

Consultation on Changing the Age of
Sale for Tobacco

Report on Consultation

February 2007

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Introduction

1. On 4 July 2006, the Department of Health published a consultation paper, *Consultation on Changing the Age of Sale for Tobacco*. The consultation ended on 2 October 2006 and over 202 submissions were received. There were also informal meetings between the Department and key stakeholders in Trading Standards and the retail sector.
2. The consultation invited views on changing the minimum age of sale for tobacco and on sanctions against retailers who repeatedly flout the law on under-age sales. We also invited suggestions on any other measures that might help to reduce smoking among young people.
3. One of the most important elements of the Government's tobacco programme is reducing smoking among young people. Most addicted adult smokers start smoking as teenagers, with 38% of smokers starting before they reach the age of 16.
4. Great progress has been made since the *Smoking Kills* White Paper in 1998 which aimed to reduce smoking rates among 11-15 year olds to 9% or less by 2010. This target has now been achieved. However, the evidence shows that too many older children and young teenagers are still buying tobacco and starting the smoking habit young.
5. This document outlines the main points arising from the responses received, and indicates where changes to the original proposals have been made. It also sets out recommendations made by respondents to further measures that might help to reduce smoking among young people.

Summary of responses

6. There were 202 submissions (by post or e-mail) received in response to the consultation. Of these, 12 were from the tobacco or retail industry; 60 from individual respondents, 33 from NHS bodies; 53 from local authorities or local authority Trading Standards Departments, 25 from multi-agency groups or strategic partnerships; Table One sets out the submissions by category of respondent. Annex A lists all the organisations that responded to the consultation.

Type of respondent	Number of responses
Individuals	53
Business and industry	12
Local authorities/Trading Standards	40
NHS bodies	33
Multi-agency/ strategic partnerships	25
Professional bodies/Royal Colleges	10
Non-governmental/charitable bodies	7
Other	2

Analysis and key points

Changing the age of sale

7. Most of the responses from individuals were received via email. Rather than a formal response to the consultation, these tended to be general view on the merits of raising the age of sale and strengthening sanctions. These comments have been considered.
8. There was almost universal support from the public, the NHS, health organisations and business for raising the age of sale for tobacco to 18. Most felt that raising the age to 17 – one of the options in the consultation – would have minimal impact and might create confusion. Typical comments on the issue are set out below.

'One sensible age limit the same of alcohol to protect young people. Leaving the legal age of smoking at 16 suggests that smoking is less harmful than alcohol.'
(Teenage respondent to National Children's Bureau survey)

'Because I am 14 and I can get served cigarettes and have been able to for the last year and have never been asked for ID which isn't right,..I am finding it really hard to give up smoking but if the age to buy them in the first place was higher I wouldn't have been able to buy them in the first place!'
(Comment from 14-year old reported by National Children's Bureau)

'Many 11-18 secondary schools experience difficulty preventing tobacco coming on to their premises. An age limit of 18 would make it far easier for schools to implement a non-smoking policy and surely 'Every Child Matters' demands that schools take all reasonable steps to promote a healthy lifestyle.' **(Comment from secondary headteacher)**





9. There was qualified support for raising the age from the retail sector and the tobacco industry. However, some retail organisations felt that there was little justification for raising the age and that, if there were felt to be a problem, the solution lay in a universal proof of age card. Retailers also raised concerns about the risk of violence and abuse from 16 and 17 year old smokers who were denied purchase

of tobacco, particularly in smaller convenience stores where there is often only one salesperson on the till. However, practical experience from countries that have recently increased the age of sale from 16 to 18, for example in Ireland, has not shown this to be the reality in practice. Retailers like ASDA who have independently raised the age of sale to 18 have not encountered difficulties. Retail organisations like the British Retail Consortium and the Association of Convenience Stores will be asked to monitor incidents after the age change comes into effect. Guidance for retailers will include management of abusive customers.



