

Public Health (Standardised Packaging of Tobacco) Bill 2014

Regulatory Impact Analysis - Final

Summary of Regulatory Impact Analysis (RIA)	
Department/Office: Department of Health	Title of Legislation: <i>Public Health (Standardised Packaging of Tobacco) Bill 2014</i>
Stage: Bill Published	Date Initiated: September, 2013 Date Up-dated: July, 2014
Related Publications: Towards a Tobacco Free Society (2000) Healthy Ireland – A Framework for Improved Health and Wellbeing 2013-2025 (2013) Tobacco Free Ireland (2013) Public Health (Tobacco) Act, 2002 Public Health (Tobacco) Act, 2004 Public Health (Tobacco)(Amendment) Act, 2011 Public Health (Tobacco)(Amendment) Act, 2013 WHO Framework Convention on Tobacco Control (ratified by Ireland in 2005) WHO Protocol to Eliminate Illicit Trade in Tobacco Products (signed by Ireland in December 2013) EU Directive on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products (adopted 20 th May 2014) Evidence Review Standardized Packaging of Tobacco Products (Ireland) (Prof D Hammond) Plain Tobacco Packaging: A Systematic Review Plain Tobacco Packaging Research An Update Standardised packaging of tobacco - Report of the Independent Review undertaken by Sir Cyril Chantler.	

Available to view or download at:

<http://www.doh.ie>

- (i) Healthy Ireland: A Framework for Improved Health and Wellbeing 2013 – 2025

<http://www.dohc.ie/publications/pdf/HealthyIrelandBrochureWA2.pdf?direct=1>

- (ii) Tobacco Free Ireland

<http://www.dohc.ie/publications/pdf/TobaccoFreeIreland.pdf?direct=1>

- (iii) Revised EU Tobacco Products Directive

http://ec.europa.eu/health/tobacco/docs/dir_201440_en.pdf

- (iv) Public Health (Standardised Packaging of Tobacco) Bill 2014

<http://www.oireachtas.ie/documents/bills28/bills/2014/5414/b5414s.pdf>

- (v) Bill Explanatory Memo

<http://www.oireachtas.ie/documents/bills28/bills/2014/5414/b5414s-memo.pdf>

- (vi) Standardized Packaging of Tobacco Products (Ireland) (D Hammond)

<http://health.gov.ie/blog/publications/standardised-packaging-d-hammond/>

- (vii) Plain Tobacco Packaging: A Systematic Review

http://phrc.lshtm.ac.uk/papers/PHRC_006_Final_Report.pdf

- (viii) Plain Tobacco Packaging Research; An Update

<http://www.stir.ac.uk/media/schools/management/documents/Plain%20Packaging%20Studies%20Update.pdf>

- (ix) Standardised packaging of tobacco - Report of the Independent Review undertaken by Sir Cyril Chantler

<http://www.kcl.ac.uk/health/10035-TSO-2901853-Chantler-Review-ACCESSIBLE.PDF>

Contact for Enquiries:	Telephone:
Geraldine_Luddy@health.gov.ie	01 635 4000
Dilly_O'Brien@health.gov.ie	01 635 4000

What policy options have been considered?

1. No policy change / Do nothing

2. Introduce new legislation to standardise packaging of tobacco products

Preferred option: 2. Introduce new legislation

	Costs	Benefits	Impacts
1. No change	No direct financial costs to the State, however , lack of appropriate tobacco control measures may lead to substantial indirect health costs, as outlined below	State would avoid the possibility of facing litigation by tobacco industry	Non-implementation of a measure outlined in the Government approved policy document Tobacco Free Ireland; reflects negatively on the State's commitment to protecting health to the fullest extent. Negative impact in terms of health costs associated with smoking as outlined below.
2. Enact new legislation	May lead to a reduction in Excise receipts from tobacco – however this would be offset by the savings due to reduced deaths and illness attributable to smoking,	The implementation of this measure together with the other measures outlined in Tobacco Free Ireland would have the benefit of reducing smoking prevalence in	This measure would represent the latest strand in the comprehensive range of tobacco control legislation already in place in Ireland.

	<p>outlined below.</p> <p>Costs associated with possible legal challenges to the Bill by the Tobacco Industry</p> <p>Costs to the manufacturers in relation to altering packaging.</p>	<p>Ireland and thereby reducing deaths associated with smoking related diseases.</p> <p>This in turn would reduce the costs to the state related to smoking related diseases. A very conservative estimate of the costs of illness attributable to smoking was in the region of €664 million in 2009.</p> <p>The cost of premature mortality in Ireland due to smoking in the same year was estimated at €3.5 billion.</p>	<p>Evidence suggests that standardised packaging of tobacco can reduce the appeal of tobacco products, increase the effectiveness of health warnings and reduce the ability of tobacco packs to mislead consumers about the harmful effects of tobacco.</p>
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1. Description of Policy Context

Ireland's public health policy objective in relation to tobacco control is to promote and subsequently move toward a tobacco free society. The cumulative effect of tobacco control legislation to date has been a decrease in the number of people smoking.

In 2013, the National Tobacco Control Office reported that 21.5% of Irish adults smoked (22.9% men and 20.2% women). This represents a decline of 2.2% since 2010, and a decline of 7.5% since 2007 when the last comprehensive large scale study on smoking prevalence in Ireland was undertaken (SLAN study). Smoking rates are highest among young adults (18-34 years) reaching 30% in the 25-34 years age group.

The Irish Health Behaviour in School-aged Children Survey (2010) found that 27% of children reported that they had ever smoked tobacco - a 9% decrease from the 2006 Survey. In the survey, 12% of children aged 10-17 reported that they were current smokers, a reduction of 9.2% since 1998.

1.1 *National initiatives*

Tobacco Free Ireland, approved by Government in July 2013 and launched on 3rd October, sets a target for Ireland to be tobacco free by 2025. In practice, this will mean a smoking prevalence rate of less than 5%. The two key themes underpinning the policy are protecting children and the denormalisation of smoking. *Tobacco Free Ireland* addresses a range of tobacco control issues and initiatives and contains over 60 recommendations, including the introduction of standardised packaging of tobacco products.

Tobacco Free Ireland is the first policy document to be published under the *Healthy Ireland – A Framework for Improved Health and Wellbeing 2013 -2025*, which was also launched in 2013. The current health status of people in Ireland, lifestyle trends

and inequalities in health outcomes are leading us towards a dangerously unhealthy and unaffordable future. *Healthy Ireland* sets out a vision that will improve the health and wellbeing of all the population of Ireland over the next 12 years. It puts forward a “whole of society” approach and new arrangements to ensure more effective co-operation to achieve better outcomes for all.

1.2 Existing Tobacco Control Initiatives

To date Ireland has been in the forefront of tobacco control legislation in Europe. The Public Health (Tobacco) Acts 2002 and 2004 aim to protect people from the dangers of tobacco consumption and from second hand smoke. A number of tobacco control initiatives have been put in place, in particular over the last decade. Examples of these initiatives are as follows:

- A ban on sale of tobacco products to individuals under 18 years of age (2001)
- Work-place smoking ban (2004)
- A ban on packets containing less than 20 cigarettes (2007)
- A ban on the sale of confectionaries that resemble cigarettes (2007)
- A ban on the point of sale display and advertising of tobacco products (2009)
- A requirement for all tobacco products to be stored within a closed container which can only be accessed by the retailer (2009)
- A requirement for all retailers who wish to sell tobacco products to register with the National Tobacco Control Office (2009)
- A prohibition on self-service vending machines except in licensed premises or in registered clubs (2009)
- Combined text and photo warnings (graphic warnings) (2013)
- Introduction of regulations to prohibit certain tobacco sales promotion devices, “happy hour”, etc. (2013)
- Social marketing and media campaigns, establishment of a National Smokers Quitline, social media and online cessation supports (on-going)
- Development of smoking cessation services (on-going)
- Nicotine Replacement Therapy available free to all medical card holders

- Increased excise duty on tobacco products (on-going)

In addition to the above, the Protection of Children’s Health from Tobacco Smoke Bill 2014, which prohibits smoking in vehicles where children are present, is currently being progressed through the legislative process in the Oireachtas (Irish Parliament).

Work has also begun on the development of legislation for the licensing of the sale of tobacco products and related matters.

1.3 International obligations/context

The World Health Organisation *Framework Convention on Tobacco Control (FCTC)* to which Ireland along with almost 180 nations is a signatory, provides the international context for tobacco control measures.

In respect of Articles 11 and 13 of the WHO FCTC, guidelines have been developed and were adopted by the Conference of the Parties to assist Parties to meet their obligations under the respective provisions of the Convention. These guidelines reflect the consolidated views of the Parties on different aspects of implementation. They also aim to reflect and promote best practices and standards that governments would benefit from in treaty implementation.

In Article 11, the guidelines outline the following with respect to plain packaging:

“Parties should consider adopting measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging). This may increase the noticeability and effectiveness of health warnings and messages, prevent the package from detracting attention from them, and address industry package design techniques that may suggest that some products are less harmful than others”.

Further, in outlining the scope of the measures involved, the guidelines state:

“Parties should ensure that the packaging and labelling provisions related to Article 11 of the Convention apply equally to all tobacco products sold within the jurisdiction.”

In Article 13, the guidelines also recommend that packaging and product design are important elements of advertising and promotion:

“Parties should consider adopting plain packaging requirements to eliminate the effects of advertising or promotion on packaging. Packaging, individual cigarettes or other tobacco products should carry no advertising or promotion, including design features that make products attractive.”

To date no EU Member State has introduced standardised packaging. However a number of countries, including UK, have expressed an interest in doing so. The revised *Tobacco Products Directive*, which was a priority for the Irish Presidency, has been formally adopted by the European Council after a vote in its favour by the European Parliament on 26th February 2014 and approval by Council on 14th March 2014. The revised Directive is in force since 20th May 2014. Member States have two years to transpose the new rules into national law. The aim of the Directive is to harmonise laws on tobacco and related products, to facilitate the smooth functioning of the internal market and to meet EU obligations under the WHO Framework Convention for Tobacco Control.

