



**Isle of Man
Government**

Reiltys Ellan Vannin



Public Health (Tobacco)(Amendment) Bill Report on Public Consultation

Department of Health and Social Care
Slaynt as Kiarail y Theay

March 2015

1. Foreword by the Minister for Health and Social Care



Thank you to everyone who responded to the consultation. Your contributions are valued and will be taken into consideration.

Thank you.

A handwritten signature in black ink that reads "Howard Quayle". The signature is written in a cursive style with a long horizontal line underneath.

Hon. Howard Quayle MHK

Minister for Health and Social Care

The public consultation on the Public Health (Tobacco) (Amendment) Bill has now finished and I am pleased to now be able to publish the results.

I am delighted to note that there seems to be overwhelming support for the new measures which are being proposed, and officers of the Department of Health and Social Care will now proceed with the preparation of a final version of the Bill for consideration by the branches of Tynwald.

2. Background

The purpose of this consultation was to invite comments on the proposed provisions of the Public Health (Tobacco) (Amendment) Bill.

The Isle of Man Tobacco Strategy states that everything possible should be done to prevent young people from easily accessing cigarettes, and one of the key policy drivers of the Public Health (Tobacco) Act 2006 ("the Act") was to reduce the visibility of tobacco products.

The Department of Health and Social Care ("DHSC") has recognised the success of the Act in reducing the use of tobacco products on the Island and, as a consequence, in reducing the burden of ill-health. However, it is apparent that more needs to be done to shield people, and particularly young people, from the influence of tobacco product promotion in order to achieve a further reduction in the numbers taking up smoking, and to provide a public health incentive to existing consumers to further reduce their consumption.

There is good evidence that tobacco advertisements and 'cool, fun and attractive' displays do influence young people to take up smoking, and studies have shown that impulse buying of tobacco products as a result of seeing a display remains high, especially amongst young people.

There is international concern that under-aged sales of tobacco products are increasingly being made from 'self-service' vending machines. These are often not directly supervised with no routine age checks prior to purchase. The DHSC has noted that the current regulation of tobacco retailers has not directly affected the sale of tobacco products from vending machines on the Island.

Additional controls have already been established in English and Scottish primary legislation to further restrict tobacco advertising (including online) and displays, and to ban tobacco vending machines. The

DHSC was of the view that similar controls might be appropriate for the Isle of Man.

At about the same time as the DHSC was considering these new controls, more evidence about the risks of exposure to second hand smoke was coming to light. In particular, it was further highlighted that children are particularly vulnerable to the effects of second-hand smoke with an increased risk of sudden infant death syndrome, glue ear, asthma and other respiratory diseases.

It was noted that, although the Act already banned smoking in certain premises (including pubs) and in vehicles used for work, there were no restrictions in other vehicles, even though research has found that second-hand smoke concentrations in vehicles are often greater than in other restricted areas such as pubs.

In October 2012 the DHSC held a comprehensive public consultation exercise on both the proposed advertising/display controls and some ideas around extending smoking bans, particularly relating to children.

The consultation received 420 responses and the DHSC was pleased to note that the additional controls and a proposal that smoking in cars should be banned when children were present were mostly supported by the general public.

A response to that consultation was published in February 2013 and can be found at:

<http://www.gov.im/lib/docs/dhsc/Consultations/summaryofresponses.pdf>

2. Background contd.

Subsequently the Bill was drafted to amend the Act to:

- Introduce further controls on tobacco advertising;
- Ban tobacco displays, and
- Ban the sale of tobacco products from vending machines.

The Act already includes provision for secondary legislation (regulations) to be made by the Department of Environment, Food and Agriculture ('DEFA') to ban smoking in cars so there is no need to add anything into the Bill to ban smoking in cars when children are present.

However, at the request of DEFA and the Department of Home Affairs (whose officers would largely be responsible for enforcing the regulations) amendments have also been included in the Bill to facilitate the introduction of fixed penalty notices for all offences relating to smoking. This is aimed at reducing the cost of enforcement and to increase the likelihood of enforcement action.

This provision will, in due course, be attributed to the new offence of smoking in cars when children are present when DEFA have progressed the relevant regulations.

