

Evidence from the Tobacco Manufacturers' Association – PHB 97 /
Tystiolaeth gan Y Gymdeithas Gwneuthurwyr Tybaco – PHB 97

Tobacco Manufacturers' Association

Response to the Health and Social Care Committee's Consultation on the *Public Health (Wales) Bill*

04 September 2015

1. Introduction

The Tobacco Manufacturers' Association (TMA) represents the views of its member companies when communicating with the UK Government, regional and local authorities and other stakeholders on tobacco-related issues, such as the illicit trade in tobacco products, youth access prevention and taxation. The TMA's members are British American Tobacco UK Ltd, Imperial Tobacco Ltd and Gallaher Ltd (a member of the Japan Tobacco Group of companies).

2. Scope of Response

In this document the TMA will set out its views on three areas related to the tobacco and nicotine products sub-section of the *Public Health (Wales) Bill*: the proposed national register of retailers of tobacco and nicotine products; the suggested additions to Restricted Premises Orders (RPO); and the planned prohibition of the handing over of tobacco and/or nicotine products to under-18s. The TMA will defer to member companies for comment on nicotine inhaling devices, such as e-cigarettes. The proposals relating to these products will not, therefore, form a part of this response.

3. Background

The intended effect of the tobacco-related provisions in the *Public Health (Wales) Bill* is to protect children and young people under the age of 18. The TMA and its member companies actively support this objective. The tobacco industry continues to support youth access prevention schemes, which operate independently and do not require legislation to enforce.

The TMA's member companies also conduct test purchasing exercises in selected areas across the country that assess shopkeepers' compliance with youth access prevention legislation. Where legislation to limit children's access to tobacco products has been

proposed – proxy purchasing regulation, for example – tobacco manufacturers have supported its implementation.

Moreover, the TMA conducts research into attitudes and behaviour in relation to tobacco. Earlier this year, the TMA commissioned a survey of more than 12,000 UK smokers.¹ This survey was designed in conjunction with HMRC, among other stakeholders, and followed a similar poll that was conducted in 2014. Principally, it focused on the illicit tobacco trade, but respondents were asked a number of questions on a wide range of subjects related to illicit tobacco. One such area was under age sales. The results of these questions are presented below.

- In the TMA’s 2014 survey, 16% of smokers were aware of under-18s buying or selling illicit tobacco locally in Wales. This corresponded with the UK average, which was also 16%.
- In the TMA’s 2015 survey, 13% of smokers were aware of under-18s buying or selling illicit tobacco locally in Wales. This was slightly higher than the UK average, which was 12%.

Illicit tobacco vendors do not respect age restrictions on tobacco products. The TMA and its member companies support efforts to tackle the illicit tobacco trade through intelligence sharing, communications campaigns and dedicated on the ground resources. The TMA will continue to work with all relevant stakeholders in order to reduce the size of the illegal tobacco market in the UK and help to enforce youth access prevention measures.

4. Tobacco Retailers’ Register

The TMA is not opposed to the establishment of a tobacco retailers’ register in Wales. However, the TMA would like to emphasise that any register must be designed in a way that minimises the burdens on businesses, particularly retailers. This approach is supported by the Federation of Small Businesses (FSB). The FSB argues that in regard to “a registration regime, the cost of any such regime is of vital importance.”² Its assessment of the Welsh Government’s proposed tobacco registration scheme is worth quoting at length.

FSB Wales surveys show that regulation can be a significant burden for small firms, with 61 per cent of firms saying regulation costs more than £1,000 per year with a further 10 per cent saying it costs £10,000 per year or more. The proposals in the White Paper suggest that there would be a £30 fee plus £10 per additional premise registered. The consultation document states that the Scottish register of tobacco retailers does not require a fee for registrations...FSB Wales believes it would be more appropriate to follow the Scottish model. This

¹ TMA Smoker Survey 2015

² <http://www.fsb.org.uk/policy/rpu/wales/images/final%20public%20health%20white%20paper.pdf>

*would enable Trading Standards to target their resources in terms of inspection and enforcement without adding costs to the retailers concerned.*³

FSB Wales also stated that it “believes any information requests required by such a scheme should be kept to a minimum.”⁴ The Welsh Government’s own assessment of the costs retailers are likely to incur as a result of the introduction of a registration scheme found that the overall cost to retailers in Wales in 2017/18 could be as high as £246,000.⁵ This is clearly excessive and the TMA encourages the Welsh Government to remove from the legislation provisions for the inclusion of a fee payable by retailers in order to register.

Should the fee paying approach be retained, Welsh retailers will be placed at a significant disadvantage compared to their English, Scottish and Northern Irish counterparts. In the first instance, no registration scheme exists for English retailers; in the second and third instances, the registration schemes established in Scotland and Northern Ireland do not levy fee payments from retailers.

5. Adding Offences to Restricted Premises Orders (RPOs)

The consultation document states that the addition of new offences that would result in a local authority applying a RPO “would be intended to create a more effective negative licensing scheme for Wales, which would reinforce the importance of retailers complying with relevant legislation.”⁶ The TMA does not oppose a negative licensing approach to the regulation of tobacco retailers.

However, it will be possible to comment on the specific offences the Welsh Government proposes to include under this provision only once further details have been published.

6. Handing Over of Tobacco Products to Under-18s

In principle, the TMA is not opposed to the prohibition of the handing over of tobacco products to under-18s. However, given that the products in question are likely to have been purchased online, the TMA is concerned that this provision will be difficult to enforce and could needlessly criminalise those men and women charged with providing postal services. What is also clear is that there is a lack of evidence surrounding the scale of this activity, any problems associated with it and the likely impact of the measure proposed by the Welsh Government.

Given these significant issues, the TMA encourages the Welsh Government to reconsider this proposal – specifically, whether it will be workable in practice.

7. Conclusion

³ <http://www.fsb.org.uk/policy/rpu/wales/images/final%20public%20health%20white%20paper.pdf>

⁴ <http://www.fsb.org.uk/policy/rpu/wales/images/final%20public%20health%20white%20paper.pdf>

⁵ <http://www.assembly.wales/laid%20documents/pri-ld10224-em/pri-ld10224-em-e.pdf>

⁶ <http://www.assembly.wales/laid%20documents/pri-ld10224-em/pri-ld10224-em-e.pdf>

The TMA and its member companies are committed to ensuring that tobacco products are consumed only by those members of the public who are over the age of 18 and that the tobacco products consumed are legal. The TMA does not oppose a registration scheme in principle, but it does oppose one that will significantly increase costs for retailers. Similarly, the TMA does not oppose other measures that will encourage youth access prevention, but it believes such proposals must be proportionate and evidence-based, not to mention workable.

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