Proposed Tobacco Sales Licensing (Scotland) Bill
A Consultation

Smoking and the Bandits
tackling rogue traders and under-age tobacco sales

Supported by:
Action on Smoking and Health Scotland
British Medical Association Scotland
British Heart Foundation Scotland
Cancer Research UK

Christine Grahame MSP
November 2007
“More than any other single thing, the cigarette has blighted the health and shortened the lives of people in Scotland for over a century. Tobacco is now known to be a highly addictive substance that seriously damages the health of both smokers and people exposed to tobacco smoke. If the health of people in Scotland is to be improved and inequalities reduced, smoking prevention must be a top priority.”

Towards a future without tobacco

“Scotland’s smoke-free legislation has been essential in helping to change people’s attitudes towards smoking and it has clearly underlined the dangers associated with smoking. I would hope that, along with better awareness and education of the health risks, strict enforcement of age restrictions and raising the purchase age to 18, young people will be encouraged to choose not to start a habit that is highly addictive and deadly”

Smoking ban a success one year on, but still a long way to go to reduce smoking in Scotland, says BMA
British Medical Association press release, 26th March 2007
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Foreword

Smoking is Scotland’s biggest preventable killer. Every year 13,500 people in this country die due to smoking and thousands of others are affected by a range of tobacco related illnesses.

Evidence shows the younger you start smoking, the more you smoke in adulthood, the more harm is done to your health, and the harder it is to quit. A child who starts smoking at age 14 or younger is five times more likely to die of lung cancer than someone who starts smoking at age 24 or older, and no less than fifteen times more likely to die of lung cancer than someone who has never smoked. So it is no wonder that there was cross party support to raise the minimum purchase age for tobacco from 16 to 18 and bring it into line with alcohol.

Tobacco is age restricted because it is recognised as a dangerous and harmful product. Yet unlike alcohol, which can be consumed safely and not cause harm to oneself or to others if treated properly and taken in moderation, tobacco is a product that damages the health of the smoker and, through second-hand smoke, those around the smoker. Yet tobacco can be bought and sold easily. Unlike alcohol, there are no restrictions on who can sell tobacco. There is no licensing system ensuring that anyone who sells tobacco is aware of the responsibilities that come with selling this item and there is no effective deterrent for retailers who consistently sell cigarettes to those who are under-age.

This to me is wrong, which is why I want to introduce a positive licensing scheme for the sale of tobacco. I don’t want to stop smokers getting cigarettes, but I do want the law to be properly upheld and enforced – and currently it is not. 82% of 15 year old and 47% of 13 year old smokers regularly buy their cigarettes from shops. Just recently in Glasgow, trading standards officials carried out test purchases in 38 stores, including corner shops and supermarkets, and found that 12 of them sold tobacco to children. The age change may make it more difficult for young people to buy cigarettes but if retailers are already selling to under-age youngsters, do we really think this will change whilst there are no real deterrents and penalties?

There is international evidence that age restriction laws can lead to a significant decline in the numbers of retailers selling cigarettes to those under-age but only if the law is properly and fully implemented. Licences which can be suspended or revoked alongside a system of fixed penalty notices will be an effective enforcement tool for the local authority officers who currently
tackle those who break the law. Currently the sanction for selling tobacco to people under-age is prosecution through the courts and a fine. It is a lengthy and costly system which has resulted in only 17 people being subject to court proceedings in the last six years and fines being on average just £188 from a possible maximum of £2500. This level of enforcement will scarcely act as much of a deterrent to those selling cigarettes to children.

However as we can see from both research into where youngsters get their cigarettes and the recent experience of Glasgow, the problem is much more widespread, so I want to let our busy courts deal with other matters and enforcement of breaches of licences to be processed at a local level using the simpler, cheaper, and more effective tools of fixed fines and the suspension or withdrawal of licences. I also foresee that rogue traders would be deterred by the threat of having their right to sell tobacco suspended or revoked for breaches of their licence conditions.

But let me be clear: I will ensure that retailers will not face unnecessary costs or bureaucracy; I want this system to be as cheap and easy to administer as possible. In our current age of technology there is no reason why licences cannot be applied for online and it should take no longer to do than it currently does to gain an alcohol licence. I hope that retailers will recognise that it will be in their best interests. If rogue traders who sell tobacco to under-age people lose their right to sell cigarettes, then those who continually uphold the law will be better protected.

A licensing system also means equality amongst those who sell tobacco. Because the licence will be issued to the retailer and not the retail outlet, sites that have vending machines and mobile stores, as well as shops, garages, or supermarkets, will also be regulated. There will be a register of licensees, so when local authorities carry out their enforcement or awareness activities, they will be able to visit all those retailers licensed to sell tobacco, wherever their premises.

The minimum purchase age for tobacco has been increased, but without the additional enforcement to back it up. The time is right to take a positive step in enforcing these laws. The time is right for a tobacco licensing system.

I hope you will support a licensing scheme for the sale of tobacco and I look forward to receiving your responses.

Christine Grahame MSP
November 2007
Statements by supporting organisations

**Action on Smoking and Health Scotland**
ASH Scotland is the leading voluntary organisation campaigning for effective measures to protect people from the harmful effects of tobacco.

The sale of alcohol is licensed as a measure to protect public health and keep children from harm. Whilst tobacco kills 13,500 Scots each year, and whilst evidence shows the younger you start smoking, the more harm is done to your health and the harder it is to quit, it is obvious tobacco is also a major public health issue and should also be subject to licensing regulations.

A tobacco licensing scheme could be used as both an active deterrent and to penalise persistent offenders. Retailers who consistently sell cigarettes to anyone under age could face having their licence suspended and ultimately revoked for repeated violation. Licensing would also be cheaper and quicker than the current costly court system which led to only eleven court prosecutions in 2006/07.

Teenage smoking remains an issue for Scotland with 18% of 15 year old girls and 12% of 15 year old boys being regular smokers. That along with the fact 82% of those smokers buy their cigarettes from shops shows that enforcement of the age restriction laws are much needed and our local authority enforcement officers need to be given the tools to tackle retailers who continue to flout the law. A positive tobacco licensing scheme is necessary for Scotland and I congratulate Christine Grahame for bringing this issue to the attention of Scotland and the Scottish Parliament.

Maureen Moore OBE  
Chief Executive, ASH Scotland

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**Cancer Research UK**
Cancer Research UK is the world's largest independent organisation dedicated to cancer research, with a research spend of over £315 million in 2006/07.

Smoking causes one in four cancer deaths, and although there has been a steady decline in smoking rates over recent years, this has been heavily concentrated in older age groups. Smoking in young people in Scotland is a serious problem. In 2006, 12% of boys and 18% of girls were regular smokers at age 15. The younger children start smoking, the more likely they are to be smokers in adulthood.

Cancer Research UK congratulates Christine Grahame MSP for proposing legislation to introduce a licensing scheme for tobacco retailers to discourage them from selling tobacco to underage smokers.

Increasing the age of sale of tobacco will only have a meaningful impact if it is properly enforced and we therefore support the introduction of 'positive licensing'. This is because the threat of having a licence revoked could offer a powerful incentive to retailers to uphold the legislation. It would also provide a comprehensive list of tobacco retailers and allow better monitoring and communication with them. In contrast and based on experiences in various countries, a negative licensing system is a lot less powerful. Only a minority of retailers who have sold tobacco to under age people have ever been fined.

Scotland has made great progress in addressing its high smoking rates and was the first nation in the UK to go smokefree. However, there is much still to be done. By introducing positive licensing for tobacco sales we can demonstrate our commitment to further reducing smoking related harm. Cancer Research UK urges all stakeholders to support this proposal.

Jean King  
Director of Tobacco Control, Cancer Research UK
British Medical Association Scotland
The British Medical Association (BMA) is a trade union and professional association representing the interests of doctors from all branches of medicine throughout Scotland. With more than 13,000 members in Scotland, the BMA is the voice of the medical profession.