It covers areas including labelling and packaging, ingredients and emissions, traceability and security features and cross border distance sales of tobacco. The Directive provides for the retention of the power of Member States to introduce provisions providing for the further standardisation of the packaging of tobacco products where it is justified on grounds of public health and proportionate.

1.4 Next steps for Ireland

Tobacco control experts in Ireland and internationally recognise that no one element in isolation can be effective in reducing tobacco consumption and moving towards a tobacco free society. Rather, a suite of measures is required, which includes education

and taxation as well as regulation. *Tobacco Free Ireland* sets out the policy framework for reducing tobacco consumption in Ireland. It has a range of measures which together will have the overall impact of reducing smoking prevalence.

Cumulative restrictions both in Ireland and internationally on advertising, promotion and sponsorship by the tobacco industry have resulted in the industry turning increasingly to packaging as a key marketing tool to interest smokers and potential smokers.

Standardised packaging forms the latest strand of a comprehensive range of tobacco control legislation already in place in Ireland aimed at decreasing tobacco consumption in this country. Standardised packaging of all tobacco products would remove a key remaining means for the industry to promote its products to smokers and future smokers.

There is strong support in Ireland for this measure. A 2012 Eurobarometer survey found that support for the banning of colours, logos and promotional elements from packets of tobacco products was highest in Ireland (81%) among all EU countries (EU27 average was 57%).

2. Policy Objectives and Evidence

2.1 Objectives of the Public Health (Standardised Packaging of Tobacco) Bill 2014

The main objectives of introducing standardised packaging of tobacco products are:

- (a) To decrease the appeal of tobacco products
- (b) To increase the effectiveness of health warnings on tobacco packaging
- (c) To reduce the ability of packaging of tobacco products to mislead consumers about the harmful effects of smoking.

2.2 Evidence

To date, Ireland has been in the forefront of tobacco control legislation. There is a ban in place on smoking in the workplace, on tobacco advertising and sponsorship, on the display of tobacco products in shops and tobacco products placed on the market must display combined text and graphic warnings as appropriate.

Cumulative restrictions both in Ireland and internationally on advertising, promotion and sponsorship by the tobacco industry, have resulted in the industry turning increasingly to packaging, particularly the cigarette pack, as a key marketing tool to interest smokers and potential smokers. The evidence indicates that tobacco packaging is a critically important form of tobacco promotion, particularly in jurisdictions with comprehensive advertising and marketing restrictions, such as Ireland.

Standardised packaging forms the latest strand of a comprehensive range of tobacco control legislation already in place in Ireland aimed at decreasing tobacco consumption in this country and “denormalising” smoking in Ireland. These initiatives are to complement each other and one measure cannot be being viewed as being more effective than another. Rather standardised packaging of tobacco products is one of a suite of measures being perused to facilitate us in achieving our strategic goal of a smoking prevalence rate of less than 5% by 2025.

The new EU Tobacco Products Directive provides "*Directive shall not affect the right of Member States to maintain or introduce*" standardised packaging provided those provisions are compatible with the TFEU, with WTO obligations, do not affect the full application of the Directive and where it is justified on grounds of public health.

To replace smokers who quit and the 5,200 smokers who die prematurely every year due to their smoking (19% of all deaths nationally), it is estimated that the tobacco industry needs to recruit 50 new smokers every day just to maintain smoking rates at their current levels. Since almost 80% of smokers start when they are under 18, it follows that most of these new smokers are actually children. A 2012 Eurobarometer survey found that the average age of starting to smoke among the adults surveyed in Ireland was 16.4 years – the lowest age among all the EU Member States.

The tobacco industry has invested heavily in pack design in order to communicate specific messages to targeted demographic groups. As most smokers start when they are children and there is evidence of considerable brand loyalty among older smokers, packaging elements are by definition directed mainly at young people.

Packaging in the marketing industry generally has long been regarded as “the silent salesman” and tobacco packaging can be considered mobile billboards. Packaging is particularly important for consumer products with a high degree of social visibility, such as cigarettes. Unlike many other products, cigarettes are contained in packs that are displayed each time the product is used and are often in public view between uses.

Evidence shows that tobacco branding works in three key ways:

- Packs are designed to be attractive and to communicate the personality of a brand. They can act as badge products which become a part of a person's identity – particularly relevant for young people in the process of establishing a self-identity.
- Lighter coloured packs mislead consumers, falsely suggesting that some tobacco products are healthier than others.
- Branding on packs reduces the prominence and effectiveness of health warnings.

Standardised packaging, also known as plain or generic packaging, means that all forms of branding – trademarks, logos, colours and graphics – would be removed, except for the brand and variant names, which would be presented in a uniform typeface for all brands on the market. All packs would be in a plain neutral colour, except for the mandatory health warnings. The objective is to make all tobacco packs look less attractive to consumers and to make health warnings more prominent.

Over the last number of years, as interest in standardised packaging as a tobacco control measure has grown and in light of standardised packaging being recommended by the WHO FCTC, various governments have commissioned systematic reviews of the evidence put forward in the literature on the possible impacts on standardised packaging of tobacco products.

The key reviews are outlined below:

- UK, Stirling Review: Plain Tobacco Packaging: A Systematic Review, 2011;
- UK, Stirling Update: Plain Tobacco Packaging Research: An Update, 2013;
- Ireland, Prof David Hammond: Standardised Packaging of Tobacco Products. Evidence Review, 2014, and

- UK, Sir Cyril Chanter, Standardised packaging of tobacco products. Report of the independent review undertaken by Sir Cyril Chantler, 2014.

These reviews deal with many aspects of standardised packaging, **including the three primary policy objectives outlined above**. The evidence base from the reviews cited for each of the three objectives will be set out below. The review carried out by Sir Cyril Chantler on behalf of the UK government goes a step further than all of the other reviews in that in addition to reviewing the evidence base, it also tested the quality of the primary evidence based used in the Stirling Review and Update, much of which was also used in Hammond’s Review.

To do this Chantler commissioned an independent analysis of the quantitative and qualitative elements from independent academics, which used Critical Analysis Skills Programme appraisal tools, modified as necessary to take account of the nature of the studies in question. This approach subjected the primary studies to an alternative appraisal structure than that on which the original Stirling Review was based.

Their key findings, which are contained in the Chantler Review, were that the Stirling Review was conducted according to recognised best practice, all of the studies included in the review were considered appropriate for inclusion in its narrative synthesis, the Stirling Update, whilst not itself a systematic review, added useful information and included papers of individually higher quality than in the original review. Overall, in their opinion, the work was robust, and notable for the consistency of its findings.

Therefore the studies used to form the evidence base for the policy objectives as set out below have been quality assured.

Policy Objective (a): To decrease the appeal of tobacco products

The **Stirling Review** outlines findings on how plain packs impact on the appeal of cigarette products, packs and brands. Findings focused on three main elements of

appeal: attractiveness, quality, and smoker identity and personality attributes associated with the brand.

In terms of attractiveness, 19 studies examined perceptions or ratings of the attractiveness of plain packs. All these studies found that plain 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.

Twelve studies in the review examined perceptions of the quality of plain packs in terms of perceived quality, taste, smoothness and cheapness. The studies which compared perceptions of plain and branded packs consistently found that plain packs were perceived to be poorer quality by both adults and children. A study which compared different colours of plain packs, without comparing them with branded packs, found that lighter coloured packs were generally associated with weaker taste.

Thirteen studies in the review examined perceptions of smoker identity and personality attributes associated with plain packs. They found that plain 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 plain packaging. Studies that looked at whether a pack was perceived to be targeted at particular 'types' of smokers found that plain packs were perceived as being more likely to be smoked by 'older' or 'less fashionable' people than branded packs.

In the ten qualitative studies reviewed that examined appeal, four key themes emerged to explain why plain packs were consistently rated as less attractive and lower quality and had a poorer image than branded packs. These were that: plain pack colours have negative connotations; plain packs weaken attachment to brands; plain packs project a less desirable smoker identity, and plain packs expose the reality of smoking.

In the Stirling Update, which summarised the findings from 17 new studies since their first review, they found further evidence that when compared to branded packs, plain packs reduced the appeal of the pack of the cigarettes contained within it, and of smoking in general. In addition, findings from qualitative studies which explored young people's view of plain packs were overwhelmingly associated with negative attributes such as ugliness, and evoked negative emotions such as embarrassment and disgust.

In **Hammond's review**, he found that the evidence unequivocally demonstrated that plain packaging is perceived as less attractive and less appealing, particularly among youth and young adults, including smokers and non-smokers. Plain packaging is also associated with less positive brand imagery, including smoker traits, such as cool, stylish, thin. The findings of his review of the evidence suggest that plain packaging is less socially desirable and limits the ability of packaging to target sub-groups of youth and young adults.

In **Chantler's review** he agreed that there is very strong evidence that exposure to tobacco advertising and promotion increases the likelihood of children taking up smoking. He agreed that tobacco industry documents show that tobacco packaging has for decades been designed, in the light of market research, with regard to what appeals to target groups. Branded cigarettes are 'badge' products, frequently on display, which therefore act as a "silent salesman." He found that tobacco packages appear to be especially important as a means of communicating brand imagery in countries like Australia and the UK which have comprehensive bans on advertising and promotion. He noted that Japan Tobacco International responded to the decision to introduce tobacco plain packaging in Australia by attempting to sue the Australian Government for taking possession of its mobile "billboard".

Chantler pointed out that the tobacco industry argues that all of its marketing activity, including packaging, aims solely to persuade existing adult smokers to switch brand and never targets children or new smokers. However, in his opinion, whatever their intent, it is not plausible that the effect of branded packaging is only to encourage brand switching amongst adult smokers, and never to encourage non-smokers from taking up smoking. He stated that he heard no coherent argument as to how this

purported separation occurs in practice and in his opinion a ‘spillover effect’ is highly plausible whereby packages that are designed to appeal to a young adult, also, albeit inadvertently, appeal to children. He stated that children and non-smokers are not, and cannot be, quarantined from seeing tobacco packaging and in his view once they are exposed to this packaging, they are susceptible to its appeal whether it is intended to target them or not. In the light of these and other considerations set out in his full report he stated that he believed that branded packaging contributes to increased tobacco consumption.

