

# Standardised Packaging of Cigarettes and Tobacco Products

## Smokefree Action Coalition briefing

### Children and Families Bill: House of Lords Report Stage

The Smokefree Action Coalition (SFAC) is an alliance of over 250 organisations committed to promoting public health. This briefing note for MPs and peers sets out the case for legislation requiring cigarettes and other tobacco products to be sold in standardised (sometimes called “plain”) packaging. **The first two pages summarise the key arguments, set out in full in the more detailed briefing that follows.**

**The Smokefree Action Coalition supports the Government’s amendment to the Bill (No 57B: New Clause before Clause 80). This has essentially the same effect as the cross-Party and crossbench amendment previously tabled by Lord Faulkner, Baroness Finlay, Lord McColl and Baroness Tyler, which will now not be pressed to a vote.**

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#### What is Standardised Packaging?

1. Standardised packaging would remove the attractive promotional aspects of existing tobacco packaging, and require that the appearance of all tobacco packs would be uniform, including the colour of the pack. Standardised packaging would also allow the promotion of strong anti-smoking and health messages.
2. In April 2012, the UK Government launched a consultation on whether to introduce standardised packaging, following a commitment in its Tobacco Control Plan for England.<sup>1</sup> On Friday 12<sup>th</sup> July 2013 the Government announced in a written ministerial statement that it had



*“decided to wait until the emerging impact of the decision in Australia can be measured before we make a final decision on this policy in England”.*<sup>2</sup> On 28<sup>th</sup> November 2013, the Government announced that it would table an amendment to the Children and Families Bill giving the Secretary of State the power to introduce standardised packaging by Regulations, and that it had appointed Sir Cyril Chantler to review the public health evidence on the issue. He will report by March 2014.<sup>3</sup>



## Why is it about Protecting Children?

- Smoking is an addiction that begins in childhood; more than 200,000 people under the age of 16 started to smoke in 2011.<sup>4</sup> The tobacco industry needs these new smokers as its existing customers quit, become ill or die prematurely. Half of all lifetime smokers will die from smoking related disease, more than 100,000 people across the UK every year.<sup>5</sup> Smoking rates are particularly high among vulnerable groups, including children in care.<sup>6,7</sup> Tobacco packaging is designed to be attractive to young people in particular. Instead, packaging should carry strong and unambiguous health messages that are not contradicted or subverted by the remainder of the pack design.

## Is there Evidence that Standardised Packaging Works?

- A systematic review of peer reviewed studies carried out for the Department of Health found that plain standardised packaging is less attractive, especially to young people, improves the effectiveness of health warnings, reduces mistaken beliefs that some brands are 'safer' than others and is therefore likely to reduce smoking uptake amongst children and young people.<sup>8</sup>
- Standardised packaging is a simple policy that would be cheap and easy to implement and require little enforcement. Australia has already introduced standardised packaging: the Republic of Ireland has announced that it will also introduce the policy next year.<sup>9,10</sup>



## Is there Public Support for Standardised Packaging?

- The public support standardised packaging, with polls showing more than 60% support for the policy among intending Conservative, Liberal Democrat and Labour voters.<sup>11</sup> It is also supported by health professionals, the public health community and relevant professional bodies including the Chartered Institute for Environmental Health and the Trading Standards Institute. Standardised packaging is also supported by the Scottish and Welsh Governments and the Northern Ireland Health Minister.<sup>12,13,14</sup>



## Would Standardised Packs Increase Illicit Trade?

- The tobacco industry and its front groups claim that illicit trade in tobacco products would be made worse by the introduction of standardised packs. In fact, all the key security features on existing packs would also be on standardised ones, including a covert anti counterfeit mark, which can be read by scanners, and number codes on each pack. The Children and Families Bill amendment would



explicitly allow the Secretary of State to include any necessary security features in the design of standardised packs.

## Detailed Briefing

### Fundamental Case

10. The fundamental case for standardised packaging is very simple. Smoking tobacco is a lethal addiction. Cigarettes are the only legal products sold in the UK that kill their consumers when used exactly as the manufacturer intends. No company should be allowed to promote such a product through advertising and marketing. Children, and the most vulnerable groups of children in particular, need protection from the tobacco industry's search for new addicts. Tobacco packaging should be made as unattractive as possible.