Smoking is the biggest preventable cause of ill health and death in Scotland. Every day doctors witness the devastation experienced by patients and their families as tobacco takes its toll on their health. The younger a person starts to smoke, the more difficult it is for them to give up, therefore we must do all we can to deter children from becoming addicted to tobacco at a young age.

The BMA welcomes the recent increase in the tobacco purchase age from 16 to 18. This is a key element for a multi-dimensional strategy to address Scotland’s smoking habit and reduce the death toll from tobacco.

Recent studies have reported that nearly half (47%) of 13 year olds and over three quarters (82%) of 15 year olds reported buying cigarettes from a shop. Without tough enforcement, the age increase will fail in its objective to restrict children’s access to tobacco. 93% of doctors surveyed by BMA Scotland called for retailers to be encouraged to stop selling to underage children by the introduction of a licence to sell cigarettes, which would be removed for persistent offenders.

BMA Scotland therefore welcomes Christine Grahame’s consultation for a member’s bill for a licensing scheme to sell tobacco in Scotland.

Dr Peter Terry
Chairman, BMA Scotland

British Heart Foundation Scotland
British Heart Foundation (BHF) Scotland is the nation’s heart charity, dedicated to saving lives through pioneering research, patient care, campaigning for change and by providing vital information.

Smoking is one of the most serious risk factors for heart disease. Estimates suggest that 18% of deaths from heart and circulatory disease in Scotland are due to smoking. Regular exposure to second hand smoke increases the risk of heart disease by around 25%, which is why the Smoking Health and Social Care (Scotland) Act has had our unequivocal support. The time is now right that we build on the tremendous success of that legislation and look for other opportunities to reduce exposure to smoking and tobacco products. Retailers who want to sell age restricted items like fireworks or alcohol need to apply for a licence and we feel the same rules must be made to apply for retailers who want to sell tobacco.

BHF Scotland congratulates Christine Grahame MSP for proposing legislation to tackle the important issue of a licensing scheme for tobacco retailers. We fully support a positive licensing scheme over any of the other options, for the following reasons:

• We suspect that requiring all retailers wishing to sell tobacco to obtain a licence will reduce the number of shops selling tobacco, in particular for those shops where tobacco constitutes a small proportion of sales, which do not make obtaining a licence worthwhile.
• We believe that the sanctions available under a positive licensing system would provide more of an incentive for retailers to adhere to the law.
• We do not consider that any administrative or financial burden on businesses should be of greater consideration than the interests of public health when making decisions about licensing.

We urge everyone with an interest in improving Scotland’s health to support this proposed legislation.

Ben McKendrick
BHF Scotland
Executive summary

On the 1st October this year, the Scottish Government increased the minimum age for the purchase of tobacco from 16 to 18 in line with the rest of Great Britain. While this move is to be welcomed, an age increase on its own is unlikely to do much to restrict the availability of cigarettes to the under-18s. Surveys show that when the minimum age was 16, children as young as 13 had little difficulty in gaining access to cigarettes, with many of them buying them from local shops.

If we are serious about tackling under age smoking, we must enable far greater enforcement of existing laws than is currently taking place. One way for this to happen is for us to introduce a system of licensing for tobacco sales.

Tobacco sales licensing schemes have been successfully introduced in a number of other countries, notably the United States, Singapore, Canada and Australia. Licensing schemes fall into one of two categories: positive and negative licensing. Under a positive licensing scheme, retailers are obliged to apply for and be granted a licence before they can legally sell tobacco. A negative scheme does not require a licence to be held, but as for positive licensing, the right to sell tobacco can be suspended or withdrawn if a retailer sells or supplies tobacco products to under-age customers. While negative licensing requires less administration and is therefore cheaper to operate, a positive licensing scheme sends a much more powerful message to the retailer and is likely to be far more effective in addressing under-age tobacco sales. Whichever model is adopted will deliver very significant long term financial savings.

Trials have shown that tobacco licensing, when backed up with active enforcement activity, can have a dramatic impact on retailer compliance with minimum purchase age laws. In one Australian state, enforcement of a positive licensing scheme led to compliance rates of 90%, considerably higher than had been the case before the licensing scheme was introduced.

This consultation paper is an important early stage in the development of a parliamentary bill that seeks to introduce a licensing system for tobacco sales in Scotland. We invite all those who may be affected by the proposed legislation and those with an interest in the issue to study and respond to this consultation. There are a number of questions, located throughout the text of the paper, that may help you formulate your response. We would be grateful if you could respond by Friday 15th February 2008 to the postal or email address given at the end of the next section.
Introduction

There has been considerable progress in recent years in tackling the harmful effects of smoking on Scotland’s health. Smoking cessation services have been established helping thousands of smokers to give up, the historic ban on smoking in public enclosed places came into force on the 26th March 2006, and on the 1st October 2007 the Scottish Government increased the legal age for the purchase of tobacco products from 16 to 18 in a move unanimously supported by the Scottish Parliament. These initiatives will help smokers to quit, protect the public from the harmful effects of second hand smoke, and help to prevent young people from becoming smokers in the first place.

The recent age increase to 18 brings tobacco into line with alcohol, recognising that tobacco is a harmful product and further restricting its availability. Yet while the age increase will prevent some children from buying cigarettes and tobacco, there is no evidence that an age increase alone will be fully effective in preventing sales to all under-18s. For that to happen, the law must be rigorously and effectively enforced. This proposed bill will enable effective enforcement to take place.

Since the Children and Young Persons (Scotland) Act was passed in 1937, it has been illegal to sell tobacco to anyone under the age of 16. But surveys have shown that large numbers of children continue to smoke, and that a significant proportion of them experience little or no difficulty in buying their own cigarettes. Merely raising the minimum purchase age to 18 is unlikely to change this situation.

Sales of alcohol are also restricted to the over-18s, but in this instance, outlets are legally obliged to apply for, and be issued with, a licence before they are permitted to sell alcohol. The stated policy objectives for licensing the sale of alcohol include protecting and improving public health and protecting children from harm.

The use of tobacco, like that of alcohol, brings with it not only health impacts for the user, but also wider negative societal impacts. In 2004, no less than one in four deaths – almost 13,500 in total – were attributable to smoking. So it can be argued that the policy objectives that justify the regulation of alcohol should also apply to the control of tobacco products, and that the regulation of tobacco sales, as part of an integrated package of measures including advice on smoking cessation, should be no less rigorous than that controlling the sale of alcohol.

Christine Grahame MSP proposes to introduce a bill in the Scottish Parliament to enable effective enforcement of the minimum age at which...
customers can be sold tobacco products. The bill proposal is worded as follows:

Proposal for a bill to introduce licensing of tobacco sales

It is hoped that this consultation paper will be distributed as widely as possible to those who will be affected by the proposed legislation. The consultation process is an important part of the bill’s development, and we welcome any comments that you may have on the issue. Questions that may help you to formulate your response are located throughout this consultation paper and repeated at the end. All responses that we receive will be closely studied, and will help us to formulate the bill to reflect the concerns and interests of as many groups and individuals as possible.

It is important that this consultation exercise is accessible to as many people as possible. If English is not your first language, please let us know, and we will do our best to put you in touch with someone who can supply you with a suitable translation.
Consultation responses

Please return any responses to Christine by Friday 15 February 2008. Responses can be sent electronically to:

christine.grahame.msp@scottish.parliament.uk

or by post or fax to:

Christine Grahame MSP
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Scottish Parliament
Edinburgh EH99 1SP

Tel 0131 348 5729
Fax 0131 348 5954

Further copies of this consultation paper are available from the above address. It can also be downloaded from the Scottish Parliament website at:

http://www.scottish.parliament.uk/s3/bills/MembersBills/index.htm

To help inform debate on the matters covered by this paper and in the interests of openness it is intended all the responses submitted on this consultation document will be made public. You should therefore be aware that by submitting this response you are indicating consent to the publication of all the material contained in your response. Unless you indicate otherwise this will include your name and address and any other biographical information you have provided about yourself. You should note that personal data referring to third parties included in the response cannot be accepted without explicit written consent from the third party. This consent should be provided with your response.

