



Standardised (plain) packaging of tobacco products

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Standardised packaging (or 'plain packaging') of tobacco products is taken to mean the removal of all attractive promotional aspects. Except for the brand name (which would be presented in a standardised way), all other trademarks, logos, colour schemes and promotional graphics would be prohibited. The package itself would be standardised and display only information (such as health warnings) required by law.

'Healthy Lives, Healthy People: A Tobacco Control Plan for England', published by the Government in March 2011, includes a commitment to explore options to reduce the promotional impact of tobacco packaging. A UK-wide public consultation ran from April to August 2012, with a summary report being published in July 2013. The Government said it would wait to see the results of the standardised packaging legislation introduced in Australia in 2011 before making a final decision.

On 28 November 2013, the Government announced an independent review into the public health evidence on standardised tobacco packaging and that an amendment would be tabled to the Children and Families Bill to establish regulation making powers in this area. The Government amendment was tabled at the Report stage in the House of Lords on 29 January 2014 and was agreed by both Houses at later stages. The *Children and Families Bill* received Royal Assent on 13 March 2014.

On 3 April 2014, the report of the Public Health Review undertaken by Sir Cyril Chantler was published. He concluded that it was very likely that the introduction of standardised packaging would lead to a modest but important reduction in the uptake and prevalence of smoking and would have a positive effect on public health. On the same day the Government announced that it was minded to introduce regulations to provide for standardised packaging.

On 26 June 2014, draft regulations and a consultation were published. Jane Ellison, The Under-Secretary of State for Health explained that the Government were particularly looking for views on the emergence of any new evidence including the wider implications of introducing standardised packaging. This consultation ended on 7 August 2014. On 21 January 2015, the Under-Secretary of State for Health announced that the Government had decided to bring forward the legislation for standardised packaging before the end of this Parliament.

This note gives an overview of the debate. As such, it is not a comprehensive account of the arguments for and against the use of standardised packaging or an evaluation of the different views expressed as to the impact that standardised packaging might have on public health, the incidence of smuggling and the compliance costs to business. The Government's [summary report](#) to its public consultation looks in detail at the range of views.

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Contents

1	Background	4
1.1	World Health Organization's Framework Convention on Tobacco Control	4
1.2	UK health policy on smoking	4
1.3	Excise duties on tobacco products and the illicit trade in tobacco	5
2	Background to the issue of standardised packaging in the UK	12
3	Government consultation on standardised packaging 2012	13
3.1	Written Ministerial Statement	13
3.2	Evidence	14
3.3	Government response to the consultation	15
4	A review of public health evidence on standardised packaging	16
4.1	Announcement of the review November 2013	16
4.2	Report of the Independent review April 2014	17
5	Children and Families Act 2014	18
9	Draft regulations and consultation 2014-15	18
5.1	What will the standardised packaging look like?	19
9.1	Enforcement	20
9.2	Government announce they will bring forward regulations on standardised packaging	21
10	Revised EU Tobacco Products Directive	22
11	Australia – the first country to introduce standardised packaging	23
11.1	The legislation	23
11.2	Legal challenges to the legislation	23
	In the High Court in Canberra	24
11.3	International legal challenges	25
	International Complaint to the World Trade Organisation (WTO)	25
	Bilateral Investment Treaty (BIT)	25
11.4	Early research on the impact of the Australian legislation	26
	Appendix A - Current tobacco control legislation	28
	Prohibition on sale of tobacco products to children	28
	Prohibition on tobacco advertising	28

Prohibition on the sale of tobacco products from vending machines	29
Labelling of tobacco products	29
Smoking in public places and the workplace	29
Appendix B – Trends in smoking prevalence	31
Appendix C Parliamentary debates prior to the <i>Children and Families Bill</i>	32
11.5 Adjournment debate	32
11.6 Westminster Hall Debate	32
11.7 Backbench Business Committee debate	33
12 Appendix D: Stages of the <i>Children and Families Act</i>	35
12.1 Grand Committee stage	35
12.2 Lords Report Stage and Third Reading	36
12.3 Consideration of Lords amendments in the House of Commons	38

1 Background

1.1 World Health Organization’s Framework Convention on Tobacco Control

The United Kingdom has been a Party to the World Health Organization’s *Framework Convention on Tobacco Control* (FCTC) since 2004. The FCTC is the world’s first public health treaty and places obligations on Parties to meet the treaty objective to ‘*reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke*’ and to implement comprehensive tobacco control strategies.¹

To help Parties meet their obligations under the FCTC, guidelines have been developed. While these guidelines are not binding, Parties have agreed that they reflect their consolidated view of a desirable means of fulfilling their FCTC obligations.²

1.2 UK health policy on smoking

Health policy is largely devolved. However, tobacco falls within the remit of a number of different government departments, (for example, Treasury, Business, HMRC and Health), which makes tobacco control policy partly reserved.

Specifically, smoking cessation and health education campaigns are devolved to:

- the [Department of Health](#) (England) (since the structural changes to the NHS in England came into effect in April 2013 responsibility for managing the stop smoking services has shifted to local government)³;
- the Chief Medical Officer’s Directorate (Scotland);
- the Health and Social Services Directorate General (Wales); and

¹ From [Article 3 \(objective\) and Article 5 \(general obligations\) of the World Health Organization’s Framework Convention on Tobacco Control](#), (accessed 23 September 2013)

² [Adopted guidelines](#) for implementation of the ‘*WHO Framework Convention on Tobacco Control*’, (accessed 23 September 2013)

³ Local authorities will be expected to measure performance against smoking prevalence indicators set out in the Public Health Outcomes Framework and to deliver the best cessation opportunities within their area to support progress against the indicators

- the [Department of Health, Social Services and Public Safety](#) (Northern Ireland)

Each department or directorate has responsibility for improving public health, including reducing tobacco use through the implementation of comprehensive tobacco control strategies.

UK-wide policy and law applies to taxation, smuggling, advertising, and to consumer protection issues such as the provision of health warnings on tobacco packaging. Some of these measures are determined by European Union legislation.

In March 2011, the Government published a Public Health White Paper, '*Healthy Lives, Healthy People: A Tobacco Control Plan for England*' which set out its programme of tobacco control for five years.⁴ One target is to reduce smoking prevalence among adults to 18.5% or less by 2015; to 12% or less among 15 year olds by 2015; and to 11% or less among pregnant women by the end of 2015.⁵

Similar tobacco control plans have been developed by the devolved administrations. The Welsh Government has set a target to reduce adult smoking rates to 16% by 2020.⁶ The Scottish Government has published a new tobacco control strategy for Scotland which includes a target to reduce adult smoking prevalence to 5% or less by 2034.⁷ In Northern Ireland, a 10-year Tobacco Control Strategy was launched in February 2012.⁸

1.3 Excise duties on tobacco products and the illicit trade in tobacco⁹

Excise duties on tobacco products are forecast to raise £9.9 billion in 2014/15. By way of comparison duties on alcoholic drinks – spirits, wines, beer and cider – are forecast to raise £10.4 billion in the same year.¹⁰ This type of tax charge is set as a flat rate – a number of pence per g of tobacco - although, in the case of cigarettes, the duty charge includes a second ad valorem element.¹¹

As flat-rate duties are expressed in cash terms, they must be increased in line with inflation – revalorised – each year in order to maintain their real value. In its March 2010 Budget the Labour Government proposed that duty rates would rise by 2% each year in real terms, at least until 2014/15.¹² Following the establishment of the Coalition Government after the 2010 General Election, the new Government adopted this approach to setting duties on tobacco products; this remains the baseline assumption for duty regime, as reflected in the Treasury's forecasts for the public finances.¹³ In his 2014 Budget the Chancellor George Osborne proposed that this approach to increasing duty rates would continue: "Tobacco duty has been rising by 2% above inflation and will do so again today, as previously confirmed. This

⁴ Department of Health, '*Healthy lives, Healthy people: A Tobacco Control Plan for England*', March 2011, [online] (accessed 23 September 2013)

⁵ *Ibid*

⁶ [Tobacco Control Action Plan for Wales](#)_Feb. 2012

⁷ [Tobacco Control Strategy - Creating a Tobacco-free Generation](#)_The Scottish Government, March 2013

⁸ [Health Minister launches tobacco strategy for Northern Ireland](#)_NI Department of Health, Feb 2012

⁹ This section has been written by the House of Commons Library tax specialist, Antony Seely (Business and Transport Section)

¹⁰ Office for Budget Responsibility, *Economic and fiscal outlook Cm 8820*, March 2014 p104, Table 4.5

¹¹ Further details on the arrangements for manufacturers and importers to account for tobacco duty on the products they supply for sale are on Gov.uk: [HMRC Guidance – Tobacco Products Duty](#), March 2014

¹² [Budget 2010, HC 451, March 2010](#) para 5.85

¹³ HM Treasury, [Budget 2014 – Budget Costings](#), March 2013 p62. In the case of cigarettes, Budget 2011 saw a cut in the ad valorem duty and an increase in the quantity-based duty, increasing the amount of duty paid on cheaper brands (HC 836, March 2011 para 2.125).

escalator was due to end next year, but there are no sound health reasons to end it, so it will be extended for the rest of the next Parliament.”¹⁴

As a result, duty rates on tobacco products rose by 2% in real terms from 19 March 2014, as set out below:¹⁵

Tobacco product	From 6pm 20 March 2013	Ad valorem element	From 6pm 19 March 2014	Ad valorem element
Cigarettes	£176.22 per 1000 cigarettes	16.5% of retail price	£184.10 per 1000 cigarettes	16.5% of retail price
Cigars	£219.82/kg	N/A	£229.65/kg	N/A
Hand rolling tobacco	£172.74/kg	N/A	£180.46/kg	N/A
Other smoking tobacco and chewing tobacco	£96.64/kg	N/A	£100.96/kg	N/A

The proportion of the final selling price of tobacco products that is tax has been consistently high in the UK. Excise duty and VAT taken together account for 58-61% of the selling price of various price categories of cigarettes. The tax burden on other tobacco products is of an equivalent size, though lower in the case of cigars.¹⁶

For many years the smuggling and illicit sale of tobacco products have posed serious problems for the maintenance of Exchequer revenues from tobacco, as well as significant threats to public health. HM Revenue & Customs publish estimates for the ‘tax gap’. This is the difference between tax that is actually collected and the tax that is ‘theoretically due’, which is the tax that would be paid if all individuals and companies complied with both the letter of the law and HMRC’s interpretation of the intention of Parliament in setting law. Another way of defining the tax gap is the tax that is lost through non-payment, use of avoidance schemes, interpretation of tax effect of complex transactions, error, failure to take reasonable care, evasion, the hidden economy and organised criminal attack.

In October 2014 the department published updated estimates for the tax gap, which included lower, midpoint and upper estimates of the tax gap for tobacco. Using the midpoint figure, this puts the cost of the tax gap for tobacco duties at £1.6 billion in 2012/13, compared with a tax gap across all national taxes of £34 billion.¹⁷

In the same month HMRC published estimates for the tax gap for tobacco for 2013/14, which showed a small increase in the size of the illicit market on the year before:¹⁸

¹⁴ HC Deb 19 March 2014 c791. Continuing the duty escalator from 2015/16 is forecast to raise £40m in 2015/16 rising to £135m by 2018/19: *Budget 2014, HC 1104, March 2014* p57 (Table 2.1 – item 31).

¹⁵ HM Treasury/HM Revenue & Customs, *Overview of Tax Legislation and Rates*, 19 March 2014 pB16

¹⁶ In the case of cigars: 48%; pipe tobacco: 59%; hand rolling tobacco 71%. All figures for 2013. HMRC, *Tobacco factsheet*, November 2013. The methodology for these figures has been revised this year – for details see the comments section of this factsheet.

¹⁷ *Measuring Tax Gaps 2014*, October 2014 p7. The £1.6bn figure is for excise duty only. HMRC estimated a tax gap of £2.0bn, including revenue losses from VAT on tobacco products (pp37-38). The department’s work on the tax gap is collated on its site at: <http://www.hmrc.gov.uk/statistics/tax-gaps.htm>

¹⁸ *Tobacco tax gap estimates 2013/14*, 16 October 2014 pp1-2

Table 1.1: Cigarettes: Illicit market and tax gap¹

	2009-10	2010-11	2011-12	2012-13	2013-14
Illicit Market Shares:					
Upper Estimate	15%	13%	12%	13%	14%
Mid-point Estimate	11%	9%	7%	9%	10%
Lower Estimate	8%	5%	2%	4%	5%
Tax Gap (£million)^{2,3}					
Upper Estimate	1,800	1,500	1,500	1,700	1,700
Mid-point Estimate	1,300	1,000	900	1,100	1,100
of which:					
VAT	200	200	200	200	200
Duty	1,100	800	700	900	900
Lower Estimate	900	500	200	500	600
Illicit Market Volumes (billion sticks):					
Upper Estimate	8.0	7.0	6.0	6.0	6.0
Mid-point Estimate	6.0	4.0	3.0	4.0	4.0
Lower Estimate	4.0	2.0	1.0	2.0	2.0

¹ Figures are rounded.

