



IRISH MEDICAL
ORGANISATION
Ceardchumann Dochtúirí na hÉireann

IMO Response to Department of Health Public Consultation

On Legislation in Relation to the Sale of Tobacco Products and Non-Medicinal Nicotine Delivery Systems

January 2015

Irish Medical Organisation

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About the IMO and Anti-Tobacco Advocacy

The Irish Medical Organisation is the largest trade union and professional body that represents doctors in Ireland, and has consistently adopted a tough stance against tobacco products. Tobacco is one of the leading causes of preventable death in Ireland, and the IMO has continually been on the forefront of anti-tobacco advocacy. In the past the IMO has called for bans on the use of tobacco products in the workplace and in the vicinity of children's amenities, for the government to tackle the illicit trade of tobacco products, to increase the price of tobacco products to discourage consumption, and more recently has advocated for standardised packaging for tobacco products and stricter penalties for those found to be selling tobacco products to minors.

In 2004 Ireland rose to prominence as a global leader in anti-tobacco public policy by becoming the first country in the world to institute a complete ban on the use of tobacco products in the workplace. The IMO welcomes this initiative to place greater controls on the sale of tobacco and NMNDS, such as e-cigarettes, and calls for measures to be introduced that will position Ireland on the international forefront of tobacco control, and will truly diminish the devastating effects of tobacco products on the health and lives of so many throughout the country.

Consultation

All answers are displayed in [a blue font](#), for ease of recognition.

Personal Information

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Questionnaire Details

Q. Are you completing this questionnaire in a personal capacity; on behalf of an organisation/agency; or on behalf of the tobacco industry?

A. [I am completing this questionnaire on behalf of an organisation/agency.](#)

Declaration of Interest

- (a) Do you or your organisation/agency come within the definition of "tobacco industry" as set out in the WHO Framework Convention on Tobacco Control? [No.](#)
- (b) Do you or your organisation/agency have any commercial or other interest in the sale of any form of tobacco products? [No.](#)
- (c) Do you or your organisation/agency have any relationship or connection with the tobacco industry or any party having a commercial or other interest in the sale of tobacco products? [No.](#)
- (d) Have you or your organisation/agency ever received any funding from the tobacco industry or any party having a commercial or other interest in the sale of tobacco products? [No.](#)
- (e) Have you or your organisation/agency ever worked for or provided services to the tobacco industry or any party having a commercial or other interest in the sale of tobacco products? [No.](#)
- (f) Have you or your organisation/agency ever received any payment from the tobacco industry or any party having a commercial or other interest in the sale of tobacco for work done or for the provision of any services? [No.](#)

A – Licensing system for the sale of tobacco products

Q1. In addition to compliance with tobacco control legislation, what criteria should an applicant applying for a licence to sell tobacco products fulfil – for example, should an applicant:

- (a) Be over 18 years of age?
- (b) Provide proof of identity and age?
- (c) Be tax compliant?
- (d) Hold a valid Revenue Commissioner Business Identifier?
- (e) Be a fit and proper person?
- (f) Other? Please provide details.

A1. An applicant applying for a licence to sell tobacco products should fulfil a range of criteria. These include:

- (a) Having attained at least 18 years of age at the time of the application;
- (b) Being able to provide proof of identity and age through a government-issued certificate, such as a passport or driver's licence.
- (c) Being regarded by the Office of the Revenue Commissioners as being tax compliant
- (d) Being registered with the Companies Registration Office and possessing a corresponding registration number.
- (e) Being able to provide a forthright history of all summary convictions or convictions on indictment resulting from contravention of the Public Health (Tobacco) Act, 2002 (as amended), or similar tobacco control legislation or for the sale of illegally imported or unstamped tobacco products pursuant to Section 119 of the Finance Act, 2001 (as amended), and Section 78 of the Finance Act, 2005 (as amended), or similar contraventions in other jurisdictions. Evidence of previous and serious disregard for tobacco control measures, such as the repeated supply of tobacco products to minors, for example, should be considered, by the relevant licensing authority, as suitable grounds for the rejection of a licence application.

Q2. Do you have any other comments on the licensing system for the sale of tobacco products? If yes, please provide details.

A2. There are a number of measures regarded by academic assessment as being effective in reducing tobacco usage that have hitherto not been expressly considered as part of retailer licensing mechanisms that aid the completion of Tobacco Free Ireland's stated goal of reducing tobacco use prevalence to 5% of the population or lower by 2025.