11. The remainder of this note is set out as follows:

- Smoking and young people paragraphs 12 to 17
- Existing tobacco packaging: advertising and marketing paragraphs 18 to 26
- Standardised packaging, *not "plain"* packaging paragraphs 27 to 29
- Effects on smokers and potential smokers paragraphs 30 to 34
- International developments paragraphs 35 to 41
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- Standardised packaging: the tobacco industry campaign paragraphs 45 to 54
- Standardised packaging and illicit trade paragraphs 55 to 63
- Let Parliament decide! paragraphs 64 to 65

### Smoking and Young People

12. Most smokers began their habit as children. Among existing adult smokers, two thirds report that they began to smoke before the age of 18, and almost two fifths before the age of 16. Starting to smoke is associated with a range of risk factors, including smoking by parents and siblings, smoking by friends, the ease of obtaining cigarettes, exposure to tobacco marketing, and depictions of smoking in films, TV and other media.<sup>15</sup>

13. Cancer Research UK analyses of national data<sup>4</sup> show that about 207,000 children age 11 to 15 started to smoke in 2011. Internal documents from Philip Morris International, reported in the Observer, showed that the company's key lobbying message was "*wait and see what happens in Australia (2-3 years)*"<sup>16</sup>. Standardised packaging was introduced in Australia on 1<sup>st</sup> December 2012.

14. The younger the age at which smokers start, the greater the harm is likely to be, because early uptake of the habit is associated with subsequent heavier smoking, higher levels of dependency, a lower chance of quitting and a higher chance of death from smoking-related disease.<sup>17 18</sup> Half of all lifetime smokers will die from illness caused by their addiction.<sup>19</sup>

15. Smoking rates are higher among vulnerable groups, including children in care. For example, a study for the Office of National Statistics of 1,000 "*looked after*" children (i.e. looked after by the state), which included lifestyle questionnaires, found that almost a third reported that they were current smokers. This rose to 69% for those in residential care, reflecting the greater proportion of older children in these placements.<sup>6 7</sup>

16. Exposure of young people to smoking is higher in poorer social groups and communities – since they have higher smoking prevalence rates. Data from the UK Government's General Lifestyle Survey for 2011 showed that 13% of adults in managerial and professional occupations smoked compared with 28% in routine and manual occupations. The data also showed an association between socio-economic grouping and the age at which people started to smoke. Of those in managerial and professional households 31% had started smoking before they were 16, compared with 45% of those in routine and manual households. <sup>20</sup>
17. Other specific groups of vulnerable young people with high smoking prevalence rates include teenage mothers. The Infant Feeding Survey for 2010 <sup>21</sup> showed that 57% of teenage mothers smoked during pregnancy, and 36% throughout their pregnancy. This is about six times the smoking rate for pregnant women generally. Smoking rates in pregnancy vary greatly between social classes. In 2010 pregnant women in routine and manual groups were five times more likely to smoke than those in managerial and professional occupations. Across the whole population, maternal smoking causes up to 5,000 miscarriages, 2,200 premature births and 300 perinatal deaths each year. Infants born to smokers are also much more likely to become smokers themselves. <sup>17</sup>

### **Existing Tobacco Packaging: Marketing and Advertising**

18. Tobacco packaging is carefully used by the tobacco industry as a residual form of advertising. Most forms of tobacco advertising were banned under the Tobacco Advertising and Promotion Act 2002. Sponsorship of sport by tobacco companies was prohibited from July 2005. Retail displays of tobacco products were banned in large stores from April 2012 and in all other stores from April 2015, under the Health Act 2009. <sup>22</sup>
19. Smokers display tobacco branding every time they take out their pack to smoke. In doing so they are making a statement about how they want to be seen by others as they display and endorse the brand they have chosen. The importance of the pack as a communication tool is acknowledged by the tobacco industry, as the response from Philip Morris International to the Government's consultation on the future of tobacco control illustrates. The response stated that: *"as an integral part of the product, packaging is an important means of differentiating brands and in that sense is a means of communicating to consumers about what brands are on sale and in particular the goodwill associated with our trademarks, indicating brand value and quality. Placing trademarks on packaged goods is, thus, at the heart of commercial expression."* <sup>23</sup>
20. Below are examples of existing UK packaging, which illustrate how packaging is now used by the tobacco industry for advertising and marketing purposes. The picture overleaf shows a pack design for Vogue Menthol cigarettes specifically created to appeal to young women. The brand is owned by British American Tobacco. US internet sites advertising this and related brands give the following description: *"Vogue Cigarettes stand out among other cigarette brands for both their appearance and their unique, recognizable taste. These fashionable quality smokes are all about softness - from their gentle, eye-catching design, to their smooth, pleasant smoke. Vogue Cigarettes' all-white box design with a tiny colored branch and different colored leaves reflects the romantic essence that is Vogue Cigarettes. The tobacco and additives used in Vogue Cigarettes are of the highest quality and the smoke is fulfilling and relaxing."* <sup>24</sup>