In conclusion, based on the evidence above it is clear that standardised packs are less appealing than branded packs. An alternative scenario, to leave pack presentation untouched, would allow the tobacco industry to continue to innovate in this area and to make tobacco products more appealing to children, young people and adults.

Policy objective (b): To increase the effectiveness of health warnings on tobacco packaging

The **Stirling Review** outlined findings on how plain packaging impacts upon the effectiveness or salience of health warnings, in terms of recall, attention, seriousness and believability.

Twelve studies in their review examined whether plain packs increase people’s ability to notice and recall the health warnings on packs or whether plain packs affect the perceived seriousness and believability of the warnings. One of the survey studies measured eye movements to measure visual attention to packs, while the other survey and mixed method studies briefly showed participants different plain and branded packs and then asked them what they recalled, using either unprompted or prompted measures or both.

Of the seven studies which statistically compared responses to warnings on plain packs and branded packs, four studies suggested that plain packaging increases the salience of health warnings, one study found no difference, and two found mixed results. The impact of health warnings appeared to be influenced by the size, type and

position of the warnings used in the studies. One study which recorded eye movements as an indicator of attention paid to warnings suggested that non-smokers and weekly smokers paid more attention to warnings on plain packs than did daily smokers.

From the qualitative studies reviewed, two themes emerged: that plain packs were perceived as having less ‘clutter’ on them to detract from the health warning, and that the dullness and seriousness of the packs enhanced the seriousness and believability of warnings.

In the **Stirling Update**, eight further studies were identified on this topic. In studies using eye-tracking methodology it was found that there were more eye movements towards health warnings as against branding on plain packs compared to branded packs and that fixation time on health warnings was greater for plain packs than for branded packs. Another study in the review found that young adult women smokers looked more closely at the health warnings on plain packs than on branded packs and thought more about what the health warnings were telling them. In qualitative studies in this review, it was found that health warnings on plain packs were clear, direct and straight-to the-point compared to the same warnings on branded packs. It was also found the removal of design elements on packs made the text health warnings appear more prominent because of the removal of competition from colour and other design elements.

Hammond also looked at the impact of standardised packaging on health warnings. In his review he concluded that the evidence suggests that health warnings are more noticeable on plain packs, associated with greater recall of health messages, and may lead to greater cognitive processing, particularly among youth non-smokers. The evidence also indicates that the effect of package branding persists even in the context of large pictorial warnings, and that plain packaging and health warnings have complimentary, but independent effects on consumer perceptions.

Chantler, in his report, concluded that on the basis of the evidence he had seen that health warnings would be more credible, memorable and effective when not confusingly juxtaposed with attractive branded packages.

In conclusion, the evidence available clearly shows by introducing standardised packaging on tobacco products, the effectiveness of health warnings on packs will be significantly enhanced. In a situation where packs are not standardised the tobacco industry could exploit their design capacity to detract from the messages contained within the health warnings

Policy objective (c): To reduce the ability of packaging of tobacco products to mislead consumers about the harmful effects of smoking.

The **Stirling Review** reviewed the evidence concerning the impact of plain packaging upon perceptions of the harmfulness and strength of cigarette products, packs and brands.

Sixteen studies in the review examined whether and how perceptions of the harmfulness and strength of plain packs differ from perceptions of the harmfulness and strength of branded packs, or how different kinds of plain packs differ in terms of perceived harmfulness and strength. Perceptions of harmfulness and strength were assessed in several ways, by asking respondents which packs: would deliver the most tar and/or nicotine or would be 'lighter' in tar; were a greater risk to health compared to other brands; would be associated with greater or lesser harm; would trigger discussions on harmfulness; inform the smoker about the health effects; and would be more likely to make you think that the cigarettes inside were dangerous. Perceptions of harm also included questions on which packs you would purchase if trying to reduce the risks to health or which were perceived as 'easier to quit'. From a public health perspective, all conventional cigarettes pose a similar health risk; smokers can alter the way they smoke cigarettes of different tar and/or nicotine machine-measured yields in order to compensate for differences and satisfy their nicotine addiction. In addition there is no evidence that brands differ in ease of quitting. As brightly coloured and attractive branded packs can reduce perceptions of the harmfulness of cigarettes, the desired outcome of these studies is that plain packs should be perceived as equally harmful as, or more harmful than, branded cigarettes, and plain packs should be seen as equally easy to quit as branded cigarettes or harder to quit.

The 14 studies which used quantitative methods to examine the impact of plain packs on perceptions of harm and strength found that findings were mixed as perceptions varied according to the colour of the plain pack. In general, darker coloured plain packs were seen as more harmful, and lighter coloured plain packs less harmful, than branded cigarettes. This indicates that misperceptions about the relative harmfulness of cigarettes were reduced when darker coloured plain packs were shown. Descriptor terms such as 'gold' or 'smooth' also affected response: in general, plain packs without descriptors were perceived as more harmful than packs with descriptors. This suggests that descriptor terms have the potential to mislead consumers about harm when used on plain packs, as on branded packs. Studies which examined perceptions of which pack was more effective in terms of raising awareness of health risk tended to find that plain packs were perceived as more effective than branded packs.

The studies which compared sub-group differences in response found that in general, smokers were more likely to have misperceptions about the harmfulness of packs, both plain and branded, than non-smokers.

The **Stirling Update** also looked at this issue and found that tobacco products in packs which had attractive design features were perceived to be less harmful than those in plain packs. In a comparison study using cigarette packs, including the thin Superslims pack and a plain brown pack, the Superslims were considered to be less harmful, whereas the plain pack was considered as harmful and dirty.

In his review on the perceptions of risk associated with different tobacco products pack design, **Hammond** concluded based on the research available that many consumers continue to hold false beliefs that some cigarette brands are less harmful than others, despite scientific evidence to the contrary. Pack design and colour promote false beliefs about the relative risks between brands. A variety of experimental studies identified in his review indicate that plain packaging is associated with fewer false health beliefs.

Chantler also found that smokers and potential smokers would be less deceived into thinking that some brands are healthier than others with standardised packaging.

In conclusion, there is ample evidence to show that the current pack designs on the market do mislead consumers about the harmful effects of smoking. By standardising packs this misperception can be reduced.

Overall, with respect to all three policy objectives it is worth noting the final comment by Chantler in his extensive review: “I am of the opinion that on the basis of the evidence I have seen, it is likely that standardised packaging will result in smokers and potential smokers acquiring more negative feelings about smoking. They will be less deceived into thinking that some brands are healthier than others and that therefore health warnings apply less to them. Susceptible children and young adult smokers will be less likely to associate particular brands with the peers they want to emulate. Health warnings will be more credible, memorable and effective when not confusingly juxtaposed with attractive branded packaging. This is, in turn likely to lead to behavioural changes such as smokers hiding their cigarette packets, thereby diminishing their role in creating an exaggerated view of smoking as a social norm. This may help to make smoking seem less “normal” and therefore less desirable to children to take up smoking to ‘fit in’ with peers”.

The Impact of Plain Packaging Regulations in Australia.

In December 2012, Australia became the first country in the world to implement plain packaging regulations for all tobacco products. Obviously, the impact of this measure is eagerly awaited by many, however, caution is advised, as the full impacts of the measure may take many years to emerge, given that Australia has already one of the lowest smoking prevalence rates in the world. In addition, Chantler in his review had also advised that what is happening in Australia does not constitute a randomised trial, because a number of tobacco control actions have happened at the same time, most notably significant tax rises on tobacco products, hence it will take many years of longitudinal data to disentangle the impact of the different tobacco control measures.

Since the introduction of plain packaging in Australia, seven studies have been published in peer reviewed journals outlining the impact of the measure (up-to 18th

July 2014) and it is expected that additional studies will be published in the near future. Some of these are included in the Hammond review and all are logged on Cancer Council Victoria's web page: Plain Packaging: The Facts, available at <http://www.cancervic.org.au/plainfacts/default.asp>.

The studies published cover the following areas of interest:

- 1- Effects on attitudes and intentions;
- 2- Effects on pack display/social acceptability;
- 3- Effects on calls to quit-line;

1-Effects on attitudes and intentions

Wakefield, M. A., Hayes, L., Durkin, S. and Borland, R., Introduction effects of the Australian plain packaging policy on adult smokers: a cross-sectional study, *BMJ Open* 2013. Available from <http://www.ncbi.nlm.nih.gov/pubmed/23878174>, accessed 18th July 2014.

This was the first study to be published post implementation. It explored whether smokers smoking from packs required under Australia's plain packaging law had different smoking beliefs and quitting thoughts, compared with those still smoking from branded packs. The study used a cross-sectional survey during the roll-out phase of the law, and was carried out in the Australian state of Victoria in November 2012.

The researchers interviewed 536 cigarette smokers with a usual brand, of whom 72.3% were smoking from a plain pack and 27.7% were smoking from a branded pack. They were asked about their perceived quality and satisfaction of cigarettes compared with 1 year ago, frequency of thoughts of smoking harm, perceived exaggeration of harms, frequency of thoughts of quitting, quitting priority in life, intention to quit, approval of large graphic health warnings and plain packaging.

Compared with branded pack smokers, those smoking from plain packs perceived their cigarettes to be lower in quality, tended to perceive their cigarettes as less satisfying than a year ago, were more likely to have thought about quitting at least once a day in the past week and to rate quitting as a higher priority in their lives. Plain pack smokers were more likely to support the policy than branded pack smokers. Branded and plain pack smokers did not differ on measures of less immediate smoking intentions, frequency of thoughts about harms or perceived exaggeration of harms. Appeal outcomes, but not other outcomes, were sensitive to the extent of roll-out, with responses from branded pack smokers approaching those of plain pack smokers, once 80% of survey respondents were smoking from plain packs 1-2 weeks before the December implementation date.

