

# Impact of leaving the European Union on health and social care in Scotland

## ASH Scotland response



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### About ASH Scotland

ASH Scotland - Action on Smoking and Health (Scotland) - is the independent Scottish charity taking action to reduce the harm and inequality caused by tobacco use. Our activities include an expert information service, campaigning for political action on tobacco and health, supporting community groups to help their service users affected by tobacco use, building public support and awareness for making Scotland free from tobacco and supporting charities, enforcement agencies, the NHS and others to contribute to achieving that goal.

### Responses

- 1) *How could the potential risks of Brexit for health and social care in Scotland be mitigated?*

A great deal of tobacco-related legislation has been developed at EU level. Most recently, the 2014 Tobacco Products Directive introduced new graphic warning labels, regulations on e-cigarettes and a ban on ten-packs of cigarettes, among other policies. The UK Government has set out its intention to transpose the body of EU law into UK law, so there is no immediate threat to the application of the TPD. However, there has been media discussion of the possibility of repealing parts of the legislation, including the delayed ban on menthol cigarettes.

Tracking and tracing of tobacco in order to tackle the illicit trade is an upcoming issue. The EU's track-and-trace regulations, introduced as part of the TPD, are expected to come into force in May 2019, just after the UK leaves the EU. As a signatory to the Illicit Trade Protocol (ITP) of the Framework Convention on Tobacco Control (FCTC) the UK will be expected to introduce a similar track-and-trace scheme after the ITP comes into force in international law (once 40 countries have ratified it – at present, 33 countries have done so). It is unclear whether the UK will use the same tracking and tracing scheme as the EU, but it would broadly make sense to do so, as long as the scheme adopted by the EU is free from tobacco industry interference. Failure to adopt a suitable scheme could leave the UK in violation of international law, as well as failing to address the issue of illicit tobacco.

More generally, there is the risk that the UK could be more vulnerable to the threat of tobacco industry lobbying, particularly in a hard Brexit focused on deregulation. This could take the form of an economic argument – as two of the four largest transnational tobacco companies (British American Tobacco and Imperial Tobacco) are based in the UK, they may seek to argue that their economic contribution should outweigh their disastrous impact on world health, particularly in the event of significant economic changes after leaving the UK.

In light of the devastating impact of tobacco on human health and well-being (and the attendant costs of healthcare) this argument should be dismissed.

*2) How could the potential benefits of Brexit for health and social care in Scotland be realised?*

Brexit has the potential to widen the scope of powers available to the Scottish Parliament and to the UK more generally, particularly in areas related to taxation.

Leaving the EU means that the UK will no longer be restricted to one low VAT band and one high band, potentially allowing increased taxation of tobacco through this route (rather than simply through the duty system). It is conceivable that the Scottish Parliament could receive powers to vary VAT (or introduce a separate sales tax), but this would require UK legislation beyond the Scotland Act 2016.

Assuming the UK leaves the single market, there will no longer be a need to consider legally the impact of market-based interventions on intra-union trade. This could make it easier to introduce innovative policies such as minimum tobacco pricing or limits on the amount of tobacco supplied in the UK. Further to this, human rights legislation could be redrawn to exclude commercial entities under certain circumstances, for example limiting the legal recourse to commercial property rights that were used to challenge standardised packaging.

Opportunities for importing tobacco without paying UK duty could be reduced. The current personal use allowance is high and allows people travelling from low-tax EU jurisdictions (such as Poland) to bring relatively large volumes of tobacco into the UK, potentially for further sale. This limit could be reduced in post-Brexit legislation.

*3) In what ways could future trade agreements impact on health and social care in Scotland?*

This is an area of utmost concern. The inclusion of investor-state dispute settlement (ISDS) mechanisms in the TTIP trade deal had the potential to allow tobacco companies to sue countries which introduce tobacco control measures. Tobacco companies are already using Investor State Dispute mechanisms to sue the Governments of Australia and Uruguay over public health policies which they believe harm their interests.

In fact, this has been of such concern to public health that in 2016 then-US President Obama explicitly exempted tobacco control policies from ISDS mechanisms proposed in the Trans-Pacific Partnership trade deal (although the US later withdrew from negotiations).

It must be recognised explicitly in any trade deal that public health measures in general and tobacco control measures in particular are legitimate health policies, whether or not they affect the financial returns of industry.

*4) The Joint Ministerial Committee (EU Negotiations) has agreed a definition and principles to shape discussions within the UK on common frameworks including enabling the functioning of the UK internal market. What implications might this have for health and social care in Scotland and what are your views on how these common frameworks are agreed and governed?*

Common frameworks should explicitly consider the requirements of the Framework Convention on Tobacco Control<sup>1</sup> as part of their mandate to ensure compliance with international obligations. Particular concern should be given to Article 5.3:

*In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.*

Action on Smoking & Health (Scotland) (ASH Scotland) is a registered Scottish charity (SC 010412) and a company limited by guarantee (Scottish company no 141711). The registered office is 8 Frederick Street, Edinburgh EH2 2HB.

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<sup>1</sup> The international tobacco control treaty led by the World Health Organisation, to which the UK is a signatory