² Includes duty and VAT.

³ Based on the weighted average price (WAP) of all UK duty paid cigarettes.

Table 1.2: Hand rolling tobacco: Illicit market and tax gap¹

	2009-10	2010-11	2011-12	2012-13	2013-14
Illicit Market Share:					
Upper Estimate	48%	44%	41%	42%	43%
Mid-point Estimate	42%	38%	35%	36%	39%
Lower Estimate	37%	32%	30%	31%	34%
Tax Gap (£million)^{2,3}					
Upper Estimate	800	800	900	1,100	1,200
Mid-point Estimate	700	700	700	900	1,000
of which:					
VAT	100	200	200	200	200
Duty	600	500	600	700	800
Lower Estimate	600	500	600	700	800
Illicit market volumes (tonnes):					
Upper Estimate	5,300	4,900	4,600	4,900	5,200
Mid-point Estimate	4,400	3,900	3,700	4,000	4,400
Lower Estimate	3,600	3,000	2,800	3,100	3,600

¹ Figures are rounded.

² Includes duty and VAT.

³ For 2012-13 and 2013-14 this is based on the weighted average price (WAP) of all UK duty paid hand rolling tobacco. This data is not available for earlier years, so losses are based on a 'typical brand'.

It is worth noting that these estimates cannot be disaggregated by the type of illicit activity involved – that is, through smuggling, counterfeiting or other fraud.¹⁹

In the late 1990s and early 2000s the scale of tobacco fraud is thought to have been even greater; HMRC have estimated that illicit sales accounted for 21% of the cigarette market in 2000/01.²⁰ In April 2011 the Government announced a new joint strategy of HMRC and the UK Border Agency in tackling this problem. The report noted that the nature of smuggling had changed, from being mostly 'contraband' products – legally manufactured products sold on the Continent but charged a much lower rate of duty – to counterfeit or 'illicit whites':

¹⁹ HC Deb 24 April 2013 c1014W

²⁰ Committee of Public Accounts, *Tobacco Smuggling*, HC 143 2002-03, 10 January 2003; *Customs & Excise Standard Report 2004-05*, HC 874 2005-06, 22 June 2006 pp10-11; [PQ215878](#), 1 December 2014.

illegally manufactured copies of well-known existing brands, or, legally manufactured brands, sold without UK duty being paid:

The illicit tobacco market in the UK has changed significantly since 2000. Historically it was made up of genuine UK brands of tobacco smuggled from lower-priced EU countries. Currently, it is much more a mix of genuine UK and non-UK brands of cigarettes, hand-rolling tobacco, counterfeits, and increasingly, illicit whites.

The emergence of counterfeit, non-UK and illicit white brands is reflected in increased proportions of these products in seizures of commercial quantities of cigarettes destined for the UK illicit market.²¹ Smuggling of genuine UK brands continues to be a particular problem for hand-rolling tobacco, which is relatively small in volume but high in value. In 2009/10, half of HMRC and UKBA seizures of hand-rolling tobacco²² were genuine UK brands, with the remainder being counterfeits of UK brands (24%) and non-UK brands (26%).

Counterfeit Cigarettes: Counterfeits of UK brands originate mostly from the Far East, with China continuing to be the major source. The counterfeiters show ever increasing sophistication in the face of international enforcement efforts. They frequently move manufacturing bases and distribution hubs, and are constantly challenging border controls with new routings or methods of concealment of goods.

Illicit White Cigarettes: Illicit whites, from a range of non-EU sources, continue to increase their market share in the UK. Along with counterfeits, they represent the most significant threat to legitimate trade and tobacco revenues in the UK from large scale organised criminality. A number of illicit white brands have now established themselves in the UK, including Raquel and Jin Ling, with new brands beginning to emerge.²³

The document set out several objectives for the strategy:

- a) Targeting and disrupting the organised criminal gangs behind the fraud;
- b) Seizing greater volumes of illicit product to undermine the economics of the fraud;
- c) Taking hard-hitting action against offenders to deter and punish those involved in the fraud
- d) Reducing the availability of genuine tobacco products for fraud
- e) Decreasing demand for illicit tobacco products
- f) Collaborating with overseas partners and international organisations;
- g) Working with industry.

The new strategy did not give HMRC a specific monetary target for reducing revenue fraud; rather, as noted in a PQ answer, “the objective of the joint strategy is to maintain downward pressure on the illicit tobacco market in the UK.”²⁴ In June 2013 the National Audit Office looked at HMRC’s progress in tackling this problem, concluding that the strategy was “logical” but that its “approach to deterring and disrupting the distribution of illicit tobacco within the UK is not yet effectively integrated.” It made a series of recommendations, reproduced below:

²¹ Seizure of cigarettes over 100,000 sticks.

²² Data is only available for seizures over 50kg of hand rolling tobacco.

²³ *Tackling Tobacco Smuggling—building on our success – a renewed strategy for HM Revenue & Customs and the UK Border Agency*, April 2011 pp6-7

²⁴ HC Deb 17 June 2013 c457W

a HMRC should develop its approach to tackling the trade in tobacco products within the UK. HMRC should:

- assess the deterrent impact of enforcement action against people selling illicit tobacco; and
- develop further its collaborative work with police, trading standards and other local bodies, building on successful regional initiatives.

b HMRC should evaluate the options for improving its methodology for estimating tax losses from tobacco fraud. HMRC recognises that it needs more accurate and up-to-date information on the scale of the illicit market. It should continue to explore options including involving other sources of expertise, such as academic input.

c HMRC should improve the quality of its key performance information or disclose limitations in any public reporting. HMRC should ensure teams take a more consistent and evidence-based approach to estimating the revenue loss prevented from criminal prosecutions and disclose the limitations in its approach in any public reporting. While it may not be feasible to impose independent checks on seizure volumes reported by overseas tax authorities, it should also disclose these limitations in any public reporting.

d HMRC should ensure that projected benefits from key initiatives are fully tested before they are announced. HMRC should take a more robust approach to challenging the feasibility of projects at an early stage, including seeking legal and technical advice where appropriate.

e HMRC should establish why legislation has not yet resolved the problem of over-supply of tobacco overseas. HMRC should establish what more it needs to do to resolve outstanding concerns. It should take a robust stance in its enforcement activities with tobacco manufacturers where it establishes clear evidence of over-supply to foreign markets.²⁵

In June 2014 the Home Affairs Committee published a report on tobacco smuggling.²⁶ The Committee noted that HMRC's performance – increasing seizures of product, cutting revenue losses and imposing penalties on fraudsters – was improving, though it had not met its targets in 2012-13. In evidence HMRC had stated that making successful seizures was becoming harder due to changes in the profile of smuggling: specifically, a move away from smuggling through posted packages, and the use of large consignments through containers, as consignments were fragmented into smaller values. In light of this HMRC and Border Force were 'refreshing' their joint strategy, and the Committee urged that they should "continue to strengthen the lines of communication between the two organisations", while doing more to "publicise prosecutions and enforcement action more widely."²⁷

The Committee was especially concerned over the scale of 'over-supply' – UK manufacturers supplying branded products that were not sold, but smuggled back into the UK. They argued that the penalties for this practice were "too weak" and enforcement "too rare":

²⁵ *Progress in tackling tobacco smuggling*, HC 226, 2013-14, 6 June 2013 pp8-9. See also, Public Accounts Committee, *HMRC – progress in tackling tobacco smuggling*, HC 297, 2013-14, 10 October 2013, and, the Government's response to this (*Treasury Minutes, Cm 8774, January 2014* pp 1-3).

²⁶ *First report of Session 2014-15: Tobacco smuggling*, HC 200, 14 June 2014

²⁷ *op.cit.* paras 11, 22, 31. Border Force, which is part of the Home Office, took on the responsibilities of the UK Border Agency in this area in 2012 (*Home Office press notice, 1 March 2012*). In July 2014 HMRC started to publish quarterly data on this aspect of their performance on Gov.uk.

It is astonishing that no UK tobacco manufacturer has ever been fined for over-supply of products to high-risk overseas markets, and that only one statutory warning letter has been issued ... We find it farcical that a respected enforcement agency such as HMRC has not imposed tougher punishments on those over-supplying overseas markets. We recommend that HMRC publish a clear set of criteria setting out the circumstances in which it would normally impose a fine and that an immediate review be taken against all historic and ongoing cases against this criteria in order to ensure those who have committed an offence do not go unpunished.²⁸

The Government published its response to the Committee's report in October 2014; in answer to the Committee's concern about the penalties for 'over-supply' the Government said:

The Tobacco Products Duties Act supply chain legislation has succeeded in its objective to reduce tobacco manufacturer supplies to high-risk markets. The law provides for proportionate action to address non-compliance, with penalties up to £5m. A list of the relevant criteria and the approach HMRC takes when considering potential action under the supply chain legislation is already published in Notice 477 *Tobacco products duty: control of supply chains*. Any decision to issue a warning notice or penalty requires HMRC to consider all relevant factors, both positive and negative, on a case-by-case basis. HMRC continually monitors and reviews all four UK major tobacco manufacturers' compliance with the legislation and will take action where appropriate.

At the time of the committee oral evidence hearing on 11 March one tobacco manufacturer was in receipt of a statutory warning letter stating that they were in breach of their obligations under the supply chain legislation and could be subject to penalty at the end of the review period if they failed to adequately address the breaches identified. Following expiry of the review period, HMRC has issued the manufacturer involved with a penalty.

HMRC is reviewing the current guidance to help improve the tobacco manufacturers' understanding of how their compliance with the legislation will be evaluated.²⁹

There have been some concerns that the introduction of standardised packaging might result in a reduction in Exchequer revenues, from an increase in the supply of and the demand for illicit tobacco. When it consulted on standardised packaging in 2012, the Department of Health did not provide an estimate of this impact, as noted in answer a PQ:

Asked by Lord Moonie: To ask Her Majesty's Government what was the total taxation arising from packaged cigarettes in the last financial year; and what estimate they have made of the percentage revenue they would lose if all cigarettes were to be sold in plain packaging.

The Commercial Secretary to the Treasury (Lord Deighton): HM Revenue and Customs (HMRC) publishes excise duty collected on cigarettes in the HMRC national statistics bulletin. The cigarettes duty revenue for 2012/13 was £8,559 million. VAT collected on cigarettes is not available and, therefore, the total tax revenue collected from tobacco taxation cannot be established.

Alongside the Consultation on standardised packaging of tobacco products published in 2012, the Department of Health also published a consultation-stage impact

²⁸ *op.cit.* para 26

²⁹ *Fifth special report of Session 2014-15*, HC 767, 31 October 2014 p2

assessment that provided a preliminary assessment of the costs and benefits that could arise from the introduction of standardised packaging requirements. Paragraph 52 of the impact assessment considers the cost to the Exchequer. An estimate of the percentage revenue lost is not available as “these estimates of lost receipts are indicative and do not allow for future changes in rates of duty, changes in market shares of different brands, changes in smoking patterns or purchasing habits.”

The relevant documents are available on the Department of Health’s website.³⁰

For convenience, this section of the impact assessment cited in this answer is reproduced below:

(iii) Costs to the exchequer through the loss of tobacco duty

52. For every additional adult smoker who quits, there is a lifetime loss of duty of around £3,900. For every young person who no longer takes up smoking, there is a lifetime loss of duty of around £11,300.³¹ The estimates of lost duty have been updated since the IA on the legislation ending the open display of tobacco in shops and use the same methodology as for health benefits (see Annex 1).

In previous IAs, we have excluded any impact on VAT receipts on the basis that any loss is expected to be matched by a compensating gain elsewhere in the economy. Here, we allow for the difference between VAT on tobacco (20%) and the average rate of VAT in the economy (around 13.2%) to obtain an additional item for lost VAT (around £950 per young person and £330 per adult).