21. Another site says that: *“the Vogue cigarette’s style was based on the 1950s couture captured by Henry Clarke. [They] are the cigarettes that are preferred by women from the entire world. The length and the slimmest appearance of the Vogue cigarette is an attribute of the femininity. Vogue cigarettes are manufactured under British American Tobacco company control in the USA, South Korea, Russia, and several European countries. Vogue Cigarettes differ from other cigarette brands with both their appearance and their unique, recognizable taste”.*<sup>25</sup>
22. Industry documents released under the Master Settlement between the industry and 46 US states show that cigarette packaging has been used by the industry for decades to appeal to young people. For example, in 1981, an internal RJ Reynolds document stated that: *“smoking is frequently used in situations when people are trying to make friends, to look more mature, to look more attractive, to look ‘cooler’, and to feel more comfortable around others. These aspects of social interaction are especially prevalent among younger adult smokers....”*<sup>26</sup>

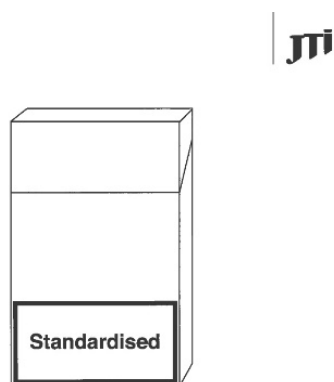


23. The picture above shows how the tobacco industry bends the existing rules about packaging to appeal to new consumers in their target markets and to try to discourage existing users from quitting. On the outside, the pack of Benson and Hedges “Silver Slide” looks not unusual. But unlike most packs, to open it you have to press the side opening where it says *“Push and Slide”*. That exposes a tray containing the cigarettes. Printed on the tray are the words: *“I owe my success to having listened respectfully to the very **B**est advice & then going away and doing **tHe** exact opposite”*. G.K. Chesterton
24. This design is intended to reinforce a key tobacco industry marketing message that has been used with success for many years, particularly to recruit young people to smoke and to discourage possible quitters: smoking is cool, an act of rebellion, adult, and transgressive.

25. The importance of pack design in promoting smoking is well understood by the tobacco industry. For example, in a presentation to an industry conference in 2006, Imperial Tobacco's Global Brand Director, Geoff Good, acknowledged that the tobacco advertising ban in the UK had *"effectively banned us from promoting all tobacco products"* and noted that, *"In this challenging environment, the marketing team have to become more creative"* adding: *"We therefore decided to look at pack design."* In November 2004, Imperial launched a *"Celebration"* pack design for its Lambert and Butler design, as a four month *"special edition"*. Reviewing this in 2006, Mr Good reported that: *"The effect was very positive. Already the no.1 brand, our share grew by over 0.4% during this period – that might not sound a lot – but it was worth over £60 million in additional turnover and a significant profit improvement... Often in marketing, it is difficult to isolate the effects of individual parts of the mix. But in this case, because the UK had become a dark market, the pack design was the only part of the mix that was changed, and therefore we knew the cause and effect."*<sup>27</sup>
26. Tobacco industry trade press also contains numerous examples of appeals to tobacco manufacturers to use packaging as an advertising vehicle. For example, the magazine World Tobacco advised that *"if your brand can no longer shout from billboards, let alone from the cinema screen or the pages of a glossy magazine, it can at least court smokers ... from wherever it is placed by those already wedded to it."*<sup>28</sup>

### **Standardised Packaging: Not Plain Packaging**

27. Standardised packaging is often named *"plain"* packaging, a description which can be misleading and has been seized on by the tobacco industry in the course of an expensive and mendacious campaign against the proposal.
28. For example, Japan Tobacco International has used the following image in its newspaper advertising (complaints about their advertisements have been upheld by the Advertising Standards Authority: see paragraph 48 below):



### **WHY MAKE IT EASIER FOR CRIMINALS TO MAKE A PACKET?**

29. In fact standardised packs would be highly coloured and carefully designed, but the message they would convey is that smoking is a lethal and addictive habit. Below are examples of standardised packs based on those used in Australia.



