



An Roinn Sláinte
DEPARTMENT OF HEALTH

**Public consultation on legislation in relation to
the sale of tobacco products and
non-medicinal nicotine delivery systems**



Tús Áite do
Shábháilteacht 1 Othar
Patient Safety 1 First

Consultation paper on legislation in relation to the sale of tobacco products and non-medicinal nicotine delivery systems, including e-cigarettes

December 2014

Purpose

1. In June 2014, the Irish Government approved the drafting of legislation to provide for measures in relation to the sale of tobacco products and non-medicinal nicotine delivery systems, including e-cigarettes (hereafter NMNDS).
2. The policy objectives of the legislation are in line with the recommendations contained in *Tobacco Free Ireland*¹ and are as follows:
 - (i) to reduce the number of young people smoking and starting to smoke;
 - (ii) to denormalise smoking;
 - (iii) to help smokers who wish to quit;
 - (iv) to establish a regulatory framework for non-medicinal nicotine products;
 - (v) to further regulate who sells tobacco products and how and where these products are sold; and
 - (vi) to become a tobacco free society by 2025 (i.e. a smoking prevalence rate of less than 5%).
3. The purpose of this consultation paper is to seek views on the measures to inform the drafting of the Bill.

Legislative measures

4. The components of the legislation are as follows:
 - A. introduction of a licensing system for the sale of tobacco products. The licensing system will replace the retail register currently in operation for the sale of tobacco products;
 - B. introduction of a licensing system for the sale of NMNDS;
 - C. prohibition of the sale of tobacco products from self-service vending machines;
 - D. prohibition of the sale of tobacco products from temporary or mobile units/containers;

¹ *Tobacco Free Ireland* available at <http://health.gov.ie/blog/publications/tobacco-free-ireland/>

- E. prohibition of the sale of tobacco products at events/locations primarily intended for persons under 18 years of age;
- F. prohibition of the sale of tobacco products by persons under 18 years of age (the sale of tobacco products to persons under 18 years of age is already prohibited under the *Public Health (Tobacco) Acts 2002-2013*);
- G. prohibition of the sale of NMNDS by persons under 18 years of age and to persons under 18 years of age; and
- H. introduction of minimum suspension periods for retailers convicted of offences under the Public Health (Tobacco) Acts and this new legislation.

In addition to the legislation outlined in A to H above, the Department is also seeking views on the:

- (i) introduction of fixed penalty notices (on the spot fines) for certain offences under tobacco control legislation; and
- (ii) publication of information in respect of any person on whom a fine, other penalty or conviction is imposed by a court or pursuant to fixed penalty notices ('name and shame').

Tobacco Free Ireland

- 5. The Department of Health's policy in relation to smoking, *Tobacco Free Ireland* (launched in October 2013), is to promote and subsequently move toward a tobacco free society by 2025. In practice, this will mean a smoking prevalence rate of less than 5%.
- 6. *Tobacco Free Ireland*, the report of the Tobacco Policy Review Group, builds on existing tobacco control policies and legislation already in place in this country. The two key themes underpinning the policy are protecting children from the harms of smoking and the denormalisation of smoking. Denormalisation of smoking refers to the process of changing social norms about tobacco use. *Tobacco Free Ireland* addresses a range of tobacco control issues and initiatives and contains over 60 recommendations, including the majority of the measures outlined in this consultation paper.
- 7. *Tobacco Free Ireland* is the first policy document to be published under *Healthy Ireland – A Framework for Improved Health and Wellbeing 2013 -2025*, which was also launched in 2013. The current health status of people in Ireland, lifestyle trends and inequalities in health outcomes, are leading us towards a dangerously unhealthy and unaffordable future. *Healthy Ireland* sets out a vision that will improve the health and wellbeing of all the population of Ireland over the next 11 years. It puts forward a

“whole of society” approach and new arrangements to ensure more effective co-operation to achieve better outcomes for all.