3. Summary of Responses

This consultation was publicised by way of a press release to the local media and emails and/or letters to the following persons and organisations

- Tynwald Members
- Attorney General
- Chief Officers of Government Departments Statutory Boards and Offices
- Local Authorities
- Isle of Man Chamber of Commerce
- Isle of Man Trades Union Council
- Isle of Man Law Society
- Positive Action Group
- Relevant Professional Bodies
- Health Services Consultative Committee
- Council of Voluntary Organisations
- Relevant stakeholders (businesses, third sector organisations, etc.)

Almost 300 letters or emails were sent out. 19 responses to the consultation were received.

Positive responses included:

"As I work on the front line offering people support to quit smoking I am in favour of anything that will help people do this and encourage them to quit."

"...the Council supports the proposals contained therein as being beneficial to public health."

"I am strongly in favour of all the amendments proposed. I am frankly shocked that we still have unmanned tobacco vending machines on the island!"

"...I welcome anything which reduces the exposure of children to smoke, helps people to quit smoking and reduces the numbers of people starting smoking in the first place."

In addition, there were some general comments supporting the Bill and even

suggesting that it should be extended even further.

Some local Commissioners responded to confirm that they could not be commenting on the Bill.

Negative comments included

"One Member of the Committee expressed dissent on the grounds that the Bill is over-restrictive,"

"The majority of the non smoking legislation comes from "Non Smokers". Let's play on a level playing field and not have some sports jock taking away a person's right to smoke."

"...we believe it to be more unnecessary nannyng by the state and a waste of time and effort when the island has much more pressing concerns."

Representations were received from some international tobacco companies. These were generally against the proposals, arguing that the additional controls were unreasonable, disproportionate and the evidence did not prove that the additional measures would be effective. They also argued that concealing tobacco products took away consumer freedom of choice, was anti-competitive in the tobacco market and would encourage illicit trade.

Comments were also received from some local retailers who sell tobacco products. They raised the issue of the additional costs to businesses and requested 'a reasonable timeframe to carry out refurbishment'. The Department has previously stated that there would be no additional lead in time beyond the Bill receiving Royal Assent as the law here would be much the same as is already in place in the UK. However, the retailers felt that they needed more time to consider the further detail which was to be included in secondary legislation and to arrange for the purchase of new display cabinets, staff training etc.

4. Comments received outside Scope of Consultation

Banning smoking in cars when children are present

Some comments were received regarding banning smoking in cars even though the Bill itself does not include provision for this. These comments will be passed to DEFA for consideration as part of the process of drafting the regulations for this in due course.

One responder observed that

"...some of the proposals may be unenforceable...there is no point in making provisions that either cannot or will not be enforced."

The Department would argue that the majority of the population are law-abiding citizens so the law will be self-enforcing. Similar concerns were raised about introducing smokefree legislation in workplaces and pubs and that has largely been self-enforcing.

Electronic cigarettes

Two responders commented on the fact that the Bill does not include anything about e-cigarettes. One responder felt that the legislation should be extended to include e-cigarettes and the other asked the Department to consider the value of e-cigarettes in harm reduction for those who are unwilling or unable to quit.

Reference is not included in the Bill to e-cigarettes as, firstly, they are not a tobacco product so would be unlikely to be controlled under tobacco legislation, and, secondly, consideration is still being given to the available evidence in this area prior to a policy being determined.

Plain packaging of cigarettes

One retailer raised questions about the need for tobacco display bans given further developments which were anticipated in the UK around plain packaging of cigarettes.

They argued that plain packaging would make the additional introduction of a tobacco display ban unnecessary.

No reference is included in the Bill to plain packaging for tobacco products as it is unclear as to when/if the United Kingdom will be progressing legislation in this area. The majority of tobacco products are imported from the UK and all cigarettes imported or brought into the Island for sale have to bear the required "fiscal marking" under customs and excise law, showing that they are duty-paid.

The Department believes that even if plain packaging is introduced in the UK, this does not negate all the reasons for banning point of sale displays. Although there would not be specific advertising or promotion on each packet, large displays still normalise tobacco use for children, and create a perception that tobacco is easily obtainable. Tobacco displays can still be made eye-catching with lighting, towers, specific shelving etc. which draw attention, stimulate sales, and can be a trigger for impulse buying when people are trying to quit.

The information in this booklet can be provided in large print or audio format upon request.

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