These estimates of lost receipts are indicative and do not allow for future changes in rates of duty, changes in market shares of different brands, changes in smoking patterns or purchasing habits.³²

In its report on tobacco smuggling, the Home Affairs Committee cited the views of Sir Cyril Chantler, in his independent review of standardised packaging, published in April 2014.³³ Despite representation from the industry on this issue Chantler found “no convincing evidence” that fraudsters would find it easier to counterfeit standardised packaging, or that its introduction would boost the illicit market.³⁴ For its part the Committee argued that “the decision on standardised packaging should be driven by health reasons and the imperative need to reduce the numbers of young people who start smoking.” It went on to suggest that even this reform saw an increase in the illicit market, “the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government’s drive towards introducing standardised packaging.”³⁵ In its response to the Committee’s report, published in October 2014, the Government replied:

On 26 June 2014, the Government published a consultation that will inform the decision on whether to introduce standardised packaging. The current consultation asks, in particular, for views on anything new since the last consultation that is relevant

³⁰ HL Deb 29 August 2013 ccWA338-9

³¹ To the nearest pound, the estimates for lost duty are £3,918 and £11,324.

³² [Impact assessment: standardised packaging of tobacco products IA no.3080](#), 5 March 2013 p14

³³ In November 2013 Sir Cyril Chantler was commissioned to assess the potential impact of standardised packaging on public health. His report is discussed in more detail in section 4.2 of this note.

³⁴ [Standardised packaging of tobacco: Report of the independent review undertaken by Sir Cyril Chantler](#), 3 April 2014 (see pp32-37).

³⁵ [First report of Session 2014-15: Tobacco smuggling, HC 200](#), 14 June 2014 para 44

to the development of this policy, including in relation to illicit tobacco. The Public Health Minister has encouraged anyone with an interest to respond to the consultation.

HMRC is also undertaking an assessment of the potential effect of standardised packaging on the illicit tobacco market. This assessment will feed into the Department of Health consultation to inform the Government's policy. It will enable HMRC to prepare for any potential changes in the illicit market that are identified. The HMRC/Border Force strategy to tackle tobacco smuggling will adapt to any changes in risk as it has done over many years.³⁶

2 Background to the issue of standardised packaging in the UK

In December 2007 the Department of Health's [Cancer Reform Strategy](#) signalled the Government's intention to consult the public on the next steps in tobacco control.³⁷ A '[Consultation on the Future of Tobacco Control](#)' was published on 31 May 2008.³⁸ This consultation was the first step in developing a new national tobacco control strategy and covered four main areas:

- reducing smoking rates and health inequalities caused by smoking;
- protecting children and young people from smoking;
- supporting smokers to quit; and
- helping those who cannot quit.

Among the questions asked was whether "*plain packaging of tobacco products has merit as an initiative to reduce smoking uptake by young people*". A [summary report](#) on responses to the consultation was published by the Department of Health in December 2008. It stated that almost 98 per cent of respondents who answered this question (over 80,000 respondents) were in favour of plain packaging.³⁹ Approximately 2,000 respondents were against the measure, with most of these suggesting that such a requirement would stimulate counterfeit and illicit trade.⁴⁰

A provision on standardised packaging was not included in either the 2009 *Health Bill [HL]* as originally drafted or in the final Act. In fact, the Bill contained only five clauses and one schedule on tobacco control, including provisions on the display of tobacco displays at the point of sale (i.e. in shops) and a prohibition on the sale of tobacco products from vending machines. The stated aim of both of these measures being to protect children and young people from the harm caused by smoking.

However, standardised packaging was debated during the passage of the Bill through Parliament.⁴¹ Both in the House of Lords⁴² and in the House of Commons⁴³, amendments

³⁶ [Fifth special report of Session 2014-15](#), HC 767, 31 October 2014 p3

³⁷ Department of Health, [Cancer Reform Strategy](#), 3 December 2007, Cm 283524

³⁸ Department of Health, '[Consultation on the Future of Tobacco Control](#)', 31 May 2008, Cm 287904, [online] (accessed 20 September 2013)

³⁹ Department of Health, '[Consultation on the Future of Tobacco Control – Consultation Report](#)', page 25, December 2008, [online] (accessed 20 September 2013)

⁴⁰ *Ibid*

⁴¹ See PBC 25 June 2009 c.306; HC Deb 12 October 2009 c94; HC Deb 12 October 2009 c95; and HC Deb 12 October 2009 c109

⁴² Lord Patel twice moved an amendment to the Bill to impose plain packaging; during Grand Committee and again on Report. On both occasions the amendment was withdrawn. HL Deb 11 March 2009 cc440-152GC and HL Deb 6 May 2009 cc603-607

were moved to impose plain packaging on all tobacco products. The amendments were withdrawn after the previous Labour Government made a commitment to keep the issue of tobacco packaging under review.⁴⁴

In November 2010, Andrew Lansley, then Secretary of State for Health, said the Government would look at the impact of tobacco packaging on children:

We have to try new approaches and take decisions to benefit the population. That's why I want to look at the idea of plain packaging. The evidence is clear that packaging helps to recruit smokers, so it makes sense to consider having less attractive packaging. It's wrong that children are being attracted to smoke by glitzy designs on packets. We would prefer it if people did not smoke and adults will still be able to buy cigarettes, but children should be protected from the start. The levels of poor health and deaths from smoking are still far too high, and the cost to the NHS and the economy is vast. That money could be used to educate our children and treat cancer.

We will shortly set out a radical new approach to public health in a White Paper. We want to go further and faster in improving the health of the nation based firmly on doing what the evidence tells us works.⁴⁵

In March 2011, in its White Paper, '*Healthy Lives, Healthy People: A Tobacco Control Plan for England*', the Government made a further commitment to explore options to reduce the promotional impact of tobacco packaging:

To do this we must review the evidence and draw up an impact assessment on the costs and additional public health benefits of policy options. We will, as well, explore the competition, trade and legal implications, and the likely impact on the illicit tobacco market of options around tobacco packaging. While similar measures are currently being considered actively by a number of Governments around the world, we must be sure, about the impacts of policy options in the legal and trading circumstances of tobacco control in this country. Only after this work, and gathering views and evidence from public consultation, will we be in a position to know whether, or how, to proceed.⁴⁶

In December 2011, Andrew Lansley underlined his intention to publish a consultation on the packaging of tobacco products in spring 2012.⁴⁷

3 Government consultation on standardised packaging 2012

3.1 Written Ministerial Statement

On 16 April 2012, in a Written Ministerial Statement, Andrew Lansley announced the publication of a '*Consultation on standardised packaging of tobacco products*'.⁴⁸ The consultation was to be undertaken, with the agreement of the devolved administrations, on a UK-wide basis. He acknowledged the UK's comprehensive, evidence based tobacco control policies but that more could be done to prevent young people taking up the smoking habit. He said that the Government had an open mind about the introduction of standardised

⁴³ During the Bill's Committee Stage in the House of Commons, Sandra Gidley and John Pugh moved an amendment to impose plain packaging on tobacco products. The clause was withdrawn after the Government made a commitment to keep the issue of tobacco packaging under review. PBC25 June 2009 c.306

⁴⁴ HC Deb 12 October 2009 c.109

⁴⁵ http://www.dh.gov.uk/en/MediaCentre/Statements/DH_121982

⁴⁶ HC Deb 9 March 2011 c.67WS

⁴⁷ HC Deb 15 December 2011 c125WS

⁴⁸ Department of Health, '*Consultation on standardised packaging of tobacco products*', 16 April 2012, [online] (accessed 17 July 2013)

packaging for tobacco and they wanted to understand whether there was evidence to demonstrate it would have public health benefits

A consultation-stage impact assessment and an initial assessment of the impact on equality were also published alongside the consultation document.⁴⁹ The purpose of the consultation was to explore whether requiring tobacco products to be sold in standardised packaging could contribute to achieving these public health policy objectives by:

- reducing the appeal of tobacco products to consumers;
- increasing the effectiveness of health warnings on the packaging of tobacco products;
- reducing the ability of tobacco packaging to mislead consumers about the harmful effects of smoking; and
- having a positive effect on smoking-related attitudes, beliefs, intentions and behaviours, particularly among children and young people⁵⁰

In the consultation paper, the Government acknowledged that there may be other effects associated with introducing standardised tobacco packaging. Specifically, it sought views on whether introducing standardised packaging would have:

- trade or competition implications;
- legal implications;
- costs or benefits for retailers or manufacturers;
- implications for the availability of, and demand for, illicit tobacco (both smuggled and counterfeit);
- implications for cross-border shopping;⁵¹ or
- any other unintended consequences

The consultation period was expected to run from 16 April to 10 July 2012 but the deadline was extended by a month to allow more people to respond.⁵²

3.2 Evidence

To inform responses to the consultation and subsequent policy making, the Department of Health (DoH) commissioned a systematic review of the evidence on plain tobacco packaging. This review was undertaken by academics at the University of Stirling, University of Nottingham, the Institute of Education (University of London), and the UK Centre for Tobacco Control Studies. It was published alongside the consultation document.⁵³

⁴⁹ Department of Health, *'Impact Assessment - Standardised packaging for tobacco products'*, IA No:3080, 15 March 2012, [online] (accessed 23 September 2013)

⁵⁰ *bid*

⁵¹ People travelling from abroad may bring tobacco brought in another country back into the UK for their own consumption, subject to UK customs regulations – this is referred to as 'cross-border shopping'

⁵² [HC Deb 5 July 2012 c71WS](#) and also see Department of Health, ['Plain packaging consultation deadline extended'](#), press notice, 5 July 2012

⁵³ *'Plain Tobacco Packaging: A Systematic Review'*, University of Stirling, Institute of Education (University of London), University of Nottingham, UK Centre for Tobacco Control Studies, undated, [online] (accessed 17 July 2013)

It was reported in the press that on 29 June 2012, an open letter signed by over 70 MPs was sent to the Health Secretary, Andrew Lansley. It reportedly called for the Government to abandon any proposal for standardised packaging on the basis that there was 'no reliable evidence' that it would have any public health benefit. It stated that standardised packaging would threaten more than 5,500 jobs directly employed by the UK tobacco sector and could make tobacco smuggling easier.⁵⁴

The scope and adequacy of the evidence on the effectiveness of standardised packaging as a tobacco control tool has been central to the whole debate. This is apparent from the responses to the Government's public consultation and from the Members' contributions to several debates on this issue.

3.3 Government response to the consultation

On 12 July 2013, the Department of Health published a summary report of the responses to the consultation.⁵⁵ It stated that over 668,000 responses were received,⁵⁶ including individual detailed responses and multiple campaign responses.⁵⁷ In the light of these, Jeremy Hunt, the Health Secretary, announced that the Government had decided to wait until the impact of the decision in Australia could be measured, before making a decision in respect of England.⁵⁸

On the same day, and after Diane Abbott, Shadow Minister (Public Health) had asked an Urgent Parliamentary Question on the Government's response to the consultation, Anna Soubry, the Public Health Minister, made a Statement to the House. An extract is reproduced below:

The Parliamentary Under-Secretary of State for Health (Anna Soubry): [...] More than 668,000 responses to the consultation were received and the views expressed were highly polarised. Strong views were put forward on both sides of the debate and a range of organisations generated campaigns and petitions. Of those who provided detailed feedback, some 53% were in favour of standardised packaging while 43% thought the Government should do nothing about tobacco packaging. Having carefully considered those differing views, the Government have decided to wait until the emerging impact of the decision in Australia can be measured before we make a final decision.

Only one country, Australia, has adopted the policy, which it introduced on 1 December last year. New Zealand and the Republic of Ireland have announced that they intend to follow suit. We intend to wait, so we can benefit from the experience of countries such as Australia that have introduced standardised packaging. In the meantime, I want to promote wider public debate about whether we should introduce standardised packaging in this country, including in this House as well as in the media.⁵⁹

⁵⁴ 'MPs took gifts from tobacco company Japan Tobacco International', Independent, 29 June 2012, and 'MP opponents of plain packaging for cigarettes accepted hospitality from tobacco giant', Daily Telegraph, 28 June 2012 [both online] (both accessed 23 September 2013)

⁵⁵ Department of Health, 'Consultation on standardised packaging of tobacco products: Summary report', July 2013, [online] (accessed 20 September 2013)

⁵⁶ *Ibid* page 8

⁵⁷ The response of the tobacco company, Philip Morris Limited, included an attachment to a legal opinion written by Lord Hoffman on the impact of standardised packaging on intellectual property rights, dated 24 May 2012

⁵⁸ Department of Health press release, 'Consultation on standardised packaging of tobacco products', 12 July 2013, [online] (accessed 20 July 2013)

⁵⁹ HC Deb 12 July 2013 c.679

Diane Abbot criticised the Government for not implementing the policy:

Ms Abbott: [...] Today, the health of the nation is being sacrificed to the interests of big tobacco [...] Every single medical stakeholder, every campaigner on tobacco harm and every member of the public who is concerned about the fact that half of all lifetime smokers will die prematurely from their habit and that hundreds of children start smoking every day will be appalled at this decision. It bears no relationship to the evidence and people will die. Will the Minister tell the House whose decision it was to slip out the announcement on a sitting day by means of a written statement? Who was involved in making the decision and can she confirm that Lynton Crosby had no involvement whatsoever in today's decision?⁶⁰

Other Members spoke both in favour and against standardised packaging.

