



**Tithe an  
Oireachtais**  
Houses of the  
Oireachtas

## **Tithe an Oireachtais**

An Comhchoiste um Shláinte agus Leanaí

Tuarascáil maidir le héisteachtaí i ndáil le Scéim Ghinearálta  
an Bhille Sláinte Poiblí (Pacáistiú Caighdeánaithe Tobac)

*Imleabhar 1  
Aibreán 2014*

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## **Houses of the Oireachtas**

Joint Committee on Health and Children

Report on hearings in relation to the General Scheme of the  
Public Health (Standardised Packaging of Tobacco) Bill

*Volume 1  
April 2014*

**31/HHCN/014**





**Foreword by the Chairman of the Joint Committee on Health and Children, Jerry Buttimer TD.**

The purpose of the Public Health (Standardised Packaging of Tobacco) Bill 2013 is to make it mandatory for tobacco to be sold in Standardised Packaging which will greatly increase the health warnings and reduce the ability of tobacco manufacturers to promote their brand.

The Minister for Health referred the Heads of Bill to the Joint Committee on Health and Children for consultation with key stakeholders before the Bill is finalised and presented to the Houses of the Oireachtas.

The Joint Committee is delighted to have this opportunity to feed into this critical piece of legislation. It allowed members of the Committee to be fully informed and enable us to provide meaningful input into the legislation, make observations and suggestions before the Bill comes before the Dáil and Seanad.

It has also been an opportunity for interested groups and stakeholders to contribute to the drafting of this legislation. Tobacco packaging has been described at the last billboard for the tobacco industry and this legislation will force the industry to show with greater clarity, the devastating effects of smoking on health. Committee members have seen for themselves the packets of various shapes, sizes and colours used by tobacco companies to attract young people to take up smoking. Standardised packaging with much larger health warnings will act as a deterrent.

Every year 5,200 Irish people die from diseases caused by smoking. Protecting our children and young people from taking up smoking is a key policy for the Minister for Health, and one which this Committee strongly supports. There is a wealth of international evidence on the effects of tobacco packaging in general and on perceptions and reactions to standardised packaging which support the introduction of this measure.

As part of the wider consultation process, the Committee held public hearings with various interest groups and stakeholders to obtain their input. We believe that our intensive scrutiny of this subject over the last number of months, culminating in the publication of this report, will assist the Minister and the Government in their further consideration and formulation of this legislation.

I would like to record our appreciation to the many different interest groups who made both oral and written submissions to the Joint Committee in its preparation of this report. I would also like to acknowledge the contribution of Ms. Monica Boyle, from the Oireachtas Library & Research Service for her assistance with this body of work, the Clerk to the Committee and the staff of the Committee Secretariat in the Houses of the Oireachtas for their assistance in its compilation.

The Joint Committee presents this report to the Minister for Health as its contribution to the formulation of this critically important legislation.



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**Jerry Buttimer, T.D.,**  
**Chairman,**  
**Joint Committee on Health and Children.**  
**3<sup>rd</sup> April 2014**

# 31<sup>st</sup> Dáil

## Members of Joint Committee on Health and Children

### DEPUTIES



**Jerry Buttimer TD**  
**CHAIRMAN (Fine Gael)**

<b>Catherine Byrne TD</b> <b>(Fine Gael)</b>	<b>Ciara Conway TD</b> <b>VICE CHAIR</b> <b>(Labour)</b>	<b>Regina Doherty TD</b> <b>(Fine Gael)</b>	<b>Clare Daly TD</b> <b>(Independent)</b>
<b>Robert Dowds TD</b> <b>(Labour)</b>	<b>Peter Fitzpatrick TD</b> <b>(Fine Gael)</b>	<b>Seamus Healy TD</b> <b>(Independent -</b> <b>WUAG)</b>	<b>Billy Kelleher TD</b> <b>(Fianna Fáil)</b>



**Eamonn Maloney**  
**TD**  
**(Labour)**



**Sandra McLellan**  
**Sinn Féin**

			
<b>Mary Mitchell O'Connor TD (Fine Gael)</b>	<b>Dan Neville TD (Fine Gael)</b>	<b>Caoimhghín Ó Caoláin TD (Sinn Féin)</b>	<b>Robert Troy TD (Fianna Fáil)</b>

### Senators

			
<b>Senator Colm Burke (Fine Gael)</b>	<b>Senator John Crown (Independent)</b>	<b>Senator John Gilroy (Labour)</b>	<b>Senator Imelda Henry (Fine Gael)</b>

	
<b>Senator Marc MacSharry (Fianna Fáil)</b>	<b>Senator Jillian Van Turnhout (Independent)</b>

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## **Section 1: Report of the Joint Committee on Health and Children**



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**Report of the Joint Committee on Health and Children**

**General Scheme of the Public Health  
(Standardised Packaging of Tobacco) Bill 2013**

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# 1. Conclusions and Recommendations

## Conclusions and Recommendations

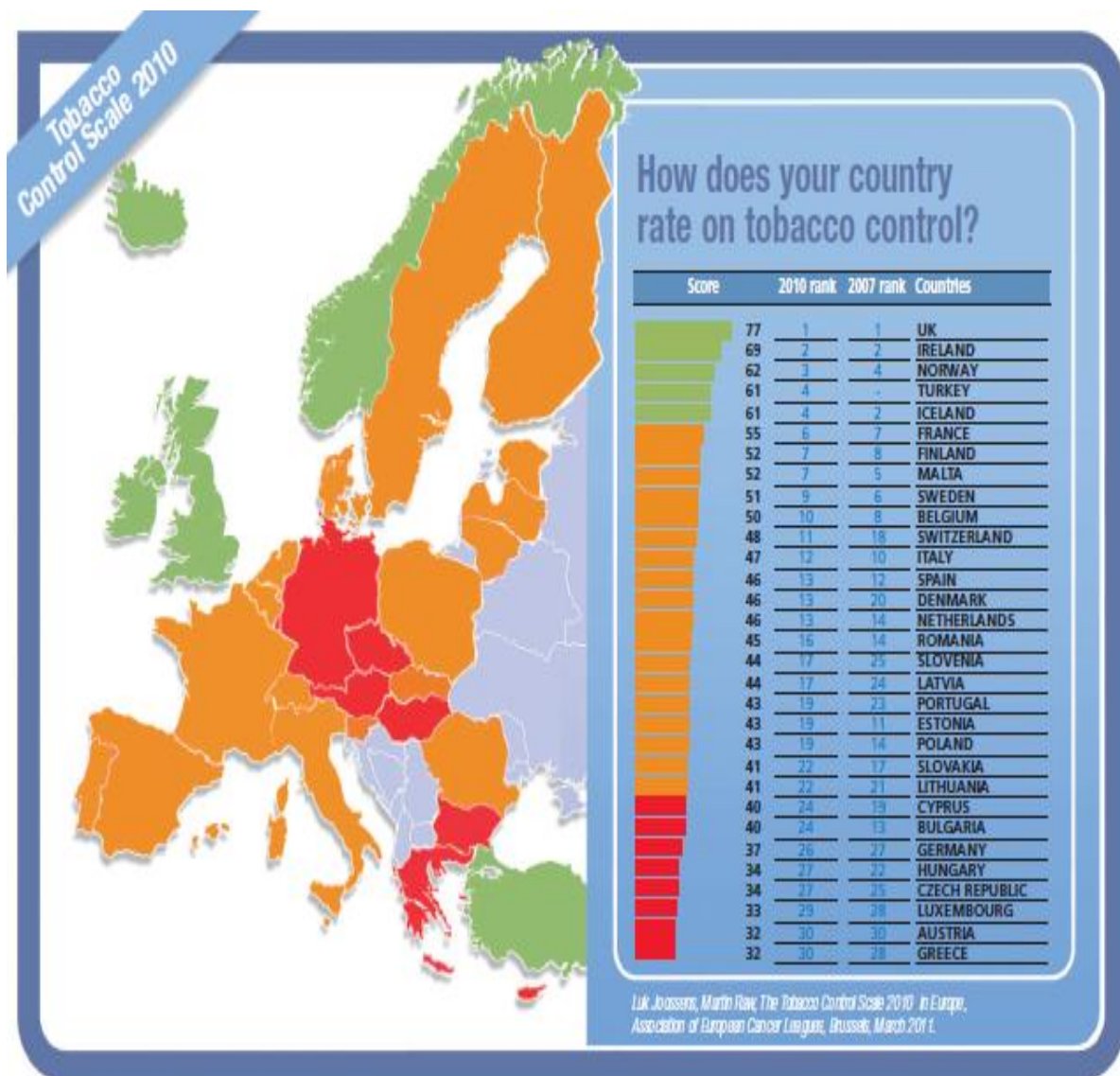
1. That the recommendations and measures set out in *Tobacco Free Ireland* should be implemented as soon as possible, in particular the following recommendations:
  - Banning smoking in cars where children are present;
  - Prohibiting the sale of tobacco products from mobile units/containers (at fairs and markets); and
  - Making nicotine replacement therapies (NRTs) more widely available, including in retail outlets where tobacco products are sold;
2. 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*;
3. The rise in the number of calls to the Quitline in Australia could be viewed as evidence that the inclusion of a Quitline 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 Quitline number in the legislation;
4. That the Department, in conjunction with other key stakeholders, should monitor and review the effectiveness of standardised packaging on the prevalence of smoking and the scale of the illicit tobacco market in Ireland;
5. 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;
6. That consideration should be given to decreasing the level of duty free allowance in respect of tobacco products in general (note: 6% of cigarettes are purchased abroad and brought back into Ireland legitimately for personal use). Alternatively, that consideration be given to decreasing the level of duty free allowance in respect of non-compliant tobacco products;
7. 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;
8. 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;
9. 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);
10. 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;
11. 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;
12. 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;
13. That consideration should also be given to providing that the offender pay the costs associated with the seizure, removal and detention of non-conforming products including the cost of their destruction;
14. That the proposed legislation includes an offence for the possession by retailers of non-conforming tobacco products;
15. That the primary sanction upon conviction would be the suspension, and in the case of repeat offences, the loss of the privilege to sell tobacco products;
16. That the proposed legislation provide a wider range of penalties available to include official warnings/cautions and on-the-spot fines;
17. That consideration should be given to introducing a ban on proxy purchasing as a matter of urgency;
18. That the Department should assess the potential impact raising excise duties would have on the sale of illicit tobacco products;
19. That more investment should be made into educational programmes/youth projects designed to raise awareness around smoking and to complement other strategies designed to prevent young people from starting to smoke;
20. That more investment should be made into cessation and quit programmes so as to give the 4 out of 5 people who want to quit smoking the necessary aids and supports to do so;
21. That consideration should be given to ways of incentivising retailers to become tobacco free zones;
22. That consideration should be given to the introduction of a 'polluter pays' type levy on tobacco manufacturers to be used to offset the health care costs associated with tobacco use;

