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6th April 2009

Douglas Thornton
Senior Assistant Clerk
Health and Sport Committee
T3.60
Scottish Parliament
Edinburgh
EH99 1SP

By post and email

Dear Mr. Thornton,

Tobacco and Primary Medical Services (Scotland) Bill (SP Bill 22) - Call for Evidence

Thank you for inviting the Tobacco Manufacturers' Association (TMA) to submit written evidence on the general principles of the Tobacco and Primary Medical Services (Scotland) Bill. This response is made on behalf of the TMA member companies: British American Tobacco, Gallaher (a member of the JTI group of companies) and Imperial Tobacco who may also make submissions in their own right.

The declared intent of the tobacco provisions of the Bill (as set out at paragraph 7 of the Policy Memorandum to the Bill) is to "[reduce] *smoking among children and young people through updated statutory controls on the display and sale of tobacco products in Scotland*". The Bill therefore focuses in large part on youth smoking prevention and rightly so; smoking must be a matter for informed adult choice. The TMA agrees that under-aged persons should not smoke and that they should not have access to tobacco products. The TMA and our member companies are fully supportive of youth smoking prevention initiatives. We are major stakeholders in the UK wide CitizenCard proof of age scheme, the 'No ID No Sale' campaign and support PASS accredited schemes such as YoungScot. We encourage responsible retailing and applaud rigorous enforcement of the law on under-age sales.

Our observations are confined to relevant sections in Part 1 of the Bill and are as follows:

S1 Prohibition of tobacco displays at the point of sale with only a notice listing the brands available and their prices.

The Tobacco Advertising and Promotion Act 2002 (TAPA) and the "point of sale" Regulations¹ made pursuant to it, limit the advertising of tobacco products at point of sale to a maximum total surface area of A5-size (with 30% of the space taken up by a health warning) on a fixed gantry or other display unit, within fixed or movable premises, that is "primarily used for the display of tobacco products to customers" (Regulation 2). At the time of enacting TAPA, it was expressly stated: "*The [UK] Government regards the current practice of storing tobacco products for the most part in a gantry with minimal advertising as perfectly satisfactory and has no current plans to make regulations under this section. However, the Government feels that it is important to have the power to control displays if displays of tobacco products start to become quasi-advertisements.*"²

It has not been demonstrated that in-store tobacco product displays have "become quasi-advertisements". There is, therefore, no basis for any suggestion that current arrangements for the storage and display of tobacco products should now be regarded as anything but still "perfectly satisfactory". In these circumstances, a ban on gantry displays would be an entirely disproportionate measure, not only to the recognised legitimate expectations of the retailers, but also to the legitimate expectations of the tobacco manufacturers and existing adult smokers. In addition, there is no reliable evidence that a product display ban will achieve the stated objective of reducing smoking amongst children and young people. Further, there is also no independent evidence which shows that sight of a display of tobacco packaging at the point of sale encourages people of any age to either start or to continue smoking.

Reflecting this fact, the New Zealand government rejected a proposal to ban the display of tobacco products earlier this year on the basis that "*there is no international evidence that it actually works.*"³ Similarly, when the Norwegian Department of Health and Care Services previously considered whether to introduce a display ban in Norway, it conceded "there is yet no scientific study published that definitely shows the impact that a ban against public display would have on the number of people who smoke."⁴

Furthermore, in the few countries and places where product displays have been banned there has been no significant impact on smoking prevalence. In Iceland and the relevant Canadian provinces, the display bans have not had any impact on established trends in prevalence and consumption.

Tobacco product displays are not predictors of youth smoking. Reflecting this fact, the UK Department of Health stated in its recent display ban consultation that the predictors of smoking are: age and sex, home environment, drug use and drinking alcohol, truancy and exclusion from school ("Consultation on the Future of Tobacco Control" paragraph 3.8). It rightly does not list retail displays of tobacco products as a factor.

Most young people's first experience of smoking is not consequent upon purchase by them of tobacco products from a retail outlet, but upon obtaining tobacco products from family or friends.

¹ The Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2004

² Explanatory Notes to Tobacco Advertising and Promotion Act 2002 Chapter 36, Section 8: Displays

³ Interview of the New Zealand Prime Minister aired on the Sunrise programme on 24 February 2009 (<http://www.3news.co.nz/Full-interview-with-John-Key/tabid/370/articledID/92515/cat/765/Default.aspx>)

⁴ Public hearing of a proposal on a ban against visible display of tobacco products at points of sale, as well as certain other changes to the Tobacco Damage Act and the Advertising Regulation. Norwegian Ministry of Health and Care Services, March 2007.