10. There was considerable input from young people themselves into the consultation. Many emailed their views in favour of raising the age. The National Children’s Bureau (NCB) carried out a survey of over 300 young people between 11 and 16. Several teachers surveyed their Year 8 classes on the issues. Despite their support for raising the age, young people raised concerns about the ready availability of cigarettes from friends and family and the need for stronger anti-smoking programmes in school. It is worth showing the extent of support for raising the age to 18 among young people responding to the NCB survey. 67% backed raising the age to 18; almost 60% thought that the increase would make it harder for children and young teenagers to buy tobacco and a similar proportion felt that leaving the age at 16 suggests that the Government thinks that smoking is less harmful than drinking alcohol.

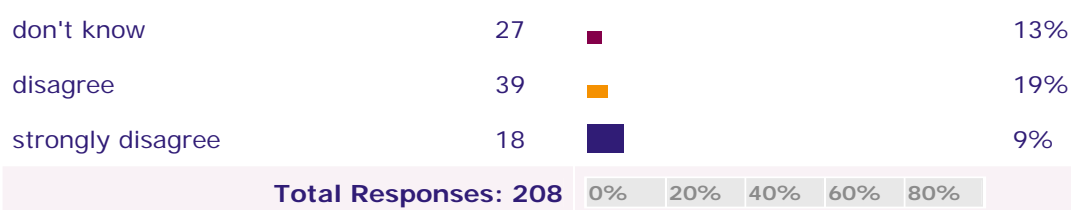
Government is suggesting 3 options for changing the age that cigarettes can be sold to young people. Please tick the option that you prefer.

(Each Respondent could choose only **ONE** of the following options:)

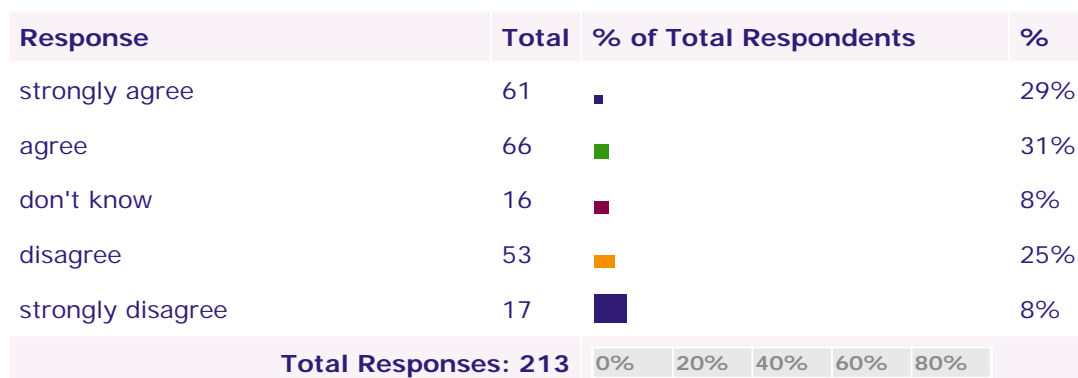
Response	Total	% of Total Respondents	%
1. To keep the current age of 16 the same	63		29%
2. To increase the age that you can buy cigarettes to 17	8		4%
3. To increase the age that you can buy cigarettes to 18	143		67%
Total Responses: 214			

Increasing the legal age of smoking will make it more difficult for children and young people to buy tobacco

Response	Total	% of Total Respondents	%
strongly agree	53		25%
agree	71		34%



• **Leaving the legal age of smoking at 16 suggests that smoking is less harmful than alcohol**



11. There was particularly strong support for a higher minimum age from Trading Standards, whose representative bodies like the Trading Standards Institute (TSI) and LACORS (local authority coordinators of regulatory services) have long campaigned for the measure and the need for a standard minimum age for all age-restricted products.
12. LACORS felt that it was essential that any age change be accompanied by ‘a robust communications campaign leading up to the change’, to prepare young people and businesses and to ease any potential regulatory burden on local authorities.