23. That consideration should be given to the introduction of mandatory opening/trading hours for tobacco products (i.e. not during or after a certain time, for example, between 7am and 9am and not after 6pm);
24. That consideration should be given to prohibiting the sale of cigarettes in licenced premises (for example pubs and clubs);
25. That consideration should be given to regulating the sale of e-cigarettes;
26. That consideration should be given to setting up a Freephone complaints line/email address to encourage compliance (through answering enquiries) and the reporting of breaches of the legislation.

## 2. Overview

The control and regulation of tobacco products and tobacco use is a key public health policy objective in Ireland. Following the implementation of many successful legislative and policy initiatives, Ireland is regarded internationally as one of the leaders in this area. [The Tobacco Control Scale 2010 in Europe](#) ranks Ireland second out of 31 European countries in terms of tobacco control.



## 2.1 Key legislative and policy initiatives to date

The [General Scheme of the Public Health \(Standardised Packaging of Tobacco\) Bill 2013](#) is part only of a suite of measures, both past and future, designed to tackle tobacco consumption, and the harm caused by smoking in Ireland. The Bill will build upon previous successful measures including:

- The establishment of the 'Quitline' service to support smokers in giving up (1997);
- The adoption of the Tobacco Free Policy Review Group Report '[Towards a Tobacco Free Society](#)' as Government policy (2000);
- The ban on tobacco sponsorship (2000);
- Raising the age limit at which a person can be sold tobacco products to 18 years (2001);
- The introduction of the workplace smoking ban (2004);
- Ireland's hosting of the EU Conference '*Future Directions in Tobacco Control*' (2004);
- The ban on the sale of cigarettes in packets of 10 and confectionary which resembles tobacco products (2007);
- The ban on the advertising and display of tobacco products in retail outlets (2009);
- The introduction of registration requirements for retailers wishing to sell tobacco products (2009);
- The introduction of the graphic warnings on cigarette packets (2013);
- The publication of *Healthy Ireland - A Framework for Improved Health and Wellbeing 2013 - 2015*<sup>1</sup>, which takes a "whole of Government" and "whole of society" approach to improving health and wellbeing (2013).

In October 2013, the Minister for Health, Dr. James Reilly, T.D., launched the Government's latest tobacco control policy, [Tobacco Free Ireland](#). The overall aim of this policy is to reduce the harm caused by tobacco use, ultimately achieving a tobacco free Ireland by 2025 (i.e. a smoking prevalence rate of less than 5%). While the Minister for Health accepted that this is

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<sup>1</sup> Available at [http://www.dohc.ie/publications/Healthy\\_Ireland\\_Framework.html](http://www.dohc.ie/publications/Healthy_Ireland_Framework.html)

an 'extraordinary challenge', he stated that 'if we work together to de-normalise smoking...we can do it'<sup>2</sup>.

*Tobacco Free Ireland* sets out over 60 recommendations and measures designed to assist key stakeholders, including Government, in reaching the 2025 target, including:

- **legislating for the introduction of standardised/plain packaging for tobacco products;**
- banning the sale of tobacco products from mobile units/containers;
- making Nicotine Replacement Therapy (NRT) more widely available, including in retail outlets where tobacco products are sold;
- monitoring and reviewing the effectiveness of current smoke free legislation;
- developing national smoking cessation guidelines;
- enhancing educational initiatives aimed at preventing young people from starting to smoke, in line with the *Healthy Ireland Framework* and international best practice;
- legislating to prohibit smoking in cars where children are present;

The Minister for Health has indicated his support for the Private Member's Bill, [\*Protection of Children's Health from Tobacco Smoke Bill 2012\*](#), initiated in the Seanad, the aim of which is to prohibit smoking in cars where children are present. According to *Tobacco Free Ireland* work is on-going on this Bill in consultation with the Senators who initiated it, the Department of Justice and Equality, the Attorney General and An Garda Síochána in order to ensure that the resulting legislation operates effectively.

- an increase in excise duty on tobacco products to be applied over a continuous five year period;
- the introduction of a tobacco industry levy which would be ring-fenced to fund health promotion, and tobacco control initiatives, such as ending the illicit trade in tobacco products; and

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<sup>2</sup> *Minister Reilly aims for a Tobacco Free Ireland by 2025*, Department of Health Press Release, 02 October 2013, <http://www.dohc.ie/press/releases/2013/20131003.html>

- collaborating on a North/South basis on measures designed to reduce tobacco consumption.

## Conclusions

That the recommendations and measures set out in *Tobacco Free Ireland* should be implemented as soon as possible, in particular the following recommendations:

- Banning smoking in cars where children are present;
- Prohibiting the sale of tobacco products from mobile units/containers (at fairs and markets); and
- Making nicotine replacement therapies (NRTs) more widely available, including in retail outlets where tobacco products are sold.

## 2.2 *Legislating for the standardised/plain packaging of tobacco products*

In November 2013, the Government approved and published the [General Scheme of the Public Health \(Standardised Packaging of Tobacco\) Bill 2013](#) (“the General Scheme”). The aim of the proposed legislation, as set out in Head 3 of the General Scheme, is to:

- reduce the appeal of tobacco and tobacco products;
- increase the effectiveness of health warnings on tobacco products; and
- reduce the ability of the packaging of tobacco and tobacco products to mislead consumers about the harmful effects of smoking.

As part of the pre-legislative scrutiny (PLS) process, the Joint Committee on Health and Children was appointed to review and consider the General Scheme, with a view to submitting a report to the Minister.

The Joint Committee was briefed on the General Scheme by the Minister for Health, Dr. James Reilly, T.D., and the Chief Medical Officer, Mr Tony Holohan, at a meeting on the 5th December 2013. The Joint Committee invited written submissions from interested groups and individuals in relation to the General Scheme and held a series of meetings with key stakeholders and experts, including those involved in the tobacco industry.

This paper responds to a request from the Joint Committee to review the submissions received and prepare a briefing paper addressing the key issues identified by the Library & Research Service (L&RS). This paper, accordingly, summarises issues relating to the above

General Scheme which have been brought to the attention of the Joint Committee. In particular, the paper attempts to summarise and set in context some of the concerns identified by stakeholders.



### 3. Smoking - key facts and figures

The following are some of the key facts and figures which emerged during the course of the Joint Committee's hearings and as a result of secondary research:<sup>3</sup>



The Joint Committee also heard evidence that:

<sup>3</sup> Further statistics and charts in relation to smoking prevalence in Ireland is available online at: <http://www.hse.ie/eng/about/Who/TobaccoControl/Research/>

- ❖ Approximately 1,700 people die from lung cancer each year<sup>4</sup>, over 90% of lung cancers are caused by smoking<sup>5</sup>;
- ❖ Approximately 1,500 people die annually from COPD, over 90% of these are smokers or ex-smokers;<sup>6</sup>
- ❖ A quarter of deaths from coronary heart disease and 11% of all stroke deaths are attributable to smoking;<sup>7</sup>
- ❖ The average cost per admission of treating a smoker in an in-patient setting for a tobacco related illness is €7,700;<sup>8</sup>
- ❖ It is estimated that the workplace smoking ban, introduced in 2004, in more than 3,500 deaths being avoided as a result of tobacco consumption;<sup>9</sup>
- ❖ The overall prevalence of cigarette smoking in Ireland as of December 2013 is 21.5%, a decline of 2% since June 2010, with a higher percentage of men (22.9%) reporting being smokers than women (20.2%);<sup>10</sup>
- ❖ The average E.U. age of starting smoking is lowest in Ireland (16.4 yrs.);<sup>11</sup>

<sup>4</sup> Dr. Anthony O'Regan, Chief Executive of the Irish Thoracic Society, Parliamentary Debates, 6 February 2014,

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140206~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140206~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>5</sup> Dr. Finbarr O'Connell, Consultant Respiratory Physician, St. James's Hospital, Parliamentary Debates, 6 February 2014,

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140206~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140206~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>6</sup> Dr. Ross Morgan, Ash Ireland, Parliamentary Debates, 30 January 2014,

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>7</sup> Dr. Matthew Sadler, President of the Irish Medical Organisation, Parliamentary Debates 6 February 2014,

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140206~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140206~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>8</sup> This cost does not include out-patient costs, GP visits, medicines and other supports provided by the H.S.E. See *Tobacco Free Ireland*, Report of the Tobacco Policy Review Group, October 2013

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

<sup>9</sup> *Tobacco Free Ireland*, Report of the Tobacco Policy Review Group, October 2013

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

<sup>10</sup> *2013 Smoking Prevalence Data*, Health Service Executive

<http://www.hse.ie/eng/about/Who/TobaccoControl/Research/>

<sup>11</sup> *Attitudes of Europeans towards Tobacco*,

[http://ec.europa.eu/health/tobacco/docs/eurobaro\\_attitudes\\_towards\\_tobacco\\_2012\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/eurobaro_attitudes_towards_tobacco_2012_en.pdf)

- ❖ It is estimated that 13% of cigarette consumption in Ireland is illicit, and a further 6% of cigarettes are purchased abroad and brought into Ireland legitimately for personal use.<sup>12</sup> However, [KPMG's Project Star Report](#)<sup>13</sup> suggest that these figures are 19% and 9% respectively;<sup>14</sup>
- ❖ The Health Service Executive (HSE) carry out over 15,000 tobacco inspections annually;<sup>15</sup>
- ❖ In 2013, the HSE initiated 38 prosecutions under *The Public Health (Tobacco) Acts 2002 to 2013*, 17 of these arose from the sale of tobacco to minors;<sup>16</sup>
- ❖ In 2013, 100 people were convicted for smuggling or other illicit tobacco offences, resulting in 38 custodial sentences, and average fines in excess of €2,600 in the remaining cases;<sup>17</sup>
- ❖ Ireland ratified the World Health Organisation's (WHO) *Framework Convention on Tobacco Control* in November 2005. This binding international treaty provides for the first time an agreed global approach to tobacco control;
- ❖ The European Parliament formally approved the revised *Tobacco Products Directive* on 26<sup>th</sup> February 2014. It will now be transmitted for official adoption by the Council, following which the new rules will enter into force (expected date May 2014). Member States will then have two years to transpose the provisions of the Directive.