Public health aspects

8. Tobacco use is the leading cause of preventable death in Ireland. It is one of Ireland’s most serious public health challenges, with the greatest burden of disease, disability and premature death falling on the most disadvantaged in society. Each year, at least 5,200 people die as a direct result of diseases caused by tobacco use. This represents 19% of all deaths.
9. At present 21.5% of adults and 12% of children smoke. Whilst overall smoking prevalence is on the decline, unfortunately one in every two smokers will be killed by a tobacco related disease. Therefore, the toll from tobacco use will continue well into the future unless new approaches are taken to reduce the number of adults and children who continue to smoke and to prevent children from starting to smoke.
10. It is well established that 78% of smokers begin smoking and become addicted to tobacco products by the time they are 18 years old, highlighting the danger of youth initiation².
11. As well as protecting the health of the population from the harms caused by tobacco, reducing smoking initiation, addiction and prevalence will also help to protect our overall economy by taking pressure off a health care system in these difficult economic times. An EU Commission Report estimated the cost to the Irish Exchequer of smoking attributable diseases, including an estimate of the cost of absenteeism and incapacity, as €664m in 2009³.
12. In the most recent report from the US Surgeon General - The Health Consequences of Smoking- 50 years of progress⁴, it was recognised that the decline in smoking rates being experienced will not be sufficiently rapid without additional action if we are to avoid the burden of preventable disease and premature death that is currently experienced. This new Surgeon General’s report also found that cigarettes today pose an even greater risk of disease than the cigarettes sold when the first Surgeon General’s report was issued in 1964. This current report concludes “the evidence is sufficient to infer that the relative risk of dying from cigarette smoking has increased over the last 50 years in men and women...”.

² *Tobacco Free Ireland* available at <http://health.gov.ie/blog/publications/tobacco-free-ireland/>

³ A Study on Liability and the Health Costs of Smoking DG SANCO (2008/C6/046), December 2009 available at http://ec.europa.eu/health/tobacco/docs/tobacco_liability_en.pdf

⁴ The Health Consequences of Smoking- 50 years of progress: A Report of the Surgeon General 2014 is available at: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/>

13. In a recent report from the Campaign for Tobacco-Free Kids⁵, detailed evidence is provided as to how the tobacco industry has used the last 50 years to make cigarettes more dangerous, more addictive and more appealing to young people and other non-smokers. The report states “they took a bad product and made it worse with design changes and ingredients that:
- increased the risk of disease to cigarette smokers;
 - made it easier to become addicted and harder to quit; and
 - made cigarettes more appealing to youth, women and other populations.”
14. These findings underscore the need for those charged with protecting the public health to recognise that tobacco product design and marketing are not static. They are constantly evolving to suit the interests of the tobacco industry and other vested interests so as to maximise their profits. Hence the need for public health authorities to counter these developments in order to protect public health.

Existing Tobacco Control Initiatives

15. To date Ireland has been in the forefront of tobacco control legislation in Europe. A number of landmark initiatives have been put in place. These include a ban on smoking in the workplace, a ban on tobacco advertising and sponsorship, a ban on the display of tobacco products in shops and combined text and graphic warning requirements. In addition, the Public Health (Standardised Packaging of Tobacco) Bill 2014 and the Protection of Children’s Health (Tobacco Smoke in Mechanically Propelled Vehicles) Bill 2014 are currently being progressed through the legislative process in the Oireachtas (Irish Parliament).

Non-Medicinal Nicotine Delivery Systems (including e-cigarettes)

16. Non-medicinal nicotine delivery systems are non-pharmaceutical products containing nicotine, including nicotine water, wafers, candy, inhalers and electronic cigarettes (e-cigarettes). Despite being relatively new to the market, there has been a rapid and significant rise in their use over the past few years, particularly in the case of e-cigarettes. According to a recently published World Health Organisation Report⁶ on electronic nicotine delivery systems (ENDS) data mainly from North America, the European Union and the Republic of Korea indicate that ENDS use at least doubled among both adults and adolescents between 2008 and 2012. It is estimated that currently, there are 466 brands available and that in 2013, US\$3 billion was spent on ENDS globally.

