tobacco control population-wide measures, it is appropriate to consider what additional measures might further reduce smoking among young people. Some suggestions are listed below.

Sanctions against retailers

Licensing.

21. The Government consultation paper sets out two proposals to stop retailers selling tobacco if they repeatedly flout the law. The first – a positive licensing system – would require all retailers of tobacco products to hold a licence in order to sell tobacco which would be revoked if they repeatedly broke the law. The second option – a negative licensing system – would allow retailers to continue to sell tobacco without the need to hold a licence but they would be subject to banning orders for repeated offences with the period of suspension being made at the discretion of the courts.

22. ASH favours the introduction of a **positive tobacco licensing** system which we believe would provide a stronger incentive for retailers to comply with the law compared to a negative system. It would also make monitoring and enforcement easier as Trading Standards Officers would have a register of all tobacco retailers in their locality.
23. A positive licensing system would also facilitate the implementation and enforcement of further conditions on the sale of tobacco in the future. For example, should the Government decide to bring forward tobacco display regulations, monitoring and enforcement would be easier if local authorities were required to hold a register of licensed tobacco retailers.
24. Requiring retailers to hold a licence to sell tobacco should also result in an overall reduction in the number of retail outlets for tobacco as some retailers, for whom tobacco constitutes a very small proportion of sales, would opt not to sell tobacco rather than pay for a licence. Reducing the total number of tobacco outlets would further reduce the opportunity for minors to attempt to purchase tobacco.
25. A positive licensing system would also help reverse a recent increase in tobacco outlets. For example the sandwich chain Benjy's has just started to sell cigarettes from some of its central London shops. This is clearly against the interests of public health and hardly justified on grounds of consumer choice given the existing extensive range of premises selling tobacco.
26. Although there would be an initial increase in cost to retailers and local authorities this should be offset in future by greater compliance with the law and therefore lower enforcement costs.
27. In contrast, although the costs of a **negative licensing** system would initially be lower, the weaker sanctions would be less likely to deter retailers from breaking the law. Furthermore, there appears to be little evidence that a negative licensing is an effective way of stopping illegal sales to minors. A review conducted in Australia, for example, found that a negative licensing system lacked the advantages of a positive system, noting that a negative system "fails to emphasize to retailers their responsibilities in regard to selling tobacco products" and "will not provide funding for enforcement and other programs". [\[11\]](#)

Penalties.

28. Whether a positive or negative licensing scheme is adopted, it is very important that the financial penalties for breaking the law on under age sales are increased in order to act as a deterrent.

Additional measures to further reduce smoking among the young

29. Most of the measures designed to reduce demand, such as the stop smoking services, high taxes on tobacco and mass media campaigns are well established in the UK and should be maintained. However more should be done to reduce the supply side of tobacco. Such measures include:

A ban on the sale of tobacco from vending machines.

30. According to the latest survey of smoking among secondary school children in England, [\[12\]](#) 24% of regular smokers reported buying cigarettes from vending machines at least a few times a week. The survey also found that only 13% of current smokers who bought cigarettes from vending machines found it very or fairly difficult. Whilst the banning of tobacco from vending machines might inconvenience some adult smokers it would be a small price to pay in return for a reduction in cigarette consumption among teenagers.
31. In place of tobacco, ASH recommends that nicotine replacement therapies be made available via vending machines. This would support the policy outlined in the Government's Choosing Health White Paper [\[13\]](#) which calls for the promotion of stop smoking therapies through a wider choice of outlets. It is absurd that deadly tobacco products are widely available yet products that can help people to stop smoking have limited availability.

Better enforcement of the law.

32. Laws which are not properly enforced fall into disrepute. In Ireland, for example, the legal age for the purchase of tobacco was raised from 16 to 18 in 2001. However, a recent survey of teenagers under the age of 18 who bought cigarettes from shops found that 92% of them had not been asked for identification. In England and Wales there is evidence that the existing law is being breached yet there were only 73 prosecutions in 2004, of which 50 resulted in a fine. [\[14\]](#) Most of the fines were in the range of £150-£200, compared to a maximum fine of £2500 that could be levied. Such small fines are unlikely to be sufficiently strong to act as a deterrent. ASH therefore recommends that guidelines be issued for magistrates to encourage them to impose higher fines to reflect the severity of the offence.