One is reducing the density of retail outlets that supply tobacco products, thus limiting product availability. A growing body of research is continuing to establish clear links between the density of tobacco retail outlets in residential areas and increased consumption, experimental use, habitual use, and exposure to cigarettes among the populace resident in such areas. Research has also found similar correlations between the proximity of retail outlets to schools and increased use of tobacco products among children or minors. For these reasons, a means of reducing the density of tobacco retail outlets should be considered as part of any licensing arrangement. Below are examples of various research efforts that have been advanced in this area, however they remain a small portion of the work conducted in this field:

[Chan, W. C., and Leatherdale, S. T., 'Tobacco retailer density surrounding schools and youth smoking behaviour: a multi-level analysis' in *Tobacco Induced Diseases*, 9(1), July 2007]

[Shortt, N. K. *et al.*, 'The density of tobacco retailers in both home and school environments and relationship with adolescent smoking behaviours in Scotland' in the *European Journal of Public Health*, 24(2), October 2014]

[Lipperman-Krede, S., Grube, J. W., and Friend, K. B., 'Local Tobacco Policy and Tobacco Outlet Density: Associations with Youth Smoking' in the *Journal of Adolescent Health*, 50(6), June 2012]

Additionally, a substantial increase in the cost of obtaining a tobacco licence is likely to have a dissuasive effect for retailers who wish to trade in tobacco products. Recent research published in *Tobacco Control* showed that, two years following an increase in the cost of obtaining a tobacco licence in South Australia from \$12.90 per annum to \$200.00 per annum, the number of licences issued had decreased by 23.7% from their pre-increase levels [Bowden, J. A. *et al.*, 'What happens when the price of a tobacco retailer licence increases?' in *Tobacco Control*, 23(2), March 2014]. The cost of tobacco licensing should be proportional, and based on the volume of sales, to ensure that small retailers are unduly penalised, and to discourage attempts to increase tobacco sales to cover the heightened cost of a licence.

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

- Q3. In addition to compliance with this legislation and the relevant articles in the Tobacco Products Directive (2014/40/EU), what criteria should an applicant applying for a licence to sell non-medical nicotine delivery systems (including e-cigarettes) fulfil – for example, should an applicant:
- (a) Be over 18 years of age?
 - (b) Provide proof of identity and age?
 - (c) Be tax compliant?
 - (d) Hold a valid Revenue Commissioner Business Identifier?
 - (e) Be a fit and proper person?
 - (f) Other? Please provide details.
- A3. An applicant applying for a licence to sell tobacco products should fulfil a range of criteria. These include:
- (a) Having attained at least 18 years of age at the time of the application;
 - (b) Being able to provide proof of identity and age through a government-issued certificate, such as a passport or driver's licence.
 - (c) Being regarded by the Office of the Revenue Commissioners as being tax compliant
 - (d) Being registered with the Companies Registration Office and possessing a corresponding registration number.
 - (e) Being able to provide a forthright history of all summary convictions or convictions on indictment resulting from contravention of the Public Health (Tobacco) Act, 2002 (as amended), or similar tobacco control legislation or for the sale of illegally imported or unstamped tobacco products pursuant to Section 119 of the Finance Act, 2001 (as amended), and Section 78 of the Finance Act, 2005 (as amended), or similar

contraventions in other jurisdictions. Evidence of previous and serious disregard for tobacco control measures, such as the repeated supply of tobacco products to minors, for example, should be considered, by the relevant licensing authority, as suitable grounds for the rejection of a licence application.

Q4. Do you have other comments on the licensing system for the sale of non-medicinal nicotine delivery systems (including e-cigarettes)? If yes, please provide details.

A4. While academic debate surrounding e-cigarettes remains lively, the emerging consensus is that these products are largely safer to use, at least in terms of immediate or short-term health consequences, than traditional combustible cigarettes. Nevertheless, apart from containing nicotine, a highly addictive substance that may carry its own health risks or encourage the use of other nicotine products, there are indications that e-cigarettes contain similar toxicants as ordinary tobacco smoke, albeit at lower levels [Hayek, P. *et al.*, 'Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit' in *Addiction*, 109(11), November 2014].