The authors of this study concluded that the early indication is that plain packaging is associated with lower smoking appeal, more support for the policy and more urgency to quit among adult smokers.

2-Effects on pack display/social acceptability

Two studies have been published in this area.

Zacher, M., Bayly, M., Brennan, E., Dono, J., Miller, C., Durkin, S., Scollo, M. and Wakefield, M., Personal tobacco pack display before and after the introduction of plain packaging with larger pictorial health warnings in Australia: an observational study of outdoor café strips, *Addiction* 2014. p. 653-62. Available from <http://www.ncbi.nlm.nih.gov/pubmed/24428427> , accessed 18th July 2014.

Wakefield, M. A., Zacher, M., Bayly, M., Brennan, E., Dono, J., Miller, C., Durkin, S. J. and Scollo, M. M., The silent salesman: an observational study of personal tobacco pack display at outdoor café strips in Australia, *Tobacco Control* 2014. p. 339-344. Available from <http://tobaccocontrol.bmj.com/content/23/4/339.abstract> , accessed 18th July 2014.

The first study tested whether prevalence of cigarette pack display and smoking at outdoor venues and pack orientation changed following the introduction of plain packaging and larger pictorial health warnings in Australia. The researchers observed patrons, smokers and tobacco packs at cafés, restaurants and bars with outdoor seating before and after the introduction of plain packs.. Pack type (fully branded, plain or unknown) and orientation were noted. Rates of pack display, smoking and pack orientation were analysed using multi-level Poisson regression.

They found that pack display declined by 15%, driven by a 23% decline in active smoking between phases. The decline in pack display coincided with the full implementation of plain packaging from December 2012, was stronger in venues with children present and was limited to mid and high socio-economic status (SES) areas. The proportion of packs orientated face-up declined from 85.4% of fully branded packs pre-PP to 73.6% of plain packs post-PP. Alternatively, the proportions concealed by telephones, wallets or other items increased. Low SES areas evidenced the greatest increase in pack concealment and the greatest decline in face-up pack orientation.

The authors concluded that following Australia's 2012 policy of plain packaging and larger pictorial health warnings on cigarette and tobacco packs, smoking in outdoor areas of cafés, restaurants and bars and personal pack display (packs clearly visible on tables) declined. Further, a small proportion of smokers took steps to conceal packs that would otherwise be visible. Both are promising outcomes to minimize exposure to tobacco promotion.

The second study sought to determine the relative frequency and nature of personal display of cigarette packs by smokers in two Australian cities. This was an observational study that counted patrons, active smokers and tobacco packs at cafés, restaurants and bars with outdoor seating. Pack orientation and use of cigarette cases were also noted.

Overall, 18 954 patrons, 1576 active smokers and 2153 packs were observed, meaning that one out of every 12 patrons was actively smoking, and one of every 9 patrons displayed a pack. Packs were more frequently observed in lower socio-

economic neighbourhoods, reflecting the higher prevalence of smoking in those regions. Packs were displayed less often in venues where children were present, suggesting a greater tendency not to smoke around children. Most packs (81.4%) were oriented face-up, permitting prominent brand display. Only 1.5% of observed packs were cigarette cases, and 4.2% of packs were concealed by another item, such as a phone or wallet.

The authors concluded that tobacco packs are frequently seen on table-tops in café strips, providing many opportunities for other patrons and passers-by to be incidentally exposed to cigarette brand names and imagery. Use of cigarette cases is rare, suggesting that smokers eventually habituate to pictorial warnings on branded packs and/or find repeated decanting of each newly purchased branded pack into a case to be inconvenient.

3-Effects on calls to quit-line

Young, J. M., Stacey, I., Dobbins, T. A., Dunlop, S., Dessaix, A. L. and Currow, D. C., Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time-series analysis, *Med J Aust* 2014. p. 29-32. Available from <http://www.ncbi.nlm.nih.gov/pubmed/24438415>, accessed 18th July 2014.

This study investigated whether the introduction of tobacco plain packaging in Australia was associated with a change in the number of calls to the smoking cessation helpline, Quitline, and to compare this with the impact of the introduction of graphic health warnings from 1 March 2006.

The study design involved a whole-of-population interrupted time-series analysis in New South Wales and the Australian Capital Territory between 1 March 2005 and October 2006 for the comparator, graphic health warnings, and October 2011 and April 2013 for the intervention of interest, tobacco plain packaging. The main outcome measure studies was the weekly number of calls to the Quitline, after adjusting for seasonal trends, anti-tobacco advertising, cigarette costliness and the number of smokers in the community.

The authors found that there was a 78% increase in the number of calls to the Quitline associated with the introduction of plain packaging (baseline, 363/week; peak, 651/week). This peak occurred 4 weeks after the initial appearance of plain packaging and has been prolonged. The 2006 introduction of graphic health warnings had the same relative increase in calls (84%; baseline, 910/week; peak, 1673/week) but the impact of plain packaging has continued for longer.

The authors concluded that there has been a sustained increase in calls to the Quitline after the introduction of tobacco plain packaging and that this increase is not attributable to anti-tobacco advertising activity, cigarette price increases nor other identifiable causes.

Qualitative research indicates that:

- Plain pack colours have negative connotations;
- Plain packs weaken attachment to brands; project a less desirable smoker identity and expose the reality of smoking.
- Younger people were more likely than older people to perceive that standardised packs are less appealing and would discourage the onset of smoking, encourage cessation and reduce consumption.

Systematic reviews of the research evidence covering 54 studies were published by Moodie et al in 2012 and in 2013. These reviews, and other studies, suggest that standardised packaging can reduce the appeal of tobacco products, increase the effectiveness of health warnings and reduce the ability of branded tobacco packaging to mislead consumers about the harmful effects of smoking.

The review concluded that

“it is worth emphasising the remarkable consistency in study findings regarding the potential impact of plain packaging. Across studies using different designs conducted in a range of countries, and with smokers and non-smokers the key

findings are similar. This consistency of evidence can provide confidence about the observed potential effects of plain packaging. If and when introduced, existing evidence suggests that plain packaging represents an additional tobacco control measure that has the potential to contribute to reductions in the harm caused by tobacco smoking now and in the future”.

In another study, the views of 33 tobacco control experts (from UK, Australasia and North America) were elicited on the likely impact on smoking rates in adults and children of standardised packaging of tobacco products two years after its introduction (all other things being constant) in the expert’s region of residence. The median estimate for the impact on adult smoking prevalence was a 1 percentage point decline, and for the percentage of children trying smoking there was an estimated 3 percentage point decline.

A year on from the introduction of plain packaging in Australia, a limited amount of research is beginning to be published on the effects of the policy. One study, published in December 2013, reported on the results of research conducted before and after the legislation. Between October and April 2011-2012 and 2012-2013, the researchers counted patrons, smokers and tobacco packs at cafés, restaurants and bars with outdoor seating. They concluded that following the introduction of plain packaging and larger pictorial warnings on packs, smoking in outdoor areas declined by 23%, and personal pack display (where packs are clearly visible on tables) declined by 15%. The decline in pack display was found to be stronger in venues where children were present.

Another Australian study found a 78% increase in the number of calls to the smoking cessation helpline, Quitline, associated with the introduction of plain packaging. The researchers controlled for a number of variables, including seasonal trends, and concluded that the increase was not attributable to anti-tobacco advertising activity, cigarette price increases or other identifiable causes.

An independent review in relation to standardised packaging of tobacco was undertaken in the UK by Sir Cyril Chantler and this was published in April 2014. The report states that branded packaging plays an important role in encouraging young

people to smoke and that it is highly likely that standardised packaging would serve to reduce the rate of children taking up smoking. It also concludes that standardised packaging is likely to contribute to a modest but important reduction in smoking and therefore have a positive impact on public health.

Ireland

The Department of Health commissioned Professor David Hammond, from the University of Waterloo, Canada, to undertake an evidence review on the impact of standardised packaging of tobacco products and to assess the relevance of this evidence to the Irish context.

This review was published in June 2014 and is available at <http://health.gov.ie/blog/publications/standardised-packaging-d-hammond/>.

The review comprehensively references the international evidence and research available in areas including marketing and advertising targeting youth, causal associations with smoking behaviour, health warnings, perceptions of risk, consumer appeal, measures of consumer demand and smoking behaviour, plain pack colour, and post-implementation: the impact of plain packaging regulations in Australia.

In relation to the Irish market, Professor Hammond indicates that

“Western countries are very similar in terms of the trajectories of smoking initiation, patterns of use, and smoking cessation. Industry practices with respect to the use of packaging are also similar. Therefore, it is reasonable to generalize the research findings on packaging from other Western countries to Ireland. In relation to the wealth of existing international research on standardised/plain packaging, it is reasonable to apply research findings from other Western countries to Ireland. The consistency of findings across different countries supports this hypothesis. Research conducted in jurisdictions with similar regulations tobacco marketing and advertising – particularly the United Kingdom – is important in this regard. It should also be noted – however obvious- that evidence on the actual impact of plain packaging in Ireland cannot be collected prior to actual implementation of a regulation.*

Therefore, comparisons with other countries are informative for this critical source of evidence.”

The review goes on to state that

“evidence indicates that tobacco packaging is a critically important form of tobacco promotion, particularly in jurisdictions with comprehensive advertising and market restrictions, such as Ireland. The evidence indicates that plain packaging reduces false beliefs about the risks of smoking, increases the efficacy of health warnings, reduces consumer appeal among youth and young adults, and may promote smoking cessation among established smokers”

The key Evidence Review documents in relation to standardised packaging in Ireland are:

- Standardized Packaging of Tobacco Products Evidence Review 2014 (Prof D Hammond)
- Plain Tobacco Packaging: A Systematic Review 2011 (Moodie, Stead, Bauld, McNeill, Angus, Hinds, Kwan, Thomas, Hastings, O’mara-Eves
- Plain Tobacco Packaging Research An Update 2013 (Moodie, Angus, Stead, Bauld)
- Standardised packaging of tobacco - Report of the Independent Review undertaken by Sir Cyril Chantler 2014

There is strong support in Ireland for the introduction of standardised packaging of tobacco products. A 2012 Eurobarometer survey found that support for the banning of colours, logos and promotional elements from packets of tobacco products was highest in Ireland (81%) among all EU countries (EU27 average was 57%).

