

Y Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon  
Health, Social Care and Sport Committee  
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PHB 30

Bil Iechyd y Cyhoedd (Cymru)

Public Health (Wales) Bill

Ymateb gan: Cymdeithas Siopau Cyfleustra

Response from: Association of Convenience Stores

### **ACS Submission: Public Health (Wales) Bill**

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the National Assembly for Wales Health and Social Care Committee's call for evidence on the general principles of the Public Health (Wales) Bill. ACS is a trade association, representing the 50,095 convenience stores trading at the heart of the communities across the UK, which employ 390,000 people (see annex A for more details). Our members include the Co-Op, One Stop, Costcutter, Spar UK and thousands of independent retailers. In Wales, there are 3,096 stores, employing over 24,010 staff<sup>1</sup>.

ACS' primary concern regarding the Public Health (Wales) Bill is the proposal to introduce a tobacco retailers' register in Wales. While we believe that the illicit trade does need to be tackled – based on our experience of existing registration systems in the UK, we believe that a new registration system would have limited (if any) impact on the illicit tobacco market. We believe that a registration scheme would only refocus enforcement activity on legitimate retailers, rather than those that participate in the illicit tobacco trade.

Tobacco is an important product category for convenience retailers, representing an average of 15.4% of sales in the UK convenience market<sup>2</sup>. Retailers work hard to ensure they retail these products responsibly through enforcing age restrictions using policies, such as Challenge 25. Convenience stores selling tobacco are already

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<sup>1</sup> ACS Local Shop Report 2016

<sup>2</sup> ACS Local Shop Report 2016

burdened by a number of restrictive tobacco legislation, most notably the tobacco display ban, the Tobacco Products Directive and the standardised packaging of tobacco to be introduced next year. A tobacco retailer register will only exacerbate these burdens and add further complexities to tobacco legislation.

HM Revenue and Customs launched a consultation on the introduction of a tobacco licensing scheme for England earlier this year. In our response to the consultation (which can be found [here](#)), we outlined our opposition to a tobacco licensing scheme, and instead called on the Government to introduce more targeted measures to reduce the illicit tobacco trade. We call on the Committee to consider these recommendations to tackle the illicit tobacco trade in Wales.

Our recommendations include:

- More effective sanctions available to trading standards officers, including the revocation of alcohol licences for selling illicit tobacco.
- Additional powers to trading standards officers to sanction retailers by using the Customs & Excise Management Act 1979 (CEMA).
- Extension of the Restricted Premise Order to include illicit tobacco as an offence, creating a three strikes and you're out system for illicit tobacco.

Please see below for ACS' views on the general principles of the Public Health (Wales) Bill.

## **Chapter 2: Tobacco and Nicotine Products**

### **Retailers of Tobacco and Nicotine Products**

ACS does not support the introduction of a tobacco register for retailers in Wales. We believe that a register would not only impose financial and administrative burdens on convenience retailers; but it would also pose a significant risk of enforcement activity being refocused on legitimate retailers, rather than those that participate in the illicit tobacco trade.

Registration systems have also proven to be largely ineffective in reducing instances of the illicit trade or reducing compliance costs for enforcement agencies.

#### *Financial Cost*

The Bill stipulates that the regulations may make provision to require payment of a fee to accompany an application for a retailer to register. The Explanatory Notes of the Bill propose that this fee would be set at £30 for the first premise and £10 for each additional premise. Based on the number of convenience stores in Wales, this could cost the convenience sector over £90,000.

If introduced, a tobacco register should not be funded by retailers, but operated on a similar model that is already in place in Scotland and Northern Ireland where registration is free. As highlighted in the consultation document, the benefits of the registration scheme would fall primarily to trading standards and local authorities, yet retailers would be expected to fund this scheme. Therefore, we do not believe the potential benefits of a tobacco register for retailers is proportionate to the burdens that would be imposed on them. Any proposed tobacco retailer register should reflect the register already in place in Scotland. Not only would this provide consistency to retailers who operate nationwide, but would not be as burdensome on retailers.

### *Advice*

The Welsh Government justifies the registration fee on the basis that “by having access to a comprehensive list of all retailers who sell tobacco and/or nicotine products, trading standards officers and health authorities would be able to target advice, guidance and campaigns relevant to these industries more effectively, ensuring that all registered retailers receive this information.” ACS believe that retailers are unlikely to look to trading standards officers for advice on regulatory compliance. Often local authorities do not have dedicated resources to develop and communicate with the trade effectively.