### Standardised Packaging: Effects on Existing and Potential New Smokers

30. There is a growing body of research evidence in support of standardised packaging. A systematic review commissioned by the Department of Health from the Public Health Research Consortium (PHRC),<sup>8</sup> found that: *“there is strong evidence to support the propositions set out in the Framework Convention on Tobacco Control relating to the role of standardised packaging in helping to reduce smoking rates; that is, that standardised packaging would reduce the attractiveness and appeal of tobacco products, it would increase the noticeability and effectiveness of health warnings and messages, and it would reduce the use of design techniques that may mislead consumers about the harmfulness of tobacco products”*.

31. Set out below is a summary of the research considered in the PHRC systematic review:

- 19 studies examined perceptions or ratings of the attractiveness of standardised packs.<sup>29</sup> All these studies found that standardised packs were rated as less attractive than branded equivalent packs, or were rated as unattractive, by both adults and children. Those studies that tested a range of branded and unbranded packs found that this difference increased as progressively more branding elements and descriptors were removed; in other words, the plainer the pack, the less attractive.
- 12 studies examined perceptions of the quality of standardised packs in terms of perceived quality, taste, smoothness and cheapness. The studies which compared perceptions of standardised and branded packs consistently found that standardised packs were perceived to be of poorer quality by both adults and children.
- 13 studies examined perceptions of smoker identity and personality attributes associated with standardised packs. Standardised packs consistently received lower ratings on projected personality attributes (such as ‘popular’ and ‘cool’) than branded packs. Visual experiments which measure the strength of association between specific brands and person types found an association between particular brands and smoker identity and saw that this association weakened or disappeared with standardised packaging.
- 10 qualitative studies examined appeal, and four key issues were identified as important. These were that: standardised pack colours have negative connotations; standardised packs weaken attachment to brands; standardised packs project a less desirable smoker identity; and standardised packs expose the reality of smoking.

32. The authors of the systematic review published an update in September 2013. This looked at 17 further studies published since the systematic review. These studies

reinforced the original findings of the systematic review, in respect of: health warning salience and effectiveness; perceptions of product harm; smoking-related attitudes, beliefs intentions and behaviour; and facilitators and barriers to the implementation of plain packaging. <sup>30</sup>

33. On October 7<sup>th</sup> 2013, the British Heart Foundation published the results of a survey on standardised packaging, of 2,500 13 to 18 year olds in Australia and the United Kingdom. In the UK, 77% of those surveyed supported the introduction of standardised packaging. 36% of those surveyed in the UK thought that existing packs in their country deterred them from smoking, compared with 48% in Australia, where standardised packaging was introduced on 1<sup>st</sup> December 2012. 59% of those surveyed in Australia thought that standardised packs in their country made teenagers less likely to smoke, and 66% thought that standardised packs should be introduced elsewhere in the world. <sup>31</sup>

34. On 11<sup>th</sup> November 2013, University of Stirling researchers published a study funded by Cancer Research UK showing brand perceptions of cigarettes by 48 UK teenagers. Findings included that teenagers thought white tips and a longer length for cigarettes portrayed a “*cleaner, feminine*” image, softening perceptions that smoking was harmful. Cigarettes with white tips were also associated with menthol, perceived as both weaker and less harmful than other cigarettes. One 15 year old girl was quoted as saying: “*because it’s skinny you feel that you’re not doing as much damage*”. Another said: “*they don’t look like cigarettes so you wouldn’t think, like, harmful*”.<sup>32</sup>

## International Developments

35. Australia has become the first country in the world to require all tobacco products to be sold in standard packaging. The law came into effect on 1<sup>st</sup> December 2012.<sup>9</sup> On 28<sup>th</sup> May 2013, the Government of the Irish Republic announced that it will introduce legislation on standardised packaging, which is intended to come into force early in 2014. <sup>10</sup>