For this reason caution must be exerted, particularly as question marks still exist as to whether e-cigarettes have the potential to appeal to current non-smokers who may become habitual e-cigarette users, developing nicotine dependency as a result. Similarly, risks exist that the perceived comparative safety of e-cigarettes may encourage former smokers to engage in their use. Such habitual e-cigarette use or nicotine dependency may act as a gateway to traditional combustible cigarette use. Furthermore, a public perception that e-cigarettes are safe or an uptake in their use by non-smokers or former smokers may serve to re-normalise smoking in the public eye; an undesirable result considering the strong and successful efforts that have been made to raise awareness of smoking's drawbacks by public health and NGO bodies, including the IMO, over the past several decades.

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

Q5. What impacts, if any, would the prohibition of the sale of tobacco products from self-service vending machines have?

A5. Research has indicated that minors are far more likely to obtain cigarettes from self-service vending machines than they are through over-the-counter sales [Wildley, M. B. *et al.*, 'Self-service sale of tobacco: how it contributes to youth access' in *Tobacco Control*, 4(4), December 1995]. As a result, instigating such a ban of these points-of-sale that do not require the purchaser to verify his age will likely lead to reduced youth access to tobacco.

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

A6. No.

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

Q7. What impacts, if any, would the prohibition of the sale of tobacco products from temporary or mobile units/containers have?

- A7. As aforementioned, greater availability of points-of-sale of tobacco products increases their levels of consumption, experimentation, and habitual use among users, particular in residential areas. As mobile units provide greater access to tobacco products for regular and non-regular users, and can offer sale in areas or at events that may have a high number of minors in attendance, trade in tobacco from such units should be prohibited. This reduced availability could decrease consumption of tobacco products.
- Q8. Do you have any views on the types of temporary or mobile units/containers which should be included in this provision? If yes, please provide details.
- A8. In order to reduce access to tobacco products to the greatest extent possible, prohibition should extend to all mobile units or containers.
- Q9. Do you have other comments on the prohibition of the sale of tobacco products from temporary or mobile units/containers? If yes, please provide details.
- A9. No.

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

- Q10. What impacts, if any, would the prohibition of the sale of tobacco products at events/locations primarily intended for persons under 18 years of age have?
- A10. Recognised causes of progression to habitual use of cigarettes by minors include access to cigarette points-of-sale and peer smoking [Mowery, P. D. et al., 'Progression to Established Smoking among US Youths' in the *American Journal of Public Health*, 94(2), February 2004]. For this reason, the prohibition of the sale of tobacco at events or locations primarily intended for persons under 18 years of age is encouraged as it mitigates two observed causes of youth smoking. It should also be noted that the sale of tobacco near schools has been positively correlated with an increase in tobacco use by minors attending those institutions [Shortt, N. K. *et al.*, 'The density of tobacco retailers in both home and school environments and relationship with adolescent smoking behaviours in Scotland' in the *European Journal of Public Health*, 24(2), October 2014].
- Q11. Do you have any views on the types of events/locations which should be included in this provision? If yes, please provide details.
- A11. The sale of tobacco should be prohibited at locations and events including, but not limited to: the vicinity of schools, both primary and secondary level; pre-school and montessori schools; childcare facilities; playgrounds; youth clubs and events; all sports events; and music or cultural events that are likely to attract a larger number of under-18s to attend.
- Q12. Do you have any other comments on the prohibition of the sale of tobacco products at events/locations primarily intended for persons under 18 years of age? If yes, please provide details.
- A12. No.

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

Q13. What impacts, if any, would prohibition of the sale of tobacco products by persons under 18 years of age have?

A13. Research has indicated that, as a result of social pressures, teenage employees are more likely than adults to sell tobacco products to minors and engage in the theft of tobacco products for the purpose of supplying them to minors [di Franza, J. R., and Coleman, M., 'Sources of tobacco for youths in communities with strong enforcement of youth access laws' in *Tobacco Control*, 10(4), July 2001]. Ergo, the introduction of this prohibition would reduce the access of minors to tobacco products.

Q14. Do you have any other comments on the prohibition of the sale of tobacco products by person under 18 years of age? If yes, please provide details.

A14. No.

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

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

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

A15. It can be reasonably extrapolated from research focused on the sale of traditional tobacco products that teenage employees are more likely than adults to supply minors with NMNDS. For this reason prohibition of sale of NMNDS by those under 18 years of age is likely to reduce youth access to NMNDS.

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

A16. No.