ACS asked 1,200 retailers about the levels of engagement they have with their local trading standards officers in terms of receiving advice, guidance, and support. Retailers’ answers varied considerably, 38% of convenience retailers responded that they had no engagement with any trading standards officer in any capacity in the last year, while 24% of retailers responded that a trading standards officer regularly visits their store to discuss regulatory compliance and the challenges facing their business<sup>3</sup>. The creation of a tobacco registration scheme will do nothing to enhance these relationships, in fact it is likely to divert resources away from providing advice and engagement with retailers.

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<sup>3</sup> ACS Voice of Local Shops Survey February 2016

During the introduction of the tobacco display ban for small stores in England and Wales in 2015, trading standards teams, the Department for Health and the Welsh Government had no bespoke guidance for small retailers. They also did not have any dedicated communication resources to communicate the changes to small retailers. All of the parties relied upon trade associations such as ACS and others to promote the change in regulation<sup>4</sup>. Guidance was then developed in collaboration with retailers to achieve high levels of awareness. This approach resulted in 90% of retailers<sup>5</sup> across England and Wales having no concerns about display ban compliance issues.

### *Failure to Address Illicit Trade*

The cost of the illicit tobacco trade to the Exchequer was £2.4 billion in 2015–16<sup>6</sup>, as such, it poses a significant threat to the Welsh Government’s public health objectives and undermines the legitimate retail trade. However, a tobacco register would have a limited impact on reducing the illicit trade. The introduction of a tobacco retailers’ register risks focusing enforcement activity on legitimate, registered retailers rather than addressing individuals participating in the illicit trade. The tobacco register neglects to consider that illicit tobacco retailers will not sign up and will risk enforcement action because the punishment for non-compliance is as great as the benefits to them of evading duty.

One of the most common sales avenues for illicit tobacco are ‘tab houses’, selling from private houses, which accounts for 34% of illicit tobacco sales<sup>7</sup>. There is an increase in the proportion of 14–15 year old illicit tobacco buyers who have bought from ‘fag houses’ from 15% in 2009 to 34% in 2011<sup>8</sup>. Illicit tobacco makes tobacco accessible to children and young people. Tackling this must form a central part of any tobacco control or public health policy.

### *Experience of Existing Tobacco Retailer Registers*

There are two tobacco retailer registers already in operation in the UK, these include the Northern Ireland Tobacco Retailer Register and the Scottish Tobacco Retailer Register. The schemes have yet to be reviewed but there is little evidence of their

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<sup>4</sup> [Business Companion: Tobacco & nicotine inhaling products](#)

<sup>5</sup> [ACS Release: Retailers Report Successful Compliance with Tobacco Display Ban Regulations](#)

<sup>6</sup> [HMRC: Tobacco Tax Gap Estimates for 2015-16](#)

<sup>7</sup> APPG on Smoking and Health - Inquiry Into the Illicit Trade in Tobacco Products 2013

<sup>8</sup> APPG on Smoking and Health - Inquiry Into the Illicit Trade in Tobacco Products 2013

effectiveness in meeting their original objectives of tackling the illicit trade or increasing compliance with tobacco legislation.

Northern Ireland have only recently launched their tobacco retailer register in April 2016. This system requires tobacco to register their business online or by post which can be completed via head office for businesses with multiple sites, or individually for independent retailers. There is no registration fee or other costs associated when retailers sign up to the scheme, but like the register in Scotland, there is a requirement for retailers to keep their information and details up to date. Since the register has only just launched, its effectiveness cannot be evaluated or be used to support the introduction of a tobacco register in Wales.

While the Scottish tobacco retailer register has been in effect since 2011. This system requires retailers of tobacco products to sign up to the tobacco register online, which can be completed via head office for businesses with multiple sites, or individually for independent retailers. There is no cost associated when retailers sign up to the scheme but there is a requirement for retailers to keep their information and details up to date. In the development of the registration scheme in Scotland, the Scottish Government estimated that this would cost £413,500<sup>9</sup>, as well as ongoing annual staffing costs and database management costs.

There is very limited evidence, across all types of tobacco related offences, that the Scottish Tobacco Register has been effective despite being free for retailers to register. Within five years of the introduction of the register, only five retailers have been issued with tobacco banning orders. One retailer had been issued with a tobacco banning order for selling tobacco unregistered<sup>10</sup>, one banning order had been issued to a retailer who had persistently sold illicit tobacco, and three banning orders were issued to retailers who had sold tobacco to persons under 18 years old. This highlights that a registration does not mean rogue operators will be removed from selling illicit products. If you take into account the amount that the Scottish Government estimated that the register would cost (£419,500), this equates to £83,900 being spent for each retailer to be removed from the register. These funds could be used better elsewhere to tackle the illicit trade.