⁵ Campaign for Tobacco-Free Kids Report “Designed for addiction”, June 2014 is available at: <http://tinyurl.com/obon897>

⁶ Electronic nicotine delivery systems. Report by WHO. FCTC/COP/6/10 21 July 2014 is available at http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_10-en.pdf?ua=1

17. In Ireland, medicines and medical devices are regulated by the Health Products Regulatory Authority (formerly known as the Irish Medicines Board). These include medicinal nicotine replacement therapies included in patches, gum, inhalers, lozenges and nasal sprays. However NMNDS on the market are presented as smoking alternatives and not medicinal products for smoking cessation or as medical devices with a therapeutic purpose. They, therefore, do not fall under the medicinal products or medical devices legislation. As NMNDS do not contain tobacco they are not regulated under tobacco control legislation.
18. NMNDS products do, however, fall under the European Communities (General Product Safety) Regulations 2004 which specify the duties of producers and distributors placing products on the market.
19. In July 2014, the Irish Cancer Society commissioned a survey of 1000 adults (18+) on a range of tobacco related issues, including e-cigarettes. The findings show that more than half of all smokers (59%) have tried an e-cigarette with 7% being current users of the products. The survey also found that 5% of people that have never smoked have tried e-cigarettes although none report current use.
20. With regard to the use of e-cigarettes among adolescents, as part of research carried out in early 2014 on smoking, researchers explored e-cigarette use among a representative sample of 823 adolescent secondary school students. The provisional results of the research showed that, overall 23.8% of 16-17 year olds have ever used an e-cigarette, with regular smokers being much more likely to have tried them and to be current users⁷.
21. At European level, the revised EU *Tobacco Products Directive*⁸ which came into force on 20th May 2014, states that a high level of public health protection should be taken into account when regulating e-cigarettes and similar products. Member States have two years to transpose the Directive into national law. The Directive, *inter alia*, provides for the regulation of certain aspects of e-cigarettes across EU Member States.

⁷ Clancy L, paper pending publication

⁸ Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0040&from=EN>

22. The Directive will:

- set mandatory safety and quality requirements e.g. on nicotine content, ingredients and devices, as well as refill mechanisms etc., for e-cigarettes;
- make health warnings and information leaflets obligatory;
- introduce notification requirements for manufacturers and importers of e-cigarettes; and
- impose stricter rules on advertising and monitoring of market developments.

23. The Directive also gives the EU the power to prohibit any given electronic cigarette or refill cartridge if concern is raised regarding an unforeseen risk to public health.

24. The Directive does not set an age limit for e-cigarettes or refill containers. It does, however, encourage Member States to regulate such matters as they see fit given their own domestic setting.

25. The Department of Health will continue to monitor existing and emerging evidence on the potential harm and the potential benefits of these products, so as to inform decisions around any future additional regulation in this area.

26. The legislation discussed in this document, namely the introduction of licensing and the prohibition of the sale to, and by, persons under 18 year olds, is the first step ahead of the transposition of the Directive, to ensuring that NMNDS, including e-cigarettes, are sold in a responsible manner in this country.

CONSULTATION

27. The Department of Health is inviting responses to the questions listed under each measure. Please see the 'how to respond' section below for details of how to submit responses.

A. Licensing system for the sale of tobacco products

28. In Ireland, licences are required for a range of businesses and activities, including the sale of alcohol⁹, gaming, gambling¹⁰ and book making¹¹ activities. This is in recognition of the fact that, while there are generally no long term consequences for modest engagement, there may be health and social costs involved for those who gamble and drink to excess. This is in contrast to the consumption of tobacco products which cause both acute and chronic negative health impacts.
29. Under current tobacco control legislation, a retailer wishing to sell tobacco products must register with the Health Service Executive (HSE) National Tobacco Control Office to be placed on the retail register for the sale of tobacco products and pay a registration fee of €50. This fee is applied on a once-off basis regardless of the number of premises selling tobacco products held by the applicant. This has resulted in a significant anomaly whereby multiple retailers including supermarket chains make a single payment of €50, regardless of the number of retail outlets they have.
30. The primary policy objectives of the licensing system are as follows:
- to replace the existing retail register for tobacco products;
 - further regulate who sells tobacco products and how and where they are sold to reflect the serious nature of these products, in the context of protecting the public, particularly children, from the harms of smoking: and
 - restrict availability of and access to tobacco products.
31. Under the licensing system, all retailers wishing to sell tobacco products must apply for a licence. Licences will apply to premises in fixed locations. A retailer who owns or controls more than one retail premises must obtain separate licences for each premises. A prescribed annual fee for each premises will apply.