3. Identification and Description of Options

Against the international background (WHO FCTC Guidelines), the progress made by Ireland to date in the tobacco area, and in light of the extensive evidence base concerning the impact of tobacco packaging as a persuasive advertising vehicle, a decision was made by Government to introduce standardised packaging of all tobacco products.

Government approval was received on 28th May 2013 to introduce standardised packaging of tobacco products in Ireland. On 19th November 2013, Government approval was received for the publication of the General Scheme of a new Public Health (Standardised Packaging of Tobacco) Bill, and to proceed with the drafting of legislation based on this General Scheme and to submit the General Scheme of the Bill to the Joint Oireachtas Committee on Health and Children for consideration.

4. Analysis of Costs, Benefits and Other Impacts

4.1 Consultation

Joint Oireachtas Committee on Health & Children

Following the publication of the General Scheme of the Bill, the Minister referred it to the Joint Oireachtas Committee on Health and Children. The Joint Committee was requested to review the Scheme and report on its deliberations to the Minister. The Committee issued a call for submissions on the General Scheme and a series of public hearings on the matter was held in early 2014, concluding on 13th February. The Report of the Joint Oireachtas Committee on Health and Children on the General Scheme of the Public Health (Standardised Packaging of Tobacco Products) Bill 2013 was published on 3rd April 2014.

Although the Joint Oireachtas Committee specified that the hearings were to deal specifically with the General Scheme, many of the contributors spoke more generally on the area of tobacco control and on aspects of the area not related to standardised packaging. Of the 26 recommendations made in the Committee's report, 13 addressed specific points related to the General Scheme. These 13 points are attached at Appendix A. The Report of the Joint Oireachtas Committee is in three volumes and can be accessed on the Committee's website¹.

In drafting the Public Health (Standardised Packaging of Tobacco) Bill, the Department of Health considered the report of the Joint Committee and has taken account of a number of the recommendations in the Joint Oireachtas Committee report which specifically relate to standardised packaging of tobacco products.

¹ Volume 1: <http://www.oireachtas.ie/parliament/media/committees/healthandchildren/Public-Health-SPT-Bill--Vol-1.pdf>;

Volume 2, part 1: http://www.oireachtas.ie/parliament/media/committees/healthandchildren/Vol-2-Final-2-04-14_Part1.pdf;

Volume 2, part 2: http://www.oireachtas.ie/parliament/media/committees/healthandchildren/Vol-2-Final-2-04-14_Part2.pdf

Stakeholders

A consultation with relevant stakeholders and interested parties was undertaken to explore the possible impact of the Government's proposal to introduce standardised packaging for tobacco products in this country. The Department of Health sought submissions from stakeholders, including the tobacco industry and retailer organisations, on the specific content of the General Scheme, the impact of its provisions and on any omissions identified. The deadline for submissions was 21st February 2013.

15 submissions were received within the timeframe. The submission request and a summary of the main issues raised specifically in relation to the General Scheme are attached at Appendix B. All the submissions received can be found at [LINK](#).

An analysis of these submissions has taken place and where the submissions commented specifically on the content of the General Scheme, the Department of Health has taken account of a number of the issues raised where these were compatible with overall tobacco control policy as set out in *Tobacco Free Ireland*.

4.2 Main Issues raised during Consultation

4.2.1 Illicit Trade

(i) Standardised Packaging impact on illicit trade of tobacco

During the Joint Oireachtas Committee hearings, in submissions to the Committee and to the Department of Health, the tobacco industry has argued that standardised packaging would be easier to forge and would lead to growth in illicit trade of tobacco

products. The retail sector has stated that such an increase will have a negative impact on their businesses. The Revenue Commissioners and An Garda Síochána have refuted the claim that standardised packaging will lead to such increases. The Revenue Commissioners have advised that the tax stamp is a key means for them to distinguish between legal and illegal products, irrespective of the way in which the cigarettes are packaged. Tax stamps will remain a fixture on tobacco products following the introduction of standardised packaging, and contain all features possible to minimise the risk of counterfeiting. Therefore, this legislation is unlikely to have a significant impact on Revenue's work in relation to combating illicit trade in cigarettes.

In addition to this the 2014 EU Tobacco Products Directive sets out provisions to be adopted by Member States in relation to traceability and security features of tobacco products. Tobacco products will be marked with a unique identifier and security features. This will allow for their movements to be recorded and for such products to be tracked and traced throughout the EU. In addition this will facilitate the verification of whether or not tobacco products are authentic.

Ireland has signed the Protocol to Eliminate Illicit Trade in Tobacco Products, adopted by the Parties to the WHO Framework Convention on Tobacco Control (WHO FCTC). The new international treaty is aimed at combating illegal trade in tobacco products through control of the supply chain and international cooperation. As a key measure, Parties commit to establishing a global tracking and tracing system to reduce and eventually eradicate illicit trade.

Two Australian studies have addressed this issue. Scollo et al (2014a)² assessed change in the availability of illicit tobacco in small mixed business retail outlets following the December 2012 introduction of plain packaging in Australia. Three hundred and three small retail outlets were visited in June and September 2012 (baseline months), and in December 2012 and February, April and July 2013. Fieldworkers requested a particular low-cost brand of cigarettes and then pressed the

² Scollo M, Bayly M, and Wakefield M. Availability of illicit tobacco in small retail outlets before and after the implementation of Australian plain packaging legislation. Tobacco Control, 2014a. <http://tobaccocontrol.bmj.com/content/early/2014/04/10/tobaccocontrol-2013-051353.abstract>

retailer for an ‘even cheaper’ brand. The cheapest pack of cigarettes offered was purchased and later examined to assess any divergence from prescribed Australian packaging regulations. The price paid was compared with tax liability and recommended retail price for the particular brand and pack size. In a sub-set of 179 stores, fieldworkers then asked the retailer about availability of unbranded (chop-chop) tobacco.

They found that thirteen (2.2%) of 598 packs purchased pre-plain packaging were either non-compliant with Australian health warnings and/or suspiciously priced. Four packs (1.3%) of 297 met either or both criteria in the December implementation month, and five (0.6%) of 878 did so in the three collection months following implementation. Chop-chop was offered upon enquiry on 0.6% (n=2) of 338 occasions prior to implementation, 0.6% (n=1) of 170 occasions in the December 2012 implementation month, and 0.6% (n=3) of 514 occasions post implementation. The likelihood of a ‘positive’ response (either an offer to sell or information about where unbranded tobacco may be purchased) did not differ across pre implementation, during-implementation and post implementation waves.

The authors concluded that packs judged likely to be illicit were sold in response to requests for cheapest available packs on less than one percent of occasions. Offers to sell unbranded tobacco were rare. No change in availability of illicit tobacco was observed following implementation of plain packaging.

Scollo et al (2014b)³ assessed the availability of illicit tobacco from specialist tobacconists in Melbourne, Victoria, following the introduction of plain packaging legislation. Fifty-four tobacconists were sampled. A trained fieldworker entered each store and, after asking for a cheap pack of cigarettes, went on to enquire about local availability of unbranded tobacco, making sure to always use the words ‘chop-chop’ in their request. If offered chop-chop, the fieldworker declined to purchase it. The response of the retailer was noted after leaving the store.

³ Scollo M, Bayly M, and Wakefield M. Availability of chop-chop in Victorian tobacconists following introduction of plain packaging. Australian & New Zealand Journal of Public Health, 2014b; 38(3):293-4. <http://www.ncbi.nlm.nih.gov/pubmed/24890492>

Two-thirds of tobacconists indicated that they did not know what chop-chop was, and a further 15% confused it with roll-your-own tobacco. Retailers offered to sell unbranded tobacco on just five (3%) of 162 occasions throughout the three collection months. They provided specific information as to where unbranded tobacco could be found on five occasions (3%) and vague information on a further 10 occasions (6%).

The authors concluded that the results complement information from population surveys which indicate very low incidence of Victorian smokers purchasing such tobacco and that the availability of unbranded tobacco from tobacconists in Melbourne appears to be low and shows no signs of increasing in the months following the introduction of plain packaging legislation in Australia.

All of the studies outlined above show that the introduction of plain packaging in Australia is having a positive impact with none of the downsides predicted by the tobacco industry of other vested stakeholders.

Since the introduction of plain packaging in Australia, there have been many reports commissioned by the tobacco industry which purport to show that the sales of illicit tobacco has increased and there has been no impact on smoking prevalence, hence the initiative has failed to deliver the public health goals identified by the Australian Government. Some of these reports are available at <https://www.cancervic.org.au/plainfacts/browse.asp?ContainerID=industryopposition>. In response the Australian Department of Health published online “Tobacco Facts and Figures” available at <http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-kff>. the key points are outlined below:

- On tobacco sales data, recent figures released by the Australian Bureau of Statistics (ABS) show that total consumption of tobacco and cigarettes in the March quarter 2014 is the lowest ever recorded, as measured by estimated expenditure on tobacco products.

- On tobacco consumption, The Commonwealth Treasury has further advised that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when tobacco plain packaging was introduced. Tobacco clearances are an indicator of tobacco volumes in the Australian market.
- On smoking prevalence rates, the Australian Government relies on data from national surveys conducted by the Australian Bureau of Statistics (ABS) and the Australian Institute of Health and Welfare (AIHW). The latest smoking prevalence related data, released on 17 July 2014, shows that there has been a significant decrease in daily smokers aged 14 years or older in Australia, falling from 16.6% in 2007, 15.1% in 2010 to 12.8% in 2013. This is lowest smoking prevalence rate ever recorded in Australia. These results do not reflect any impact from the Australian Government's change to bi-annual indexation of tobacco excise or the first of four 12.5% excise increases on tobacco products which took effect on 1 December 2013.
- On plain packaging, the Australian Department of Health states that tobacco plain packaging operates as part of a comprehensive set of tobacco control measures. It is an investment in the long term health of Australians and its full effects will be seen over the long term.