Christine Grahame is not entitled to process your personal data by publication without your consent. If therefore you want parts of your response to remain confidential please indicate which parts are not for publication. Similarly, if you wish all of the contents of your response to be treated in confidence and not made public then please indicate so.

All responses will be included in any summary or statistical analysis, which will not identify individual responses.

In order to gather the views of those who may be affected by this proposal, Christine wishes to consult as widely as possible. She would be grateful if you could pass this document on to any other interested parties of whom you may be aware.
Background

A survey conducted in 2006 showed that around 15% of 15 year olds are regular smokers; any measures to reduce the numbers of under-age smokers will lead to lower numbers of adult smokers in the future and correspondingly lower rates of smoking-related diseases including cancers and heart disease. This in turn will result in very significant social benefits, improvements in general quality of life, as well as greatly reduced healthcare costs. It seems likely that the financial costs of introducing and implementing greater regulation of tobacco sales will be considerably outweighed by the long-term financial benefits.

Smoking has long been recognised as the biggest single preventable cause of ill-health and premature death in Scotland, accounting for almost 13,500 deaths every year. We know that it is linked to diseases of the heart and blood vessels, the lungs, stomach, kidneys and other organs. As a result, it has been estimated that in 1999, the NHS in Scotland spent up to £140 million every year on treating smoking-related disease. At current prices this amounts to well over £200 million. Among men in 2004, 40% of all cancer deaths and 91% of lung cancer deaths were attributable to smoking. For women, the figures were 29% and 88% respectively. For men and women aged between 35 and 69, 22 years of life were lost on average per death from smoking.

Smoking clearly represents an enormous public health challenge for Scotland. Conversely, introducing a regulatory framework to control retail sales of tobacco represents an equally enormous opportunity, and it is in order to maximise the health, financial and social benefits to Scotland that this bill is proposed.

A Breath of Fresh Air for Scotland, published by the Scottish Executive in 2004, contained a smoking action plan with the following three main aims:

- to help as many smokers as possible to stop smoking if they wish to
- to protect the public from the effects of second-hand smoke
- to prevent as many people as possible from starting to smoke.

Since the publication of that report considerable progress has been made on the first two of these objectives. Scotland now has a nationwide network of smoking cessation services that has helped thousands of smokers to quit their habit. In addition, nicotine replacement therapy (NRT) is available free on prescription for those who need it. NRT can also be bought over the counter at pharmacies.
Protection for the public from the effects of second-hand smoke was delivered by the banning of smoking in enclosed public spaces, introduced as part of the Smoking, Health and Social Care (Scotland) Act 2005. Commentators – many of whom were initially sceptical about the ban – have been fulsome in their praise; a leader in The Scotsman on the first anniversary of the ban stated that:

“…a year on, the absence of smoking in public has become not just normal, but common sense. We are more tempted to ask: ‘Why was smoking not banned before?’ than to reminisce about a lost past.” 11

At the same time, Jack McConnell, First Minister of Scotland between 2001 and 2007, described the legislation as “one of the greatest achievements of devolution” 12.

Dr Peter Terry, Chairman of BMA Scotland, also welcomed the ban while pointing out that more work remained to be done:

“Scotland’s smoke-free legislation has been essential in helping to change people’s attitudes towards smoking and it has clearly underlined the dangers associated with smoking. I would hope that, along with better awareness and education of the health risks, strict enforcement of age restrictions and raising the purchase age to 18, young people will be encouraged to choose not to start a habit that is highly addictive and deadly.” 13

The third aim outlined in A Breath of Fresh Air for Scotland, to prevent as many people as possible from starting to smoke, is partly being addressed by the Scottish Government’s raising of the minimum purchase age for tobacco from 16 to 18 on the 1st October 2007. This event coincides with similar age increases being implemented in England and Wales.

**Smoking among children and young people**

There are many factors involved in a child’s or young person’s decision to smoke. Social and cultural pressures, issues relating to self image, the behaviour of families, friends and peers as well as the highly addictive nature of nicotine are all key factors. Children and young people may start smoking out of a sense of defiance, or to assert their growing independence. 14 Among young women, concern over body weight can be a significant risk factor for smoking. 15 However, easy access to cigarettes is also important. 16 Tackling this availability by raising the age at which young people can buy cigarettes and tobacco is a welcome step in the right direction.

| Almost half of 13 year old smokers, and over 80% of 15 year olds bought their own cigarettes. |

There is, however, no evidence that simply increasing the age at which tobacco products can legally be purchased is effective in tackling smoking
among children and young people. The Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) National Report for 2006 outlines the levels of smoking activity among 13 and 15 year olds of both genders: 4% of 13-year olds are classified as “regular smokers” (defined as smoking one cigarette or more per week), while by age 15 this has risen to 15%. Girls in both age groups are more likely than boys to be regular smokers. (See table 1 in the appendix.)

Surveys have demonstrated that children as young as 13 had very little difficulty in buying cigarettes, particularly from small shops and newsagents. Almost half of 13 year old smokers, and over 80% of 15 year olds bought their own cigarettes, particularly from newsagents and sweet shops. (See table 2 in the appendix.) The 16 year age limit, therefore, was widely disregarded, and it is likely that an increase in the legal smoking age to 18 will be scarcely more effective without additional enforcement measures. The potential benefits of raising the age of purchase, such as reduced uptake of smoking among young people, reduced numbers of cigarettes smoked by regular under-age smokers, increased smoking cessation among young smokers and easier refusal of sales by retailers, outweigh concerns that making tobacco a purely “adult” product could actually increase its attraction for children and young people under the age of 18.17

Tables 3 and 4 in the appendix show the ages at which regular smokers took up the habit. Data from the General Household Survey of 2005 shows that around 40% of regular male smokers have consistently begun smoking before the age of 16, with this percentage rising to around 68% by the age of 18. Only around 15% wait until they are over the age of 20 to commence smoking. While the data for males has been very consistent, the data for regular female smokers shows that an ever larger proportion of them have begun smoking at an early age. In 1992, the percentage of regular female smokers beginning before the age of 16 was 28%; by 2005 this had risen to 38%. The proportion waiting until they were 20 to begin smoking fell from 25% to 19% over the same period.

Table 4 (also adapted from the General Household Survey) shows that there is a clear link between age of starting smoking and cigarette consumption for both male and female regular smokers. Over half of regular male smokers consuming 20 cigarettes or more per day began their habit before 16, but only one third of those smoking less than 10 a day began at this early age.

It is clear that early smoking commencement is linked both with continued smoking into adulthood, and with greater consumption of tobacco. There is also evidence that the earlier smokers take up the habit, the worse the long term health risks become: a child who starts smoking at age 14 or younger is five times more likely to die of lung cancer than someone who starts smoking at age 24 or older.

A child who starts smoking at age 14 or younger is five times more likely to die of lung cancer than someone who starts smoking at age 24 or older.
who starts smoking at age 14 or younger is five times more likely to die of lung cancer than someone who starts smoking at age 24 or older, and no less than fifteen times more likely to die of lung cancer than someone who never smokes.\textsuperscript{18}

It follows that preventing young people from smoking until they are 18 would therefore ultimately lead to lower numbers of adults smoking, with lower cigarette consumption per smoker, and with dramatically reduced negative health consequences.