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<sup>12</sup> Mr Gerard Moran, Assistant Secretary, Indirect Tax Evasion, Office of the Revenue Commissioners, Parliamentary Debates, 23 January 2014, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

<sup>13</sup> This Report was prepared by KPMG on behalf of Philip Morris International Management S.A.

<sup>14</sup> Ronnie Flanagan, Submission to the Oireachtas Committee on Health and Children regarding review of Plain Packaging proposals, 15 January 2014.

<sup>15</sup> Health Services Executive Submission in relation to the Health (Standardised Packaging of Tobacco) Bill 2013, 23 January 2014

<sup>16</sup> Mr Gavin Maguire, Assistant National Director Environmental Health and Emergency Planning Health Service Executive, Parliamentary Debates, 23 January 2014, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

<sup>17</sup> Mr Gerard Moran, Assistant Secretary, Indirect Tax Evasion, Office of the Revenue Commissioners, Parliamentary Debates, 23 January 2014, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

- ❖ According to the 2012 Report [\*Attitudes of Europeans towards Tobacco\*](#) there is strong public support for various tobacco control policies among Irish citizens, well above the European average:
  - 81% are in favour of banning colours, logos and promotional elements from tobacco products;
  - 65% of Respondents are in favour of increasing taxes on tobacco products;
  - 83% are in favour of banning sales through the internet;
  - 82% support banning flavours that make tobacco products more attractive;
  - 82% are in favour of security measures on packs to limit smuggling/counterfeit even if it increased the price by a few cent.

The Report found that overall, packaging is important in the process of selecting a cigarette brand (23%) with 26% of Respondents in Ireland agreeing.

## 4. The General Scheme of the Bill

### 4.1 *General points*

In examining what has been published to date, it is important to draw the distinction between the General Scheme of the Bill and the Bill as will be presented at first stage in the parliamentary legislative process (which is known as “initiation”, i.e. publication).

Most Government departments have their legislation drafted by the Office of the Parliamentary Counsel (OPC) by supplying Heads of a Bill which broadly set out policy objectives.

Typically, a General Scheme can be considered to be in draft format and as such is still subject to the legal advice of the Office of the Attorney General. It may include an explanatory note to accompany each Head unless the Heads are self-explanatory (see Appendix 2 for further details on the preparation of legislation).

It is important to note that the General Scheme has no legal effect and the proposals it contains may well evolve over time as the legislative process progresses.

The publication of the General Scheme presents an important opportunity for interested stakeholders to comment on the general principles and themes at an early stage in the Bill’s development. In this case, the Joint Committee have formally invited written submissions in relation to the Heads of the Bill.

The draft legislation which follows the General Scheme of a Bill can potentially vary, to a greater or lesser extent, from the General Scheme as issues are further refined during the drafting process.

Conscious that the General Scheme is at a very preliminary stage of the legislative process, this paper conducts a summary, as far as is possible, of some of the key themes which emerged during the consultation process with stakeholders.

#### **4.2 The General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013**

As stated previously the overall aim of the General Scheme of the *Public Health (Standardised Packaging of Tobacco) Bill 2013* is to reduce the appeal of tobacco products, reduce the ability of tobacco packaging to mislead consumers about the harmful effects of smoking, and increase the effectiveness of health warnings on such products. Speaking on the importance of this Bill, Minister for Health, Dr James Reilly, T.D. stated that:

‘Cigarette packs have been described as the last billboard for the tobacco industry; this legislation will force the industry to show with greater clarity, the potential devastating effects of smoking on health. As it stands the tobacco companies use packets of various shapes and colours to attract young people to take up the killer habit. Standardised Packaging – all the one type –with much larger warnings will be a deterrent. Today’s decision by the Government will also contribute to our goal of achieving a Tobacco Free Ireland by the year 2025...Protecting our children and young people from starting to smoke is a key goal for me as Minister for Health. There is a wealth of international evidence on the effects of tobacco packaging in general and on perceptions and reactions to standardised packaging which support the introduction of this measure.’<sup>18</sup>

The following is an overview of some of the main proposals contained in the General Scheme:

- The measures will apply only in respect of the retail sale of tobacco products in Ireland, and will not apply to tobacco products and packaging for export (**Head 4**);
- The use of trademarks or other marks on tobacco packaging will be prohibited. However, special provision is made in respect of the tax stamp and health warnings (**Head 5**);
- Tobacco packaging may not be visually enhanced in any way, nor can it make noise or contain scents or features designed to change the packaging after sale (for example; heat activated inks, scratch panels and fold-out panels) (**Head 5 and Head 11**);

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<sup>18</sup> *Much larger health warnings on cigarette packs a step closer – Minister Reilly on Government decision*, Department of Health Press Release, 19 November 2013, <http://www.dohc.ie/press/releases/2013/20131119.html>

- Cigarette packs must be a regulated dull drab colour with a matt finish and have plain white inner surfaces (**Head 5**);
- The size of the general health warnings and combined warnings on tobacco packaging will be increased from not less than 45% to 65% in line with the draft revised E.U. *Tobacco Products Directive* (**Head 6**);
- The General Scheme contains provisions in relation to the appearance of individual cigarette sticks to ensure that design features, trademarks, etc., are not transferred to the product itself. However, provision has been made for the brand name and/or variant name to appear once on the individual cigarette itself (**Head 7**);
- A number of offences relating to the sale, supply, purchase, packaging and manufacture of non-compliant tobacco products are set out in the General Scheme. These provisions will not apply to individuals who purchase tobacco products for their own personal use (**Head 13**);
- The General Scheme provides that non-use of a trademark as a direct result of the provisions of the Bill will constitute a proper reason under [The Trade Marks Act 1996](#). This Act provides for revocation of a registered trade mark if it has not been used over a period of five years (**Head 15**).

Section 6 of this paper examines these provisions in more detail, and outlines relevant stakeholder comment and concern in relation to them. Where appropriate, the paper contains conclusions which the Joint Committee may wish to consider when drafting its Report to the Minister.

## 5. Current law and policy

### 5.1 Tobacco control and regulation

#### 5.1.1 Ireland

Tobacco control and regulation in Ireland is governed primarily by *The Public Health (Tobacco) Acts 2002 to 2013*. These Acts include provisions which prohibit tobacco advertising and sponsorship, and restrict the marketing and sale of tobacco products. For more information on the key developments in Irish tobacco control and regulation from 1964 to date see Appendix 1 below.

Current national policy on tobacco is based on the principles and recommendations of a number of reports, policy documents and strategies, including:

- *Towards a Tobacco Free Society* (adopted as Government policy in 2000)<sup>19</sup>;
- *Tobacco Control Framework 2010* (H.S.E.)<sup>20</sup>;
- *Tobacco Free Ireland* (2013)<sup>21</sup>; and
- *A Framework for Improved Health and Wellbeing 2013–2025*<sup>22</sup>.

Some of the key legislative measures introduced in recent years include:

- the workplace smoking ban (2004);
- the ban on the sale of cigarettes in 10 packs, and the sale of candy cigarettes (2007);
- the ban on point of sale advertising (2009); and
- the introduction of graphic warnings on tobacco packaging (2013).

#### 5.1.2 Ireland's European and international obligations

Ireland is a party to the World Health Organisation's *Framework Convention on Tobacco Control* (the "FCTC"), and is subject to the provisions of the E.U. [Tobacco Products Directive](#) (the "TPD") - which is currently undergoing a process of revision. Both of these instruments aim to reduce tobacco consumption, and the harm caused by smoking, on a global scale.

<sup>19</sup> [http://www.dohc.ie/publications/towards\\_a\\_tobacco\\_free\\_society.html](http://www.dohc.ie/publications/towards_a_tobacco_free_society.html)

<sup>20</sup> <http://www.hse.ie/eng/about/Who/TobaccoControl/framework/framework.pdf>

<sup>21</sup> <http://www.dohc.ie/publications/TobaccoFreeIreland.html>

<sup>22</sup> [http://www.dohc.ie/publications/Healthy\\_Ireland\\_Framework.html](http://www.dohc.ie/publications/Healthy_Ireland_Framework.html)



❖ [The Framework Convention on Tobacco Control \(FCTC\)](#)

Ireland became a party to the World Health Organisation's *Framework Convention on Tobacco Control* (FCTC) in 2005. The Convention was developed in response to the globalisation of the tobacco epidemic. It places an obligation on Parties to '*develop, implement, update and review comprehensive multi-sectoral national tobacco control strategies, plans and programmes*' in order to meet the treaty objective:

'to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke...in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.'