Strengthening sanctions against retailers

13. There was considerable support for toughening sanctions against retailers who repeatedly flout the law on under-age sale of tobacco, particularly among the NHS, health organisations and local authorities.
14. The great majority of respondents across interest groups supported the Government’s preferred option of negative licensing.
15. However, support for positive licensing was expressed by a small but significant number of groups, particularly in the health lobby including the British Heart Foundation, the Royal College of General Practitioners (RCGP), ASH and Cancer Research UK. They argued that a positive scheme would reduce the number of tobacco retailers and hence the availability of tobacco products and facilitate monitoring of tobacco sales. The RCGP suggested that if a

negative scheme were shown not to be effective on review after five years, it should be replaced by a positive scheme at that stage. The experience of negative licensing in Australia and New Zealand, where compliance with under-age laws continues to be a problem, was cited in support of the need for positive licensing

'The British Heart Foundation suspects that requiring all retailers wishing to sell tobacco to obtain a licence will reduce the number of shops selling tobacco, in particular for those shops where tobacco constitutes a small proportion of sales which do not make obtaining a licence worthwhile. We do not consider that any administrative or financial burden should be of greater consideration than the interests of public health when making decisions about licensing.'

16. Opinion was divided among retailers. Some, like ASDA (who have had an 18 age restriction on tobacco sales since September 2006) were strongly opposed to the proposed prohibition orders, describing the proposal as presently framed as 'unnecessarily draconian'.
17. Other retailers recognised the need for stronger sanctions but had concerns about fair implementation of the measure. Both retailers and Trading Standards wished to see an adequate lead-in time for the measure along with an effective communications campaign. The view of the Association of Convenience Stores was typical:

'We support tough and fair enforcement against retailers that flout the law on tobacco sales. The current legislation provides significant scope for sanctions against those found guilty of offences...these penalties could be better applied. It is absolutely vital that there is both adequate lead –in time and a comprehensive communication strategy to accompany any change in the law.'

Implementation issues

18. A number of business respondents were concerned about aspects the proposed strategy for implementing prohibition orders. Some were concerned about the evidential basis of warning letters from Trading Standards Departments. Others felt that the proposed 'three strikes and you're out' approach was overly harsh. Asda, for example, pointed to its large number of customers, high turnover and rapid turnover of staff: *'A store serving 60,000 customers a week employing several hundred checkout colleagues at any one time is necessarily likely to run more risk of occasional mistakes being made.'*
19. In contrast, the Tobacco Manufacturers' Association felt that the proposed approach was fair: *'We recognise that inevitably mistakes can occur, especially for example when a new or inexperienced member of staff is on duty but believe that the 'three strikes and you're out' approach is sufficient to deal with such situations.'* This view was shared by the Federation for Small Business who commented that *'the proposal is punitive. However, it does target non-compliant businesses only, thus*

reducing regulatory burdens for compliant businesses and for Trading Standards Officers'.