4 A review of public health evidence on standardised packaging

4.1 Announcement of the review November 2013

In a Ministerial Statement on 28 November 2013, Jane Ellison, the Under-Secretary of State for Health announced the setting up of an independent review of the public health evidence on standardised tobacco packaging. This would be chaired by the paediatrician, Sir Cyril Chantler and would provide advice to the Secretary of State for Health:

Tobacco use is a significant public health challenge. Our evidence-based tobacco control strategies play an essential part in delivering the Government's continued commitment to reduce the number of people in this country who are dying prematurely.

It is important to explore avenues that have the potential to contribute to this longstanding aim. In July we said that we would keep the policy of standardised packaging under review as we examine the emerging evidence. As part of this ongoing work we have therefore commissioned a review with the following terms of reference:

1. To give advice to the Secretary of State for Health, taking into account existing and any fresh evidence, as to whether or not the introduction of standardised packaging is likely to have an effect on public health (and what any effect might be), in particular in relation to the health of children. It will be a matter for the Chair to determine how he undertakes this review and he is free to draw evidence from whatever source he considers necessary and appropriate.⁶¹

The independent review would report by March 2014 and following the report the Government would reach a decision on packaging. The Government also intended to table an amendment in the current *Children and Families Bill* to provide for enabling powers should it decide to introduce standardised packaging later.

In an Urgent Question on the same day, Luciana Berger suggested that the Government were delaying and asked what further evidence was needed.

Some 79,230 children will have taken up smoking in the 139 days since the Government U-turned on standardised packaging in July, and about 70,000 more will have had their first cigarette by the time the review reports next March. We should be legislating now, not delaying.⁶²

⁶⁰ [HC Deb 12 July 2013 c679-680](#)

⁶¹ [Written Ministerial Statement, Department of Health: Tobacco control update](#), 28 November 2013

⁶² [HC Deb 28 November 2013 c408](#)

Jane Ellison responded by advising that although a consultation had been held before, a review had not and this was the right time to assess the new evidence emerging on this issue.⁶³ The Government wanted to make good, robust policy and this was the right way to do it.

Jane Ellison confirmed that she saw no reason why after the results of the review, the policy could not be in place before the end of this Parliament.⁶⁴ She said that at present the Government were strongly minded to introduce the regulations which would be subject to the affirmative procedure.⁶⁵ The purpose of the review was to consider the public health evidence and it will then be for Ministers to decide how to take the findings forward and to make policy.⁶⁶

On 17 December 2013, the Government tabled amendment 57B to the *Children and Families Bill* creating powers for the Secretary of State to make regulations to impose limitations and requirements on tobacco packaging.⁶⁷ These regulations are to be introduced with the purpose of reducing the risk of harm to, or promoting, the health and welfare of those under 18. (see Section 5 of this note)..

4.2 Report of the Independent review April 2014

On 3 April 2014, Sir Cyril Chantler published the report of his review into the public health evidence on standardised packaging.⁶⁸ The review had involved a consideration of all existing public health evidence on this issue and a number of new submissions. Meetings with experts were held to gather information and independent expert analyses of the Stirling review were commissioned. Sir Cyril also undertook a trip to Australia to meet with a number of stakeholders to discuss the emerging evidence on standardised packaging there.

In his conclusion, Sir Cyril reported that he was satisfied there was sufficient evidence that the introduction of standardised packaging would be very likely to contribute to a modest but important reduction in smoking prevalence especially in children and young adults. He stated that the importance of such a reduction should not be underestimated - this would have a positive impact on public health:

Having reviewed the evidence it is in my view highly likely that standardised packaging would serve to reduce the rate of children taking up smoking and implausible that it would increase the consumption of tobacco. I am persuaded that branded packaging plays an important role in encouraging young people to smoke and in consolidating the habit irrespective of the intentions of the industry. Although I have not seen evidence that allows me to quantify the size of the likely impact of standardised packaging, I am satisfied that the body of evidence shows that standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but important reduction over time on the uptake and prevalence of smoking and thus have a positive impact on public health.⁶⁹

⁶³ HC Deb 28 November 2013 c409

⁶⁴ HC Deb 28 November 2013 c410

⁶⁵ HC Deb 28 November 2013 c411

⁶⁶ HC Deb 28 November 2013 c414

⁶⁷ Children and Families Bill, [Amendments to be moved on report](#), 17 December 2013

⁶⁸ [Standardised packaging of tobacco, Report of the Independent review undertaken by Sir Cyril Chantler](#), April 2014

⁶⁹ Sir Cyril Chantler, [Letter to the Secretary of State for Health](#), 3 April 2014

Jane Ellison, Under Secretary of State for Health, announced that following the results of the review, the Government were minded to introduce regulations on standardised packaging.⁷⁰ There would be a final short consultation, alongside the publication of the draft regulations, the details of which would be announced at a later date.

5 Children and Families Act 2014

The Children and Families Act 2014 received Royal Assent on 13 March 2014. Section 92 provides powers for the Secretary of State to introduce regulations to provide for standardised packaging for tobacco products.

The provision was initially introduced as a cross party amendment to the Bill at the Committee stage in the House of Lords. It passed at this time, but a Government amendment was introduced at the Third Reading stage. The Government also introduced amendment 35 at Third Reading to ban the proxy purchasing of tobacco products⁷¹ and amendments 36 and 37⁷² to ban the sale of nicotine products to those under 18. All these amendments were agreed.

At consideration of the Lords amendments in the House of Commons in February 2014, the majority of members spoke in favour of the amendment. They argued that regulations would be a useful tool in protecting young people from the harms of smoking. Those who spoke against the amendment expressed concerns about a potential increase in illicit trade and that the regulations could result in a slippery slope leading to standardised packaging on other products.

Section 92 would apply on a UK wide basis, following the passing of legislative consent motions in the devolved administrations. In effect, the Secretary of State for Health could introduce the regulations across the UK, with the consent of the appropriate Ministers in the devolved nations. The regulations would be subject to affirmative procedures, and would be enforced by local authority trading standards under the *Consumer Protection Act 1987*.

Summaries of some of the Parliamentary stages of the Act are included in Appendix D to this note.

9 Draft regulations and consultation 2014-15

On 26 June 2014, the Government published draft regulations and an impact assessment alongside a further short consultation on standardised packaging for tobacco products.⁷³ This consultation ended on 7 August 2014 and responses are now being considered. It was highlighted that whilst the Chantler review had focused on the public health benefits of standardised packaging, the consultation had sought views on wider policy issues.

Specifically, the consultation sought views on the following questions:

1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

⁷⁰ Ministerial statement, [Chantler report on standardised packaging of tobacco products](#), 3 April 2014

⁷¹ HL Deb 5 February 2014 c225

⁷² HL Deb 5 February 2014 c238

⁷³ [Department of Health, Consultation on the introduction of regulations on standardised packaging for tobacco products](#), 26 June 2014

2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?

3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?

4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?⁷⁴

5.1 What will the standardised packaging look like?

The consultation document provided details on what might be covered under regulations on standardised packaging. Importantly, the draft regulations would not affect existing labelling requirements for health warnings and security features.

The draft regulations set out various requirements for cigarette packets and loose tobacco, including:

- The outside of the packaging to be a drab brown with a matt finish.
- Text to be in a grey helvetica typeface with a prescribed maximum size
- Brand and variant names may appear once on each of the front, top and bottom surfaces of cigarette packs, once on each of the front and back surfaces and on the surface hidden beneath the flap of hand-rolling tobacco pouches
- Cigarette packets must be cuboid and made of either a carton or soft material. And packets must contain a minimum of 20 cigarettes
- Loose tobacco packets must be cuboid, cylindrical or in the form of a pouch. The pack must contain at least 30 grams of tobacco.
- No inserts or additional materials not integral to packaging would be permitted.

⁷⁴ [Department of Health, Consultation on the introduction of regulations on standardised packaging for tobacco products, 26 June 2014](#)

An illustration of how a cigarette packet would look if the regulations were introduced was included in the consultation document:



The standardised packaging requirements would only apply to the retail packaging of tobacco products, including multipacks that are sold to the consumer. However, there is no proposals to standardise packaging used only in the tobacco trade.

The regulations would only apply to cigarettes and loose hand rolling tobacco, except regulation 10, which imposes the conditions under the *EU Tobacco Product Directive*. The consultation document provides more information on this decision:

We propose that standardised packaging not apply to specialist tobacco products at this point, given their low rates of use, particularly by young people. Regulations for standardised packaging could be extended to specialist tobacco products in the future, if necessary. For example, if the tobacco market changes and young people become increasingly attracted to these types of tobacco.⁷⁵

9.1 Enforcement

As stated in the consultation document, it would be an offence to produce or supply tobacco products that has retail packaging that does not meet the provisions in the draft regulations. Local trading standards officers would be responsible for enforcement and the appropriate Minister in England or the devolved nations would also be able to enforce the regulations.

The consultation document provides more information about potential sentencing for breach of the regulations:

⁷⁵ [Department of Health, Consultation on the introduction of regulations on standardised packaging for tobacco products, 26 June 2014](#)

We propose that a person who produces or supplies tobacco products in breach of the regulations would be liable, on summary conviction, to imprisonment for a term not exceeding three months, or a fine of any amount, or both, and, if convicted on indictment, would be liable to imprisonment for two years or a fine or both....

The draft regulations also provide for a defence for someone who supplies tobacco products (for instance a small shop keeper), if they neither knew nor had reasonable grounds for suspecting that the tobacco packaging was in breach of the regulations.⁷⁶

9.2 Government announce they will bring forward regulations on standardised packaging

The consultation on the draft regulations to introduce standardised packaging for tobacco products ended in August 2014.

The draft regulations were notified to the European Commission under the Technical Standards Directive ([Directive 98/34/EC](#)) in August 2014. This EU Directive creates a legal mechanism by which a Member State informs the European Commission and other Member States about technical regulations at a draft stage, it aims to prevent technical barriers to trade being created.⁷⁸ This means that regulations cannot be made until the end of a 'standstill period' of three months (beginning with the date of notification). This 'standstill period' can be extended if a Member State submits a detailed opinion on the draft regulations. In this case, 11 Member States have provided detailed opinions, and the UK is required to respond to these.⁷⁹ These detailed opinions have extended the 'standstill period' until 2 March 2015.

There have been concerns expressed about a perceived delay with the introduction of regulations on this issue. In December 2014, over 3000 healthcare professionals wrote an open letter to the Prime Minister and Secretary of State for Health that was published in the *British Medical Journal*.⁸⁰ The letter said that more than half a million children had taken up smoking since the Government first announced it would consult on standardised packaging in 2011, the authors urged the Government to table regulations in time for them to be considered by Parliament before the general election.

There has been some Parliamentary activity on this issue in recent months, with support in both Houses for the introduction of standardised packaging. However, there remain some who have concerns that the measures will not reduce consumption and will increase illicit trade.⁸¹

On 21 January 2015, the Under-Secretary of State for Health announced that the Government had decided to proceed with bringing forward the Regulations on standardised packaging before the end of this Parliament.⁸² This decision had followed careful consideration of all responses to the consultation, and taking account of all information on public health implications and wider issues. The Minister confirmed that she would be

⁷⁶ [ibid](#)

⁷⁸ Department for Business, Innovation and Skills, [Technical Standards and Regulations Directive 98/34/EC: guidance for officials](#), October 2013

⁷⁹ [Tobacco: Packaging: Written question - 218954](#)

⁸⁰ Nicholas S Hopkinson, chair, Sanjay Agrawal, chair, Rebecca Sherrington, chair, Peter Carter, chief executive and general secretary, Janet Atherton, president, Iolo Doull, president, Hilary Cass, president on behalf of 3096 doctors, nurses, and other healthcare workers, [Standardised \("plain"\) packaging of cigarettes regulations must be passed before the general election](#), *BMJ* 2014;349:g7751

⁸¹ [HC deb 27 October 2014 c145](#)

⁸² [HC Deb 21 January 2015 c343](#)

speaking with ministerial colleagues in the devolved Administrations about the implementation of this measure on a UK wide basis. As at the time of writing, the Regulations have not been laid before Parliament.