Article 11 of the FCTC specifically sets out provisions in relation to the packaging and labelling of tobacco products. According to the Guidelines<sup>23</sup> for the implementation of this Article:

'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.'

Article 13 of the FCTC deals with the advertising, promotion and sponsorship of tobacco products, and requires Parties in accordance with their constitution to undertake a comprehensive ban, or apply restrictions, on all tobacco advertising, promotion and sponsorship. Given that packaging and product design are viewed as important elements of advertising and promotion, the Guidelines<sup>24</sup> on Article 13 recommend that:

'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.'

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<sup>23</sup> Guidelines for implementation of Article 11 of the WHO Framework Convention on Tobacco Control (*Packaging and labelling of tobacco products*) [http://www.who.int/fctc/guidelines/article\\_11.pdf](http://www.who.int/fctc/guidelines/article_11.pdf)

<sup>24</sup> Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control (*Tobacco advertising, promotion and sponsorship*) [http://www.who.int/fctc/guidelines/article\\_13.pdf](http://www.who.int/fctc/guidelines/article_13.pdf)

The effect of advertising or promotion on packaging can be eliminated by requiring plain packaging...nothing other than a brand name, a product name and/or manufacturer's name, contact details and the quantity of product in the packaging, without any logos or other features apart from health warnings, tax stamps and other government-mandated information or markings; prescribed font style and size; and standardized shape, size and materials. There should be no advertising or promotion inside or attached to the package or on individual cigarettes or other tobacco products.'

Ireland further signed up to the [Protocol to Eliminate Illicit Trade in Tobacco Products](#) on 20 December 2013. The object of the Protocol is to eliminate all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the FCTC:

'The Protocol was developed in response to the growing international illicit trade in tobacco products, which poses a serious threat to public health. Illicit trade increases the accessibility and affordability of tobacco products, thus fuelling the tobacco epidemic and undermining tobacco control policies. It also causes substantial losses in government revenues, and at the same time contributes to the funding of transnational criminal activities. The objective of the Protocol is the elimination of all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO FCTC... It requires [among other things] the establishment of a global tracking and tracing regime within five years of entry into force of the Protocol, comprising national and/or regional tracking and tracing systems and a global information sharing point located in the Convention Secretariat... The Protocol to Eliminate Illicit Trade in Tobacco Products is a milestone in strengthening global action against tobacco and is a new legal instrument in public health. It supplements the WHO FCTC with a comprehensive tool to counter and eventually eliminate illicit trade in tobacco products and to strengthen legal dimensions for international health cooperation.'<sup>25</sup>

Parties to the Protocol must, among other things, adopt effective measures to control and regulate the supply chain of goods covered by the Protocol in order to prevent, deter, detect and prosecute illicit trade in such goods. They must also take any necessary measures to increase the effectiveness of their competent authorities, (for example, customs and police) in preventing, deterring, detecting, investigating, prosecuting and eliminating all forms of illicit trade in goods covered by the Protocol.

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<sup>25</sup> *Protocol to Eliminate Illicit Trade in Tobacco Products*  
[http://apps.who.int/iris/bitstream/10665/80873/1/9789241505246\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/80873/1/9789241505246_eng.pdf)

❖ *The revised Tobacco Products Directive (TPD)*

In December 2013 agreement was reached between the European Parliament and EU Member States on the revision of the 2001 *Tobacco Products Directive*. According to the Commission:

'The new Directive sets in place more stringent rules for tobacco and related products, with the aim of limiting their appeal, in particular to young people. The new measures cover labeling, ingredients, tracking and tracing, e-cigarettes, cross-border distance sales, and herbal products for smoking.'<sup>26</sup>

The draft text<sup>27</sup> provides for:

- combined picture and text health warnings covering 65% of the front and the back, and 50% of the sides of tobacco packaging;
- the introduction of a track and trace system in order to strengthen the fight against illicit trade;
- a ban on flavoured tobacco products;
- the introduction by individual Member States of more stringent rules on tobacco packaging (such as plain-packaging), subject to certain conditions (such as notification of the Commission);
- the regulation of electronic cigarettes which will be subject to a number of safeguards.<sup>28</sup>

The European Parliament formally approved the *revised Tobacco Products Directive* on 26th February 2014. It will now be transmitted for official adoption by the Council, following which the new rules will enter into force (expected date May 2014). Member States will then have two years to transpose the provisions of the Directive.

As it currently stands, the revised Directive will allow Member States to introduce measures relating to the standardisation of packaging where such measures are justified on grounds of

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<sup>26</sup> *Revision of the Tobacco Products Directive* <http://ec.europa.eu/health/tobacco/products/revision/>

<sup>27</sup> For more information on the draft text see European Commission Press Release, 18 December 2013 [http://europa.eu/rapid/press-release\\_MEMO-13-1177\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-1177_en.htm)

<sup>28</sup> *Tobacco directive: MEPs reach agreement with Council of Ministers*, European Parliament Press Release, 18 December 2013 <http://www.europarl.europa.eu/news/en/news-room/content/20131216IPR31001/html/Tobacco-directive-MEPs-reach-agreement-with-Council-of-Ministers>

public health, are proportionate, and do not lead to hidden barriers to trade between Member States.<sup>29</sup>

## Conclusion

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*.

### 5.1.3 Australia

Australia was the first country in the world to introduce plain packaging legislation for tobacco products by way of the [Tobacco Plain Packaging Act 2011](#).

A short BBC podcast (August 2012) reporting on the Australian legislation at the time it was held to be lawful by the courts there is available online [here](#).

The Australian Department of Health, in its submission to the Joint Committee sets out the rationale for such legislation:

'Plain packaging of tobacco products is a legitimate measure designed to achieve a fundamental objective, the protection of public health. It is based on a broad range of studies and reports, and supported by leading Australian and international public health experts...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.'<sup>30</sup>

As stated the introduction of plain packaging in Australia was based on a broad range of studies and reports, including:

- *Plain packaging of cigarettes: a review of the evidence*, Prepared by Quit, Cancer Council Victoria (2011);<sup>31</sup>
- *Plain packaging regulations for tobacco products: the impact of standardizing the color and design of cigarette packs*, Hammond D. (2010);<sup>32</sup> and
- The reports of the National Preventative Health Taskforce<sup>33</sup>, including [Tobacco Control in Australia: making smoking history](#).

<sup>29</sup> For more information see [http://ec.europa.eu/health/tobacco/products/revision/index\\_en.htm](http://ec.europa.eu/health/tobacco/products/revision/index_en.htm)

<sup>30</sup> Australian Department of Health, Submission to Ireland's Joint Committee on Health and Children Public Health (Standardised Packaging of Tobacco) Bill 2013, 14 January 2014

<sup>31</sup> <http://www.cancervic.org.au/plainfacts/browse.asp?ContainerID=plainfacts-evidence>

<sup>32</sup> [http://www.scielosp.org/scielo.php?pid=S0036-36342010000800018&script=sci\\_arttext&lng=pt](http://www.scielosp.org/scielo.php?pid=S0036-36342010000800018&script=sci_arttext&lng=pt)

In particular, the Taskforce found that:

- young adult smokers associate cigarette brand names and package design with positive personal characteristics, social identity and aspirations;
- packaging can create misperceptions about the relative strength, level of tar and health risks of tobacco products;
- plain packaging would increase the salience of health warnings; research subjects showed an improved ability to recall health warnings on plain packs; and
- decreasing the number of design elements on cigarette packs reduces their appeal and perceptions about the likely enjoyment and desirability of smoking.<sup>34</sup>

The *Tobacco Plain Packaging Act 2011* requires:

- ❖ that all tobacco products manufactured or packaged in Australia for domestic consumption must be in plain packaging<sup>35</sup> (as of 1 October 2012) and that all tobacco products sold, offered for sale or supplied in Australia be in plain packaging (as of 1 December 2012); and
- ❖ that graphic health warnings cover at least 75% of the front and at least 90% of the back of a cigarette pack or carton. While warnings for most other smoked tobacco products must cover at least 75% of both the front and back of the packaging.

In terms of enforcement, a broad range of enforcement options are available under the 2011 Act ranging from educational responses and the issuing of warnings to civil proceedings and/or criminal prosecutions.

As is the case in Ireland plain packaging is part only of a comprehensive suite of tobacco control measures being employed in Australia.

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<sup>33</sup> <http://www.preventativehealth.org.au/>

<sup>34</sup> Australian Department of Health, Submission to Ireland's Joint Committee on Health and Children Public Health (Standardised Packaging of Tobacco) Bill 2013, 14 January 2014

<sup>35</sup> Based on consumer research a drab dark brown matte finish was chosen as the most effective colour for achieving the objective of the legislation.

Other tobacco control measures introduced in Australia include:

- The *Tobacco Advertising Prohibition Amendment Act 2012*<sup>36</sup> which restricts internet advertising of tobacco products in Australia (effective as of 6 September 2013);
- a reduction in the duty free allowance for tobacco products from 250 cigarettes or 250g of cigars or tobacco products to 50 cigarettes or 50g of cigars or tobacco product per person (effective as of 1 September 2012);
- stronger penalties in relation to smuggling offences;
- the extended licensing of NRT and other smoking cessation supports on the Pharmaceutical Benefits Scheme<sup>37</sup>; and
- a further four-staged increase in excise and excise-equivalent customs duty on tobacco and tobacco-related products: the first 12.5 per cent increase commenced on 1 December 2013 and further 12.5 per cent increases will occur on 1 September 2014, 1 September 2015 and 1 September 2016. These increases are in addition to the change to bi-annual indexation of tobacco products (from the Consumer Price Index to Average Weekly Ordinary Time Earnings) (effective as of 1 March 2014).