In view of the above, it is anticipated that illicit trade of tobacco will not increase as a result of the introduction of standardised packaging.

(ii) Extent of Illicit Trade of Tobacco in Ireland

The extent of the illicit cigarette market in Ireland is estimated through annual surveys of smokers. These surveys are undertaken for Revenue and the National Tobacco Control Office of the Health Services Executive by IPSOS MRBI.

The survey for 2012 found that 13% of cigarettes consumed in Ireland are illicit. Of the 13% classified as illegal packs, 11% were classified as contraband, almost 2% as “illicit whites” and less than 1% were found to be counterfeit.

The comparable figure for 2011 was 14%. This would suggest that the extent of the problem is being contained, as a result of the extensive action being taken against the smuggling and sale of illicit product.

While estimating the scale of any illegal activity and the resultant tax loss is difficult, the IPSOS MRBI survey is the best indicator of the extent of the market in illicit cigarettes.

(iii) Combatting Illicit Trade

Combating the illegal tobacco trade is, and will continue to be, a high priority for the Revenue Commissioners. Their work against this illegal activity includes a range of measures designed to identify and target those who are engaged in the supply or sale of illicit products, with a view to seizing the illicit products and prosecuting those responsible. This multi-faceted strategy includes ongoing analysis of the nature and extent of the problem, developing and sharing intelligence on a national, EU and international basis, the use of analytics and detection technologies and ensuring the optimum deployment of resources at points of importation and within the country.

Interception of illicit tobacco products is achieved through a combination of risk analysis, profiling and intelligence and the screening of cargo, vehicles, baggage and postal packages. Revenue officers also target the illicit trade at the post-importation level by carrying out intelligence-based operations and random checks at retail outlets, markets and private and commercial premises.

There is extensive cooperation with An Garda Síochána in combating the illicit trade, and the relevant agencies in the State also work closely with their counterparts in Northern Ireland, through a cross-border group on tobacco enforcement, to target the organised crime groups that are responsible for a large proportion of the illegal tobacco market. In addition, cooperation takes place with other revenue administrations and with the European Anti-Fraud office, OLAF, in the on-going programmes at international level to tackle the illicit trade.

In addition, legislative action has been taken over recent years to ensure that the Revenue Commissioners have the requisite powers to respond effectively to the problem of the illegal tobacco trade. The Finance Act 2012 clarified the legal basis for Revenue officers to open and examine the contents of postal and courier packets that are reasonably believed to contain untaxed excise products. The Finance Act 2013 introduced new offence and forfeiture measures relating to the illicit production of tobacco, including offences for involvement with illicit tobacco production, knowingly dealing in or delivering any illicit tobacco product and keeping materials and equipment for the purposes of illicit production. Provision was made also for the forfeiture of any equipment or materials, including unmanufactured tobacco, used for illicit production.

That Act also strengthened the offence provisions relating to the sale or delivery of unstamped tobacco products. The Finance (No. 2) Act 2013, provided that a person suspected of an offence of dealing in, or with, unstamped tobacco products must provide information to a Revenue Officer or a Garda, may be required to present any tobacco product concerned for examination, and makes provision for search by a Revenue Officer or Garda of any bag or other receptacle that he or she reasonably believes to contain tobacco products that are concerned in the offence.

As well as those changes to primary law Ireland, in accordance with EU Directive 2008/118/EU, introduced a quantitative restriction, with effect from 1 January 2014, on the number of cigarettes that may be brought into the State for personal use by individuals travelling from Bulgaria, Croatia, Hungary, Latvia, Lithuania and Romania. The Excise Duty on Cigarettes (Quantitative Restrictions) Order 2013 (S.I. No. 553 of 2013) provides that the number of tax-paid cigarettes that may be brought into Ireland for personal use by individuals travelling from those Member States, without payment of further excise duty in Ireland, is restricted to 300. Anyone with cigarettes in excess of that quantity must declare them to a Revenue Officer and pay the appropriate excise duty. This restriction will remain in place until 31 December 2017 or until such time as the particular Member State has achieved the required EU minimum tax levels, whichever is the earlier.

4.2.2 Impact on Retailers

(i) Illicit Trade

Retailers of tobacco products have argued that standardised packaging would be easier to forge and would lead to growth in illicit trade of tobacco products. It is argued that this in turn would lead to loss in profits and may in turn affect employment in the retail sector. However, as stated above in paragraph 4.2.1. above, the tax stamp and the introduction of new security and tracking and tracing mechanisms as set out in the Tobacco Products Directive and the WHO FCTC Protocol will be sufficient in ensuring that the illicit trade of tobacco is tackled.

(ii) Transaction Issues (retail staff confusion)

Issues were raised during the consultation process about possible confusion which may arise for staff in the retail sector when stocking containers/shelves with tobacco products in standardised packaging. The Bill provides that the brand and variant name may appear on a cuboid pack on the top, front and bottom which would allow for easy identification of product and eliminate risk of wrong products being sold.

Research in Australia has shown transaction and retrieval times in relation to tobacco products for retail staff have not increased due to the introduction of standardised packaging legislation⁴. Wakefield *et al* (2013) concluded that retailers quickly gained experience with the new plain packaging legislation, with retrieval time declining as days after plain packaging implementation increased, returning to the baseline range (measured in the months before implementation) by the second week of implementation and remaining so in the months afterward. Sensitivity analyses showed that results were robust to the variability in purchasing circumstances in tobacco retail outlets. They suggested that the long retrieval times predicted by tobacco industry-funded retailer groups and the resulting costs they predicted would fall upon small retailers from plain packaging are unlikely to eventuate.

⁴ Wakefield, M., Bayly, M. and Scollo, M., Product retrieval time in small tobacco retail outlets before and after the Australian plain packaging policy: real-world study, Tobacco Control 2013. <http://tobaccocontrol.bmj.com/content/early/2013/05/25/tobaccocontrol-2013-050987>

(iii) Penalties relating to Retailers

Concerns were raised regarding the “disproportionate” additional penalty placed on retailers in that the retailer can be removed from the retail register for the sale of tobacco products when convicted of an offence under the Bill. This is, however, in line with the current operation of the Public Health (Tobacco) Acts 2002 as amended. At present where a person commits an offence under that Act the retailer can be removed from the retail register. However, the Public Health (Standardised Packaging of Tobacco) Bill 2014 does contain a defence that allows for persons to demonstrate that he/she made all reasonable efforts to comply with the law.

(iv) Transition Times

During the consultation the issue of allowing adequate transitional time for the putting in place of arrangements and to allow an adequate “wash-through” period for older stock was raised.

The transitional provisions set out in the Bill allow retailers and manufacturers time to comply with the new measures.

Current packets may be manufactured until May 2016, and there will then be a one year period to sell outstanding stocks. Non-compliant retail packaging may not be manufactured from May 2016, and may not be sold after May 2017. These transitional periods are in line with those set out in the EU 2014 Tobacco Products Directive because the Bill transposes some provisions directly from the Directive.

4.2.3. Intellectual Property

In the different consultation fora i.e. Joint Oireachtas Committee submissions and hearings and the Department of Health consultation the issue of the interference or restriction of intellectual property (IP) (trademarks) was raised.

Article 43 and 40.3 of the Irish Constitution sets out the constitutional provisions in relation to the rights for private ownership and deals with any “unjust attack” on that right.

In order to justify the introduction of this legislation the State to must be satisfied that the measure is proportionate and justified.

Article 8.1 of the World Trade Organisation Trade-Related Aspects of Intellectual Property Rights agreement states that members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health, provided such measures are consistent with the provisions of the agreement.

The State is entitled to take stringent measures in the interest of public health and having considered the well-established public health threat that smoking entails, the Minister for Health is of the view that this Bill is a proportionate evidence-based public health measure. The Bill for standardised packaging for tobacco products has also been approved by the Irish Government.

Ireland has a robust legal framework in place to protect intellectual property (IP). This Government continues to focus on ensuring that Ireland’s intellectual property regime compares favourably with best international practice. In particular, actions arising from the Action Plan for Jobs target enhancements to Ireland’s IP regime to ensure that the regime allows for innovation which in turn contributes to job creation. The intention is to further reinforce Ireland’s reputation as a country where strong IP rights play a crucial role and strengthen Ireland’s already established reputation as a good place in which to do business.

4.2.4 The Bill’s Relationship with the Tobacco Products Directive

At the time of the consultation process with the Joint Oireachtas Committee and with the Department of Health, the negotiations were continuing at European level on the Tobacco Products Directive. This Directive was finalised and adopted in May 2014.

Some consultation contributors were seeking clarification on the Bill's linkages or relationship with the new Tobacco Products Directive.

The revised **Tobacco Products Directive** covers areas including labelling and packaging, ingredients and emissions, traceability and security features and cross border distance sales of tobacco. The Directive provides for the retention of the power of Member States to introduce provisions providing for the further standardisation of the packaging of tobacco products where it is justified on grounds of public health and proportionate.

Member States have two years to transpose the new rules into national law. The aim of the Directive is to harmonise laws on tobacco and related products, to facilitate the smooth functioning of the internal market and to meet EU obligations under the WHO Framework Convention for Tobacco Control.

The Public Health (Standardised Packaging of Tobacco) Bill 2014 proposes to transpose directly some of the provisions outlined in that Directive i.e. Articles 13 and 14. In relation to definitions, the Bill states that a word or expression used in the Bill that is also used in the Tobacco Products Directive shall have the same meaning as that in the Directive.

The Tobacco Products Directive also provides for more warnings and larger graphic warnings on front and back of packs. The health warnings outlined in the Directive are an essential element of the standardised packaging initiative and as such the transitional period outlined in the Directive has been included in the Bill so that all elements, plain colour etc. and graphic warnings will be introduced together.