Further action on point of sale advertising and display.

33. Although most tobacco advertising is now banned under the terms of the Tobacco Advertising and Promotion Act 2002, limited advertising at the point of sale is still permitted. There is no justification on health grounds for this concession and ASH believes that the remaining point of sale advertising should be banned. In addition, research by ASH and LACORS [\[15\]](#) [\[16\]](#) has revealed that tobacco companies have exploited the lack of rules regarding the display of tobacco products at the point of sale in order to maximise the presentation and appeal of certain brands and to reduce the visual impact of the health warnings. ASH believes this contravenes the spirit of the tobacco advertising ban.
34. One way of minimising the impact of tobacco branding at the point of sale would be to require large graphic warning notices to be displayed where tobacco products are visibly on sale. For maximum impact such notices would have to be at least as large as the current notices stating that it is illegal to sell tobacco to persons under the age of 16. The requirement to place picture warning notices at the point of sale has been adopted with great success in Tasmania where some retailers have voluntarily removed tobacco products from public view in order to avoid having to display the graphic warning notices. [\[17\]](#)

35. Under the terms of the Tobacco Advertising and Promotion Act 2002 (Section 8), the Government has the power to bring forward regulations on the display of tobacco products, to prevent tobacco products being displayed in such a manner that they constitute an advertisement. In the light of evidence highlighted above which shows how the tobacco industry is undermining the law by using eye-catching displays, ASH recommends that regulations to ban the display of tobacco products at the point of sale be introduced. This would replicate good practice adopted by provinces of Canada, Thailand and Iceland where laws have been passed to completely remove tobacco products from public view. [\[18\]](#)

Public education campaign.

36. An ongoing mass media campaign drawing attention to the fact that it is illegal to sell tobacco products to minors would help to build public support for the measure and help enforcement of the law. A Cochrane review of interventions to prevent the sale of tobacco to minors found that to be effective the interventions required enforcement and community support.[\[19\]](#) Any media campaign should be backed by a telephone 'hotline', similar to the smuggling hotline enabling the public to report in confidence any breaches of the law.
37. Any mass media campaign should also draw attention to the health impact of starting to smoke at a young age. Studies have shown, for example, that the earlier a person starts to smoke the greater the risk of lung cancer and heart disease.[\[20\]](#) Early onset of smoking also appears to adversely affect the brain and increases the likelihood of mental health disorders.[\[21\]](#)

Graphic health warnings.

38. Evidence from Australia and Canada suggests that the introduction of picture health warnings on cigarette packs is an effective means of discouraging young people from smoking. In Canada, for example, research revealed that 7 out of 10 adults, and 9 out of 10 young people thought the picture health warnings were effective at informing them about the health effects of smoking.[\[22\]](#) The Government should adopt the EU recommendations for inclusion of pictorial health warnings on all tobacco products as soon as possible. In order to increase the impact of the picture warnings, the Government should seek an amendment to the EU Tobacco Products Directive in order to allow the inclusion of picture warnings on both the front and back of tobacco packaging.

Generic packaging.

39. Now that most forms of tobacco advertising and promotion are prohibited, the tobacco companies are dependent to a large extent on tobacco packaging to convey brand appeal. The inclusion of large pictorial health warnings will go some way towards reducing the impact of tobacco branding. However, to reduce the appeal of tobacco even further, the Government should consider restricting tobacco companies to plain, generic packaging. Although no country has yet adopted such a measure, it has been widely debated in Canada and was recommended by the federal Standing Committee on Health.[\[23\]](#) More recently, the House of Commons Health Select Committee called for an assessment of the

pros and cons of plain packaging in its report on the tobacco industry. [\[24\]](#)

Further measures to tackle tobacco smuggling.

40. One possible consequence of raising the legal age for the purchase of tobacco is that young people may turn to illicit sources of tobacco as they find it increasingly difficult to obtain cigarettes from legitimate retail outlets. However, it is difficult to estimate the scale of the problem as there are no official statistics on the number of under age smokers who purchase smuggled tobacco. Therefore, ASH recommends that the Government conducts research to establish the extent of this problem.
41. One way of reducing the likelihood of young people obtaining tobacco illegally would be to introduce tracking and tracing technology to enable enforcement officers to trace the source of all tobacco products. Such technology now exists and has been implemented in California and Malaysia. In California, cigarette tax revenue increased by \$75 million in the first 26 months after the new tax stamps were introduced. [\[25\]](#) The introduction of this technology would not only help to reduce smuggled and counterfeit tobacco being sold to all smokers but would also mean that products seized from under-age smokers could be traced back to the supplier or retail outlet from where they were obtained.