Although it is considered too early to assess the full effects of the plain packaging measure, a study carried out by the New South Wales Cancer Institute, one year after the measure was introduced, found a sharp increase in the number of smokers seeking help to quit:

‘...there's been a 78 percent jump in the number of smokers in Australia seeking help to quit the habit...Spokeswoman Mayanne Lafontaine says "people have taken note of the plain packaging and smokers are actually taking action, so they're actually seeking support, calling the Quitline.”<sup>38</sup>

The Institute claims that this rise indicates that the federal health initiative is working. The Institute hopes to conduct further studies focusing on the direct effect of plain packaging on younger Australians:

‘What we'd be really keen to look at is how it has prevented the uptake of smoking amongst our younger people, because that's one of the key reasons why plain packaging was introduced in the first place. So removing that brand

<sup>36</sup> <http://www.comlaw.gov.au/Details/C2012A00005>

<sup>37</sup> For more information on this Scheme see <http://www.pbs.gov.au/pbs/home>

<sup>38</sup> *Study: Plain cigarette packaging in Australia working*, 3 News, 21 January 2014, <http://www.3news.co.nz/Study-Plain-cigarette-packaging-in-Australia-working/tabid/417/articleID/329225/Default.aspx>

appeal, removing the attractiveness of smoking, was to protect I guess our younger generations from taking up such a deadly and addictive habit.<sup>39</sup>

Kylie Lindorff, Chair of the Cancer Council Australia's Tobacco Issues Committee, also states that:

'Many, many smokers have commented that they don't like the look of the new packs and also believe the taste of the cigarettes is worse, even though the tobacco companies have confirmed that the product is the same... This proves just how powerful packaging is in conveying messages about supposed quality and features of a certain brand.'<sup>40</sup>

In their submission to the Joint Committee the Australian Department of Health states that:

'Anecdotal reports indicate that the tobacco plain packaging measure may be having an effect. Smokers have reported that they no longer enjoy smoking and that the taste of tobacco has changed since the introduction of plain packaging. Smokers have also commented on the noticeability of new graphic health warnings. Recent research funded by the Cancer Institute New South Wales... showed a 78% increase in the number of calls to the Quitline associated with the introduction of plain packaging.'<sup>41</sup>

According to the Health Service Executive (HSE) initial research coming from Australia is very encouraging:

'Australia has seen a decline of approximately 15% in the number of what [are] described as table displays of cigarettes. This is mostly due to a 23% decline in the percentage of patrons who smoke. What is even more striking is that Australia has noticed that calls to its quit lines soared by 78% for a period shortly after the introduction of the new packaging. Obviously, there is an important relationship between people who make that first contact to a quit line and those who are ultimately successful in quitting tobacco.'<sup>42</sup>

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<sup>39</sup> Study: Plain cigarette packaging in Australia working, 3 News, 21 January 2014, <http://www.3news.co.nz/Study-Plain-cigarette-packaging-in-Australia-working/tabid/417/articleID/329225/Default.aspx>

<sup>40</sup> Reducing the appeal of smoking – first experiences with Australia's plain tobacco packaging law, World Health Organisation, May 2013, [http://www.who.int/features/2013/australia\\_tobacco\\_packaging/en/](http://www.who.int/features/2013/australia_tobacco_packaging/en/)

<sup>41</sup> Executive Summary, Submission to Ireland's Joint Committee on Health and Children Public Health (Standardised Packaging of Tobacco) Bill 2013, 14 January 2014

<sup>42</sup> Mr Gavin Maguire, Assistant National Director Environmental Health and Emergency Planning Health Service Executive, Parliamentary Debates, 23 January 2014, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

The Australian Government is aiming to reduce smoking rates to below 10%<sup>43</sup> by 2018.<sup>44</sup> According to the Australian Department of Health:

'The weight of the evidence indicates that the plain packaging of tobacco products, as part of a comprehensive suite of tobacco control reforms, will contribute to Australia's public health objectives.'<sup>45</sup>

## Conclusion

The rise in the number of calls to the Quitline in Australia could be viewed as evidence that the inclusion of a Quitline 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 Quitline number in the legislation.

### 5.1.4 The United Kingdom (UK)

The issue of plain packaging recently came up for debate in the UK in the context of the *Children and Families Bill*<sup>46</sup>, currently before the UK parliament. A number of amendments were tabled which would permit that Government to introduce regulations in relation to tobacco control, particularly in respect of children. These include regulating the retail packaging of tobacco products, where '*the regulations may contribute at any time to reducing the risk of harm to, or promoting, the health or welfare of people under the age of 18.*' Other amendments include:

- a prohibition on the sale of nicotine products (for example, e-cigarettes) to persons under 18 years;
- making it an offence to smoke in a private vehicle while carrying persons under the age of 18 years<sup>47</sup>; and
- making it an offence for an adult to buy cigarettes for anyone under the age of 18yrs (i.e. the offence of proxy purchasing);

<sup>43</sup> 23.5% for Aboriginal and Torres Strait Islanders.

<sup>44</sup> [Government to demand no frills cigarette packets](#), ABC News, 29 Apr 2010

<sup>45</sup> Australian Department of Health, Submission to Ireland's Joint Committee on Health and Children Public Health (Standardised Packaging of Tobacco) Bill 2013, 14 January 2014

<sup>46</sup> For more information on the Third Reading see

<http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140205-0001.htm#14020581000654>

<sup>47</sup> In November 2011, the All Party Parliamentary Group on Smoking and Health conducted an inquiry into smoking in private vehicles. The report can be downloaded as a pdf by clicking [here](#). The British Lung Foundation also produced a briefing for MPs which available for download [here](#)



On the issue of standardised packaging, the Government has indicated that it wait until the publication of the Chantler Review (expected March 2014) before deciding whether or not to proceed with such regulations.

### **5.1.5 New Zealand**

In February 2014, the New Zealand Government introduced [\*The Smoke-free Environments \(Tobacco Products and Packaging\) Amendment Bill\*](#). The objectives of the Bill are similar to that in the General Scheme – to reduce the appeal of tobacco products and smoking, particularly for young people; to further reduce any wider social acceptance and approval of smoking and tobacco products; to increase the noticeability and effectiveness of mandated health warning messages and images and to reduce the likelihood that consumers might acquire false perceptions about the harms caused by tobacco products. On its first Reading Tariana Turia, Associate Minister of Health, stated that:

‘Plain packaging will be most effective in building on other legislation to improve tobacco control...No one measure will make the difference in isolation. Each of these measures addresses specific elements in establishing a comprehensive tobacco control regime...Having removed the display of tobacco products in shops, we are now tackling how these products look, by greatly reducing their appeal, especially to young people, our children and grandchildren.

I am determined that we must denormalise smoking and build on the progress we have seen to date. This bill is about sending a very clear message to tobacco companies that this Government is serious about ending unnecessary deaths and poor health outcomes related to tobacco use.

The intent of the legislation is to prevent the design and appearance of packaging and of products themselves from having any visual or other effect that could serve to promote the attractiveness of the product or increase the social appeal of smoking.<sup>148</sup>

New Zealand has also set a target of 2025 to become smoke-free.

### **5.1.6 Legal challenges to tobacco control and regulation**

The Minister for Health, Dr James Reilly, T.D. has indicated to the Joint Committee that he would be ‘*astonished*’ if the tobacco industry did not institute a legal challenge on foot of the enactment of plain packaging measures in Ireland. However, he stated:

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<sup>48</sup> First Reading of the Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill <http://www.beehive.govt.nz/speech/first-reading-smoke-free-environments-tobacco-plain-packaging-amendment-bill>

'I am determined that the threat of legal challenges should not be an obstacle in progressing public health policies. There are always obstacles, legal or otherwise, to any move for change. We must do what is right, not what is easiest. Sometimes we observe how others might proceed, but there are times too when we must lead, and this is one of those times. We must press on with our mission. The challenge is to protect our children, and that is a challenge at which we cannot fail.'<sup>49</sup>

The Joint Committee heard that legal challenges to tobacco control and regulation are taken with a view to preventing, delaying and deterring others from introducing similar measures. According to *Tobacco Free Ireland* these legal challenges:

'...are viewed by tobacco control authorities as a means of delaying various legislative provisions from coming into operation and as a means of diverting resources away from other tobacco control and health promotion initiatives. Litigation also acts as a deterrent for other countries from developing and enacting new progressive pieces of tobacco control legislation.'<sup>50</sup>

The New Zealand Associate Minister for Health, Tariana Turia, echoed Minister Reilly's sentiments on the first reading of the plain packaging measures before the New Zealand Parliament:

'While the tobacco industry may have laid down a threat that if this legislation is passed [it will be challenged] my message to them is that our country has a sovereign right and a legal right to protect its citizens. I am firmly of the opinion that it is not for any tobacco company to be telling us what we should be doing in our own land.'<sup>51</sup>

### *Ireland*

In 2009, legal proceedings were initiated by the tobacco industry in the Irish High Court challenging the introduction of key legislative measures including the point of sale

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<sup>49</sup> Parliamentary Debates, 5 December 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20131205~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20131205~HEJ/$File/Daily%20Book%20Unrevised.pdf?openement)

<sup>50</sup> *Tobacco Free Ireland*, Report of the Tobacco Policy Review Group, October 2013 <http://www.dohc.ie/publications/pdf/TobaccoFreeIreland.pdf?direct=1>

<sup>51</sup> First Reading of the Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill <http://www.beehive.govt.nz/speech/first-reading-smoke-free-environments-tobacco-plain-packaging-amendment-bill>

advertising and display ban, and the closed container requirement.<sup>52</sup> One of the recommendations in *Tobacco Free Ireland* is that the State ‘robustly defend’ this challenge.

A similar case was taken in Norway by a tobacco company which challenged the display ban claiming that it violated trade rules under the Agreement on the European Economic Area. In September 2012, the court upheld the Government’s ban on the display of tobacco products at point of sale, finding that the display ban is necessary and that no alternative, less intrusive measure could produce a similar result.<sup>53</sup>

### *Australia*

Following the introduction of plain packaging measures in Australia, the tobacco industry (i.e. British American Tobacco, Philip Morris International, Imperial Tobacco and Japan Tobacco) initiated a number of legal challenges at domestic and international level. It was argued that this piece of legislation infringed the intellectual property rights of these companies, by “unjustly acquiring” their trademarks other than just terms (i.e. without the payment of compensation), contrary to s 51(xxxi) of the Constitution. Section 51 (xxi) of the Australian Constitution<sup>54</sup> provides that:

‘The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to...The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws...’