The Scottish Government Tobacco Control Strategy includes a commitment to review their registration scheme by 2015<sup>11</sup> but this has yet to be delivered.

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<sup>9</sup> [Scottish Government: Tobacco Provisions to be contained in the Health \(Scotland\) Bill](#)

<sup>10</sup> [Scottish Parliament: Written Answers \(Question s5W-01258\)](#)

<sup>11</sup> [Scottish Government: Creating A Tobacco Free Generation: A Tobacco Control Strategy for Scotland](#)

Registration schemes must have an independent and wide reaching impact assessment in order to ensure that their purpose is justified.

### *Recommendations*

HMRC have an extensive range of sanctions at their disposal already to tackle the illicit tobacco trade but HMRC's enforcement activity is limited to the disruption of large scale tobacco smuggling at UK borders. In comparison, trading standards teams are responsible for tackling inland illicit tobacco activity, but have extremely limited powers and sanctions to deal with illicit tobacco. This is most evident that despite 94% of all trading standards teams in councils are undertaking work in relation to illicit tobacco products,<sup>12</sup> the most common action was verbal or written warnings (56%).

We believe that it would be more effective use of HMRC's time and resources to invest in the use of existing sanctions and the disruption of the inland illicit tobacco market instead of the creation of a new registration system. This could be achieved by reviewing the appropriateness of existing sanctions available to enforcement agencies and dedicating more resources to tackling the inland illicit tobacco market.

ACS urges the Committee to consider the following proposals instead of the introduction of a tobacco registration system.

1. More effective sanctions available to trading standards officers, including the revocation of alcohol licences for selling illicit tobacco.

According to the most recent HMRC Tobacco Output (July 2016), only 62%<sup>13</sup> of individuals prosecuted for tobacco duty–fraud offences were convicted. It is often difficult and time consuming to prosecute an individual. ACS believes that it may be more effective and efficient if efforts moved towards revoking the alcohol licence of the premise involved. Removing a retailer's alcohol licence is more of an effective deterrent for a retailer than any other sanction, as the loss of the ability to trade alcohol would have a detrimental impact on their ability to trade.

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<sup>12</sup> [CTSI: Tobacco Control Survey, England 2014/15](#)

<sup>13</sup> [HMRC: Quarter 3 and 4 outputs: October 2015 to March 2016](#)

Removing alcohol licences for selling illicit tobacco and illicit alcohol is an underused sanction by all enforcement bodies. The reasons that enforcement bodies underuse this sanction are multi-faceted; it is not communicated that this sanction is available, the process to revoke a licence is viewed as complex and requires working across a number of local council departments. ACS strongly advocates greater use of the removal of alcohol licences from retailers for any engagement in the illicit market.

2. Additional powers to trading standards officers to sanction retailers by using the Customs & Excise Management Act 1979 (CEMA).

ACS believes that there needs to be a significant up-lift in inland enforcement activity by HMRC to reduce the illicit trade and additional powers should be given to trading standards officers in order to enforce more effectively. We recommend that trading standards be given the authority to sanction retailers participating in the sale of illicit tobacco using the Excise and Customs Management Act 1979.

This Act specifically addresses the sale of non-duty paid tobacco as an offence. Sanctions can be placed on retailers who “knowingly acquire non-duty paid excise goods with the intention of evading payment of duty” and retailers who have taken “preparatory steps for evasion of excise duty”. This Act would mean trading standards officers could sanction retailers with an unlimited fine and/or 7-years imprisonment if convicted on indictment.

3. Extension of the Restricted Premise Order to include illicit tobacco as an offence, creating a three strikes and you're out system for illicit tobacco.

Trading standards officers already have powers available to them to make provision for Restricted Premises Orders (RPO) where there have been a total of three underage sales offences at a premises in a two-year period. This prohibits a retail premises from selling tobacco products for a period of up to 12 months. However, trading standards officers do not have the power to use RPOs to sanction retailers involved in the sale of non-duty paid tobacco products.

We recommend that the scope of the use of Restricted Premises Orders (RPO) and Restricted Sales Orders (RS) be extended to include illicit tobacco offences. The offence for breaching a RPO or RSO is far greater than the current powers available to trading standards officers.