Smoking in films and broadcast media

42. There is mounting evidence to show that the glamorisation of smoking in films can affect youth attitudes towards smoking and increase the likelihood of smoking initiation. [\[26\]](#) [\[27\]](#) Now that tobacco advertising is no longer permitted, young people's exposure to smoking imagery is largely through films and other broadcast media. Although the guidelines issued by the British Board of Film Classification (BBFC) require that the portrayal of smoking be taken into account when classifying films, ASH does not believe that the measure is sufficient to protect vulnerable young people in the 12-18 age group. By contrast, Ofcom guidance covering television and radio broadcasts makes explicit reference to the need to avoid smoking in programmes likely to be seen by persons under the age of 18. [\[28\]](#) ASH recommends that the Government holds discussions with BBFC with the view to encouraging BBFC to strengthen the guidance in order to minimise young people's exposure to smoking in films.

Additional measure for consideration: A ban on the sale of cigarette packs containing fewer than 20 cigarettes

43. A number of countries have imposed minimum pack sizes as part of a raft of measures designed to reduce youth smoking. There is some evidence to suggest that young people may be more likely to buy cigarettes in smaller pack sizes. The 2004 youth survey in England found that 55% of 11-15 year olds who successfully purchased cigarettes bought them in packs of 10, compared to 36% who bought packs of 20. [12](#) However, this data refers to buying habits on the last attempt rather than repeated purchases. Therefore it cannot be said to be representative of the overall popularity of packs of 10 versus packs of 20.

44. In Ireland where the legal age for buying tobacco is now 18, the proportion of teenagers buying cigarettes in packs of 10 is even higher. A recent survey by the Office of Tobacco Control in Ireland revealed that 75% of smokers under the age of 18 bought cigarettes in packs of 10.[\[29\]](#)
45. There are, however, some potential disadvantages and possible unintended consequences of imposing minimum pack sizes. For example, banning packs of 10 could adversely affect adults who prefer to purchase smaller pack sizes, particularly those who are trying to cut down prior to quitting. A minimum pack size of 20 might also encourage young people to club together to share the pack, thereby increasing the socialisation and peer pressure to smoke. Therefore, ASH would not recommend this policy in the short term and would propose that it be kept under review until further evidence can be provided to show that the benefits would outweigh the disadvantages.

Conclusions and Recommendations

46. On balance ASH supports **Option Three - the raising of the legal age for the purchase of tobacco from 16 to 18**. We accept the Government estimate that such a measure is more likely to lead to a greater reduction in consumption among teenagers than leaving the legal age at 16 or raising it by one year to 17. However, in order to be effective, any amendment to the law should be undertaken alongside strict enforcement measures. Furthermore, ASH urges the Government to implement the additional policy measures recommended in this document. In summary ASH recommends the following:
1. The introduction of a positive tobacco licensing system which we believe would provide a stronger incentive for retailers to comply with the law compared to a negative system.
 2. Greater financial penalties for retailers who sell tobacco to minors.
 3. A ban on the sale of tobacco from vending machines.
 4. Modifying vending machines to permit the sale of health-promoting products such as nicotine replacement therapies.
 5. The implementation of tobacco display regulations to stop abuse of the Tobacco Advertising and Promotion Act.
 6. Graphic warning notices to be required at all points of sale where tobacco is sold.
 7. Mass media public information campaigns to raise awareness about illegal sales to minors and a telephone 'hotline' to enable the public to report breaches of the law.
 8. The swift implementation of picture warnings on tobacco products and an amendment to EU law to permit warnings to appear on both major surfaces of tobacco packaging.
 9. An assessment of the likely impact of plain packaging as a means of reducing smoking initiation.
 10. The introduction of tracking and tracing systems to curb tobacco smuggling.
 11. Encouraging the strengthening of BBFC's guidance to reduce youth exposure to smoking in films.
 12. A health impact assessment of minimum packs sizes.

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