It was claimed that it was unconstitutional for the Australian government to remove trademarks from packaging without compensation. However, in August 2012, Australia’s High Court dismissed the case, awarding costs in favour of the Australian Government.<sup>55</sup>

The World Health Organization (WHO) strongly welcomed the decision and called on the rest of the world to follow Australia’s tough stance on tobacco marketing, stating that the

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<sup>52</sup> For more information see *Tobacco Free Ireland*, Report of the Tobacco Policy Review Group, October 2013 <http://www.dohc.ie/publications/pdf/TobaccoFreeIreland.pdf?direct=1>

<sup>53</sup> *Banning Tobacco Advertising, Promotion and Sponsorship, What you need to know*, WHO, 2013 [http://apps.who.int/iris/bitstream/10665/83779/1/WHO\\_NMH\\_PND\\_13.1\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/83779/1/WHO_NMH_PND_13.1_eng.pdf)

<sup>54</sup> [http://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/~link.aspx?id=F74707A5A4934E05A67EE5969B156435&z=z](http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~link.aspx?id=F74707A5A4934E05A67EE5969B156435&z=z)

<sup>55</sup> *JT International SA v. Commonwealth of Australia*, <http://www.hcourt.gov.au/cases/case-s409/2011>

plain packaging requirement 'is also fully in line with the WHO Framework Convention on Tobacco Control.'<sup>56</sup>

Further legal challenges are, however, pending in the World Trade Organization and under the Australia-Hong Kong Bilateral Investment Treaty - initiated by Philip Morris Asia.<sup>57</sup> The Ukraine also initiated a complaint before the World Trade Organisation on the basis that the legislation breached intellectual property rights under a number of WTO agreements<sup>58</sup>:

- *the Agreement on Trade Related Aspects of Intellectual Property Rights* (TRIPS);
- *the Agreement on Technical Barriers to Trade*; and
- *the Agreement on Tarriffs and Trade*.

This action has not been concluded. Nor has the action initiated by Philip Morris Asia under Australia's Bilateral Investment Treaty with Hong-Kong. In its submission to the Joint Committee the Australian Department of Health state that '*Australia's trade and investment-related international obligations do not prevent the Australian Government from taking measures to protect the health of Australians*'.<sup>59</sup>

## **5.2 Intellectual property rights**

Irish law protects creative ideas (e.g. inventions, designs, music) by creating intellectual property rights in respect of them. Intellectual property rights take many forms, including patents, trademarks, design registration, and copyright. A number of stakeholders, including the Law Society of Ireland, raised concerns about the potential negative impact standardised packaging may have on the intellectual property rights (i.e. trademarks) of tobacco companies, and consequently Ireland's international commercial reputation. In their submissions to the Joint Committee, tobacco manufacturers made the following statements:

'Our trademarks identify the origin and quality of our products. They tell the consumer that what is on the pack is what is in the pack. The removal of the

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<sup>56</sup> WHO welcomes landmark decision from Australia's High Court on tobacco plain packaging act –, August 2012, [http://www.who.int/mediacentre/news/statements/2012/tobacco\\_packaging/en/](http://www.who.int/mediacentre/news/statements/2012/tobacco_packaging/en/)

<sup>57</sup> World Health Report in the Global Tobacco Epidemic [http://apps.who.int/iris/bitstream/10665/85380/1/9789241505871\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/85380/1/9789241505871_eng.pdf)

<sup>58</sup> For more information see *Summary of Australia's involvement in disputes currently before the World Trade Organization* (November 2013) <http://www.dfat.gov.au/trade/negotiations/disputes/>

<sup>59</sup> Australian Department of Health, Submission to Ireland's Joint Committee on Health and Children Public Health (Standardised Packaging of Tobacco) Bill 2013, 14 January 2014

legitimately held intellectual property rights of PJ Carroll and other companies is a disproportionate measure in light of the less trade restrictive alternatives available.<sup>60</sup>

'Plain packaging would represent an extraordinary deprivation of, and unjust attack on, JTI's most valuable assets – its brand and trade marks. It would be manifestly disproportionate, unjustified and unnecessary...Intellectual property rights [IPRs] are fundamental to tobacco packaging...Plain packaging would leave JTI unable to exploit its IPRs commercially, making them, for all practicable purposes, valueless in Ireland.'<sup>61</sup>

'Packaging also gives reassurance to customers about the provenance, type and quality of the product. The importance of intellectual property that is embodied in packaging cannot be overstated. John Player would be entitled to adequate compensation if the Bill was enacted, given that the company would be effectively deprived of the benefit of its trademarks.'<sup>62</sup>

According to the Law Society of Ireland:

'Legislation of this kind at best causes affected trade marks to lose almost all of their distinctiveness and at worst results in the invalidation of registered trademarks altogether with a consequential loss of property rights and brand owner value.'<sup>63</sup>

Mr. Chris Macey, Irish Heart Foundation, disputes such claims stating that:

'Apart from the grotesque notion that intellectual property rights for tobacco firms are more important than our children's health, this is legally without foundation...a legal challenge cannot succeed once the State shows plain packaging is rationally connected to improving public health and is a proportionate response....a simple choice emerges between protecting our children's health or industry profits regardless of the human cost.'<sup>64</sup>

In terms of the potential for damage to Ireland's international commercial reputation the Joint Committee heard evidence attesting that:

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<sup>60</sup> A Submission to the Joint Oireachtas Committee on Health and Children regarding the proposal to introduce standardised packaging of tobacco products, PJ Carroll and Co., January 2014

<sup>61</sup> Response to the Oireachtas Joint Committee on Health and Children Request for Written Submissions on the Outline Heads of the Public Health (Standardised Packaging of Tobacco) Bill 2013, JTI Ireland Limited, 15 January 2014.

<sup>62</sup> A response to the Oireachtas Joint Committee on Health and Children's Consultation on Public Health (Standardised Packaging of Tobacco) Bill 2013, John Player, 15 January 2014

<sup>63</sup> Submission of the Intellectual Property Law Committee of the Law Society of Ireland to the Public Consultation on a Proposal for an EU Directive on the Tobacco Products Directive, 23 February 2013

<sup>64</sup> Parliamentary Debates, 30 January 2014,

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

'...plain packaging will damage Ireland's reputation as a positive environment for business. It will give other industries cause for concern that their trademarks are not safe in Ireland.'<sup>65</sup>

This view is supported by others:

'Ireland should carefully consider the impact and perception created by the proposed plain packaging legislation internationally. Enacting legislation that completely undermines trade mark rights is not consistent with an aim to provide a robust IP protection regime in order to support foreign direct investment.'<sup>66</sup>

'Intellectual property rights are a particularly important part of Ireland's economic recovery. Ireland prides itself and sells itself as being a country at the forefront of intellectual property protection and this has been a factor which has assisted in attracting significant foreign investment to Ireland. It is referenced in every brochure aimed at that sector. If Ireland is seen as a place where intellectual property rights can be overridden by government policy, this will understandably cause anxiety amongst multinationals who are considering investing here. Ireland is competing vigorously with countries such as the Netherlands, Singapore and Switzerland for foreign direct investment and the decisions can ultimately turn on small differences.'<sup>67</sup>

It has also been suggested in an article [Plain Packaging and the interpretation of the TRIPS Agreement](#) that:

'...the path to protecting public health can and should be carved out without doing unnecessary collateral damage to trademark law. Indeed, it is desirable that it not do so because trademark law is about far more than plain packaging of cigarettes.'<sup>68</sup>

However, it is evident, as can be seen from recent developments in the United Kingdom and New Zealand that the move towards plain/standardised packaging is gaining momentum both within the EU and globally.

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<sup>65</sup> Mr. Steven Donaldson, General Manager of PJ Carroll and Company Limited, Parliamentary Debates, 6 February 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140213~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140213~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>66</sup> Written submissions on the Public Health (Standardised Packaging of Tobacco) Bill 2013, Philip Morris International, 15 January 2014

<sup>67</sup> Oireachtas Joint Committee on Health and Children Request for Submissions, Heads of Public Health (Standardised Packaging of Tobacco) Bill 2013, The Association of Patent and Trade Mark Attorneys, 15 January 2014.

<sup>68</sup> Susy Frankel and Daniel J Gervais, *Plain Packaging and the Interpretation of the TRIPS agreement*, (2013) 46 VJTL 1149. Victoria University of Wellington Legal Research Paper No. 1/2014

This paper provides some brief legal research as to trademark rights as they apply in an Irish context.

### 5.2.1 Ireland

#### ❖ *Bunreacht na hÉireann*

Intellectual property rights form part of Ireland's constitutionally protected property rights. Private property rights are expressly provided for in Article 40 and 43 of *Bunreacht na hÉireann*. Article 40 states among other things that:

'3. 1° The State guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.'

Article 43 states:

1. 1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.

2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.

Property rights are not, however, absolute and can be regulated in the public interest (subject to a proportionality test):

2. 1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.

2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.

## ❖ *Trade Marks Act 1996*

In an era of extensive advertising campaigns, and increased consumer awareness, trademarks and brand names are valuable economic/commercial assets. The function of a company's trademark is to achieve product recognition (e.g. Nokia<sup>69</sup>) and customer loyalty, thereby securing the success of the product and the company. A trade mark is the means by which a business identifies its goods and/or services and distinguishes these from the goods and services supplied by others.