10 Revised EU Tobacco Products Directive

The [2001 EU Tobacco Products Directive](#) (2001/37/EC) has been [under revision](#) since late 2010.⁸⁴ The Directive regulates the content and labelling of tobacco products in the EU and introduced important tobacco control measures, such as a ban on misleading descriptions (such as 'mild', 'light' or 'low tar') as well as voluntary graphic health warnings.

The Commission received a record-number of submissions to its [public consultation](#) – almost 85,000 submissions.⁸⁵ A report on responses to the consultation was prepared by the Commission's Directorate-General for Health and Consumers.⁸⁶

The revisions to the EU Tobacco products Directive were formally approved by the EU Council and the European Parliament by 14 March 2014. The European Commission website provides details of the [key steps in the legislative process](#).⁸⁷ The Directive came into force in May 2014. Member States have two years to transpose the Directive into law.

The key revisions include:

- Future packets of cigarettes to have 65% of their front and back surface covered in picture and text health warnings. 50% of the sides of the packet also to be covered in health warnings.
- 'Slim' or 'lipstick style' packaging to be prohibited.
- Packets must be cuboid shape and each must contain a minimum of 20 cigarettes
- No promotional or misleading features will be allowed (for example, references to taste or 'lack of additives'.)
- Similar rules to apply to 'roll your own tobacco' packets. They must be cuboid or cylindrical in shape and must contain a minimum of 30g of tobacco.
- Under the Directive, Member States may still introduce standardised packaging.
- Following discussion of the revisions in the European Parliament it was decided that slim cigarettes would not be banned.
- Member States retain some discretion when it comes to labelling some alternative tobacco products that are not as widely used. (Examples of these include cigars, cigarillos and pipe tobacco.) Member States may exempt these products from the

⁸⁴ [Public consultation on the possible revision of the Tobacco Products Directive 2001/37/EC](#), European Commission, [online] (accessed 29 November 2013)

⁸⁵ [Public consultation on the possible revision of the Tobacco Products Directive 2001/37/EC](#), [online] (accessed 17 July 2013)

⁸⁶ ['Report on the public consultation on the possible revision of the Tobacco Products Directive \(2001/37/EC\)'](#), European Commission's Health and Consumers Directorate- General, July 2011, [online] (accessed 17 July 2013)

⁸⁷ European Commission, [Revision of the EU Tobacco Product Directive](#) (accessed 24 March 2014)

stringent labelling rules but they have to ensure they carry a general warning and an additional text warning.

- Characterising flavourings in cigarettes and tobacco to be banned (menthol to be phased out over 4 years)

11 Australia – the first country to introduce standardised packaging

Currently, only Australia has introduced legislation to impose standardised packaging for all tobacco products, although the Republic of Ireland has announced a firm intention to follow suit.⁸⁸ In 2013, New Zealand also announced plans to phase out branding on tobacco products, the first reading of the *Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill* was in February 2014.⁸⁹

11.1 The legislation

In Australia, the *Tobacco Plain Packaging Act 2011* and the *Trade Mark Amendment (Tobacco Plain Packaging) Act 2011* makes it an offence to sell, supply, purchase, package or manufacture tobacco products or packaging for retail sale that are not compliant with the plain packaging requirements.⁹⁰ In effect, brand colours and logos on cigarette packets have now been replaced by logo-free, dark brown/olive green packaging with graphic health warnings (e.g. pictures of cancerous gums, blind eyes and children with oxygen masks), with the brand name and variety of the cigarette printed on the front of the packet in a plain white typeface.

The Australian Government hopes that the introduction of both plain packaging and tax increases will reduce smoking rates from 16.6 per cent in 2007 to fewer than 10 per cent by 2018.⁹¹ Governments in Europe, Canada and New Zealand are said to be assessing the impact of this legislation closely.⁹²

11.2 Legal challenges to the legislation

The legislation has been challenged by tobacco companies in the High Court in Canberra. It has also been subject to international legal challenges: a complaint to the World Trade Organisation (WTO); and legal proceedings against the Australian Government in relation to an alleged violation of intellectual property (IP) rights under Australia's Bilateral Investment Treaty (BIT) with Hong Kong.

In defence of the legislation, Australia's Trade Minister, Craig Emerson, has argued that the aim of the Australian Government in pursuing a plain packaging policy is not to attack trademarks and IP rights but to protect public health.⁹³

The detail of intellectual property (IP) law challenges is extremely complex, but the following summaries set out the chronology of events:

⁸⁸ 'Plain cigarette packaging law planned by Irish government', BBC News, 28 May 2013, [online] (accessed 23 September 2013)

⁸⁹ Beehive, The official website of the New Zealand Government, *First Reading of the Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill*, 11 February 2014

⁹⁰ The progress of the Bill can be viewed on the [Bill Pages](#) of the parliament of Australia, [online] (accessed 17 July 2013)

⁹¹ "Government to demand no frills cigarette packets", ABC News, 29 April 2010, [online] (accessed 17 July 2013)

⁹² 'Sludge-coloured cigarette packets designed to shock', The Sunday Times, 19 February 2012

⁹³ Christian Kerr, "Trade minister blasts tobacco companies over claims government plan in breach", *The Age*, 19 May 2011, accessed 8 June 2011

In the High Court in Canberra

- In April 2010, Imperial Tobacco made a submission to the Australian Senate Community Affairs Legislation Committee inquiry into standardised packaging on the grounds that the proposed legislation risked breaching Australian law and international legal and treaty obligations and in the process risked seriously damage to Australia's international reputation.⁹⁴ In the same year, Philip Morris claimed that plain packaging "*would effectively eliminate the use of trademarks in relation to tobacco products, constituting a violation of trademark rights protected by national and international law.*"⁹⁵
- On 31 May 2011, British American Tobacco (BAT) announced that it was taking the Australian Government to court over its refusal to make public (through the Freedom of Information process) its legal advice on plain packaging.⁹⁶
- Four tobacco companies (British American Tobacco, Philip Morris International, Imperial Tobacco and Japan Tobacco) issued legal proceedings in the High Court in Canberra on the grounds that the new legislation infringed their IP rights.⁹⁷ The tobacco companies claimed that since packaging was part of intellectual property, a requirement to remove logos and company colours constituted an expropriation of their trademarks. They also claimed that standardised packaging would encourage counterfeit products to enter the market. It was claimed that it was unconstitutional for the Australian government to remove trademarks from packaging without compensation.⁹⁸
- Soon afterwards, on 8 June 2011, several US-based business associations⁹⁹ issued a statement opposing Australian plain packaging for tobacco products because it "*risks establishing a precedent of IP destruction for an entire industry*".¹⁰⁰
- On the 15 August 2012, the High Court in Canberra found in favour of the Government.¹⁰¹ It ruled that plain packaging law, due to be implemented on the 1 December 2012 was constitutionally valid. The key issue before the court was whether, under the constitution, plain packaging represented an 'acquisition of property' by the government, from which they could benefit.¹⁰²

⁹⁴ Imperial Tobacco, [Submission to the Senate Community Affairs Legislation Committee for the inquiry into the Plain Tobacco Packaging \(Removing Branding from Cigarette Packs\) Bill 2009](#), April 2010, [online] (accessed 20 September 2013)

⁹⁵ Philip Morris, [Plain Packaging website](#), undated, accessed 7 June 2011

⁹⁶ BAT Australia, "[Full Federal Court hearing set for secret plain pack advice](#)", 31 May 2011, accessed 7 June 2011

⁹⁷ *JT International SA v Commonwealth of Australia; British American Tobacco Australasia Limited & ORS v Commonwealth of Australia* [1212] HCA 20 [Case No. S389/2011 and related matter [S409/2011](#) – J T International SA v. Commonwealth of Australia)

⁹⁸ First day of the hearing was on 24 April 2012

⁹⁹ The groups were: US Chamber of Commerce, National Association of Manufacturers, United States Council for International Business; National Foreign Trade Council; Emergency Committee for American Trade; US-ASEAN Business Council; and TransAtlantic Business Dialogue

¹⁰⁰ *PR Newswire*, "[Leading Business Organizations in the U.S. Issue Joint Statement in Opposition to Australian Government's Proposed Tobacco Plain/Standardized Packaging Legislation](#)", 8 June 2011, accessed 26 June 2011

¹⁰¹ The date of the Court Order was 15 August 2012, the [Court's judgment](#) in full was published on 5 October 2012

¹⁰² Philip Morris Limited, [Philip Morris Limited comments on Australian High Court decision on plain packaging for tobacco products](#), 15 August 2012, accessed August 2012

11.3 International legal challenges

International Complaint to the World Trade Organisation (WTO)

The WTO oversees a large number of multinational agreements which member countries must ratify on accession, and has its own standing body to settle disputes. It operates alongside a large number of bilateral and regional trade agreements. Through the WTO, countries are able to challenge the practices of other countries by calling for a disputes panel to be convened (private businesses and organisations are not permitted to do this).

The complaint in the WTO in respect of Australia's *Tobacco Plain Packaging Act 2011*, initiated by Ukraine, refers to three WTO agreements: the General Agreement on Tariffs and Trade (GATT), the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), and the Agreement on Technical Barriers to Trade (TBT). On 28th September 2012, the WTO Dispute Settlement Body agreed to set up a panel to assess whether Australia's new plain packaging law breaches IP rules under these three agreements.¹⁰³

In filing a grievance in the WTO against Australia's plain packaging law, the Ukraine, is supported by Zimbabwe, Honduras, the Dominican Republic, Nicaragua and Indonesia.¹⁰⁴ Honduras and the Dominican Republic, Cuba and Indonesia have also now started dispute proceeding against Australia.¹⁰⁵ Thirty five countries have indicated they will join the dispute as a third party.

Bilateral Investment Treaty (BIT)

The Australia-Hong Kong BIT was established in 1993 to create favourable conditions for greater investment and to promote economic cooperation, by providing reciprocal protection for investments made in one country by investors from the other.

In June 2011, Philip Morris Asia began legal proceedings against the Australian Government in relation to the violation of IP rights under Australia's BIT with Hong Kong. Among other things, it is claimed by Philip Morris Asia that the 2011 Act represents an expropriation of its intellectual property and violation of its rights under the 'Treaty to Fair and Equitable Treatment'. It is also claimed that the 2011 Act breaches Australia's international obligations by violating TRIPS, the Paris Convention for the Protection of Industrial Property and the WTO Agreement on Technical Barriers to Trade (TBT). On 16 May, the Tribunal ordered that the Hearing on preliminary objections in this case will be held in Singapore in February 2015.¹⁰⁶

As a separate issue, a subsidiary of Philip Morris International has filed a request for arbitration against Uruguay alleging that a requirement that tobacco packages include graphic images of the health consequences of smoking, a mandate that health warnings cover 80% of the front and back of cigarette packages, and a single presentation requirement (which prohibits marketing of more than one tobacco product under each brand) violate several provisions of the Switzerland-Uruguay BIT.

¹⁰³ On the WTO website it states that the Ukraine disputes panel with Australia is 'established, but not yet composed'

¹⁰⁴ World Trade Organization, [Panels set up on Australia's tobacco measures and on US duties on China's exports](#), 28 September 2012, accessed October 2012

¹⁰⁵ Australian Government, Summary of Australia's involvement in disputes currently before the World Trade Organization, November 2013 (accessed 11 December 2013)

¹⁰⁶ The McCabe Centre for Law and Cancer, [Philip Morris Asia Challenge under Australia – Hong Kong Bilateral Investment Treaty](#) (accessed 4 August 2014)

11.4 Early research on the impact of the Australian legislation

In July 2013, early research on the impact of compulsory plain packaging on smokers in Australia was carried out by the Centre for Behavioural Research in Cancer funded by Cancer Council Victoria. This research was published in the [British Medical Journal \(BMJ\)](#).¹⁰⁷

This study considered the immediate effects of plain packaging on 536 cigarette smokers in November 2012, all living in the Australian state of Victoria. It found that, compared to smokers of branded cigarette packs, smokers who smoked from plain cigarette packs with large front-of-pack health warnings, were more likely to:

- perceive their tobacco to be of lower quality and less satisfying than a year ago¹⁰⁸
- think about and prioritise quitting
- support the plain packaging law¹⁰⁹

Some commentators see this research as providing compelling evidence of the need to introduce standardised tobacco packs in the UK.¹¹⁰ Others remain unconvinced.¹¹¹ In particular, they argue that the research was conducted in only one Australian state with 536 participants, and is not evidence of any national change on smoking.