But while any increase in the legal age of smoking is to be welcomed, it must be accompanied by rigorous enforcement if it is to be effective. Enforcement activity by Scottish trading standard officers was hampered by the guidance of the Lord Advocate restricting the use of child test purchasers’ testimony in court. As a consequence of this approach very few prosecutions were brought. The Scottish Government, answering a written parliamentary question tabled by Christine Grahame, revealed that there was one prosecution in 2001-02, three prosecutions in 2003-04 and two prosecutions in 2005-06. Since the decision of the Lord Advocate to allow the use of young people’s evidence in prosecutions, the rate of court action has risen significantly: in 2006-07 eleven people were subject to court proceedings in respect of illegal sales of tobacco. However, in a country where 15\% of 15 year olds are regular smokers and over 80\% of them report buying their own cigarettes, eleven prosecutions in one year cannot represent rigorous enforcement. (See Appendix for full text of the question and answer.)

There is overwhelming support for increased enforcement among the medical community; a survey of doctors in Scotland revealed that:

- 96\% said that enforcing age restriction for the purchase of cigarettes was important to tackle teen smoking rates
- 93\% endorsed the introduction of a licence to sell cigarettes so that those who continue to sell cigarettes to under-age children would lose their licence.\textsuperscript{19}

Question 1: What concerns, if any, do you have about the enforcement of the minimum age limit for the purchase of tobacco?

The economic justification for increased regulation of tobacco sales
The tobacco industry has engineered and marketed a highly addictive substance very effectively, and most smokers begin when they are teenagers. The prevalence of smoking in our society should be laid at the door of tobacco companies, but the costs are borne by all. This section
examines the costs of smoking to society and therefore the justification for government intervention. It does not seek to lay the blame for this on smokers.

Conventional economic theory dictates that market forces are the best way to allocate resources, and that government intervention is only justified where there is clear evidence of market failure. In a properly functioning market, consumers have perfect information, and internalise all their costs and benefits.

However, in the case of tobacco consumption, particularly among children and young people, neither of these conditions hold true.

Young smokers often underestimate the health risks of their smoking habit: a survey in the United States found that almost half of 13 year old smokers believed that smoking 20 cigarettes a day would not cause them great harm. Furthermore, even teenagers who do understand the theoretical risks of smoking frequently lack the foresight to use this information wisely. It is difficult for a 15 year old to imagine being 30, let alone 55. It is unsurprising therefore that warnings about the health impacts of smoking in later life so often fail to prevent children from smoking, particularly when weighed against the perceived – and much more immediate – attractions of smoking.

Children and young people rarely have full knowledge of the long term health implications of tobacco use, often leading them to make the ill-informed decision to commence smoking. This, combined with the highly addictive nature of nicotine, leads to too many children becoming addicted and then continuing smoking into adulthood.

Many of the costs associated with tobacco use are not experienced purely by the smoker, but are passed on to those around them and onto society as a whole. These external costs caused by the use of tobacco can be divided into three main types:

- the direct physical cost for other people who are exposed to environmental tobacco smoke
- the financial externalities that cause monetary loss to others, whether or not they are exposed to environmental tobacco smoke (these include the financial costs imposed by smoking on the health service)
- the emotional costs suffered by other people from the suffering, illness and early death of tobacco users, who may or may not be related to them personally.

These external costs, particularly the caring impacts mentioned in the third bullet point, are not easy to assess accurately. But it is clear that not all the
costs of smoking are restricted to smokers themselves, and combined with the inadequate access to information discussed above, this provides ample economic justification for government intervention in the tobacco market.
Licensing schemes
There are a number of activities and products for which a minimum age limit has been set by law. These include gambling, the purchase of alcohol, tobacco, knives and fireworks, and the supply of certain age-restricted videos and computer games. Alcohol and gambling are further regulated by licensing schemes in order to minimise the potential social harm caused by these activities. Gambling and the consumption of alcohol can both be enjoyed in moderation with minimal negative long term consequences. But because of the health and social costs caused by the minority of individuals who gamble and drink to excess, gambling and the sale of alcohol are subject to licensing systems. But the sale of tobacco remains almost totally free from regulation, despite there being no safe level of consumption. Cigarettes are the only product that will prematurely kill one in two users when used as intended. Given the harm caused by smoking tobacco, it is hard to justify a weaker regulatory regime than the one governing sales of alcohol.

The primary policy objectives of any future licensing system would be to facilitate the provision of:

- appropriate knowledge/information to enforcement officials to enable them to adequately enforce the laws regulating tobacco sales
- appropriate and adequate information to retailers regarding their obligations and
- efficient and effective sanctions for use against retailers who contravene relevant tobacco point of sale laws.

There are two main forms of licensing system: negative and positive.

Positive licensing
A positive licensing system requires that all retailers who wish to sell tobacco make a formal application for a licence, analogous to the system currently in place for the sale of alcohol. Such a system actively links compliance with tobacco control legislation with the right to sell tobacco products. Should a retailer be shown to be selling tobacco to under-age customers, this licence can be withdrawn, either permanently or for a finite period of time.

The advantages of a positive licensing system are that it:

- provides an opportunity for targeted education and information for retailers through the licence application process and through the provision of a comprehensive record of all tobacco retailers
- is consistent with the message that selling tobacco – a dangerous product – is similar to other activities that carry a potential health risk in that it is a conditional privilege rather than an unconditional right
- provides the possibility of administrative enforcement options, such as licence conditions or licence withdrawal, that are less costly than legal action through the courts
ensures that those who sell tobacco products are aware of their legal responsibilities and, through the offence of selling tobacco products without a licence, deters unscrupulous sellers.

Disadvantages of a positive system are that it:

- imposes administrative costs on governments (although such costs may be recovered by charging retailers for licence applications and renewals and through fines)
- imposes an administrative cost to businesses in the retail sector and
- imposes a licence fee on businesses. 29

**Question 2: What are your views on the effectiveness of a positive licensing scheme, i.e. a scheme requiring all outlets to apply for and receive a licence before tobacco products could be sold?**

**Negative licensing**

A negative licensing system enables anyone to sell tobacco without having to actively apply for a licence. An outlet that has been shown to sell tobacco to under-age customers can be subject to a prohibition order preventing them from selling tobacco, either temporarily or permanently. They are therefore free to sell tobacco until or unless they are shown to have flouted the age restriction and sanctions are applied.

The advantages of a negative licensing system are:

- there are no fees or compliance costs for businesses
- it provides some level of deterrence for legislative breaches and
- there is little administration, leading to lower costs for local authorities.

The disadvantages of a negative system include:

- it is not pro-active and prevention oriented, but responds to breaches in legislation after they occur
- it does not provide a comprehensive record of all tobacco retailers, reducing the ability of health authorities to undertake targeted education and information campaigns
- it does not provide members of the public with information about who is responsible for the sale of tobacco products (i.e. there is no licence on display)
- it may provide only a weak message to retailers; if the penalty for non-compliance with the law is the “loss” of a licence that was never issued in the first place, the view may perpetuate that selling tobacco is a right and not a privilege.
Question 3: What are your views on the effectiveness of a negative licensing scheme, i.e. a scheme whereby any outlet is entitled to sell tobacco without a licence and sanctions are only applied once a breach of the law has occurred?

In short then, the advantages of a positive licensing scheme are chiefly related to the greater effectiveness of such a system, while the advantages of a negative scheme are almost all cost related.

Question 4: Do you have a preference for either a positive or a negative licensing scheme?

The Scottish Government, in line with the UK Government, increased the minimum purchase age for tobacco from 16 to 18 on the 1st October 2007. While this brings the age restrictions on the purchase of tobacco in line with those for alcohol, there remains a wide gulf between the overall regulatory framework governing sale of the two products. Outlets selling alcohol must apply for and be granted a licence, while currently the only formal obligation on shops and other retail outlets selling tobacco products is that a statement on the illegality of sale of tobacco to the under-16s must be prominently displayed at the point of sale.