Most countries have taken steps to protect trademarks through a system of registration. Under Irish law the right to a trademark is governed by the *Trade Marks Act 1996* which defines a trade mark as:

"any sign capable of being represented graphically which is capable of distinguishing the goods or services of one undertaking from those of other undertakings."<sup>70</sup>

The Irish Patents Office advises that 'a trade mark may consist of words, (including personal names), designs, logos, letters, numerals or the shape of goods or of their packaging, or of other signs or indications that are capable of distinguishing the goods or services of one undertaking from those of others.'<sup>71</sup>

### 5.2.2 *Ireland's European and International obligations*

Ireland is a signatory to a number of international agreements which aim to protect intellectual property rights, including the Charter of Fundamental Rights, the Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property. Ireland is also party to the E.U. [Community Trade Mark Regulations 2009](#) which provide that:

'A Community trade mark shall have a unitary character. It shall have equal effect throughout the Community: it shall not be registered, transferred or surrendered or be the subject of a decision revoking the rights of the proprietor

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<sup>69</sup> Leaving aside the value of its patent and design portfolio, Nokia's brand value (protected by trade marks) was reckoned to be in excess of 24 billion US dollars in 2004. See [http://www.patentoffice.ie/en/student\\_ip.aspx](http://www.patentoffice.ie/en/student_ip.aspx)

<sup>70</sup> *The Trade Marks Act 1996*, <http://www.irishstatutebook.ie/1996/en/act/pub/0006/index.html>

<sup>71</sup> *What is a Trade Mark?* <http://www.patentoffice.ie/en/trademark.aspx>



or declaring it invalid, nor shall its use be prohibited, save in respect of the whole Community.<sup>72</sup>

❖ [The Charter of Fundamental Rights of the European Union](#)

Article 17.2 of the Charter specifically recognises that '[i]ntellectual property shall be protected'. However, provision is also made for the regulation of the use of property in so far as is necessary for the general interest, acknowledging that in certain circumstances a person may be deprived of their property rights:

'No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss.'

❖ [The Paris Convention for the Protection of Industrial Property \('the Paris Convention'\)](#)

The Paris Convention is one of the first multilateral treaties aimed at protecting intellectual property rights. It ensures, among other things, national treatment and priority rights in respect of patents and trademarks. It does not, however, define or guarantee any minimum level of protection for these rights; this is left entirely to individual Party States.

The lack of such provisions is thought to have led to the adoption of the *Agreement on Trade Related Aspects of Intellectual Property Rights*.

❖ [The Agreement on Trade-Related Aspects of Intellectual Property \(TRIPS\)](#)

The TRIPS introduced intellectual property rules into the multilateral trading system for the first time. The World Trade Organization outlines the reasoning for the formulation of the agreement and the extent of its application:

'The extent of protection and enforcement of [intellectual property] rights varied widely around the world; and as intellectual property became more important in trade, these differences became a source of tension in international economic relations. New internationally-agreed trade rules for intellectual property rights were seen as a way to introduce more order and predictability, and for disputes to be settled more systematically...The WTO's TRIPS Agreement is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules. It establishes minimum levels of

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<sup>72</sup> Article 1.

protection that each government has to give to the intellectual property of fellow WTO members. In doing so, it strikes a balance between the long term benefits and possible short term costs to society. Society benefits in the long term when intellectual property protection encourages creation and invention, especially when the period of protection expires and the creations and inventions enter the public domain. Governments are allowed to reduce any short term costs through various exceptions, for example to tackle public health problems. And, when there are trade disputes over intellectual property rights, the WTO's dispute settlement system is now available.<sup>73</sup>

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<sup>73</sup> *Intellectual property: protection and enforcement*, World Trade Organisation, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm7\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm)

## 6. Key provisions and stakeholder comment

### 6.1 Purpose of the legislation (Head 3)

The General Scheme specifically sets out the purpose of the proposed plain packaging measures in Head 3, which states:

‘The purposes of this Act are to:

- a) reduce the appeal of tobacco and tobacco products,
- b) increase the effectiveness of health warnings on tobacco products, and
- c) reduce the ability of the packaging of tobacco and tobacco products to mislead consumers about the harmful effects of smoking in the public interest,

by providing for the standardisation of the labelling and physical features of retail packaging of tobacco products and the requirements for the appearance of cigarettes.’

According to the Explanatory Note to the General Scheme tobacco branding works in three key ways:

1. Packs are designed to be attractive and to communicate the personality of the brand;
2. Lighter colour packs mislead consumers, falsely suggesting that some tobacco products are healthier than others; and
3. Branding reduces the prominence and effectiveness of mandatory health warnings.

The Joint Committee heard evidence that following the cumulative tobacco control measures introduced in Ireland and internationally the tobacco industry has turned increasingly to packaging, particularly the cigarette pack, as a key marketing tool to interest smokers.<sup>74</sup> Standardised packaging will remove one of the last remaining methods of tobacco advertising.

### Stakeholder comment

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<sup>74</sup> Dr. Mr Tony Holohan, Chief Medical Officer, Parliamentary Debates , 5 December 2014 [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20131205~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20131205~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

The Joint Committee heard evidence that packaging offers tobacco companies a powerful opportunity to recruit new smokers, in particular young people:

‘addiction keeps people smoking, branding entices them to start’.<sup>75</sup>

However, representatives from the industry gave evidence to the Joint Committee that ‘*in no way do we market our products to children*’<sup>76</sup> and that claims ‘*we use our brands to entice Irish children to smoke*’ is a ‘*myth*’<sup>77</sup>. Mr. Steven Donaldson, General Manager of P.J. Carroll and Company Limited pointed to the black market as a means of access for children to cigarettes and went on to state that:

‘There is no disagreement between P.J. Carroll, the Government or the committee. We have a shared objective of preventing children from taking up smoking.’<sup>78</sup>

Other stakeholders, including the Irish Cancer Society and the Irish Heart Foundation, gave evidence of the impact of tobacco branding and standardised packaging on young people. Ms Kathleen O’Meara, of the Irish Cancer Society, outlined the scope and findings of research commissioned jointly by both organisations in 2013:

‘Focus group research was conducted...among a group of 15 and 16 year olds, both smokers and non-smokers, who were first shown branded packs. These sleek, expertly designed, coloured packs influenced everything from the teenagers’ perception of the quality of the cigarette to the likely users of the brand and, ultimately, their likelihood to try them. They were then shown examples of standardised packaging. These packs, with their dull colour and graphic health warnings, are immediately rejected by teens. The images showing the health effects of smoking strip away any glamour or fun attributes imbued by branded packs...For those teens who have tried smoking, most reported that the introduction of plain packaging would be enough to prevent them from trying

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<sup>75</sup> Ms Sharon Cosgrove, CEO of the Asthma Society of Ireland, Parliamentary Debates, 30 January 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>76</sup> Mr. Steven Donaldson, General Manager of P.J. Carroll and Company Limited, Parliamentary Debates, 13 February 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140213~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140213~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>77</sup> Mr. Andrew Meagher, Managing Director of John Player & Sons Limited, Parliamentary Debates, 13 February 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140213~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140213~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>78</sup> Parliamentary Debates, 13 February 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140213~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140213~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

cigarettes again. For those who smoked on a daily basis, plain packaging would encourage them to give up sooner.<sup>79</sup>

According to Mr Chris Macey, Head of Advocacy with the Irish Heart Foundation these findings indicate that plain packaging would turn the concept of peer pressure on its head, making young people fear judgment and shame from their peers.

The Joint Committee heard that these findings mirror similar research carried out by other organisations in different parts of the world, in particular, the study published (September 2013) by the Centre for Tobacco Control Research in the University of Stirling - [Plain Tobacco Packaging Research: An Update](#). This study comprehensively overviews 17 studies carried out between August 2011 and September 2013 across the UK, New Zealand and Australia.<sup>80</sup>

‘The findings of these 17 studies... suggest that plain packaging would: reduce the appeal of cigarettes and smoking, enhance the salience of health warnings on packs, and address the use of packaging elements that mislead smokers about product harm.’

The Joint Committee heard evidence that the tobacco industry requires the continuous recruitment of 50 new consumers, every day in order to maintain current smoking rates. Many stakeholders, including Dr. Ross Morgan, Chairperson of Ash Ireland, highlighted that it is young people who are the primary target of tobacco industry marketing. On a positive note, Dr. Morgan pointed out that in the last decade smoking rates have fallen from approximately 30% to 22% and there has been a reduction of approximately 50% in the number of 12-15 year olds starting smoking.

The Joint Committee heard evidence that the tobacco industry accepts that it is operating and competing in a declining market, acknowledging that ‘*the market declines in line with the measures which are implemented.*’<sup>81</sup> It has been suggested to the Joint Committee that the longer a person can be delayed from starting to smoke, the better the chance that person will have of never starting and of never developing an addiction:

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<sup>79</sup> Parliamentary Debates, 30 January 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