20. Some Trading Standards Departments expressed concern about the possible lack of flexibility of the proposed three offences over a three year period. Several departments wanted the discretion to apply for orders in cases where offences had occurred at several branches of a small chain of convenience stores in a local authority area.
21. Concerns were also raised by some respondents about the proposed length of the prohibition order period. Some NHS and health organisation felt that the period is not sufficiently punitive. In contrast, the Association of Convenience Stores considered that an order preventing the sale of tobacco for even a fraction of the period might have a serious detrimental impact on the viability of its shops.
22. There was also concern from many respondents about the current enforcement of the law by Magistrates. Many felt that fines for breaking the law on under-age sale were too lax and called for clear guidance for courts on the seriousness of the offence as well as on imposition of prohibition orders. Some, like Nottinghamshire Trading Standards, considered that the orders *'will in reality not prove much of a deterrent for retailers bent on selling tobacco to minors. At present it is understood both by Trading Standards Officers and retailers that the majority of Magistrates do not treat this breach of the law particularly seriously when cases go to court.'*
23. Some trading standards respondents suggested that there be more effective use of 'Stop Now' orders under the Enterprise Act 2002, which can be imposed by TSOs for an act or omission likely to cause harm. Others called for fixed penalty notices for under-age sale offences as are used for under-age sale of alcohol.
24. Some respondents like Central England Trading Standards and the Association of Convenience Stores were concerned about proposed liability for prohibition orders and the difficulty in applying orders to managers where that role is not clearly allocated or when turnover is very high. It is suggested that 'manager in charge' be clearly defined in the guidance to deal with this along with responsibility for maintaining a national database of prohibition orders to track individuals against whom orders have been imposed.
25. Many respondents stressed the need for a robust mass media and public information campaign to build public support for the new measures and to highlight the fact that it is illegal to sell tobacco to minors and that breaking the law can lead to serious penalties. To aid implementation, ASH calls for a hotline similar to the smuggling

hotline to enable the public to report breaches of the law in confidence to trading standards.

Other measures to reduce smoking among young people

26. The consultation invited views on other measures that might be taken to discourage older children and young teenagers from taking up the smoking habit.
27. There was considerable support for tougher measures on vending machines from which many young people under minimum age are able to obtain tobacco products. Some respondents called for the current voluntary NACMO code of practice to be made compulsory. It was suggested that England and Wales adopt a system like that used in the Republic of Ireland where those wishing to purchase cigarettes from a vending machine must request a token from the premises manager. This kind of token system has also been taken up by a number of other EU member states including Austria and Germany. Other respondents called for more radical action on in this area and urged a ban of cigarette sales from vending machines.
28. Several respondents including LACORS and Cancer Research UK called for restrictions on the display of tobacco products as they felt that tobacco products were still too visible and appealing to children and teenagers despite restrictions on point of sale advertising.
29. Changes in packaging were urged by several respondents. Some suggested that a larger minimum pack size might help to discourage young people with limited resources from buying cigarettes. ASH pointed to evidence that over half of 11-15 year olds who bought cigarettes bought them in packs of 10, compared to 36% who bought them in packs of 20. It was felt by health groups that picture warnings would discourage young people from taking up the habit but some urged that they appear on both front and back of packs to maximise impact. Many health sector respondents urged a requirement for generic packaging to reduce the appeal of brand loyalty for buying tobacco products.
30. Several respondents pointed to the need to tackle the problem of illicit trade in tobacco, pointing out that a possible consequence of raising the legal age of sale is that more under-age smokers might turn to the smuggled market as they find it increasingly difficult to buy tobacco from retail outlets.