Some of the submissions called for the inclusion of the Quit line phone number on the warnings. The combined warnings in the Tobacco Products Directive provide for the inclusion of smoking cessation phone numbers, websites on the warnings on tobacco products and as such these provisions will be transposed into domestic Irish law.

4.2.5 Evidence

The issue of evidence arose during the consultation processes. Some contributors to the consultation process referred to the lack of evidence in relation to the effectiveness of standardised packaging. The issue of evidence is dealt with in a comprehensive way in paragraph 2.2.

4.2.6. Inclusion of “Other tobacco products”.

Several of the submissions received during the stakeholder consultation were from cigar retailers and manufacturers, both in Ireland and abroad who were concerned with the possible effects this legislation would have on their business. The cigar industry argues that this is a small niche market and not one that is attractive to children or young people and as such is not marketed as such.

The Public Health (Standardised Packaging of Tobacco) Bill 2014 covers all tobacco products legally available for retail sale in Ireland.

All tobacco products have been shown to negatively affect health and as such it was considered appropriate that all tobacco products should be treated equally under this Bill. While it is accepted that currently the majority of cigar smoking does not occur among children and young people, evidence shows that standardised packaging encourages and acts as a motivating factor for existing smokers to quit. It also encourages those that have given up smoking to remain as non-smokers. This would be relevant to all tobacco products.

As set out in the foreword to the treaty, the WHO FCTC is an evidence-based treaty that reaffirms the right of all people to the highest standard of health. The Treaty represents a paradigm shift in developing a regulatory strategy to address addictive substances; in contrast to previous drug control treaties, the WHO FCTC asserts the importance of demand reduction strategies as well as supply issues. Articles 11 (Packaging and labelling of tobacco products) and Article 13 (tobacco advertising,

promotion and sponsorship) are relevant in this regard. In addition, Article 2 of the WHO FCTC, encourages Parties to the treaty to implement measures beyond those required by the Convention and its protocols.

Furthermore, the preamble to the WHO FCTC states that there is no distinction made between tobacco products and the harm that they cause and that tobacco products are defined in Article 1 as products entirely or partly made of the leaf tobacco as raw material which are to be manufactured to be used for smoking, sucking, chewing or snuffing.

In respect of Articles 11 and 13 cited above, the WHO FCTC has produced a set of guidelines, which were adopted by the Conference of the Parties to assist Parties to meet their obligations under the respective provisions of the Convention. These guidelines reflect the consolidated views of the Parties on different aspects of implementation. They also aim to reflect and promote best practices and standards that governments would benefit from in treaty implementation.

In Article 11, the guidelines outline the following with respect to plain packaging: Parties should consider adopting measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging). This may increase the noticeability and effectiveness of health warnings and messages, prevent the package from detracting attention from them, and address industry package design techniques that may suggest that some products are less harmful than others. Further, in outlining the scope of the measures involved the guidelines state: Parties should ensure that the packaging and labelling provisions related to Article 11 of the Convention apply equally to all tobacco products sold within the jurisdiction.

In Article 13, the guidelines also recommend that packaging and product design are important elements of advertising and promotion. Parties should consider adopting plain packaging requirements to eliminate the effects of advertising or promotion on packaging. Packaging, individual cigarettes or other tobacco products should carry no advertising or promotion, including design features that make products attractive.

From a public health perspective, Ireland has taken a decision to reduce smoking of all tobacco products, and not just cigarettes, to a prevalence rate of less than 5% by 2025. All smokers, irrespective of the type of product they consume deserve the same level of protection as do those who consume cigarettes. All tobacco products have been shown to be harmful to health. It is also clear that the tobacco industry uses branding and packs design to make all tobacco products attractive.

The findings from research carried out on cigarette pack design can be readily extrapolated to other tobacco products. Research carried out in Australia found that branding and packaging did have an impact on users' perceptions of the products they consumed and that standardised packaging could have benefits from a public health perspective <http://www.yourhealth.gov.au/internet/yourhealth/publishing.nsf/Content/mr-plainpack>.

Ensuring that all tobacco products are subject to standardised packaging legislation is important from an implementation and enforcement perspective. It sends a clear message that all tobacco products are harmful to health and does not allow any discrimination between products. Likewise it avoids a scenario where there is confusion as to the differences between cigarettes, cigarillos and cigars. It also avoids a situation whereby the tobacco industry would target those products that might not be included under the legislation for further promotion.

It is worth noting that such a scenario has already occurred in the United States. While cigarette smoking has been declining in the United States, cigar sales have more than doubled since 2000, driven by an explosion of cheap, sweet small cigars that entice children.

National surveys show high school students are twice as likely as adults – 13.1% compared to 6.6% – to report smoking cigars in the past month, and young adults (ages 18-24) smoke cigars at even higher rates (15.9%).

In 2009, the Food and Drug Administration banned candy and fruit-flavoured cigarettes. However, because the FDA does not currently regulate cigars, tobacco

companies continue to market similarly flavoured cigars. Some tobacco companies have modified their flavoured cigarettes to meet the legal definition of cigars (e.g., by adding tobacco to the wrapper) and continued to market them with sweet flavours. When another 2009 federal law significantly increased taxes on cigarettes and small cigars, but taxed larger cigars at lower rates, some manufacturers added weight to their products to qualify for the lower tax rate.

There is a wealth of experience internationally that shows the necessity for a comprehensive approach in tobacco control. Historically, partial bans or the lack of comprehensive and clear measures on advertising and on smoke free legislation have made it extremely difficult to achieve the policy objectives. The tobacco industry has a long history of exploiting the lack of comprehensiveness in tobacco control measures to their own advantage.

Against that background, and in light of the extensive evidence base concerning the impact of tobacco packaging as a persuasive advertising vehicle a decision was made by Government to introduce standardised packaging of all tobacco products.

4.3 Other Issues considered

4.3.1. Costs to the State

Since the intent of measures outlined in *Tobacco Free Ireland* is to reduce tobacco use, it could lead to a reduction in Excise receipts from tobacco which in 2012 yielded €1.072 billion. However, any impact on Excise receipts must be set against the economic costs of deaths and illness attributable to smoking. A very conservative estimate of this for 2009 is in the region of €664 million. This is composed of €498 million in health expenditure, €15 million in productivity losses due to absenteeism and €151 million in productivity losses due to long term incapacity. The figure of €498 million in 2009 represents 3.52% of health care spending in that year and 0.31 % of GDP. The Report commissioned by EU DG Sanco on which the above figure of €664 million is based did not include substitution costs e.g. disability benefit payments. The report did however include an additional amount of €3.5 billion in 2009 as the cost of premature mortality in Ireland due to smoking. This is based on €52,000 as the median value of one life year of (VOLY) - a value which has been estimated in several international studies.

4.3.2 Industry Costs

There will be one-off set up costs for the tobacco industry in introducing standardised packaging. However, the industry already changes its packaging fairly regularly and in addition there will be a lead-in time provided for the introduction of the measure. It is also likely that any set-up costs for the industry will be recouped over time, as standardised packaging, once introduced, is likely to be cheaper to produce than the current branded packaging on which the industry spends considerable sums of money, including on market research and design.

Submissions also highlighted the possible costs to the industry in relation to any increase in illicit trade of tobacco products. This issue is dealt with in paragraph 4.2.1.

4.3.3. Employment

The main area of tobacco-related employment in Ireland is in the general retail sector the tobacco element of which the CSO cannot disaggregate from its classification “non-specialised stores with food, beverages and tobacco predominating”. At March 2013 there were 11,029 registered tobacco retailers on the HSE’s National Register of Tobacco Retailers. There were 13,497 registered premises.

The retail sector has been aware for some time now of the government’s policy to move towards a tobacco-free society. The majority of retailers sell many products other than tobacco. The introduction of standardised packaging will not prevent these retailers from continuing to sell tobacco products. In addition there will be a lead in time in order for the necessary arrangements to be out in place as well as a “wash-through” period for the sale of older stock.

CSO statistics indicate that there are 234 people employed in the sale of tobacco in 57 specialised stores and 377 people employed in 32 enterprises involved in the wholesale of tobacco products.

In relation to the manufacturing of tobacco there are so few enterprises involved in the area in Ireland that the number falls below the CSO threshold (3) for business sector confidentiality under the Statistics Act 1993. Therefore, information on either the number of enterprises involved or the aggregate number employed in them cannot be made available. The Department of Health is aware of 2 tobacco manufacturing businesses, one involved in roll-your-own tobacco and another in cigars and cigarillo manufacture.

4.3.4. Enforcement

The Bill specifies that summary proceedings for an offence may be brought and prosecuted by the Health Service Executive (HSE). The HSE will appoint Authorised Officers (retaining Officers already appointed under previous Public Health

(Tobacco) Acts), who will be issued with warrants of appointment to exercise the powers conferred by the Act, and may apply to a judge of the District Court for a warrant to enter dwellings to carry out investigations. If necessary, Authorised Officers may be accompanied by members of the Garda Síochána or Officers of the Revenue Commissioners in carrying out their functions.

During the consultation process the powers of the authorised officers were raised. The provisions were re-examined with a view to ensuring that the authorised officers had adequate powers e.g. seize and detain products.