⁹ Intoxicating Liquor Acts (as amended). Available at www.irishstatutebook.ie

¹⁰ Gaming and Lotteries Act, 1956 (as amended) and Finance Acts (as amended). Available at www.irishstatutebook.ie

¹¹ Betting Act, 1931 (as amended). Available at www.irishstatutebook.ie

Questions

- Q1) In addition to compliance with tobacco control legislation, what criteria should an applicant applying for a licence to sell tobacco products fulfil - for example, should an applicant:
- (a) be over 18 years of age?
 - (b) provide proof of identity and age?
 - (c) be tax compliant?
 - (d) hold a valid Revenue Commissioner Business Identifier?
 - (e) be a fit and proper person?
 - (f) other?, please provide details.
- Q2) Do you have any other comments on the licensing system for the sale of tobacco products? If yes, please provide details.

B. Licensing system for the sale of non-medicinal nicotine delivery systems (including e-cigarettes)

32. *Tobacco Free Ireland* recommends the establishment of a regulatory framework for non-medicinal nicotine products, including e-cigarettes, in the context of discussions at European Union level.
33. Both the European Union and the WHO recommend the regulation of e-cigarettes and related products by Member States in the interest of protecting public health.
34. The general consensus at European level is that there is a lack of research in relation to the long term health effects of e-cigarettes and a lack of sufficient evidence that they aid with smoking cessation. The WHO acknowledges that ENDS may present a range of potential benefits to smokers, however, there are concerns regarding nicotine initiation among non-smokers and young people while maximising potential benefits for smokers – known as gateway and renormalisation effects. There is a possibility that children will initiate nicotine use with ENDS at a rate greater than expected if ENDS did not exist and the possibility that once addicted to nicotine through ENDS children will switch to cigarette smoking. The renormalisation effect refers to the possibility that everything that makes ENDS attractive to smokers may enhance the attractiveness of smoking itself and perpetuate the smoking epidemic¹².

¹² Electronic nicotine delivery systems. Report by WHO. FCTC/COP/6/10 21 July 2014 is available at http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_10-en.pdf?ua=1

35. Under the licensing system, all retailers wishing to sell NMNDS must apply for a licence. Licences will apply to premises in fixed locations. A retailer who owns or controls more than one retail premises must obtain separate licences for each premises. A prescribed annual fee for each premises will apply.

Questions

- Q3) In addition to compliance with this legislation and the relevant articles in the *Tobacco Products Directive* (2014/40/EU), what criteria should an applicant applying for a licence to sell non-medicinal nicotine delivery systems (including e-cigarettes) fulfil - for example, should an applicant:
- (a) be over 18 years of age?
 - (b) provide proof of identity and age?
 - (c) be tax compliant?
 - (d) hold a valid Revenue Commissioner Business Identifier?
 - (e) be a fit and proper person?
 - (f) other?, please provide details.
- Q4) Do you have any other comments on the licensing system for the sale of non-medicinal nicotine delivery systems (including e-cigarettes)? If yes, please provide details.

C. Prohibition of the sale of tobacco products from self-service vending machines

36. The legislation will prohibit the sale of tobacco products from self-service vending machines.
37. One of the most compelling reasons to strengthen the controls on tobacco products is the detrimental impact tobacco consumption has on people's health and lives, particularly children. Protecting children from the harms of smoking is one of the key objectives of *Tobacco Free Ireland*.
38. Controls were introduced in the *Public Health (Tobacco)(Self Service Vending Machines) Regulations 2009*. There is, however, evidence that a disproportionate number of minors still have access to cigarettes by way of vending machines.
39. A survey conducted by Ipsos MRBI on behalf of the Health Service Executive in 2011¹³ found that while compliance in relation to vending machines had improved since the introduction of 2009 Regulations, 28% of minors who attempted to access cigarettes

¹³ Retail & Licensed Premises Compliance Audit (September 2011) conducted by Ipsos MRBI on behalf of the then Office for Tobacco Control.

from disc/card or token operated machines were not prevented from doing so by a member of staff.¹⁴

40. There is support in Ireland for prohibiting sales of tobacco products from vending machines. A 2012 Eurobarometer survey found that support for the banning of sales of tobacco products through vending machines was second highest in Ireland (73%) with only Cyprus being ahead (79%) among all EU countries (EU 27 Member States, average was 54%).¹⁵
41. The legislation will not apply to retail vending machines (closed containers). A retail vending machine is understood to be an automated unit holding cigarettes or other tobacco products pending sale by retailers and retail assistants and not designed or intended for self-service use by the public.