While highlighting the usefulness of this initial research, NHS choices has said that there are important limitations to the conclusions that can be drawn from it:

This was a useful piece of research that informs how attitudes and beliefs to smoking may be influenced by a change in packaging. The study's strengths are that it is based on a relatively large representative sample of people from one Australian state, and that it was timed to occur during the introduction of plain tobacco packaging in Australia.

However, there are important limitations to the conclusions that can be drawn from this research, including:

- that people were surveyed at only one point in time and attitudes may have changed if surveyed at a different period of time
- that the study could not assess whether a change in packaging achieves the desired outcomes – of an increase in quit rates
- whether the change in packaging prevented people from starting smoking in the first place

¹⁰⁷ ['Introduction effects of the Australian plain packaging policy on adult smokers: a cross-sectional study'](#), by Melanie A Wakefield, Linda Hayes, Sarah Durkin, Ron Borland, *British Medical Journal*, 22 July 2013, [online] (accessed 15 August 2013)

¹⁰⁸ According to this study, 30.6 per cent of smokers using plain packaged cigarettes perceived their cigarettes to be of lower quality than a year earlier (compared with 18.1 per cent of smokers using branded cigarettes); 26.2 per cent of smokers using plain packaged cigarettes were less satisfied by their cigarettes than they were a year earlier (compared with 14.9 per cent of branded packet smokers)

¹⁰⁹ *Ibid*

¹¹⁰ ['UK government's delay on plain tobacco packaging: how much evidence is enough?- Early findings from Australia add to a rapidly growing body of research'](#), Crawford Moodie senior research fellow, Linda Bauld Professor of health policy, Martine Stead deputy director, *British Medical Journal (BMJ)* 2013, [online] (accessed 19 August 2013)

¹¹¹ For example, Forest, see ['Plain cigarette packs encourage smokers to quit'](#), BBC News, 22 July 2013, [online] (accessed 19 August 2013)

While people smoking the plain pack cigarettes were significantly more likely to have thought about quitting and place higher priority on quitting, their intention to quit smoking remained unchanged.

Other limitations include the fact that the interviews were carried out only in English, so may not apply to other populations. The amount people smoked was based on self-reporting which may not be reliable and may bias the results. The commentary advises that despite these limitations, the study has potential public health implications and provides early evidence on attitudes to plain packaging. More research is welcomed in the future to assess the impact of plain packaging further.

Roy Morgan Research, a leading Australian market research company, has also carried out early research to determine the level of impact felt by small retailers in Australia as a result of the introduction of plain packaging of tobacco products. A final report, '[Impact of Plain Packaging on Small Retailers](#),' prepared for the tobacco company Philip Morris Limited was published on 25 January 2013.¹¹² According to this report, consumers prefer to use larger retailers that have the resources to adapt to plain packaging with a consequential loss in footfall for small retailers.¹¹³

Sir Cyril Chantler in his review on public health evidence cites another study in Australia since the introduction of standardised packaging. An observational study of personal pack display showed that there had been a reduction in the number of people displaying their tobacco packets outside of restaurants, cafes and bars since the introduction of the new measures¹¹⁴:

Pack display declined by 15% (driven by a decline in active smoking of 23%), the proportion of packs orientated face-up declined from 85.4% of branded packs to 73.6% of plain packs, and there was a modest increase in the proportion of packs concealed by other items or in an external case.¹¹⁵

Another study investigated whether the introduction of standardised packaging in Australia was associated with an increase in calls to a freephone *Quitline*.¹¹⁶ In this study, published in the *Australian Journal of Medicine*, data was collected in two Australian states between 2011 and 2013. There was a 78% increase in the number of calls associated with the introduction of standardised packaging. This increase was more prolonged than a similar increase that had been noted following the introduction of graphic health warnings. The authors of the study warn that increased anti-smoking advertising and the costliness of cigarettes may be confounding factors.

Recent figures on smoking prevalence and tobacco sales have been published by the Australian Department of Health¹¹⁷. These 2010- 2013 figures show that smoking rates have continued to decrease over this period, and at a record pace. Data was only collected for one year after the introduction of standardised packaging so it is a little early to attach significant effects to this measure. There have been a number of tobacco control measures

¹¹² Roy Morgan Research, '[Impact of Plain Packaging on Small Retailers – Final Report Prepared for Philip Morris Limited](#)', 25 January 2013, [online] (accessed 20 September 2013)

¹¹³ *Ibid*

¹¹⁴ Wakefield et al, The silent salesman: an observational study of personal tobacco pack display at outdoor café strips in Australia, *Tob Control* 2014; **23**:339-344 doi:10.1136/tobaccocontrol-2012-050740

¹¹⁵ Standardised packaging of tobacco: Report of the independent review undertaken by Sir Cyril Chantler, April 2014

¹¹⁶ Young et al, Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time-series analysis, *Med J Aust* 2014; **200** (1): 29-32.

¹¹⁷ Australian Government Department of Health, [Tobacco key facts and figures](#), July 2014

introduced in the last several years in Australia which may also have contributed to this drop in smoking rate.

Public Health England, in their submission to the consultation on regulations to introduce standardised packaging, highlighted the encouraging picture in the numbers from Australia:

The early experience of Australia, which introduced standardised packaging in December 2012, bears striking testimony to the impact of standardised packaging as part of a comprehensive programme of tobacco control. According to the latest official national survey of tobacco use, the daily smoking rate fell markedly from 15.1% to 12.8% between 2010 and 2013 – a record 15.2% decline. A number of factors will have contributed to this, including tax rises, bans on point-of sale retail displays and media campaigns, but the introduction of standardised packaging in year three is a major contributor to the fastest ever drop in smoking rates since the start of the triennial survey in 1991. The data on tobacco sales also presents an encouraging picture: Australian Treasury customs and excise data showed a fall of 3.4% in tobacco sales by volume in the first year of standardised packaging.³ Once again, while the fall cannot be attributed solely to standardised packaging, it must be considered to have been a significant contributing factor.¹¹⁸

Appendix A - Current tobacco control legislation

Prohibition on sale of tobacco products to children

It is an offence for any retailer to sell tobacco products to anyone under the age of 18 years. The legal minimum age for buying tobacco was raised from 16 to 18 in England, Wales and Scotland and was raised to 18 in Northern Ireland on 1 September 2008.¹¹⁹

In Scotland, any retailer selling tobacco must be registered.¹²⁰ In addition it is an offence under Scottish law for adults to purchase tobacco on behalf of children and for minors to attempt to purchase tobacco.¹²¹

In all places in the UK where tobacco is sold a warning notice must be prominently displayed stating: "It is illegal to sell tobacco products to anyone under the age of 18". Cigarettes cannot be sold in packs of fewer than 10 or singly. Enforcement is undertaken at Local Authority level.

Prohibition on tobacco advertising

The *Tobacco Advertising and Promotion Act 2002* prohibits all forms of tobacco advertising throughout the UK (including on billboards, in print media, by direct mail and through sponsorship). Tobacco advertising on television and radio is prohibited under the *Broadcasting Acts* of 1990 and 1996 and also under EU law.

A separate Library note provides detailed information on the *Tobacco Advertising and Promotion (Display) (England) Regulations 2010*. These Regulations, made under the *Health Act 2009*, prohibit the display of tobacco products in large shops (with a floor area exceeding 280 square metres) from 6 April 2012 and in all other shops from 6 April 2015.¹²² The ban is

¹¹⁸ Public Health England, [Response to the government consultation on the introduction of regulations for standardised packaging of tobacco products](#), August 2014

¹¹⁹ The relevant legislation is the *Children and Young Persons (Protection from Tobacco Act) 1991*, the *Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991*, and the *Children and Young Persons (Sale of Tobacco etc.) Order 2007*

¹²⁰ For details of the tobacco register see: <http://www.tobaccoregisterscotland.org/>

¹²¹ See: http://www.legislation.gov.uk/asp/2010/3/pdfs/asp_20100003_en.pdf

¹²² [SN/HA/5537](#)

aimed at reducing the uptake of smoking among young people in particular, by reducing the visual temptation of cigarettes on display.

Similar regulations have been introduced in Scotland as part of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#). The ban came into effect on 29 April 2013 for large shops and will apply to all other shops from 6 April 2015.

In Wales, a ban on the display of tobacco products in large shops came into force on 3 December 2012 and will apply to small shops from 6 April 2015.¹²³ In Northern Ireland, a similar ban came into force on 31 October 2012 for large shops, and will also apply from 6 April 2015 for small shops.¹²⁴

Prohibition on the sale of tobacco products from vending machines

A separate Library note provides information on the [Protection from Tobacco \(Sales from Vending Machines\) England Regulations 2010](#), which came into force on 1 October 2011.¹²⁵ These Regulations, made under the *Health Act 2009*, prohibit the sale of tobacco products from vending machines in England. Similar regulations made under the Health Act 2009 came into force in Wales on 1 February 2012 and in Northern Ireland on 1 March 2012.

In Scotland, a prohibition on sales of tobacco products from vending machines was introduced under the [Tobacco and Medical Services \(Scotland\) Act 2010](#) and came into force on 29 April 2013.

Labelling of tobacco products

Under the provisions of EU Council Directive 2001/37/EC, written health warnings are required on all tobacco packaging.¹²⁶ The Directive was implemented in the UK by the [Tobacco Products \(Manufacture, Presentation and Sale\) \(Safety\) Regulations 2002](#). It should be noted that a new list of written warnings was adopted in March 2012 and Member States had until March 2014 to implement the changes.¹²⁷ The EU Directive permits Member States to add pictorial warnings on tobacco products but only EU approved images are allowed. In the UK, picture warnings on cigarette packs were introduced from October 2008. Pictorial warnings on all other tobacco products have been required since October 2010.

The [Tobacco Products Directive](#) also places maximum levels on the amount of tar, nicotine and carbon monoxide permitted in cigarettes and requires tobacco companies to disclose tobacco ingredients to national governments. The European Commission is currently considering a proposal to revise the Directive (see section 6 below).

Smoking in public places and the workplace

Scotland was the first country in the UK to introduce a smoke-free law; the [Smoking, Health and Social Care \(Scotland\) Act 2005](#) came into force on 26 March 2006. It requires virtually

¹²³ Welsh Government, '[Guidance on the display and pricing of tobacco products in Wales, for tobacco retailers and regulatory officers](#)', November 2012 [online] (accessed 20 September 2013)

¹²⁴ Department of Health, Social Services and Public Safety, '[Guidance on the display and pricing of tobacco products in Northern Ireland](#)', January 2013 [online] (accessed 20 September 2013)

¹²⁵ SN/HA/5536,

¹²⁶ [Directive 2001/37/EC](#) of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products, L194/26 OJ 18.7.2001

¹²⁷ [Commission Directive 2012/9/EU](#) of 7 March 2012 amending Annex I to Directive 2001/37/EC of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products, 8 March 2012, OJ L 69/15, [online] (accessed 20 September 2013)

all workplaces to become smoke-free.¹²⁸ A ban on smoking in workplaces and other indoor public places was implemented in Wales on 2 April 2007 and in Northern Ireland on 30 April 2007. A similar ban was introduced in England on 1 July 2007.¹²⁹

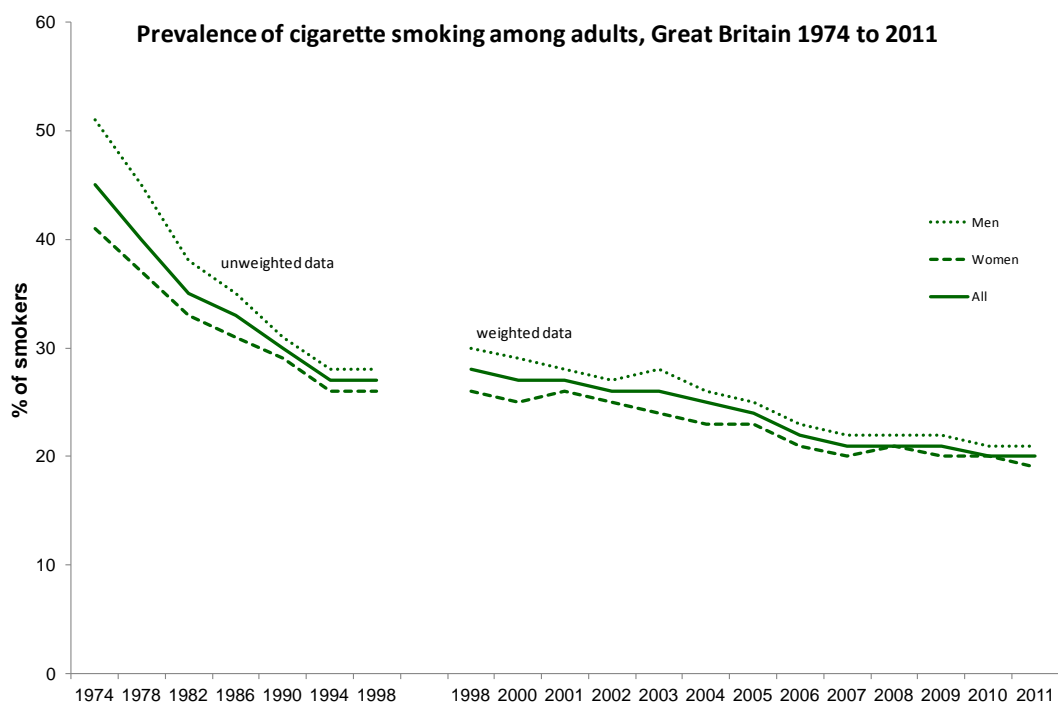
¹²⁸ Exceptions are limited and include places where the workplace is also a place of residence such as a hospice or psychiatric hospital

¹²⁹ [Health Act 2006](#)

Appendix B – Trends in smoking prevalence¹³⁰

The General Household Survey (GHS) and General Lifestyle Survey (GLF) have been monitoring smoking prevalence among adults for over 35 years. Over this period smoking prevalence in Great Britain has declined. In 1974, 45% of the adult population of Great Britain were cigarette smokers compared with 20% of adults in 2011.