## **Chapter 3: Prohibition on Sale of Tobacco and Nicotine Products**

### **Restricted Premises Orders: Tobacco or Nicotine Offences**

We welcome the provision to provide Welsh Ministers with a regulation-making power to add to the offences which contribute to a Restricted Premises Order (RPO) in Wales. As detailed above and in our submission to the HM Revenue and Customs consultation on the introduction of a tobacco licensing system, we recommended that the scope of the use of RPOs and Restricted Sales Orders (RSO) be extended to include illicit tobacco offences. As the offence for breaching a RPO or RSO is far greater than the current powers available to trading standards officers.

We believe that the extended scope of RPOs and RSOs to illicit tobacco would remove the need for the Welsh Government to introduce a tobacco retailer register in Wales as it would mirror the existing sanctions for the Scottish tobacco registration scheme but without the additional burdens of a registration scheme being placed on retailers.

### **Handing Over Tobacco Etc. to Persons Under 18**

We believe that retailers need to ensure that they have a robust age verification policy for remote sales, both at point of sale and point of delivery.

**For more information on this submission, please contact Julie Byers, Public Affairs Executive, at [REDACTED] or by calling [REDACTED]**

ABOUT ACS

The Association of Convenience Stores lobbies on behalf of over 50,000 convenience stores across mainland UK on public policy issues that affect their businesses. ACS' membership is comprised of a diverse group of retailers, from small independent family businesses running a single store to large multiple convenience retailers running thousands of stores.



Convenience stores trade in a wide variety of locations, meeting the needs of customers from all backgrounds. These locations range from city centres and high streets, suburban areas such as estates and secondary parades, rural villages and isolated areas, as well as on petrol forecourts and at travel points such as airports and train stations.

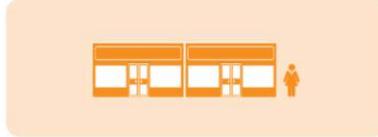
WHO WE REPRESENT

INDEPENDENT RETAILERS



ACS represents 22,870 independent retailers, polling them quarterly to hear their views and experiences which are used to feed in to Government policy discussions. These stores are not affiliated to any group, and are often family businesses with low staff and property costs. Independent forecourt operators are included in this category.

SYMBOL GROUPS AND FRANCHISES



ACS represents 15,060 retailers affiliated with symbol groups. Symbol groups like SPAR, Nisa, Costcutter, Londis, Premier and others provide independent retailers with stock agreements, wholesale deliveries, logistical support and marketing benefits. Symbol group forecourt operators and franchise providers like One Stop are also included in this category.

MULTIPLE AND CO-OPERATIVE BUSINESSES



ACS represents 12,165 stores that are owned by multiple and co-operative retailers. These businesses include the Co-Operative, regional co-operative societies, McColls, Conviviality Retail and others. Unlike symbol group stores, these stores are owned and run centrally by the business. Forecourt multiples and commission operated stores are included in this category.

THE CONVENIENCE SECTOR



In 2016, the total value of sales in the convenience sector was £37.5bn. The average spend in a typical convenience store transaction is £6.13.



There are 50,095 convenience stores in mainland UK. 74% of stores are operated by independent retailers, either unaffiliated or as part of a symbol group.



The convenience sector provides flexible employment for around 390,000 people. 21% of independent/symbol stores employ family members only.



24% of shop owners work more than 70 hours per week, while 22% take no holiday throughout the year. 74% of business owners are first time investors in the sector.



Convenience stores and Post Offices poll as the two services that have the most positive impact on their local area according to consumers and local councillors. 84% of independent/symbol retailers have engaged in some form of community activity over the last year.



Between August 2015 and May 2016, the convenience sector invested over £600m in stores. The most popular form of investment in stores is refrigeration.

OUR RESEARCH

ACS polls the views and experiences of the convenience sector regularly to provide up-to-date, robust information on the pressures being faced by retailers of all sizes and ownership types. Our research includes the following regular surveys:

ACS VOICE OF LOCAL SHOPS SURVEY

Regular quarterly survey of over 1200 retailers, split evenly between independent retailers, symbol group retailers and forecourt retailers. The survey consists of tracker questions and a number of questions that differ each time to help inform ACS' policy work.

ACS INVESTMENT TRACKER

Regular quarterly survey of over 1200 independent and symbol retailers which is combined with responses from multiple businesses representing 3,970 stores.

ACS LOCAL SHOP REPORT

Annual survey of over 2200 independent, symbol and forecourt retailers combined with responses from multiple businesses representing 5,765 stores. The Local Shop Report also draws on data from ACS' research and consulting, IGD, Nielsen and William Reed Business Media.

BESPOKE POLLING ON POLICY ISSUES

ACS conducts bespoke polling of its members on a range of policy issues, from crime and responsible retailing to low pay and taxation. This polling is conducted with retailers from all areas of the convenience sector.