CONCLUSION:

Appendix A

- That the proposed legislation specifically set out that its provisions will support Ireland's obligations under the World Trade Organisation *Framework Convention on Tobacco Control* and the revised EU *Tobacco Products Directive*
- The rise in the number of calls to the Quit line in Australia could be viewed as evidence that the inclusion of a Quit line number on tobacco packaging in Ireland could be another essential way of encouraging smokers to start thinking about quitting. The Irish Cancer Society strongly recommends the inclusion of a Quit line number in the legislation
- That consideration should be given to providing a lead in period of at least 12 months to allow retailers and tobacco manufacturers time to comply with the new plain packaging measures
- That the proposed legislation should include provisions to provide for:
 - i. the standardisation of the size of tobacco packaging;
 - ii. the inner packaging of tobacco products to be the same colour as the outside surface;
 - iii. a separate and distinct definition for brand, company and business name so as to prevent tobacco manufacturers from promoting brand variants to the status of brands; and
 - iv. the maximum length/number of characters in brand and variant names
- That consideration should be given to permitting a small distinguishing mark (for example a colour code) being applied to the bottom surfaces of cigarette packs so as to reduce the risk of consumers being sold the wrong product
- That consideration should be given as to whether an amendment similar to the one introduced by the Australian Government is needed to address a technical manufacturing issue (i.e. the use of round corners on the inside lip of cigarette packs)
- That information messages which set out the ingredients and emissions of tobacco products, similar to those used in Australia, be required on at least one side of tobacco packaging;
- That the proposed legislation prohibit the use of brand and variant names appearing on individual cigarette sticks, but allow manufacturers to use an alphanumeric code instead
- That consideration should be given to expanding the enforcement powers of authorised officers under the proposed legislation to include the seizure, removal and detention of non-conforming products

Consultation

A consultation with relevant stakeholders and interested parties was undertaken to explore the possible impact of the Government's proposal to introduce standardised packaging for tobacco products in this country. Submissions were sought from stakeholders, including the tobacco industry and retailer organisations, on the specific content of the General Scheme, the impact of its provisions and on any omissions identified. The deadline for submissions was 21st February 2013.

In seeking the submissions the following was outlined to the stakeholders:

"In line with the Regulatory Impact Assessment Guidelines (RIA) published by the Department of the Taoiseach, the Department of Health is undertaking a Regulatory Impact Analysis on the proposed legislation. The RIA is considering the costs, benefits and impacts of the proposals.

In this context, I would like to invite you to submit your organisation's views on the General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013, a copy of which is attached for your convenience. The General Scheme may also be accessed on the Department of Health website, at http://www.dohc.ie/publications/general_scheme.html.

Please note that your submission shall be deemed eligible for publication and you are asked that your organisation submit ***one*** submission only and to restrict your submission to the following areas:

- (1) Comments which relate directly to the specific provisions contained in the General Scheme of the Bill only, on a Head by Head basis and/or*
- (2) Comments which relate to identified omissions from the General Scheme of the Bill on a Head by Head basis.*

It is important to note that material submitted outside the criteria set out above will not be considered by this Department.

15 submissions were received within the timeframe. Many of the submissions received did not comment specifically on the Heads of the General Scheme.

An analysis of these submissions has taken place and where the submissions commented specifically on the content of the General Scheme, the Department of Health has taken account of a number of the issues raised where these were compatible with overall tobacco control policy as set out in *Tobacco Free Ireland*.

Copies of all the submissions can be found at [LINK](#)

A summary table of the submission is as follows:

RIA Consultation – Summary of Main Issues Raised

General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013	Stakeholder comments
Head 1 Interpretation	<ul style="list-style-type: none"> ● Difficulties were raised around a number of the definitions in the Head, including “inserts” (concern was raised around whether linings in packs would be included & possible consequences for sales of RYO ‘composite packs’) ● Submissions stated that the following terms had not been defined: <ul style="list-style-type: none"> ▪ Brand ▪ Variant name ▪ Pack ▪ Unit pack ● It was suggested that the definition of the term ‘pouch’ should

	be aligned with that in the EU Tobacco Products Directive
Head 2 Regulations	<ul style="list-style-type: none"> • No specific comments made
Head 3 Purpose of Legislation	<ul style="list-style-type: none"> • The majority of stakeholders objected to the introduction of standardised packaging – many regarded it as a disproportionate measure which would not achieve the aims as set out in the Explanatory Notes • Concerns were raised about: <ul style="list-style-type: none"> ▪ Restrictions on the use of trademarks ▪ Consumer/customer/retail staff confusion ▪ Effects on retailers businesses ▪ Increases in illicit trade ▪ Erosion of brand equity ▪ Damage to competitive market economy ▪ Damage to intellectual property rights ▪ Breaches to international treaties/constitutional rights ▪ Costs • The evidence for standardised packaging was challenged on a number of grounds, including the influence of packaging, the effects of standardised packaging on smoking rates, the public health benefits of the measure and the robustness of the research. • Retailers/manufacturers of other tobacco products argued that the benefits accruing from standardised packaging do not apply to cigars/pipe tobacco as their age profile is different, and packaging functions in a different way (not as advertising rather as a guarantee of authenticity, provenance, quality, etc)
Head 4 Application of Provisions	<ul style="list-style-type: none"> • Concerns about the effects on illicit trade were raised • Concerns were also raised about the effects on cross-border trade (especially by retailers of other tobacco products)
Head 5 Physical features	<ul style="list-style-type: none"> • Difficulty with the sale of transparent cartons of cigarettes (names appearing more than specified no. of times)

<p>– Cigarette packaging</p>	<ul style="list-style-type: none"> ● The application of price marks should be by retailers not manufacturers ● Concerns were raised about: <ul style="list-style-type: none"> ▪ The loss of branding & consequent loss of information for consumers ▪ The measure not being proportionate/unsuitable to benefit public health ▪ The measure skewing consumption towards cheaper/illicit brands ▪ Deprivation of the use of trademarks ▪ Consumer/customer/retail staff confusion (suggestion to apply discreet colour codes to help staff) ▪ Effects on retailers businesses & costs ▪ Increases in illicit trade ▪ Erosion of brand equity ▪ Damage to competitive market economy ▪ Damage to intellectual property rights/ deprivation of property ▪ Breaches to international agreements/treaties/ constitutional rights
<p>Head 6 Labelling Requirements – Cigarette packaging</p>	<ul style="list-style-type: none"> ● Quitline logo and telephone number should be included ● Health warnings are not a deterrent to counterfeiting – easily faked ● No evidence that ‘oversized’ warnings reduce the numbers of people smoking ● Illicit trade concerns raised – counterfeiting, illegal trade
<p>Head 7 Appearance of Cigarettes</p>	<ul style="list-style-type: none"> ● Retailers should be excluded from offence – not practical for them to open packs to check appearance of sticks ● Evidence cited as supporting the measure fails to examine relationship between packaging and people’s behaviour ● Concerns as above

<p>Head 8 Physical Features- RYO</p>	<ul style="list-style-type: none"> ● Difficulty with the sale of transparent cartons of cigarettes (names appearing more than specified no. of times) ● The application of price marks should be by retailers not manufacturers ● The reference to 20g minimum weight should be altered in line with EU TPD ● The requirements for ‘pouches’ should be aligned with EU TPD ● Concerns were raised about: <ul style="list-style-type: none"> ▪ The loss of branding & consequent loss of information for consumers ▪ Deprivation of the use of trademarks ▪ Consumer/customer/retail staff confusion (suggestion to apply discreet colour codes to help staff) ▪ Effects on retailers businesses & costs ▪ Increases in illicit trade ▪ Erosion of brand equity ▪ Damage to competitive market economy ▪ Damage to intellectual property rights/ deprivation of property ▪ Breaches to international agreements/treaties/ constitutional rights ▪ Evidence fails to examine relationship between packaging and people’s behaviour ● Size requirements of fonts will discriminate against the visually impaired
<p>Head 9 Labelling Requirements – RYO</p>	<ul style="list-style-type: none"> ● The term ‘unit pack’ has not been defined ● Head 9 should be aligned to the EU TPD
<p>Head 10</p>	<ul style="list-style-type: none"> ● Retailers/manufacturers of other tobacco products argued that

<p>Packaging for other tobacco products</p>	<p>the benefits accruing from standardised packaging do not apply to cigars/pipe tobacco as their age profile is different, and packaging functions in a different way (not as advertising rather as a guarantee of authenticity, provenance, quality, etc)</p> <ul style="list-style-type: none"> ● Loss of Irish business will result from the measure, also loss of online sales if these must be exported in compliant packaging, consequent loss of employment ● Measures will cause disproportionate problems & costs for cigar industry - smaller enterprises/sales volumes/assortments/production runs, wider variety of packaging types, without same resources as larger firms to cope with the requirements ● Repackaging may affect the value of the product ● Provision for a tearstrip should be included ● Exemption for tins to ensure consumer receives product in perfect condition ● Exemption for cigar bands ● Measure will lead to an increase in smuggling with consequent effects on excise revenue ● Cigars, cigarillos & pipe tobacco should be exempt
<p>Head 11 General Requirements</p>	<ul style="list-style-type: none"> ● No specific comments made
<p>Head 12 Authorised Officers</p>	<ul style="list-style-type: none"> ● No specific comments made
<p>Head 13 Offences</p>	<ul style="list-style-type: none"> ● Retailers should be excluded from offence re appearance of cigarettes (as above) or provided with a defence ● Provision in (3) should be amended – limited to individuals inadvertently involved in purchasing a product in a legitimate registered outlet ● Knowingly purchasing illicit tobacco should be made a criminal offence punishable by a fine

<p>Head 14 Fines & Penalties</p>	<ul style="list-style-type: none"> ● Retailers have an additional penalty if convicted of an offence – fine and removal from register – this is disproportionate, other offenders only have one (a fine) ● ‘Cease to have effect’ is not sufficiently worded – need to amend PHTA 2009 to cater for offences under this Act/specify that each ‘cease to have effect’ has the same summary 3 months or indictment 12 months maximum orders applied to them ● Retailers convicted of an offence should not be removed from the Register
<p>Head 15 Trade Marks Act 1996</p>	<ul style="list-style-type: none"> ● ‘Brand’ is not defined in the Trade Mark Act 1996 ● Measures would deprive companies of their right to use legitimately held trademarks and other intellectual property
<p>Head 16 Short Title and Commencement</p>	<ul style="list-style-type: none"> ● Legislation should await the adoption of the revised EU TPD ● Appropriate conversion notice should be given to comply with future regulations – minimum 24 months’ notice to convert ● Wholesale and retail trade should <u>also</u> be given conversion notice – minimum 18 months for cigar, cigarillo & pipe tobacco trade (given their significantly lower turnover rate than cigarettes)