The difference in smoking prevalence between men and women has decreased considerably since the 1970s. In 1974 there was a ten percentage point difference between men and women, 51% of men smoked cigarettes compared with 41% of women, whereas in 2011 there was only a two percentage point difference (21% of men compared with 19% of women).



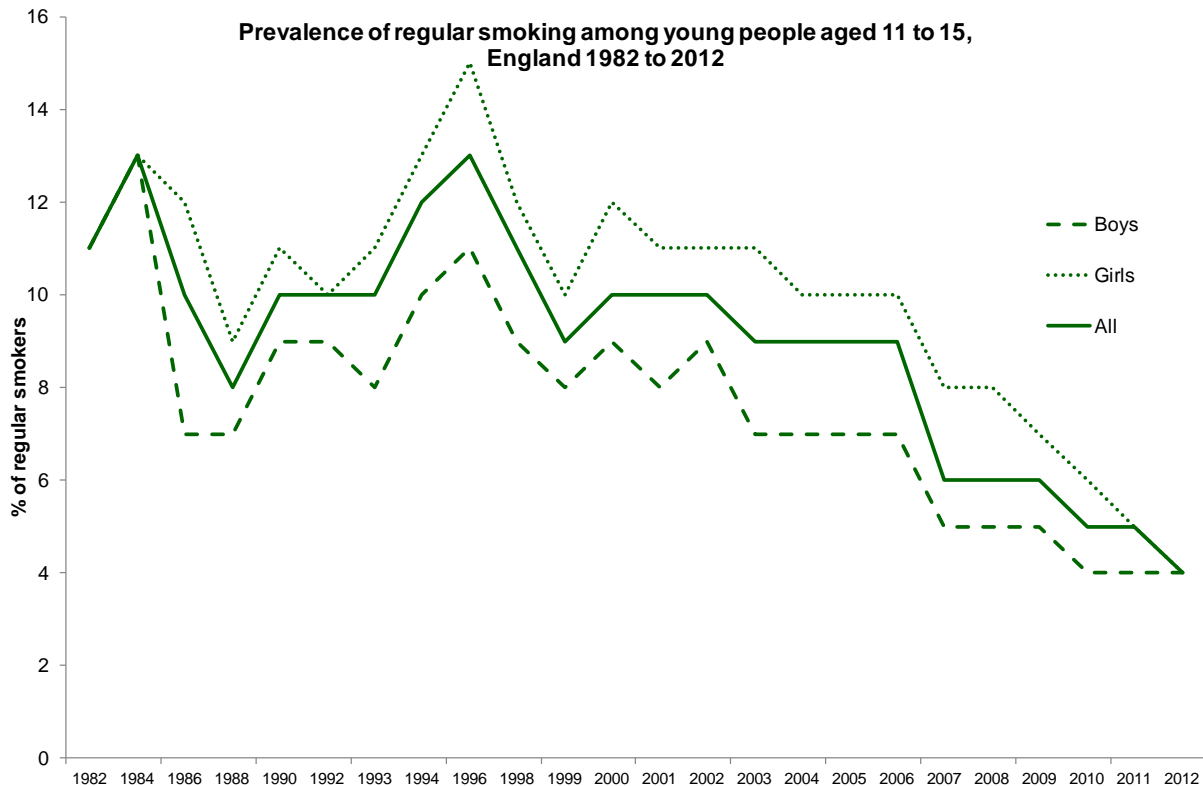
Source: General Lifestyle Survey - Office for National Statistics

Note: Data from 1998 onwards are weighted to population totals and adjusted for non-response.

The survey of Smoking, drinking and drug use among young people in England has been monitoring the smoking behaviour of young people aged 11 to 15 years since 1982. The survey defines young people as regular smokers if they report smoking at least one cigarette per week.

In 2012, 4% of both boys and girls classed as regular smokers. In previous years girls had been more likely to smoke than boys. The prevalence of regular smoking among all children has declined from a peak of 13% in 1996.

¹³⁰ This section has been written by Rachael Harker, Social and General Statistics Section, House of Commons Library



Appendix C Parliamentary debates prior to the *Children and Families Bill*

11.5 Adjournment debate

On 17 April 2012, there was a short adjournment debate on cigarette packaging.¹³¹ On 25 July 2013, the issue of plain packaging of cigarettes was raised in the House of Lords.¹³²

11.6 Westminster Hall Debate

A Westminster Hall debate on 'Tobacco Products (Plain Packaging)' took place on 3 September 2013. Views were largely polarised between those who were in favour of the introduction of standardised packaging without waiting for evidence from Australia and those who were opposed to the measure. A number of Members argued that the Government should allow Parliament to decide the question of standardised tobacco packaging with a free vote.¹³³ Central to the whole debate was the scope and reliability of the evidence.

Summing up for the Opposition, Diane Abbott dismissed as bogus the idea of linking action on cigarette packaging to alcohol and sweet or fatty foods. She argued that evidence demonstrated that it was already known that half of lifetime smokers would die from smoking and that smoking was the biggest cause of health inequality. The question was one of child protection not freedom of choice for adults. She called on the Government to allow Parliament to decide the matter by way of a free vote.¹³⁴

In reply, the Minister, Anna Soubry, said that it was important to wait to see the evidence from Australia. She agreed that the central issue was about protecting young people from the attraction of taking up smoking. She disagreed that standardised packaging would create

¹³¹ HC Deb 17 April 2012 c293-294

¹³² HL Debate 25 July 2013 c.1418-20

¹³³ See for example HC Deb 3 September c.5WH; c9WH, c14WH, c17WH and c.20-21WH

¹³⁴ HC Deb 23 September 2013 c21-22WH

a counterfeiter's charter, arguing that holograms could be put on standardised packaging. Referring to the standardised packs on sale in Australia, she said they were colourful and far from plain, but their standardisation made them less attractive to young people.¹³⁵ She said that the Government had a tobacco control plan for England that set out ambitions and a comprehensive evidence-based strategy of national and local actions to achieve them, including high-profile marketing campaigns.¹³⁶

11.7 Backbench Business Committee debate

In his Backbench Business debate on tobacco packaging on 7 November 2013, Bob Blackman stated that he hoped the new Under-Secretary of State for Health would indicate some movement in favour of introducing standardised packaging. A number of Members spoke during this debate, views were again polarised.¹³⁷ A flavour of the debate is included below.

Mr Blackman and others drew attention to the extensive morbidity and mortality associated with smoking and to the idea that tobacco is the one product in the world that if used in the way it is intended will lead to poor health and death.¹³⁸ He discussed the research published by the Public Health Consortium at Stirling University showing that standardised packaging is less attractive to potential consumers. Alex Cunningham also referred to the findings of this systematic review commissioned by the Department of Health:

The research done by Stirling University's public health research consortium shows that standardised packaging is less attractive to potential consumers. That is good news because it means that if we have standardised packaging, smoking will be less attractive to young people and children. The reviewers looked at 17 further studies, so there is no lack of evidence. There is plenty of evidence, and the evidence in favour of standardised packaging is very strong.

Bob Blackman argued that in order to make tobacco control policy more effective, measures must be introduced to prevent children from taking up smoking. Pete Wishart drew attention to the Scottish Parliament and its plans to introduce standardised packaging.¹³⁹

Kevin Barron, ex-chair of the House of Commons Health Select Committee, talked about the reliance of tobacco companies on packaging advertising. He also suggested that had the number of deaths been caused by something other than smoking, more might have been done within Parliament:

There are 100,000 premature deaths a year from tobacco smoking in this country. If those deaths had been caused by anything else in the 30 years that I have been in Parliament, this House would have been sitting 24 hours a day, seven days a week, until we could find a way to stop it. It is no good the Government saying that they will wait. We know what tobacco marketing has been like for decades. We have stopped most of it, and we should stop this advertising at the point of use as well.¹⁴⁰

¹³⁵ HC Deb 23 September 2013 c23-26WH

¹³⁶ HC Deb 23 September 2013 c23-26WH

¹³⁷ [HC Deb 7 November 2013 c438](#)

¹³⁸ [HC Deb 7 November 2013 c440](#)

¹³⁹ HC Deb 7 November 2013 c444

¹⁴⁰ HC Deb 7 November 2013 c 456

Ian Paisley, among others, highlighted the importance of jobs in the tobacco industry in his constituency and questioned whether the real intention was to ban smoking altogether.¹⁴¹ In response, Mr Blackman and others stressed that a smoking ban was not being proposed and had never been part of the anti-tobacco campaign in this country.¹⁴²

Nigel Evans stressed that any decision on this issue should be based on the evidence. Whilst arguing that more education and public health campaigns were needed on the damaging effects of smoking, he added that the vast majority of the 12 million smokers in the UK are adults and that this issue is all about individual choice and liberty.¹⁴³ In response to a question from David Nuttall, he voiced concern that the money currently spent on packaging would, in the future, be spent on reducing the price of tobacco products. He suggested that introducing standardised packaging might represent a 'slippery slope' which could be extended to other products in the future.¹⁴⁴

The Shadow Minister for Public Health, Luciana Berger addressed this issue by echoing the contribution of Bob Blackman that tobacco is different to other products, because if it is used properly, according to instructions it will kill one in two of its users.¹⁴⁵

Dame Angela Watkinson outlined the consensus on both sides of the house that everything should be done to deter young people from taking up smoking.¹⁴⁶ However, she suggested there were better solutions than standardised packaging to tackle this problem. She repeated the concerns of Ian Paisley of the impact plain packaging might have on jobs, small businesses and tax revenue due to increased smuggling and counterfeiting. The principal responsibility for children should lie with their parents.¹⁴⁷

Guto Bebb reiterated concerns about the impact of tobacco smuggling on the loss of tax revenue in the UK. He also argued that low price rather than branding is more likely to entice a young person to smoke. He reported that a survey of police officers' views on the impact of standardised packaging on illicit tobacco products showed that 86% of those surveyed thought it would make it easier for illicit tobacco products to be supplied. 62% thought an increase in cheap tobacco products would lead to an increase in the use of tobacco products by children.¹⁴⁸

Jake Berry called for the more rigorous enforcement of existing laws to stop the sale of cigarettes to under those 18s, and criticised recent European decisions to ban flavourings in tobacco and ten packs of cigarettes.¹⁴⁹

The Shadow Minister for Public Health, Luciana Berger, refuted claims that standardised packaging would lead to an increase in illicit tobacco products and a reduction in revenue. Andrew Leggett, Deputy Director for Tobacco and Alcohol Strategy at HM Revenue and Customs had stated that it would be very doubtful that standardised packaging would have a

¹⁴¹ [HC Deb 7 November 2013 c441](#)

¹⁴² [HC Deb 7 November 2013 c 467](#)

¹⁴⁴ [HC Deb 7 November 2013 cc 448-450](#)

¹⁴⁵ [HC Deb 7 November 2013 c469](#)

¹⁴⁶ [HC Deb 7 November 2013 c 453](#)

¹⁴⁷ [HC Deb 7 November 2013 c454](#)

¹⁴⁸ [HC Deb 7 November 2013 c464](#)

¹⁴⁹ [HC Deb 7 November 2013 c468](#)

material effect if introduced.¹⁵⁰ She confirmed that the Opposition would support any legislation to make standardised packaging a reality.¹⁵¹

The Under-Secretary of State for Health, Jane Ellison, responded to the debate. She said that effective tobacco control needs comprehensive action on many fronts. The Government were committed to completing the ban on the display of tobacco products in shops, and that this, alongside a ban on vending machines had stopped a number of people under 18 from accessing tobacco products.¹⁵² She outlined the important role of local authorities, public health directors and clinical commissioning groups in tobacco control and laid out a challenge to Members of Parliament to take up the issue at a local level. She confirmed that she was giving the issue of standardised packaging her urgent consideration.¹⁵³ In response to concerns about the possible impact of the measures on jobs, she stated that the Government had to consider all aspects of the policy- impact on employment, small business and possible health benefits¹⁵⁴.