There is, however, an emerging consensus that the age increase must be backed up by effective enforcement if it is to have much impact on under-age smoking rates. When Shona Robison, the Health Minister, gave evidence to the Scottish Parliament’s Health and Sport Committee on the 12th of September 2007 she spoke of the need for:

“more vigilance among retailers to avoid illegal sales and more effective enforcement of the law by trading standards.”

There was widespread cross party support for this position among the committee members, who unanimously recommended that the Smoking, Health and Social Care (Scotland) Act 2005 (Variation of Age Limit for Sale of Tobacco etc and Consequential Modifications) Order 2007 be approved. The Order was unanimously approved by a plenary session of the Parliament the following day.

Evidence from other parts of the world that have introduced various forms of tobacco sales licensing show that any such regulation must be backed up by rigorous and regular enforcement activity if it is to be effective. A positive licensing scheme introduced in Tasmania in 1997 was followed by a wide range of compliance rates dependent on the level of enforcement activity that was carried out. A number of surveys carried out between 1998 and 2002 show...
showed compliance rates varying from 22% to 52%. But a similar survey carried out in 2004 after an increase in the level of enforcement showed that compliance rates had increased to 95%.\textsuperscript{32} Compliance rates subsequently fell back to 74%, reflecting a drop in enforcement activity.\textsuperscript{33}

Any increase in the enforcement activities of trading standards officers will have to be funded; as the very significant financial benefits of lower teenage smoking will be enjoyed by the centrally-funded National Health Service, it can be argued that the costs of increased enforcement should also be funded centrally (see the section on financial implications below).

**Current and recent legislation**

The minimum age for the purchase of tobacco products in Scotland was set at 16 in the Children and Young Persons (Scotland) Act of 1937\textsuperscript{34}; this was modified by the Children and Young Persons (Protection from Tobacco) Act 1991\textsuperscript{35} although the age limit was not changed. The Smoking, Health and Social Care (Scotland) Act 2005\textsuperscript{36} contained a provision enabling Scottish Ministers to further modify the 1937 act by increasing the age limit as they see appropriate following a period of due consultation.

On the 1\textsuperscript{st} of October 2007, the Scottish Government took advantage of these powers\textsuperscript{37} and increased the minimum age for the purchase of tobacco in Scotland to 18, in line with similar age increases taking place across much of the rest of Great Britain.

With regard to licensing schemes for tobacco, the Scottish Government has yet to respond to the report of the Smoking Prevention Working Group, *A Breath of Fresh Air for Scotland*, which recommended that a negative licensing scheme be introduced. A response is expected by Spring 2008.

**Tobacco licensing around the world**

Tobacco licensing schemes have been introduced in a number of different countries and regions around the world. This section outlines a number of different examples and discusses the background to each.

**Australia**

Australia’s federal system of government gives each of its states and territories considerable flexibility in the laws that it introduces and implements. As a result, there is a range of different licensing schemes in place. Positive licensing for tobacco sales is in place in the Australian Capital Territory, Northern Territory, South Australia, Tasmania and Western Australia, while Victoria, New South Wales and Queensland have opted for a negative approach.

**New Zealand**

New Zealand operates a negative licensing scheme, under which a retailer who has been convicted of selling tobacco to an under 18 at least twice in a two year period may find themselves subject to a prohibition order. This can
stop them from selling all tobacco products for a period of up to three months.\textsuperscript{38}

\textit{Singapore}  
In Singapore, all tobacco retailers, distributors and importers are obliged to hold a licence; these are administered by a specialist tobacco regulation unit.\textsuperscript{39}

\textit{Canada}  
Several Canadian provinces operate tobacco licensing regulations, including:

- **Newfoundland** – the 1993 Tobacco Control Act was amended in 1999, introducing a positive licensing system. All tobacco retailers must hold a licence; violations of the law will lead to a suspension of the licence for three months for the first offence and six months for a second offence. Subsequent offences will result in the licence being cancelled\textsuperscript{40}

- **Nova Scotia** – employs negative licensing. Under the Tobacco Access Act, any vendor convicted of selling tobacco products to anyone under the age of 19 shall be prevented from selling tobacco for a period of seven days for the first offence, between three and six months for a second offence, and between twelve and twenty four months for a third or subsequent offence\textsuperscript{41}

- **Québec** – has positive licensing. Every person who makes retail sales of tobacco products in Québec must hold a registration certificate; failure to fulfil the obligations set out in the Tobacco Tax Act may result in the licence being suspended or revoked\textsuperscript{42} There is no charge for a registration certificate.\textsuperscript{43}

\textit{United States of America}  
State by state data on tobacco control can be accessed through the State Tobacco Activities Tracking and Evaluation (STATE) System; a comparison report generated shows that as of the first quarter of 2007, 35 states plus the District of Columbia require licences for both over-the-counter and vending machine tobacco sales. Four states require licences for over-the-counter sales, while a further three require licensing of vending machines. The remaining eight states do not currently require licensing for any tobacco sales.\textsuperscript{44} The fines and sanctions that apply for breaches of state laws on tobacco sales to minors vary from state to state.

The large proportion of American states with tobacco licensing laws is consistent with this recommendation from the Centers for Disease Control and Prevention:

\begin{quote}
"For tobacco control laws and regulations to be adequately enforced, universal licensure of tobacco outlet sources is necessary. A graduated system of civil penalties on the retailers, including temporary revocation of the tobacco licence in areas where tobacco retail licences are required, has been shown to be an effective enforcement strategy. Fees from licensing of tobacco
\end{quote}
vendors can be used to fund enforcement activities and to develop and maintain active, large-scale programs. States currently without licensure provisions are encouraged to require licensure of retail tobacco outlets and to revoke licences for repeated sales to minors." \(^{45}\)
Ireland
As this consultation paper was being drafted, the Irish Office of Tobacco Control was working on the implementation details of Section 37 of the Public Health (Tobacco) (Amendment) Act 2004:

“The Office shall, on the commencement of this section, cause to be established and maintained a register of all persons who carry on, in whole or in part, the business of selling tobacco products by retail.”

The Republic of Ireland’s pioneering position in the field of tobacco control led to them bringing in Europe’s first comprehensive ban on smoking in public places. They are now following up that groundbreaking step with moves towards Europe’s first positive licensing scheme for tobacco sales.

Worldwide
Few of these licensing schemes have been in place for more than a few years, and there does not appear to have been very much comprehensive evaluation work carried out. There is, however, evidence that licensing schemes can be extremely effective, and work best when they are backed up with effective on the ground enforcement work.
The proposed Tobacco Sales Licensing (Scotland) Bill

This proposal would require the sale of tobacco products to be governed by a licensing scheme, with sanctions for retailers who break existing laws preventing sales of tobacco to under-age customers. Enforcement is the key to making any form of licensing legislation work, and the proposed bill will also require local authorities to carry out adequate enforcement to provide an effective deterrent effect on those retailers who might otherwise be tempted to sell tobacco to under-age customers.

The proposed bill is not a ban on tobacco sales, it does not seek to set limits on the times when tobacco can be offered for sale or on the numbers of establishments that can sell tobacco, and it is not a ban on smoking.

Who will be affected?
Affected parties will include the retailers of tobacco products who would be governed by a licensing system. This means all those who sell tobacco directly to the public, including supermarkets, tobacconists, sweet shops, off-licences, service stations and public houses. It would also cover mobile sources such as travelling shops and ferries. Vending machines etc would also be covered; the owner or operator of the premises in which a vending machine is situated would be the licensee in such cases.

Wholesale suppliers who sell exclusively to the trade would not be covered, though cash and carry outlets who sell tobacco to the public would require to be licensed.

Also affected will be the licensing authorities who would oversee the effective and efficient running of a licensing scheme; and the trading standards officials who would have the responsibility to enforce the law. Young people under the age of 18 will also be affected; they will gain additional protection from the very severe health impacts of beginning smoking.