36. The Australian regulations require:

- No branding other than the product name in a standard font, size and colour
- Prohibition of all other trademarks, logos, colour schemes and graphics

Only the following markings are permitted:

- Standard shape, size and colour for the pack and contents
- Large graphic health warnings front and back
- Qualitative rather than quantitative information on constituents and emissions (i.e. replacing information on quantities of tar, nicotine and carbon monoxide with a qualitative warning about the toxicity of the ingredients in cigarette smoke)
- Tax stamps
- Quitline number and web address on all packs
- All packs to be standard drab dark green/brown colour in matt finish. <sup>33</sup>

37. The tobacco industry has waged an expensive but unsuccessful legal campaign against the Australian legislation. In August 2012, Australia’s High Court dismissed constitutional challenges brought by tobacco companies, awarding costs in favour of the Australian Government. The industry is encouraging further challenges from Governments through the World Trade Organisation <sup>34</sup> and under the Australia - Hong Kong Bilateral Investment Treaty, but these are also considered likely to fail. <sup>35</sup> The tobacco industry claims that standardised packaging would breach its intellectual property rights, leading



to expensive compensation claims. In fact the use of tobacco trademarks is already limited by law. Governments introducing rules on standardised packaging will not be acquiring trademarks or other property from the companies so compensation will not be due. International trade agreements do not create a right to use trademarks, and they specifically allow Governments to implement measures to protect public health.<sup>36</sup>

38. Early evidence on the impact of standardised packaging in Australia suggests that compared with smokers who were still using branded packs when the research was carried out, the standardised pack smokers were 66% more likely to think their cigarettes were poorer quality than a year ago. They were 70% more likely to say they found them less satisfying. They were also 81% more likely to have thought about quitting at least once a day during the previous week and to rate quitting as a higher priority in their lives than smokers using brand packs. The authors state that thinking about quitting is important: *“The finding that smokers smoking from a plain pack evidenced more frequent thought about, and priority for quitting, than branded pack smokers is important, since frequency of thoughts about quitting has strong predictive validity in prospective studies for actually making a quit attempt.”*<sup>37</sup> Former Australian Health Minister Tanya Plibersek reported a *“flood of calls ... in the days after the introduction of plain packaging accusing the Government of changing the taste of cigarettes. Of course there was no reformulation of the product. It was just that people being confronted with the ugly packaging made the psychological leap to disgusting taste.”*<sup>38</sup>
39. A study by the consultancy firm London Economics, commissioned by Philip Morris International, was publicised by the tobacco industry funded front group *“Hands Off Our Packs”* as showing that *“following the introduction of plain packaging, there was no change in smoking prevalence”*. In fact the study did show a fall in smoking prevalence in the three months following the introduction of standardised packaging, with a partial reversal of this effect four months later, but stated that this result was not statistically significant. This is not surprising, since the sample size used (5,000) was far too small reliably to measure any realistically likely fall in smoking prevalence. To reliably measure a fall in smoking prevalence rates of one percentage point would require a sample well over four times the size used by London Economics. Given that smoking rates have declined only slowly, a fall of one percentage point would be historically very large.<sup>39 40</sup>
40. The revised EU Tobacco Products Directive which is due to be signed off by the Parliament in advance of the next election in May 2014 allows Member States to introduce standardised tobacco packaging as part of its proposals to revise the EU Tobacco Products Directive.<sup>41</sup> The proposed Directive would require Member States to ensure that 65% of the external area of cigarette packs and other tobacco packaging are covered by combined pictorial and text health warnings. It would also permit Member States to regulate the remaining area of the package.
41. The introduction of standardised packaging has been strongly backed by the World Health Organisation, which has stated that *“WHO actively supported Australia’s pioneering tobacco control measure and is standing firmly behind all countries that face intimidation from big tobacco”*.<sup>42</sup>

## **Devolved Administrations**

42. The Scottish Government has indicated its strong support for standardised packaging of tobacco products. Its programme for 2013/14 states that *“Scottish Ministers regret the UK Government’s decision not to proceed with legislation to introduce plain packaging for cigarettes and other tobacco products. The Scottish Government is determined to take forward this important public health measure, and will consult on the issue in the coming months, with the intention of introducing legislation in 2014-15”*.<sup>12</sup> Scottish Public Health Minister Michael Matheson repeated this commitment on 8 November 2013,

stating that: *“I am very encouraged by the early findings coming out of Australia following implementation of plain packaging there. These add to, and support, the wealth of existing evidence which consistently shows that plain packaging would reduce the appeal of tobacco products to consumers”*.<sup>43</sup>