Questions

- Q5) What impacts, if any, would the prohibition of the sale of tobacco products from self-service vending machines have?
- Q6) Do you have any other comments on the prohibition of the sale of tobacco products from self-service vending machines? If yes, please provide details.

D. Prohibition of the sale of tobacco products from temporary or mobile units/containers

42. Tobacco products are a significant cause of addiction and ill-health. There is an onus on those who wish to sell these products to exercise a significant degree of care and supervision in the retail of same.
43. The legislation will make it unlawful to sell tobacco products from a point of sale that is located in a temporary or mobile structure or enclosure. This includes, but is not limited to, the following:
- stalls, booths, kiosks;
 - tents or marquees;
 - vans or trucks;
 - display stands;

¹⁴ The base figure for disc/card/token operated vending machines was 169.

¹⁵ European Commission: Special Eurobarometer 385, Attitudes of Europeans towards tobacco. Available at http://ec.europa.eu/health/tobacco/docs/eurobaro_attitudes_towards_tobacco_2012_en.pdf

- containers carried by a person; and
- containers pushed on wheels.

44. The purpose of this measure is to prohibit the sale of tobacco products from temporary or mobile units/containers for the duration of a specific event for example, markets, festivals, concerts and sports events. It also aims to prevent persons dressed in a tobacco company's livery travelling around bars, nightclubs and events selling that company's products from mobile containers/units often carried by a person or pushed on wheels.
45. This provision is supported by the Joint Oireachtas Committee on Health and Children which recently recommended in its *Report on hearings to the General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill*¹⁶ that the sale of tobacco products from mobile units/containers (at fairs and markets) be prohibited.

Questions

- Q7) What impacts, if any, would the prohibition of the sale of tobacco products from temporary or mobile units/containers have?
- Q8) Do you have any views on the types of temporary or mobile units/containers which should be included in this provision? If yes, please provide details.
- Q9) Do you have any other comments on the prohibition of the sale of tobacco products from temporary or mobile units/containers? If yes, please provide details.

E. Prohibition of the sale of tobacco products at events/locations primarily intended for persons under 18 years of age

46. Under this provision, a person intending to sell tobacco products at any temporary event or where the majority of patrons are likely to be under 18 years old, will no longer be permitted to do so. These events include, but are not limited to, events that are largely organised for the attendance by children under the age of 18 years, are open to members of the public and take place in premises or areas other than a private residence. Examples include pantomimes and children's festivals.
47. It is already an offence under existing legislation to sell tobacco to persons under 18 years of age. However at present a retailer can sell tobacco at events where many of

¹⁶ *Report on hearings to the General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill.*
<http://www.oireachtas.ie/parliament/media/committees/healthandchildren/Public-Health-SPT-Bill--Vol-1.pdf>

the patrons attending are under 18 years old. This glamourises tobacco use and portrays it as a 'cool' activity¹⁷.

48. Many temporary social and community events in Ireland attract young people. While it is illegal for tobacco companies to advertise their products as part of sponsorship of social events, they are able to sell their products. Prohibiting the sale of tobacco at such events will help to reinforce to children that smoking in a social situation is not a normal activity.

Questions

- Q10) What impacts, if any, would the prohibition of the sale of tobacco products at events/locations primarily intended for persons under 18 years of age have?
- Q11) Do you have any views on the types of events/locations which should be included in this provision? If yes, please provide details.
- Q12) Do you have any other comments on the prohibition of the sale of tobacco products at events/locations primarily intended for persons under 18 years of age? If yes, please provide details.

F. Prohibition of the sale of tobacco products by persons under 18 years of age

49. Research has shown that 78% of Irish smokers started smoking before they reached the age of 18, evidence that smoking initiation is largely a childhood and teenage phenomenon¹⁸.
50. The sale of tobacco products to persons under 18 years of age is already prohibited under the *Public Health (Tobacco) Acts 2002-2013*. However, there is no legislation restricting the sale of tobacco products by persons under 18 years of age.
51. Despite efforts to limit access by minors, children are still able to access tobacco products. This is evidenced by prevalence data from the HSE National Tobacco Control Office which shows that as at December 2013, there has been an increase in smoking prevalence amongst 15 to 17 years old with just over one in eight (13.3%) reporting to smoke. This is an increase of 2.9% in this group since December 2011.