Issues arising from legislation being proposed
The issues arising from the proposed legislation will depend largely on what form of licensing is introduced. While a negative licensing scheme would probably be simpler and cheaper to implement, it is likely that it would be less effective, and therefore save fewer health resources in the long run, than a positive licensing scheme.48

A positive licensing system would require that all retail outlets who wish to sell tobacco products apply for and receive a licence before tobacco could be sold; this is analogous to the system currently in place for sales of alcohol. It is likely that the powers of licensing boards that exist to regulate the sale of alcohol could be extended to cover tobacco sales as well. This would avoid the requirement for two licensing boards to operate in parallel for the same geographical area.
Trading standards officers currently enforce the law relating to under-age sales of tobacco; this would continue under any new licensing scheme. But is it possible that increased resources may need to be made available to local authorities to enable their trading standards departments to carry out effective enforcement of the laws relating to under-age tobacco sales.

**Difficulties with legislation**

Whether positive or negative licensing is introduced, the legislation required must be workable. There are a number of areas, such as alcohol and gambling, that are already regulated by a licensing scheme, and no difficulties are envisaged in drafting appropriate legislation to regulate sales of tobacco.

**The retail trade: cost and regulatory issues**

It is not yet apparent who would pay the financial costs of any future tobacco licensing scheme. But even if the administration is funded by the taxpayer, there will still be a regulatory burden upon the retailers. While there is evidence that regulation imposes a disproportionate burden on small businesses, there is also a counter argument – that a licensing scheme will enable the majority of reputable retailers, who have striven to uphold the law on selling tobacco, to distance themselves from less scrupulous shopkeepers.

**Deregulatory trend**

There has been a general move in recent years towards a more relaxed regulatory framework; some parties will see moves to introduce a new licensing scheme as going against this trend. During a recent debate in the Scottish Parliament entitled “Wealthier and Fairer”, John Swinney, the new Cabinet Secretary for Finance and Sustainable Growth, made this claim:

“There is a high level of political commitment from the whole Scottish Government to improve the regulatory environment for Scottish business. We will boost the competitiveness and productivity of Scottish business by stripping out unnecessary compliance costs.”

Yet despite this deregulatory environment, there clearly remains a willingness to legislate where there are clear social and health benefits; the Smoking, Health and Social Care (Scotland) Bill was passed by a large majority of Members of the Scottish Parliament. This is an opportunity for legislators to take an equally enlightened view where there is clear evidence in favour of moves to further limit the accessibility of tobacco products to young people.

**Question 5: What difficulties, if any, do you anticipate with the proposed legislation?**

**Possible financial implications**

It is not easy to provide an accurate cost benefit analysis of the various forms of tobacco licensing. While it is relatively straightforward to calculate the costs
to retailers and licensing authorities of establishing and maintaining tobacco licensing arrangements, these overall costs must be balanced against the long term benefits (including very considerable financial savings) of arrangements that will hopefully prevent a significant proportion of young people from becoming smokers in the first place. These benefits, while undoubtedly very great, are difficult to quantify with any great accuracy.

In 2006, the UK Department of Health (DoH) conducted a consultation exercise on under-age sale of tobacco, covering increases in the minimum legal age for tobacco purchase as well as various forms of licensing.\textsuperscript{52}

The DoH calculated that a positive licensing system introduced in England and Wales would incur ongoing annual costs of £53.5 million and annual ongoing benefits of £166m, leading to a net overall benefit of £112.5m annually. A negative licensing scheme would incur lower annual costs of £37.2m and benefits of £166m, leading to higher net benefits of £128.8m. Were licensing schemes with similar per capita costs and benefits to be introduced in Scotland, they would result in net benefits of £11.06m for a positive system, and £12.67m for a negative system. It is notable that the financial benefits of each scheme significantly outweigh the financial costs.

The DoH study makes at least two questionable assumptions. Firstly, it assumes that a positive licensing scheme would be no more effective than a negative scheme. Secondly, it assumes that neither scheme will reduce under-age sales of tobacco by more than 10%. Studies and empirical evidence from Australia call into question both of these. Reports from Australia suggest that a positive licensing scheme would result in far greater awareness of the consequences of under-age sales of tobacco than a negative licensing scheme would achieve, and this would almost certainly be translated into lower under-age tobacco sales. A positive licensing scheme in Tasmania, backed up by strong enforcement, resulted in compliance with legislation of up to 95%.\textsuperscript{53}

Cost recovery?
Whether it is positive or negative, any licensing scheme will have to be funded. The current alcohol licensing system seeks to achieve full cost recovery, i.e. the revenue gathered from licence applications and renewals, and from any fines payable, will fully cover the costs of implementing and enforcing the licensing system. Replicating this cost recovery model for tobacco licensing, i.e. passing the costs onto the retailers, is one way of funding a licensing scheme.

But there is another way of looking at the finances of tobacco licensing. The ultimate policy objective of a licensing scheme is to prevent children and young people from taking up a smoking habit, leading to better health and lower healthcare costs in the long term. Should tobacco retailers be expected

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But there is another way of looking at the finances of tobacco licensing. The ultimate policy objective of a licensing scheme is to prevent children and young people from taking up a smoking habit, leading to better health and lower healthcare costs in the long term. Should tobacco retailers be expected
to pay the upfront costs of a policy that will ultimately lead to savings for the NHS?

Jurisdictions in other parts of the world that have introduced positive tobacco licensing schemes are divided over who should pay them. In Australia, the following costs are payable by licence applicants (sterling equivalents in brackets):

- South Australia: A$208.54 (£91.80)
- Western Australia: A$200.55 (£88.27)
- Tasmania: A$93.75 (£41.38)
- Northern Territory: Free

In the US, New York City is an example of a jurisdiction that does not make any charge for a tobacco retailer's licence. Tobacco licences are also free in Québec. In sub-national jurisdictions where retailers make no payment for a positive licensing system, the cost is borne by state or local taxpayers.

Whoever pays for a future licensing system, efforts should be made to keep the costs of bureaucracy and administration to a minimum. It is entirely feasible for a secure application system to be conducted online, removing the need for expensive manual handling of application forms and licences.

**Question 6: Who should bear the costs of a tobacco licensing scheme?**

**Enforcement**

Under Scotland’s alcohol licensing laws, there is a licensing board for each council area (some council areas are sub-divided into smaller areas for the purposes of licensing). It is envisaged that any tobacco licensing will be carried out by the same boards that currently license alcohol outlets.

Enforcement of tobacco sales legislation would most likely be carried out by the same trading standards officials that presently enforce tobacco sales without the support of a licensing scheme. Trading standards officers have widespread experience of tobacco sales, and in addition to their enforcement duties, they carry out education and information work to ensure that retailers are fully aware of their responsibilities not to sell tobacco to under-age customers. Introducing a licensing system should enable trading standards officers to carry out this important work much more effectively.

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*One pound sterling was worth 2.266 Australian dollars on the 8th October 2007*

http://www.xe.com/ucc/convert.cgi
Enforcement of the laws relating to under-age sales of tobacco relies upon a credible and effective set of sanctions being available to trading standards officers. Other jurisdictions that have introduced licensing schemes have utilised a range of sanctions against retailers in breach of tobacco sales laws.

At the present time, trading standards officers issue warning notices to establishments found to have sold tobacco to under-age customers; if the offence is repeated, a report is sent to the procurator fiscal who decide whether or not court action is appropriate. Data released by the Scottish Government in answer to written parliamentary questions show that court action is very uncommon (see Appendix); it is possible that prosecutors do not feel that breaching tobacco sales laws is a serious enough offence to justify the cost and time of a court action.

Some jurisdictions allow for enforcement officers to issue on-the-spot fines to retailers found to have sold or supplied tobacco to under-age customers. In South Australia, the Tobacco Products Regulations Act was amended in 2004 to enable fixed penalty fines (known as expiation fines) of A$315 (just under £140) for sales to minors offences. Such fixed penalty fines remove the need for expensive and bureaucratic court action. Repeat offenders face having their tobacco retail licence suspended or revoked.