43. Speaking to the National Assembly for Wales on 15<sup>th</sup> May 2013, Professor Mark Drakeford AM, the Minister for Health and Social Services in the Welsh Government, said that: *“I very much regret the fact that there was no reference in the Queen’s Speech to legislation to bring forward plain packaging for tobacco products. This is an idea that has had general cross-party support in many parts of this Chamber. My predecessor wrote to the Secretary of State for Health, urging him to bring forward such a Bill”*. He has also said: *“I still think that moving together is the best way to deal with some of these big public health issues. But I have asked my officials ... to give me advice on what our powers are and if it is possible for us to move ahead with that.”*<sup>13 44</sup>
44. Northern Ireland Health Minister Edwin Poots said in a Written Answer in the Northern Ireland Assembly dated 10<sup>th</sup> June 2013 that: *“I fully support the concept of plain packaging and value its potential as a tobacco control measure which could further help prevent young people from starting to smoke and support current smokers to quit”*<sup>14</sup>

### **Standardised Packaging: The Tobacco Industry Campaign**

45. The tobacco industry has launched a well-resourced and highly misleading campaign in the UK and around the world to try to obstruct the introduction of standardised packaging. As far back as 1993, a “plain packs group” was formed representing the top manufacturers. The arguments against standardised packaging discussed below have been deployed by the tobacco industry in every jurisdiction where the policy is being considered.<sup>45</sup>
46. In the UK alone, Japan Tobacco International, one of the big four tobacco multinationals (JTI, Philip Morris International, Imperial and British American Tobacco), has announced that it is spending £2 million in its campaign against standardised packs.<sup>46</sup>
47. Imperial and JTI, who together have more than 80% of the UK cigarette market, engaged *“Corporate Political Advertising”* to influence *“government and decision makers”* on the issue. Tactics included funding a YouTube ad, promoted by leaflet distribution in petrol stations and elsewhere, called *“Britain 2020 Vision”*, misleadingly suggesting that all *“unhealthy”* products could in future be sold in *“plain”* packaging.<sup>47</sup> Other lobbying firms known to have been retained by the industry to campaign against standardised packaging include Luther Pendragon,<sup>48</sup> which contacted trading standards officers around the country in an attempt to persuade them that standardised packs *“will lead to a significant increase in counterfeiting and so will harm the sales from legitimate retailers”*.<sup>49</sup>
48. A series of advertisements from JTI breached the UK advertising code, according to the Advertising Standards Authority.<sup>50</sup> Unjustified claims made in the adverts include: that the introduction of standardised packs would increase illicit trade, that the previous Government had *“rejected”* standardised packs, and that there was no evidence that standardised packs would work in reducing tobacco consumption.
49. A campaign group called *“Hands off Our Packs”* was set up by the tobacco industry funded front-group FOREST and organised a petition against standardised packs in response to the government consultation.<sup>51</sup> Listed as a leading supporter is Mark Littlewood, Director General of the Institute of Economic Affairs (IEA).<sup>52</sup>