Annex A

List of organisations that responded to the consultation

Action on Smoking and Health (ASH)	NHS Tayside
Action on Smoking and Health (ASH) Scotland	North Birmingham PCT
ASDA Stores	North East Assembly
Association of Convenience Stores	North East Trading Standard Association
Association of North East Councils	North West Underage Sales Focus Group
Asthma UK	Northamptonshire County Council
Basildon District Council	North West Action on Smoking and Health
Barnsley PCT	Northumberland Care Trust
Blackpool Council	Northumberland County Council
Board of Community Health Councils in Wales	Northumberland Stop Smoking Service
Bradford District Tobacco Strategy Group	Nottinghamshire County Council
Brentwood Regulatory Services	Oxfordshire Alliance on Smoking Issues
British American Tobacco	Pembrokeshire Local Health Board
British Heart Foundation	Philip Morris Ltd
British Lung Foundation	Plymouth City Council
British Medical Association	Plymouth PCT
British Paediatric Respiratory Society	Poole Borough Council
British Thoracic Society	Quit
Caerphilly Local Health Board	Reading District Council
Caerphilly Local Public Health Team	Rochdale District CouncilW
Cambridgeshire County Council	Rotherham PCT
Cancer Research UK	The Roy Castle Lung Cancer Foundation
Cardiff Health Alliance	Royal College of General Practitioners
Central England Trading Standards	Royal College of Midwives
Cheshire and Merseyside Tobacco Alliance	Royal College of Paediatrics and Child Health
Chorley & South Ribble PCT	Royal College of Physicians
Conwy County Borough Council	Royal College of Physicians of Edinburgh
The Co-operative Group	Royal National Institute for the Blind
Cornwall and Isles of Scilly NHS Health Community	Smoke-Free Alliance for Shropshire County and Telford & Wrekin
Darlington Council	Smoke Free Cambridgeshire and Peterborough
Daventry and South Northants PCT	Smoke Free Cheshire
Denbighshire Local Health Board	Smoke Free Devon Alliance
Derbyshire Action on Smoking	Smoke Free County Durham and Darlington
Derwentside PCT	Smoke Free Derwentside
Doncaster Central PCT	Smoke Free Durham and Chester-le-Street
Doncaster West PCT	Smoke Free Hampshire and Isle of Wight
Doncaster Borough Council	Smoke Free Herefordshire
Dorset County Council	Smoke Free Lincolnshire Alliance
Easington PCT	Smokefree London
East Midlands Tobacco Control Task Group	Smoke Free Newcastle
East Yorkshire and Yorkshire Wolds and Coast PCTs	Smoke Free Norfolk Alliance
Ellesmere Port and Neston Borough Council	Smokefree North West
European Smoking Tobacco Association	Smoke-Free Nottinghamshire
Federation of Small Business	Smoke Free Plymouth Alliance
Federation of Licensed Victuallers Association	Smoke-Free Tyneside Alliance
Fresh – Smoke Free North East	Smoke Free Warwickshire
Gateshead Council	Smokefree North West
Hampshire County Council Trading Standards	Smoke-Free Staffordshire Alliance
Hampshire and Isle of Wight Public Health Network	Smokefree Wiltshire
Humber Alliance on Tobacco	Smoking Control Network
Huntingdonshire District Council	Solihull Borough Council
Islington Council/PCT	South East Coast Strategic Health Authority
JT International	South West Kent & Maidstone Weald PCT Stop Smoking Service
Kennet & North Wiltshire and West Wiltshire PCTs	South West of England Trading Standards (SWERCOTS)
Kent Alliance on Smoking and Health	South Wye Community Health Improvement Group
Lancashire County Council	South Tyneside PCT
Leeds Smoking Svices	Surrey PCT
Leicester, Leicestershire & Rutland Smoke Free Alliance	Tobacco Control Collaborative Centre
Lewisham PCT	Torbay Smoke-Free Alliance
Liverpool Heqalth Promotion Service	Tower Hamlets PCT
Local Authorities Co-ordinators of Regulatory Services	Trading Standards Institute

(LACORS)	
London Trading Standards Authorities	Trading Standards Southeast
Manchester Stop Smoking Service	The Tobacco Manufacturers' Association
Malvern Hills District Council	Vale of Glamorgan Local Health Board
Marie Curie Cancer Care	Validate UK
Medical Research Council	Wales Heads of Trading Standard
Middlesbrough Council	Walsall tPCT/Council
Mid-Sussex PCT	Warrington Borough Council/PCT
Mole Valley District Council	West Lincolnshire PCT
National Association of Cigarette Machine Operators	West Yorkshire Trading Standards Service
Stoke PCTs	Wigan Council Community Protection Department
National Public Health Service for Wales	Witshire PCTs
Newcastle PCT	Wirral Metropolitan Borough Council
NHS Ayrshire and Arran	Wirral PCT
NHS Forth Valley	Yorkshire and Humber Tobacco Control Network
No Smoking Day	Yorkshire and The Humber Trading Standards Group
NHS Health Scotland	
NHS Stop Smoking Service for South West Kent and Maidstone Weald PCTs	