¹⁷ Soulos G, Sanders S. Promoting tobacco to the young in the age of advertising bans. NSW Pub Health Bull. 2004;15(6):104-106. Available at http://www.publish.csiro.au/?act=view_file&file_id=NB04025.pdf

¹⁸ *Tobacco Free Ireland* available at <http://health.gov.ie/blog/publications/tobacco-free-ireland/>

52. It is therefore intended to introduce provisions in line with public health policy to protect minors. This measure further underscores the recognition that tobacco products are serious products with the potential to cause harm and therefore requiring to be sold by adults in a controlled environment. It may also assist in reducing peer pressure experienced by persons under 18 years of age to sell tobacco products to their peers.

Questions

- Q13) What impacts, if any, would the prohibition of the sale of tobacco products by persons under 18 years of age have?
- Q14) Do you have any other comments on the prohibition of the sale of tobacco products by persons under 18 years of age? If yes, please provide details.

G. Prohibition of the sale of NMNDS by persons under 18 years of age and to persons under 18 years of age

53. The sale of NMNDS by and to persons under 18 years of age is not currently regulated in Ireland. As previously stated, provisional results of research conducted in early 2014 in Ireland, shows that 23.8% of 16-17 year olds have ever used an e-cigarette, with regular smokers being much more likely to have tried them and to be current users¹⁹.
54. The recently published WHO Report indicates that the use of e-cigarettes has at least doubled among adolescents from 2008 to 2012. It is also worth re-iterating that the report raises concerns regarding the possible gateway and renormalisation effects. While it acknowledges that more research is required, there is sufficient evidence to caution children and adolescents about the use of e-cigarettes because of the potential consequences on brain development. The report, therefore recommends that retailers should be prohibited from selling ENDS products to minors.
55. The newly adopted *Tobacco Products Directive* recognises that e-cigarettes can develop into a gateway to nicotine addiction and ultimately traditional tobacco consumption, as they mimic and normalise the action of smoking. The Directive encourages Member States to introduce age limits for e-cigarettes.
56. It is therefore intended to prohibit the sale of NMNDS by and to persons under 18 years of ages in line with public health policy to protect minors.

¹⁹ Clancy L, paper pending publication

Questions

Prohibition of the sale of NMNDS by persons under 18 years of age

Q15) What impacts, if any, would the prohibition of the sale of NMNDS by persons under 18 years of age have?

Q16) Do you have any other comments on the prohibition of the sale of NMNDS by persons under 18 years of age? If yes, please provide details.

Prohibition of the sale of NMNDS to persons under 18 years of age

Q17) What impacts, if any, would the prohibition of the sale of NMNDS to persons under 18 years of age have?

Q18) Do you have any other comments on the prohibition of the sale of NMNDS to persons under 18 years of age? If yes, please provide details.

H. Minimum suspension periods for retailers convicted of certain offences under tobacco control legislation

57. *Section 5(A) of the Public Health (Tobacco) Act 2002*, as amended, provides that a court shall, in addition to any fine or term of imprisonment imposed in respect of the offence, order that the registration of the person shall cease to have effect, (a) in the case of summary conviction, for a period not exceeding 3 months or (b) in the case of conviction on indictment, for a period not exceeding 12 months. The provision allows judicial discretion in relation to the length of the suspension period imposed on a retailer.

58. However, there is evidence that almost half of the suspensions imposed are for a period of one day and in a minority of cases, no suspension period is imposed, despite the mandatory nature of *Section 5(A)*. This undermines the intent of the legislation which is to ensure that sanctions are effective. It is therefore intended to provide for more effective suspension periods for retailers convicted of offences under the legislation.

Questions

Q19) What impacts, if any, would the introduction of minimum suspension periods for retailers convicted of certain offences have?

Q20) Do you have any views on the length of minimum suspension periods which should be imposed on conviction? If yes, please provide details.

Q21) Should different offences under tobacco control legislation carry different periods of suspension? If yes, please provide details.

Q22) Do you have any other comments on the introduction of minimum suspension periods for retailers convicted of certain offences? If yes, please provide details.