50. Although they routinely refuse to reveal their sources of funds, it has been confirmed that the IEA and another well known “free market” think tank, the Adam Smith Institute have received financial contributions from the tobacco industry.<sup>53 54</sup> Both of these organisations also actively campaign against the introduction of standardised packaging of tobacco products.
51. Other groups funded by the industry to campaign against standardised packs include the Tobacco Retailers Alliance. In July 2012, the TRA reported that 30,000 retailers had signed postcards protesting against standardised packs.<sup>55</sup>
52. The tobacco industry has frequently quoted retired senior police officers as raising concerns that standardised packaging could lead to an increase in illicit trade. Peter Sheridan, a former assistant chief constable in Northern Ireland, and Roy Ramm, a former Scotland Yard commander, have written to MPs and Peers supporting this argument. Both men are listed as supporters of a group called the Common Sense Alliance,<sup>56</sup> which receives funding from business interests including BAT. The letter to parliamentarians was sent via Goddard Global, a multinational lobbying firm that provides the secretariat for the alliance. A BAT spokesman has confirmed that it employs the lobbying firm. Former Scotland Yard detective chief inspector Will O’Reilly has been working on illicit trade for Philip Morris International, and has been widely quoted on the subject in the media, as has the former Chief Constable of the Royal Ulster Constabulary (now the Police Service of Northern Ireland) Sir Ronnie Flanagan, who now advises British American Tobacco.<sup>57</sup>
53. The tobacco industry and its allies have claimed that the UK packaging industry will be hit by the introduction of standardised packs. In fact, cigarette packaging accounts for less than 5% of all packaging cartons manufactured in the UK, with a total value of less than £50 million. The number of people employed in the UK in manufacturing tobacco packaging is 325. Tobacco packaging will of course still be needed under standardised packaging rules.<sup>58</sup>
54. A tobacco industry backed group has claimed that the introduction of standardised packaging means that it will take longer to serve customers and so convenience stores will lose custom. However, research in Australia by Professor Melanie Wakefield and others concluded that: *“retailers quickly gained experience with the new plain packaging legislation, evidenced by retrieval time having returned to the baseline range by the second week of implementation and remaining so several months later. The long retrieval times predicted by tobacco industry funded retailer groups and the consequent costs they predicted would fall upon small retailers from plain packaging are unlikely to eventuate”*.<sup>59</sup>

## **Standardised Packaging and Illicit Trade**

55. The most commonly employed tobacco industry argument against standardised packaging is that it would lead to an increase in illicit trade. The industry has funded and published studies and other material claiming that the level of illicit trade in the UK is already on the increase. The best objective evidence, particularly data from HM Revenue and Customs, does not support this assertion.<sup>60</sup> Official figures released on 11<sup>th</sup> October 2013 show that the level of tobacco smuggling in the UK in 2012/13 was no higher than in 2010/11, the previous published set of figures. According to HM Revenue & Customs, in 2012/13 an estimated 9% of cigarettes consumed in the UK were illicit compared to 9% in 2010/11 and 7% in 2011/12. The figures for hand rolled tobacco were 36% in 2012/13 compared to 38% in 2010/11 and 35% in 2011/12 (all figures mid-range estimates).<sup>61</sup> Meanwhile, tobacco tax revenues have also continued to rise.<sup>62</sup>

56. The UK has in the past suffered from high levels of illicit trade. This was exacerbated by the actions of the major tobacco multinationals, which knowingly produced and exported cigarettes in volumes much greater than the known demand in their stated target markets. Much of this excess production was then smuggled back into the UK. By 2000, HM Revenue and Customs estimated that 21% of cigarettes and 60% of hand rolled tobacco consumed were illicit, and this cost the Treasury about £3 billion a year in lost taxes. Rightly, therefore, successive Governments have regarded action on illicit trade as a high priority, and increasingly they have been joined in this work by partners at a regional and local level.
57. HM Revenue and Customs and the UK Border Agency have agreed and implemented a detailed strategy to tackle tobacco tax evasion, and the UK Government provided substantial additional resources for this purpose during the last spending review. Internationally, the European Union has concluded legally enforceable agreements with the big four tobacco manufacturers to tackle illicit trade and included measures against illicit trade in the draft Tobacco Products Directive currently under consultation. The Illicit Trade Protocol, which includes detailed provisions for a global tracking and tracing system (using coded numbering) for tobacco products.
58. The production costs of illicit cigarettes (including packaging) are very low.<sup>63</sup> In Paraguay costs can be as low as 5 US cents a pack, a Jin Ling pack in Kaliningrad or a Chinese counterfeit pack may cost about 20 US cents a pack to produce. Counterfeiters are also able to produce quality and apparently genuine packaging at low prices in a short time. In 2004, HM Customs and Excise reported that the outside pack was the least likely indicator of the carton being counterfeit.<sup>64</sup>
59. Much more important are the security systems used on packs, which would continue to be used on standardised packaging. These include:
- a covert mark on each licit pack, which can be read by enforcement authorities using a simple scanner to determine whether or not a pack is counterfeit
  - other security marks that vary between manufacturers, for example the configuration of marks on filter paper
  - number codes printed on each pack, which will be developed and standardised through the introduction of the tracking and tracing system mandated under Article 8 of the Illicit Trade Protocol<sup>65</sup> and included in the draft EU Tobacco Products Directive.<sup>66</sup>

Under a standardised packaging law, the Secretary of State can, and should, retain the power to include any features in pack design which the Government considers desirable as a protection against illicit trade.