Other regions, (e.g. Nova Scotia and Newfoundland) allow for suspensions of the right to sell tobacco to be imposed for a first offence. Longer suspensions and permanent revocations of licences are prescribed for repeat offenders.

**Question 7: What sanctions would be appropriate for a retailer found to have sold or supplied tobacco to under-age customers?**

**Question 8: If fixed penalty fines are applied, what appeals process should be put in place?**

**Question 9: What sanctions should be applied to retailers who repeatedly sell or supply tobacco to under-age customers?**
Conclusion

The recent increase in the minimum purchase age for tobacco from 16 to 18 is welcome as it recognises the serious harm caused by tobacco and limits its use to adults. However, the large proportion of under-age smokers who report buying their own cigarettes indicates that simply increasing the age at which tobacco can legally be sold is unlikely to deliver significant reductions in under-age smoking rates. For this to happen, effective enforcement of the existing law is required. Introducing a licensing scheme for retail tobacco sales is one way of enabling such improved enforcement to take place.

Evidence from other parts of the world shows that tobacco licensing schemes, together with effective enforcement activity, can lead to high compliance rates among tobacco retailers. We believe that legislation requiring the licensing of tobacco sales is not only in the best interests of the retailers and Scotland’s healthcare system but also – and most importantly – of young people themselves. If we can prevent Scotland’s children and young people from developing harmful and costly smoking habits, it will save the Scottish health system millions of pounds each year over the long term. This is an opportunity that Scotland simply can’t afford to pass up.

Thank you very much for taking the time to read this consultation paper. I am eager to read your views on this matter, and will take into account every response we receive. Please feel free to pass on this consultation paper to others who may be interested in formulating a response – each one received will assist in the detailed policy development phase and the drafting of the Tobacco Sales Licensing (Scotland) Bill itself.

**Question 10: Do you have any other comments on the proposal?**

**Question 11: Can you identify any equal opportunities impacts (either positive or negative) arising from this proposal?**
Need for consultation

The formulation of the detailed content of the bill is at a very early stage, and Christine Grahame MSP wishes to consult widely at this stage to ensure that as many points of view as possible are received before the drafting of the bill gets underway.

We would welcome comments on the consultation paper from those who are likely to be affected by these issues. In particular, we would welcome responses from the following sectors:

- **Children and young people's organisations, for example:**
  - Barnardos
  - Children First
  - Children in Scotland
  - National Children’s Homes
  - Parent councils and the Scottish Teacher Parent Council
  - Scottish Commissioner for Children and Young People
  - Scottish schools
  - Scottish Youth Parliament
  - Younglink Scotland
  - Young Scot

- **Political interests, for example:**
  - Members of the Scottish Parliament
  - Political parties
  - The Scottish Government

- **Health organisations, for example:**
  - All those with an interest in tobacco and health
  - All those working in health promotion
  - All those working in public health
  - Community Health Partnerships
  - NHS Boards
  - Organisations representing those working in the NHS, e.g. BMA Scotland
  - Royal Colleges

- **Justice interests, for example:**
  - The Association of Chief Police Officers in Scotland
  - Scottish Police Federation
  - Scottish police forces

- **Local authorities, for example:**
  - COSLA
  - Community councils
  - Councillors
  - Local authorities
• Local Authorities Coordinators of Regulatory Services (LACORS)
  o Society of Chief Officers of Trading Standards Scotland (SCOTSS)
  o Royal Environmental Health Institute for Scotland

• Retailers Organisations, for example:
  o Association of Convenience Stores
  o CBI Scotland
  o Federation of Small Businesses Scotland
  o Scottish Chambers of Commerce
  o Scottish Grocers’ Federation
  o Scottish Retail Consortium
  o Tobacco industry organisations

• Trade Unions, for example:
  o EIS
  o NASUWT
  o STUC
  o Unison Scotland

• Voluntary organisations and alliances, for example:
  o Community Health Exchange
  o Health charities
  o Local tobacco control alliances
  o Scottish Coalition on Tobacco
  o Scottish Council for Voluntary Organisations
  o Scottish Tobacco Control Alliance
  o Voluntary Health Scotland
Questions

To assist stakeholders in preparing a response to this consultation document, here is a list of questions that parties may like to answer:

1. What concerns, if any, do you have about the enforcement of the minimum age limit for the purchase of tobacco?

2. What are your views on the effectiveness of a positive licensing scheme, i.e. a scheme requiring all outlets to apply for and receive a licence before tobacco products could be sold.

3. What are your views on the effectiveness of a negative licensing scheme, i.e. a scheme whereby any outlet is entitled to sell tobacco without a licence and sanctions are only applied once a breach of the law has occurred.

4. Do you have a preference for either a positive or a negative licensing scheme?

5. What difficulties, if any, do you anticipate with the proposed legislation?

6. Who should bear the costs of a tobacco licensing scheme?

7. What sanctions would be appropriate for a retailer found to have sold or supplied tobacco to under-age customers?

8. If on-the-spot fines are applied, what appeals process should be put in place?

9. What sanctions should be applied to retailers who repeatedly sell or supply tobacco to under-age customers?

10. Do you have any other comments on the proposal?

11. Can you identify any equal opportunities impacts (either positive or negative) arising from this proposal.
### Appendix

#### Table 1: Smoking behaviour by age group and gender

<table>
<thead>
<tr>
<th>Scotland 2006</th>
<th>13 years (%)</th>
<th>15 years (%)</th>
<th>Gender (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boys</td>
<td>Girls</td>
<td>All</td>
</tr>
<tr>
<td><strong>Regular smoker</strong></td>
<td>3</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Occasional smoker</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Used to smoke</td>
<td>6</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>Tried once</td>
<td>18</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>Never smoked</td>
<td>72</td>
<td>67</td>
<td>69</td>
</tr>
</tbody>
</table>

*Base: all pupils* 5797 5774 11647 5599 5410 11072 11396 11184

#### Table 2: Source of cigarettes reported by regular smokers by age group and gender

<table>
<thead>
<tr>
<th>Scotland 2006</th>
<th>13 years (%)</th>
<th>15 years (%)</th>
<th>Gender (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boys</td>
<td>Girls</td>
<td>All</td>
</tr>
<tr>
<td><strong>Source of cigarettes</strong></td>
<td>42</td>
<td>50</td>
<td>47</td>
</tr>
<tr>
<td>Buy from shops</td>
<td>40</td>
<td>45</td>
<td>43</td>
</tr>
<tr>
<td>Newsagent, tobacconist or sweet shop</td>
<td>11</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Garage shop</td>
<td>8</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Other type of shop</td>
<td>9</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Supermarket</td>
<td>41</td>
<td>30</td>
<td>36</td>
</tr>
<tr>
<td>Buy from other people</td>
<td>29</td>
<td>22</td>
<td>26</td>
</tr>
<tr>
<td>Friends or relative</td>
<td>21</td>
<td>15</td>
<td>18</td>
</tr>
<tr>
<td>Someone else</td>
<td>33</td>
<td>55</td>
<td>46</td>
</tr>
<tr>
<td>Given cigarettes</td>
<td>33</td>
<td>50</td>
<td>44</td>
</tr>
<tr>
<td>Friends</td>
<td>9</td>
<td>16</td>
<td>13</td>
</tr>
<tr>
<td>Siblings</td>
<td>5</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>Mother or father</td>
<td>9</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>Buy from a machine</td>
<td>15</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>Get them some other way</td>
<td>7</td>
<td>13</td>
<td>11</td>
</tr>
<tr>
<td>Take cigarettes</td>
<td>7</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Buy from market</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

*Note: columns may add up to more than 100 as more than one answer could be given. As the number of pupils responding to each of the items varied, the bases shown on the table relate to the number of pupils who were asked the question rather than those who answered.*
### Table 3: Age started smoking regularly by sex, 1992 to 2005