12 Appendix D: Stages of the *Children and Families Act*

12.1 Grand Committee stage

Cross-party amendments 264-266 to the *Children and Families Bill* related to issues on smoking affecting children's health. Lord Faulkner of Worcester, Baroness Tyler of Enfield, Baroness Finlay of Llandaff and Lord McColl of Dulwich co-sponsored these amendments. They were debated alongside amendment 263 which sought to ban smoking in cars where children are present. The amendments were withdrawn but it was advised they would be returned to at the next stage of the Bill.¹⁵⁵

Amendment 264 sought to introduce a clause under the *Tobacco Advertising and Promotions Act 2002* to allow the Secretary of State for Health to introduce regulations to specify tobacco packaging requirements in the interests of preventing harm to the health of children. Amendments 265 and 266 built on amendment 264 by requiring the Secretary of State to make regulations rather than allowing him to do so.

Baroness Hughes of Stretford, in outlining her support for the amendments, emphasised the impact colourful and attractive packaging may have on young smokers:

Especially since the advertising ban, cigarette packaging is the most important opportunity for tobacco companies to do exactly the opposite: namely, promote smoking as a cool, attractive and grown-up thing to do. That is why they spend millions on developing their packaging by testing its attractiveness to potential new customers and adding novel or gimmicky features that will attract interest. It is patently obvious that the companies believe that packaging is crucial to promoting their products and giving themselves a market edge. Indeed, research among young people by Cancer Research UK and other charities confirms the positive impressions conveyed by packaging in the minds of young people. One view was, for example, "It looks too colourful to be harmful". We therefore have to use any means possible to protect

¹⁵⁰ HC Deb 7 November 2013 c472

¹⁵¹ HC Deb 7 November 2013 c473

¹⁵² HC Deb 7 November 2013 c475

¹⁵³ HC Deb 7 November 2013 c475

¹⁵⁴ HC Deb 7 November 2013 c477

¹⁵⁵ The report stage of the Children and Families Bill commenced on 17 December 2013

young people from tobacco and deter them from taking up smoking. That is of course why the industry is resisting standardised packaging.¹⁵⁶

A number of other Members also spoke in support of the amendments. Baroness Tyler said these amendments did not represent the nanny state interfering in a person's freedom to choose. She argued that young people were often impressionable and their choices are not always well informed.¹⁵⁷ Baroness Young of Old Scone described the wealth of support for standardised packaging from the World Health Organisation, other medical organisations, health related charities and the public¹⁵⁸. She advised that whilst the Government waited for conclusive evidence, more children could become addicted to smoking. Lord Hunt of Kings Heath, in favour of the amendments, argued that the UK had always been a leader in this area-we should not wait and see what happens in Australia but act now with the introduction of standardised packaging.¹⁵⁹

Lord Palmer did not support the amendments. He advised that a ban on proxy purchasing for those under 18 would be a far more effective way to prevent young people smoking. He also drew the Committee's attention to the revenue raised by the sale of tobacco products for the Treasury and expressed the view that the introduction of these amendments would compound the income lost by illicit imports of tobacco products.¹⁶⁰

Earl Howe, the Under-Secretary of State for Health responded to the contributions of the committee. He said he was sympathetic to the aims of the amendments but that the Government had decided to wait to make a decision. He noted that there might be problems with the application of the amendment- that it may not apply to tobacco sold everywhere, only where children could come into contact with it. There may be circumstances where branded packs could be sold in adult only environments. He advised that if the Government decided to bring in such a measure it would be important to ensure that this would not be the case and that it applied everywhere.¹⁶¹ On the issue of banning proxy purchasing, he advised that this would not prevent family and friends from sharing cigarettes with children.¹⁶²

12.2 Lords Report Stage and Third Reading

At Report Stage the Government tabled amendment 57B¹⁶³ which sought to provide powers for the Secretary of State to introduce regulations on the retail packaging of tobacco products.¹⁶⁴

Amendment 57BA,¹⁶⁵ tabled by Lord Hunt of Kings Heath sought to change the wording of amendment 57B to compel the Secretary of State to introduce regulations on standardised packaging if they believe it to be promoting the health of those under the age of 18. This amendment was not moved.

The Under-Secretary of State, Earl Howe, explained that the regulation making powers would enable Ministers to regulate the internal and external packaging and associated

¹⁵⁶ [HL Deb 18 November 2013 cGC368](#)

¹⁵⁷ [HL Deb 18 November 2013 cGC369](#)

¹⁵⁸ [HL Deb 20 November 2013 cGC404](#)

¹⁵⁹ [HL Deb 20 November 2013 cGC411](#)

¹⁶⁰ [HL Deb 20 November 2013 cGC407](#)

¹⁶¹ [HL Deb 20 November 2013 cGC416](#)

¹⁶² [HL Deb 20 November 2013 cGC414](#)

¹⁶³ [HL Deb 29 January 2014 c1215](#)

¹⁶⁴ [HL Deb 29 January 2014 c1216](#)

¹⁶⁵ [HL Deb 29 January 2014 c1220](#)

materials, but would apply only to retail packaging.¹⁶⁶ The amendment would extend to all forms of tobacco and applies to the size, shape and flavour of tobacco products. He stated that all health related harms to those under 18 should be considered when deciding whether to introduce regulations, including conditions that present after the age of 18.

The provisions of the amendment would apply on a UK wide basis, provided that legislative consent motions were passed in the devolved administrations. The regulations would be subject to affirmative procedures, and would be enforced by local authority trading standards under the *Consumer Protection Act 1987*. Earl Howe announced that a further technical amendment would be drafted for the Third Reading of the Bill that would enable Ministers to take enforcement action on the regulations where a local authority had not. This would be a precautionary measure and would be in line with other tobacco control legislation.

Earl Howe also confirmed an intention to table for Third Reading of the Bill, two further amendments to ban proxy purchasing of tobacco products, and to introduce regulations to prohibit the sale of electronic cigarettes to those under 18.

Earl Howe reiterated that any decision to proceed with introducing regulations on standardised packaging would rest with the Government. The matter would be considered alongside the report from the review of public health evidence (as announced in November 2013- see section 6 above) and other wider policy issues.¹⁶⁷

During the debate, evidence in support of standardised packaging was highlighted by many, including Lord Walton of Detchant:

The accumulated evidence relating to plain packaging of cigarettes that has arisen over the past few years is incontrovertible, and for that reason the Government's amendment is extremely welcome.¹⁶⁸

The importance of tobacco packaging as a marketing tool, and arguments that tobacco companies concentrate on promoting to the teenage market were raised. In response to concerns on increases in illicit trade of tobacco products as a result of standardised packaging, Lord Faulkner, amongst others, stated that illicit trade was falling and that standardised packaging could actually enhance product security- making smuggling more difficult.¹⁶⁹

Those who opposed the amendment expressed a number of concerns. Lord Naseby highlighted the effect on intellectual property rights, and legal constraints to introducing standardised packaging. He suggested that standardised packaging would be good news for counterfeiters and that it would impact negatively on retailers and those employed by the tobacco industry.¹⁷⁰ Lord Stoddart of Swindon, also spoke against the amendment, he said it was doubtful that standardised packaging would discourage young people from smoking and that the proposals would set a precedent for other products.¹⁷¹

Earl Howe said that careful consideration had been given to the legal situation, and advised that the illegal trade in tobacco is decreasing.¹⁷² He also stated that standardised packaging

¹⁶⁶ HL Deb 29 January 2014 c1218

¹⁶⁷ HL Deb 29 January 2014 c1220

¹⁶⁸ HL Deb 29 January 2014 c1246

¹⁶⁹ HL Deb 29 January 2014 c1229

¹⁷⁰ HL Deb 29 January 2014 c1240

¹⁷¹ HL Deb 29 January 2014 c1245

¹⁷² HL Deb 29 January 2014 c1249

would not set a precedent as tobacco was unlike any other product- it is uniquely harmful to consumers, killing one in two of long term users.¹⁷³

Earl Howe drew attention to the fact that any regulations on this issue would have to be notified to the European Commission, but reiterated that it was the Government's intention to move quickly on this issue once it had received the report from Sir Cyril Chantler following the review. In response to amendment 57BA, Earl Howe said that the Government could not accept '*provisions that tie our hands;*' and that there must be time and space to consider the issue of standardised packaging.

The amendment was agreed. It went on to be considered as amendment 124 in the House of Commons alongside other amendments to the *Children and Families Bill*.

Amendment 57BB,¹⁷⁴ also tabled by Lord Hunt of Kings Heath proposed regulation making powers for the Secretary of State to make it an offence for a person to not prevent smoking in a private vehicle where children are present. This amendment was agreed. At the Third Reading of the Bill, the Government tabled their own amendment on smoking in cars with children present. Amendment 41¹⁷⁵ would amend section 5 of the *Health Act 2006* to state that regulations may in particular provide for a private vehicle to be smoke free where a person under 18 is present in the vehicle. This amendment was agreed.

The Government also introduced amendment 35 at Third Reading to ban the proxy purchasing of tobacco products¹⁷⁶ and amendments 36 and 37¹⁷⁷ to ban the sale of nicotine products to those under 18. These amendments were agreed.

12.3 Consideration of Lords amendments in the House of Commons

On 10 February 2014 a number of Lords amendments on tobacco control were debated together. These included Amendment 121 to ban proxy purchasing for those under 18, Amendment 122 to provide powers for the Secretary of State to ban the sale of nicotine products to those under 18 and Amendment 124 to provide powers to introduce regulations on standardised packaging of tobacco products.¹⁷⁸ All of these amendments were agreed.

The Under-Secretary of State, Jane Ellison outlined that the Government were seeking the regulation-making power but would await the outcome of Sir Cyril Chantler's review of public health evidence before making any decision.¹⁷⁹

Mr Phillip Davies tabled three amendments to amendment 124.¹⁸⁰ He explained that there aim was to make the amendment '*more sensible*'. One of these changed the situation in which the Secretary of State could introduce regulations- instead of when it '*may*' contribute to reducing risk of harm, it would become '*will*' reduce. The second amendment required *all* the provisions introduced by the Secretary of State to have a positive effect.¹⁸¹ Jane Ellison said that the three amendments would remove the ability for Ministers to take a reasonable

¹⁷³ HL Deb 29 January 2014 c1249

¹⁷⁴ [HL Deb 29 January 2014 c1254](#)

¹⁷⁵ HL Deb 5 February 2014 c240

¹⁷⁶ HL Deb 5 February 2014 c225

¹⁷⁷ HL Deb 5 February 2014 c238

¹⁷⁸ [Lords Amendments to the Children and Families Bill 2013, 6 February 2014](#)

¹⁷⁹ [HC Deb 10 February 2014 c603](#)

¹⁸⁰ [Consideration of Lords Amendments, Children and Families Bill, 10 February 2014](#)

¹⁸¹ [HC Deb 10 February 2014 c615](#)

view of the evidence and would constrain decision making.¹⁸² These amendments were not subject to a vote.

The majority of Members spoke in favour of the package of amendments, arguing that they would be useful in protecting young people from the harms of smoking. Those who spoke against them highlighted, as in previous debates, that standardised packaging may lead to an increase in illicit trade, that it represented a nanny state policy, and that it may lead to a slippery slope of standardised packaging for fattening foods and alcohol.

¹⁸² HC Deb 10 February 2014 c605