Further, when Saskatchewan banned retail display of tobacco products in March 2002, in the first subsequent 18 months' period youth smoking prevalence there increased from 27% to 29%, whilst, during the same period, youth smoking rates declined from 22.5% to 22% in the rest of Canada.⁵

In studies undertaken on relapse, the sight of tobacco packages in retail outlets is not cited as a reason why ex-smokers start smoking again (see eg Wetter et al⁶).

Smokers purchase cigarettes in a consciously planned and regular manner – the exact opposite of an impulse purchase. The majority of smokers have pre-selected their brand before entering a shop. Sometimes, they make a different brand selection when in front of the display, particularly if their pre-selected brand is not available.

Given the already severe restrictions on consumer communications, tobacco displays are the only means by which tobacco companies can present their existing or new products and brands to smokers and thereby compete with one another. When supply of a tobacco brand is interrupted as a result of retailers running out of stock, or for other reasons, adult smokers rely on tobacco displays to enable them to scan swiftly what is available and to make a purchasing choice. Tobacco displays are critical to effective competition. The importance of product displays to the viability of competition between manufacturers and to the proper functioning of the market must not be under-estimated, particularly when there are virtually no other opportunities to inform the smoker about the products. The fact that display is such a focal point for competition, however, makes it a matter on which the TMA is unable to say more. That must be left to the responses of individual manufacturers to the Call for Evidence.

Tobacco displays also allow retailers quickly to identify stock and to provide fast and efficient customer service. Importantly, it also provides a secure place for tobacco products and greatly eases the vital task of efficient stock control. It also allows existing adult smokers easily to see which tobacco products are available and in stock. If smokers are unable readily to see at the point of sale what brands retailers have in stock, they could be increasingly inclined to obtain their supplies from illegal street vendors and car boot sales where smuggled tobacco products are openly displayed.

S6 Prohibition of vending machines for the sale of tobacco products.

The TMA's position on sales by vending machines is unequivocal: the under-aged should not have access to tobacco products. Access to cigarette vending machines should therefore be strictly controlled. At the same time, legitimate access to the machines should not be denied to adult smokers. In the same way as we support the requirement for age verification at the point of sale for tobacco retail in shops, so this rationale should be applied to vending machines. Thus, means must be provided, beyond a code on the siting of machines and human supervision, which effectively controls access to the use of a machine.

We therefore acknowledge that access control measures must be implemented more rigorously but that is not the same as an outright ban. The former approach is that being taken for England, Wales and Northern Ireland under the auspices of the Health Bill currently

⁵ Statistics Canada. Canadian Tobacco Use Monitoring Survey 2003: Summary of Results for Wave 1 (February to June) of 2003, May 2005.

⁶ D. Wetter et al "Late relapse/sustained abstinence among former smokers: a longitudinal study" Preventive Medicine 2004 39: 1156-1163

before Parliament in Westminster. We cannot see why the same logic should not apply in Scotland also.

S7 Register of tobacco retailers

and

S12 Tobacco retailing banning orders

Earlier this year, the UK Parliament agreed two Acts that together will provide for a negative licensing system for tobacco retailers to be introduced - the Criminal Justice and Immigration Act (CJIA) the Regulatory Enforcement and Sanctions Act (RESA). However, the territorial extent of the Acts differs and also varies as between particular sections. For example, the CJIA applies to England and Wales, and some of its provisions also apply to Scotland and Northern Ireland. However, the negative licensing provisions that it contains in respect of tobacco retailers do not apply to Scotland or Northern Ireland. They could however be applied by the making of legislation by the Parliament and Assembly that amends Children and Young Persons legislation.

As is evident in the Tobacco and Primary Medical Services (Scotland) Bill however, the Scottish Government has proposed a hybrid approach that is neither a negative nor a positive licensing scheme. As the legislative framework already exists by virtue of CJIA and RESA, the provisions of which could be adopted for application in Scotland, it is questionable as to why a different regime is proposed for Scotland. It is the view of the TMA that a negative licensing scheme would operate most efficiently in curbing the activities of those retailers who persistently make under age sales of tobacco products and therefore the registration of retailers is an unnecessary move that will serve only to impose further bureaucracy on the hard pressed retail sector.

As the opportunity to present our views is limited here to the requested four pages, the TMA would welcome an invitation from the Health and Sport Committee to appear before the committee to present further evidence and take questions from the members.

Finally, the Committee is invited to note and also to address the issue as to whether the Scottish Parliament has competence under the Scotland Act to legislate a display and vending machine ban. Such matters would appear to be primarily concerned with consumer protection and business practices which are reserved to Westminster.

Yours sincerely,
Christopher Ogden

CHD Ogden
Chief Executive