<table>
<thead>
<tr>
<th>Age started smoking regularly</th>
<th>Great Britain: 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unweighted</td>
</tr>
<tr>
<td><strong>Men</strong></td>
<td></td>
</tr>
<tr>
<td>Under 16</td>
<td>40</td>
</tr>
<tr>
<td>16-17</td>
<td>27</td>
</tr>
<tr>
<td>18-19</td>
<td>17</td>
</tr>
<tr>
<td>25 and over</td>
<td>4</td>
</tr>
<tr>
<td>Weighted base (000s) = 100%</td>
<td>11,146</td>
</tr>
<tr>
<td>Unweighted base</td>
<td>5,143</td>
</tr>
<tr>
<td><strong>Women</strong></td>
<td></td>
</tr>
<tr>
<td>Under 16</td>
<td>28</td>
</tr>
<tr>
<td>16-17</td>
<td>28</td>
</tr>
<tr>
<td>18-19</td>
<td>19</td>
</tr>
<tr>
<td>20-24</td>
<td>15</td>
</tr>
<tr>
<td>25 and over</td>
<td>10</td>
</tr>
<tr>
<td>Weighted base (000s) = 100%</td>
<td>10,101</td>
</tr>
<tr>
<td>Unweighted base</td>
<td>4,640</td>
</tr>
<tr>
<td><strong>All persons</strong></td>
<td></td>
</tr>
<tr>
<td>Under 16</td>
<td>34</td>
</tr>
<tr>
<td>16-17</td>
<td>27</td>
</tr>
<tr>
<td>18-19</td>
<td>16</td>
</tr>
<tr>
<td>20-24</td>
<td>14</td>
</tr>
<tr>
<td>25 and over</td>
<td>7</td>
</tr>
<tr>
<td>Weighted base (000s) = 100%</td>
<td>21,247</td>
</tr>
<tr>
<td>Unweighted base</td>
<td>9,783</td>
</tr>
</tbody>
</table>
Table 4: Age started smoking regularly by sex, whether current smoker and if so, cigarettes smoked each day

<table>
<thead>
<tr>
<th>Persons aged 16 and over who have ever smoked regularly</th>
<th>Great Britain: 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age started smoking regularly</td>
<td>Current smoker</td>
</tr>
<tr>
<td></td>
<td>20 or more a day</td>
</tr>
<tr>
<td>Men</td>
<td></td>
</tr>
<tr>
<td>Under 16</td>
<td>53%</td>
</tr>
<tr>
<td>16-17</td>
<td>23%</td>
</tr>
<tr>
<td>18-19</td>
<td>11%</td>
</tr>
<tr>
<td>20-24</td>
<td>8%</td>
</tr>
<tr>
<td>25 and over</td>
<td>4%</td>
</tr>
<tr>
<td>Weighted base (000s)</td>
<td>1,563</td>
</tr>
<tr>
<td>Unweighted base</td>
<td>779</td>
</tr>
<tr>
<td>Women</td>
<td></td>
</tr>
<tr>
<td>Under 16</td>
<td>48%</td>
</tr>
<tr>
<td>16-17</td>
<td>23%</td>
</tr>
<tr>
<td>18-19</td>
<td>13%</td>
</tr>
<tr>
<td>20-24</td>
<td>10%</td>
</tr>
<tr>
<td>25 and over</td>
<td>6%</td>
</tr>
<tr>
<td>Weighted base (000s)</td>
<td>1,287</td>
</tr>
<tr>
<td>Unweighted base</td>
<td>660</td>
</tr>
<tr>
<td>All persons</td>
<td></td>
</tr>
<tr>
<td>Under 16</td>
<td>51%</td>
</tr>
<tr>
<td>16-17</td>
<td>23%</td>
</tr>
<tr>
<td>18-19</td>
<td>12%</td>
</tr>
<tr>
<td>20-24</td>
<td>9%</td>
</tr>
<tr>
<td>25 and over</td>
<td>5%</td>
</tr>
<tr>
<td>Weighted base (000s)</td>
<td>2,850</td>
</tr>
<tr>
<td>Unweighted base</td>
<td>1,439</td>
</tr>
</tbody>
</table>
S3W-3808 - Christine Grahame (South of Scotland) (SNP) (Date Lodged 30 August 2007): To ask the Scottish Executive how many (a) retailers and (b) licensees have been prosecuted for selling tobacco products to under-age customers in each year since 2000, broken down by local authority area.

Answered by Kenny MacAskill (11 September 2007): The available information is given in the following table. No breakdown of these figures into prosecutions of retailers and licensees is available from the data held centrally.

Persons Proceeded Against in Scottish Courts for Selling Tobacco to Persons Under 16\(^1\), by Approximate Local Authority Area\(^2\), 2000-01 to 2005-06

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>2000-01</th>
<th>2001-02</th>
<th>2002-03</th>
<th>2003-04</th>
<th>2005-06</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aberdeenshire</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>East Lothian</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Edinburgh, City of</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>North Lanarkshire</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>West Lothian</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Scotland</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>3</td>
<td>2</td>
</tr>
</tbody>
</table>

Notes:
1. Where main offence.
2. Incorporates an approximate mapping of sheriff courts into local authority areas. Some sheriff courts will deal with cases from more than one local authority area. Some local authority areas, including East Dunbartonshire, East Renfrewshire, Midlothian and North Ayrshire, do not contain a sheriff court.

More recent information available from the Crown Office and Procurator Fiscal Service shows that in 2006-07 a total of 11 people were subject to court proceedings in respect of illegal sales of tobacco.
S3W-3809 - Christine Grahame (South of Scotland) (SNP) (Date Lodged 30 August 2007) : To ask the Scottish Executive how many prosecutions of (a) retailers and (b) licensees for selling tobacco products to under-age customers in each year since 2000 resulted in convictions, broken down by local authority area.

Answered by Kenny MacAskill (11 September 2007): The available information is given in the following table. No breakdown of these figures into prosecutions of retailers and licensees is available from the data held centrally.

Persons with a Charge Proved in Scottish Courts for Selling Tobacco to Persons Under 16¹, by Approximate Local Authority Area², 2000-01 to 2005-06

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>2000-01</th>
<th>2001-02</th>
<th>2002-03</th>
<th>2003-04</th>
<th>2005-06</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aberdeenshire</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>East Lothian</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Edinburgh, City of</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>North Lanarkshire</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>West Lothian</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Scotland</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>3</td>
<td>2</td>
</tr>
</tbody>
</table>

Notes:
1. Where main offence.
2. Incorporates an approximate mapping of sheriff courts into local authority areas. Some sheriff courts will deal with cases from more than one local authority area. Some local authority areas, including East Dunbartonshire, East Renfrewshire, Midlothian and North Ayrshire, do not contain a sheriff court.

More recent information available from the Crown Office and Procurator Fiscal Service shows that in 2006-07 a total of 11 people were subject to court proceedings in respect of illegal sales of tobacco.
Sources


6 Ibid.

7 The Scottish Office (1999): Towards a Healthier Scotland (HMSO)

8 Health Scotland, ISD Scotland and ASH Scotland. An atlas of tobacco smoking in Scotland: A report presenting estimated smoking prevalence and smoking-attributable deaths within Scotland. Op Cit.

9 Ibid.


15 Delnevo et al., *Relationships between cigarette smoking and weight control in young women*, Family and Community Health 2003, 26, 140-6


19 British Medical Association. *Smoking ban a success one year on, but still a long way to go to reduce smoking in Scotland*, says BMA. Op Cit.


23 Ibid.


28 Ibid.

29 Ibid.


59 Revenu Québec. *An Overview of the Tobacco Tax Act.* (Op Cit)


62 Ibid.


64 Office of National Statistics, November 2006, Op cit, Table 1.27