As previously stated, the Department is also seeking views on the following:

(i) Fixed penalty notices (on the spot fines) for certain offences under tobacco control legislation

59. The introduction of a fixed penalty regime will provide authorised officers with an additional tool to deal quickly and effectively with non-compliance with the tobacco legislation.
60. An authorised officer who has reasonable grounds for believing that a person is committing, or has committed, an offence under tobacco control legislation, may serve a notice, in the form prescribed by the legislation, on that person. Where the person pays the prescribed amount within a defined period, no prosecution will be initiated. Where the person does not make a payment in accordance with the notice, he or she will be prosecuted for the alleged offence(s).
61. Fixed penalty regimes under other legislation are in use in Ireland for many years. The *Road Traffic Act 1961*, as amended, *Inland Fisheries Act 2010*, *Animal Health and Welfare Act 2013* and most recently the *Public Health (Sunbeds) Act 2014* all provide for fixed penalty notices. The National Consumer Agency also use fixed penalty notices as part of their enforcement of consumer protection legislation.

Questions

- Q23) What impacts, if any, would the introduction of fixed penalty notices (on the spot fines) for certain offences have?
- Q24) Do you have any views on the fixed penalty amounts which should be imposed? If yes, please provide details.
- Q25) Should different offences under tobacco control legislation carry different fixed penalty amounts?
- Q26) Do you have any other comments on the introduction of fixed penalty notices (on the spot fines) for certain offences? If yes, please provide details.

(ii) Publication of information in respect of any person on whom a fine, other penalty or conviction is imposed by a court or pursuant to fixed penalty notices ('name and shame')

62. This provision will allow the HSE to maintain a list of names and addresses of persons on whom fines or penalties have been imposed by a court under the legislation and persons who have made a payment to the HSE pursuant to fixed penalty notices. The HSE may publish all, or any part of the list in any form it considers appropriate. Such a measure should incentivise and support compliance and penalise those who have failed to comply with the legislation. The provision will be modelled on the provision within the *Public Health (Sunbeds) Act 2014* which provides that the HSE shall keep and maintain a list of persons on whom a fine, fixed payment notice or other penalty or conviction is imposed.
63. This enforcement tool is successfully used by other agencies, including the Food Safety Authority of Ireland and the National Consumer Agency as a means of sending a message to traders that if they fail to comply with the relevant legislation, enforcement actions will be taken.

Questions

- Q27) What impacts, if any, would the publication of information in respect of any person on whom a fine, other penalty or conviction is imposed by a court or pursuant to fixed penalty notices ('name and shame') have?
- Q28) What information should be published?
- Q29) Do you have any other comments on the publication of information in respect of any person on whom a fine, other penalty or conviction is imposed by a court or pursuant to fixed penalty notices ('name and shame')? If yes, please provide details.

How to respond

You can submit your views using the online questionnaire available at <http://health.gov.ie/news-centre/notice-board/tobaccoconsultation2014>

If you'd rather read a hard copy of the consultation paper and questionnaire, e-mail us at tobaccoconsultation@health.gov.ie or write to us at:

Tobacco & NMNDS Consultation
Tobacco and Alcohol Control Unit
Department of Health
Hawkins House
Hawkins Street
Dublin 2

The closing date for views is Friday, 16th January 2015. The online survey will be open until midnight on that day. Responses postmarked the closing date will be accepted. We can accept hand-delivered responses up to close of business on that date. **Late or anonymous submissions will not be accepted.**

How your response will be used

The information collected through online or hard copy questionnaires will inform the drafting of legislation in relation to sale of tobacco products and non-medicinal nicotine delivery systems, including e-cigarettes. A consultation report will be prepared and we will publish this on our website.

Freedom of Information

All submissions received by the Department are subject to the Freedom of Information (FOI) Act and may be released in response to an FOI request. The Department publishes responses to FOI requests online. More information on FOI is available on www.health.gov.ie.

Data Protection

Personally identifiable information supplied by a respondent to the Department will be held in accordance with Data Protection Act 1988, and the Data Protection Amendment Act, 2003. The Department will keep it only for explicit and legitimate purposes, process it only in ways compatible with the purposes for which it was given to us initially, keep it safe and secure, and retain it no longer than is necessary. More information on Data Protection is available on www.health.gov.ie.

The background is a vibrant blue with a grid pattern. Overlaid on this are several curved, wavy lines in various shades of blue, creating a sense of movement and depth. The lines are most prominent in the lower half of the image, where they curve upwards and then downwards, framing the text.

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