60. On 4<sup>th</sup> November 2013, British American Tobacco Australia, Philip Morris Limited and Imperial Tobacco Australia Limited released a report produced by KPMG LLP Strategy Group, London: *“Illicit tobacco in Australia: 2013 Half year report”*.<sup>67</sup> The report purported to show a high and rising level of illicit trade in Australia, but makes no claims whatever about any link between its estimates and standardised packaging. The report begins with the following disclaimer: *“KPMG LLP wishes all parties to be aware that KPMG LLP’s work for the Addressees was performed to meet specific terms of reference agreed between the Addressees and KPMG LLP and that there were particular features determined for the purposes of the engagement. The report should not therefore be regarded as suitable to be used or relied on by any other person or for any other purpose... Should any party choose to rely on the Report they do so at their own risk.”*
61. There are fundamental problems with the methodology used in the KPMG report and particularly with the *“MS Intelligence Empty Pack Survey”*, which attempts to provide an

estimate of the proportion of foreign packs present in the Australian market. Empty pack surveys consist of picking up discarded packs in selected public locations and trying to determine whether or not they are illicit. Therefore the selection of locations is crucial in determining the results. It should be noted that KPMG also produce regular reports on illicit trade across Europe (Project Star), which also use empty pack surveys. These have repeatedly overstated the extent of illicit trade in the UK, as more authoritatively measured by HM Revenue and Customs in their *“Measuring Tax Gaps”* reports.

62. Speaking in the House of Commons backbench business debate on standardised packaging, on 7<sup>th</sup> November 2013, Jane Ellison, Parliamentary Under-Secretary of State for Health, stated that: *“On standardised packaging and illicit tobacco, some 21% of the UK’s cigarette market was illicit in 2000. Latest estimates from HMRC for 2012-13 suggest that that proportion has dropped to around 9%. Enforcement is having a real impact on illicit tobacco and we want to see the figure fall still further. The Government, working with other interested parties, are trying to drive down the size of the illicit tobacco market through improved enforcement and reducing opportunities for fraud. I am grateful to those hon. Members who have made the point that if we were to adopt standardised packaging, it would not mean plain packaging. Approaches such as anti-smuggling devices could be built into standardised packaging, if we choose to go down that route.”*<sup>68</sup>

63. In oral evidence to the Inquiry on illicit trade conducted by the All Party Parliamentary Group on Smoking and Health, police, trading standards and the European Union anti-fraud office (OLAF) witnesses agreed that by maintaining security markings already in place and with new identifiers included to meet the terms of the Illicit Trade Protocol, the introduction of standardised packaging would be likely to have little or no significant impact on the level of illicit trade.<sup>69</sup>

## Let Parliament Decide

64. Standardised packaging is not a Party political issue; it is strongly supported by politicians of all parties and by crossbenchers in the House of Lords. Politicians who have publicly stated their support for standardised packaging include:

- Former Public Health Minister Anna Soubry MP (Conservative), who said that: *“I’ve seen the evidence. I’ve seen the consultation. I’ve been personally persuaded of it, but that doesn’t mean to say that all my colleagues are persuaded and that’s the debate we now have to have”*.<sup>70</sup>
- Care Minister Norman Lamb MP (Liberal Democrat), who said that: *“I think it would be a legacy for this government to have legislated on something which would be a landmark public health reform and to be out there in front in Europe”*.<sup>71</sup>
- Shadow Health Secretary Andy Burnham MP (Labour), who said in the 13<sup>th</sup> May 2013 debate on the Queen’s Speech that: *“if [the Secretary of State for Health] brings forward these proposals, they will have our full support and we will get them on the statute book.”*<sup>72</sup>

65. Standardised packaging is also popular with the public. A poll on the issue by YouGov, conducted for ASH in February 2013, found that overall 64% of adults in Great Britain were in favour of standardised packaging. A further poll by YouGov conducted in March showed support for the policy from 62% of those intending to vote Conservative, 63% of Labour and 60% of Liberal Democrats. There was majority support across age groups, genders and social classes.<sup>73</sup>

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**Smokefree ACTION**  
IT'S ABOUT **HEALTH** AND IT'S ABOUT **TIME**

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