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

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

A17. As outlined in the answer to Question 4, many facts regarding the consumption of NMNDS by minors remain unclear. The long-term effects of products like e-cigarettes, especially on those under the age of 18, have not been well researched, and the potential of NMNDS to encourage the use of other nicotine products or initiate nicotine dependency in the user has not been fully examined. Therefore the prohibition of the sale of NMNDS to those under the age of 18 is the most effective method of protecting minors from any potential negative health consequences of nicotine use, as well as avoiding any potential normalising effect the sale of NMNDS to minors may have on other nicotine products, such as combustible cigarettes.

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

A18. No.

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

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

A19. Primarily due to retailer concern over lost revenue, suspensions of licences for contravention of tobacco control legislation have been suggested as an effective punitive measure for non-compliant licence holders [Jacobson, P. D., and Wasserman, J., 'The Implementation and Enforcement of Tobacco Control Laws: Policy Implications for Activists and the Industry', in the *Journal of Health Politics, Policy, and Law*, 24(3), 1999]. For this reason their institution is likely to improve retailer compliance.

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

A20. Strong disincentives are required if tobacco licence suspensions are to be truly effective. Suspension periods of three to six months for first offences are supported by a number of provinces in Australia and Canada, as well as in the state of Singapore, often instigated in tandem with a significant fine, for contraventions of tobacco control legislation. A low tolerance of non-compliance with tobacco control measures should be adopted in Ireland, and licence suspensions of this length will impact errant retailers financially in a meaningful way.

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

A21. Serious contraventions of tobacco control legislation should carry greater periods of suspension. For example, repeatedly selling tobacco products to minors, or selling large quantities of tobacco products to minors should be considered punishable by indefinite licence suspension, as is the case in jurisdictions such as various Australian and Canadian provinces.

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

A22. No.

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

Q23. What impacts, if any, would the introduction of fixed penalty notices (on the spot fines) for certain offences have?

A23. Moderate financial penalties, such as on-the-spot fines, have been recommended by researchers as useful means of encouraging compliance by retailers with tobacco control measures [Lantz, P. M. *et al.*, 'Investing in youth tobacco control: a review of smoking prevention and control strategies' in *Tobacco Control*, 9(1), 2000]. In order for such punitive measures to be effective, graduated and escalating penalties must be imposed for a succession of infringements. For this reason, on-the-spot fines may only be suitable for minor first offences, with subsequent infringements requiring larger fines and court appearances to maintain effectiveness.

Q24. Do you have any views on the fixed penalty amounts which should be imposed? If yes, please provide details.

A24. If fines are too low, retailers may become inured against the threat posed by them, thus reducing their effectiveness as a compliance-enforcement measure [Stead, L. F., and Lancaster, T., 'Interventions for preventing tobacco sales to minors (Review)' in *The Cochrane Library*, Issue 3, 2008]. The amount fined must therefore be sufficient to noticeably impact the retailer. For this reason, on-the-spot fines may not be suitable for larger retailers, as the amount fined is likely to be regarded as superficial by a body corporate above a certain size.

Q25. Should different offences under tobacco control legislation carry different fixed penalty amounts?

A25. No. It is crucial that all contraventions of tobacco control legislation are regarded as serious infringements by retailers, and maintaining consistency in the amounts levied as fines may assist in reinforcing this impression.

Q26. Do you have any other comments on the introduction of fixed penalty notices (on the spot fines) for certain offences? If yes, please provide details.

A26. No.

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

Q27. What impacts, if any, would the publication of information in respect of any person on whom a fine, other penalty or conviction is imposed by a court or pursuant to fixed penalty notices ('name and shame') have?

A27. The IMO supports the adoption of 'name and shame' strategies, which can be effective means of encouraging retailer compliance, given that they pose the risk of reputational damage to convicted retailers. This method should be used in tandem with other measures, such as fines and licence suspensions, to achieve greatest possible efficacy.

Q28. What information should be published?

A28. Information such as the retailer's name and address, the nature of the contravention, and the types of penalties suffered should be included.

A measure utilised in Scotland (Section 19 of the Tobacco and Primary Medical Services (Scotland) Act, 2010) is a 'name-and-shame' requirement for a retailer served with a banning order for contraventions of tobacco control legislation to display a sign to this effect. Such a measure should be considered by authorities in Ireland as a potentially useful means employing a 'name-and-shame' strategy.

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

A29. No.