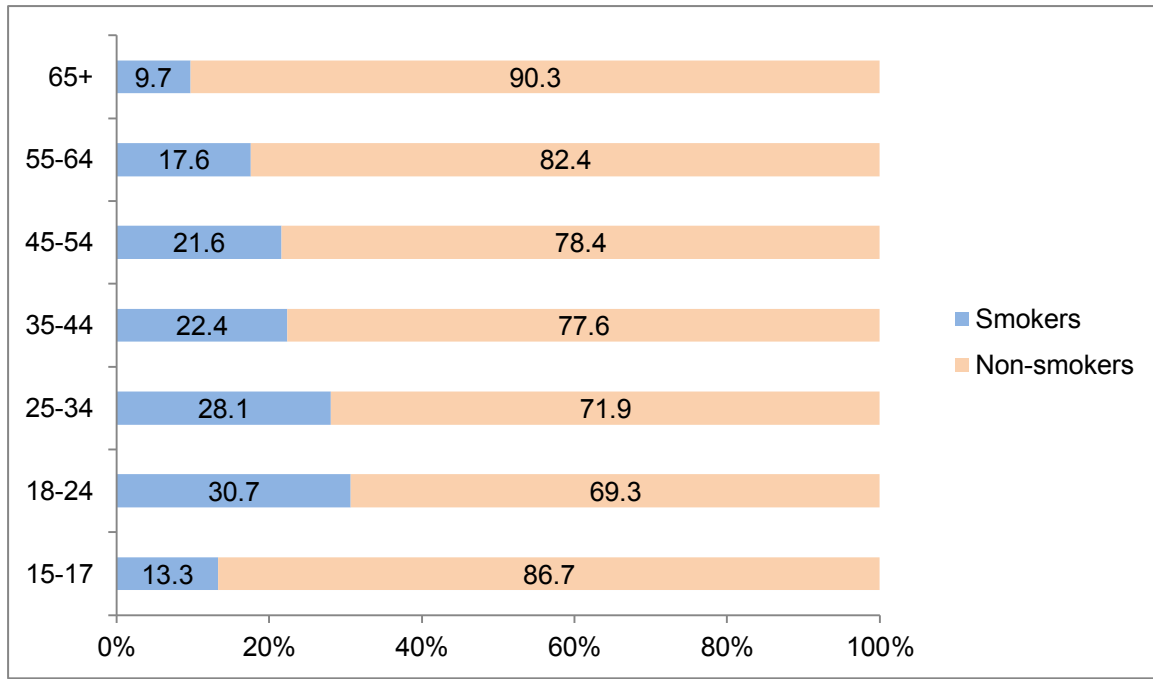
<sup>80</sup> This update of the literature now includes 54 published studies (37 in the original review and 17 in this review). The original review, *Plain Tobacco Packaging: A Systematic Review* is available [here](#).

<sup>81</sup> Mr. John Freda, General Manager, JTI Ireland, Parliamentary Debates, 13 February 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140213~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140213~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

'The longer we can delay a person having a first cigarette, the better chance we have of ensuring they never do it.'<sup>82</sup>

The following chart shows the current smoking prevalence rates in Ireland based on age.

**Figure 1: Smoking prevalence by age group (as of December 2013)**



Source: Health Service Executive [2013 Smoking Prevalence Data](#)

Stakeholders representing the retail sector<sup>83</sup> and tobacco industries, have submitted there is no credible evidence that plain packaging as a policy proposal will lead to a reduction in youth smoking or prevent youth initiation, suggesting instead that consideration be given to other means of tackling tobacco consumption (alternatives will be discussed in more detail below – see section 7). Submissions were also made to the effect that '*the Australian plain packaging experiment is failing*'.<sup>84</sup>

According to Mr. Andrew Meagher, Managing Director of John Player & Sons Limited:

<sup>82</sup> Mr. Paul Gilligan, The Children's Rights Alliance, Parliamentary Debates, 30 January 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openement)

<sup>83</sup> Including South Dublin Chamber and Retail Excellence Ireland.

<sup>84</sup> Mr. Steven Donaldson, General manager of P.J. Carroll and Company Limited, Parliamentary Debates, 13 February 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140213~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140213~HEJ/$File/Daily%20Book%20Unrevised.pdf?openement)

'There is no robust evidence that [the legislation] would achieve its stated aim, there are too many negative consequences and there are proven alternative education-based solutions from other jurisdictions that deliver reductions in minors smoking.'<sup>85</sup>

Mr. Steven Donaldson concurs:

'There is no credible evidence to suggest that plain packaging will reduce smoking rates. Extensive research has been carried out into why people take up smoking. All of the research points to parental influence, peer influence, social and cultural norms, price and access as the key factors, not packaging. Evidence offered by lobbyists for plain packaging points to a range of studies on attitudes and intentions to support their claims but fails to point to any real world evidence on the effect on smoking behaviour. Studies referenced by the Minister for Health, Deputy Reilly, deal only with how people intend to react to the idea of plain packs, not what they actually do as a result of plain packs in the real world. Studies have shown that uglier packs are less attractive but they have failed to make the critical connection between uglier packs and the decision to take up smoking.'<sup>86</sup>

The Joint Committee was asked by these same stakeholders to '*wait*', to '*gather more evidence*', to '*consider the outcome of an RIA [Regulatory Impact Analysis]*', and to '*look further at the evidence from Australia*' before making any recommendations in respect of the plain packaging proposals.

It should be noted however, that based on the evidence presented to the Joint Committee, each week that a wait and see approach is adopted, an estimated one hundred people will die from a smoking-related disease.<sup>87</sup>

In terms of commencement and implementation of any proposed legislation, it has been suggested that retailers and tobacco manufactures be given at least 12 months lead in time to allow for compliance with the new measures.<sup>88</sup>

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<sup>85</sup> Parliamentary Debates, 13 February 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140213~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140213~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>86</sup> General manager of P.J. Carroll and Company Limited, Parliamentary Debates, 13 February 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140213~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140213~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>87</sup> Dr. Ross Morgan, Ash Ireland, Parliamentary Debates, 30 January 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>88</sup> General scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013, Submission to the Oireachtas Joint Committee on Health and Children, Quit Victoria.

## Conclusion

That the Department, in conjunction with other key stakeholders, should monitor and review the effectiveness of standardised packaging on the prevalence of smoking and the scale of the illicit tobacco market in Ireland.

That consideration should be given to providing a lead in period of at least 12 months to allow retailers and tobacco manufactures time to comply with the new plain packaging measures.

### 6.2 Application of the Legislation (Head 4)

The measures as proposed in the General Scheme will apply only to tobacco products and tobacco retail packaging manufactured for retail sale in the State.

#### Stakeholder comment

As pointed out by RGDATA in its submission to the Joint Committee the implication is that those purchasing tobacco products outside the jurisdiction for use inside the jurisdiction (i.e. duty free) will not be subject to the new law. RGDATA poses a number of questions in relation to this head:

1. Why given the policy objectives which the Bill is seeking to address does the legislation not go further and prohibit the importation of cigarettes into the State above a certain volume per person which do not comply with the packaging restrictions contained in the Bill?
2. If the object of the legislation is to render the sale of tobacco products as less attractive, surely this principle should apply regardless of where the Irish based smoker acquires the tobacco products for consumption in the State?<sup>89</sup>

The current duty free allowance in respect of tobacco products is set out in the table below.

Maximum Quantities	Goods
200	Cigarettes

<sup>89</sup> RGDATA, Public Health (Standardised Packaging of Tobacco) Bill 2013 – Response to request for Submissions, January 2014.



100	Cigarillos
50	Cigars
250 grammes	Tobacco

Source: Revenue <http://www.revenue.ie/en/customs/leaflets/pn1878a.html#duty-free>

As stated previously, the Australian Government in conjunction with their plain packaging legislation reduced the duty free allowance for tobacco products. This is something which the Joint Committee may wish to consider, particularly given the proposed Bill is only one part of a suite of measures designed to counter tobacco consumption in Ireland.

### **Conclusion**

That consideration should be given to decreasing the level of duty free allowance in respect of tobacco products in general (note: 6% of cigarettes are purchased abroad and brought back into Ireland legitimately for personal use).

Alternatively, that consideration be given to decreasing the level of duty free allowance in respect of non-compliant tobacco products.

### **6.3 Physical Features of Retail Packaging of Cigarettes (Head 5)**

Head 5 sets out the substantive provisions in relation to the packaging requirements of tobacco products, including that a cigarette pack/carton must:

- be cuboid in shape and made of rigid carton;
- be a dull drab colour with a matt finish (the exact colour has been left to the Minister to regulate taking into account the need to decrease the appeal of tobacco products, increase the effectiveness of health warnings and reduce the ability of packaging to mislead consumers about the harmful effects of smoking);
- have plain white inner surfaces, and where it contains a lining this must be plain silver coloured foil with a white backing;
- not contain any trade marks or other marks other than those prescribed (i.e. the tax stamp and health warnings);

- not contain any embellishments (for example, decorative ridges, embossing or other irregularities in shape or texture);
- must not contain any inserts or onserts; and
- not include any glues or adhesives that are coloured or non-transparent.

Cigarette packs and cartons may however contain the brand, business, or company name for tobacco products; the variant name; and any other item provided by law (for example, health warnings and tax stamps).

In terms of the brand or any variant name they must appear across one line only and must not appear more than once on the surface of the pack/carton as outlined in Head 5. They must conform to the colour and font type as prescribed by the Minister and the brand name must be no larger than 14 points in size, and the variant no larger than 10 points. The first letter in each word only may be capitalised.

Head 5 also contains provision in respect of wrappers, including that they be transparent, free from embellishments and trade marks.

The Explanatory Note states that the wording of this particular section is informed by the Australian legislation, and its objective is:

‘to make all cigarette packs look less attractive to consumers and to make health warnings more prominent. This is an evidence based public health measure designed to make cigarette packets less appealing to consumers, especially young people by removing all forms of branding – trademarks, logos, colours and graphics.’

## **Stakeholder comment**

### *Wrappers*

The HSE welcomes the proposed restrictions on wrappers as set in Head 5 stating that they *‘will remove the current trend of flash pack or flash pricing across the top of the tobacco product...giving the assumption to the consumer that they are selling them at a reduced price and thus using it as a sales promotion device.’*<sup>90</sup>

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<sup>90</sup> Health Services Executive Submission in relation to the Health (Standardised Packaging of Tobacco) Bill 2013, 15 January 2014

### *Standardised size of packaging*

The HSE feels that an additional requirement on the standardisation of the packaging size should be included in the legislation:

‘Restrictions on the size of tobacco carton/packaging are currently not captured under this head. [This] would...eliminate tobacco companies from making tobacco cartons packaging bigger than required to increase their brand, business or company name on the tobacco pack.’<sup>91</sup>

According to Ms Laura Garvey, National Office of Tobacco Control:

‘Australian legislation has restricted the size of a cigarette packet and there is a minimum and maximum length, depth and height. When considering regulations, we should look the physical features of a cigarette packet so we can introduce similar restrictions.’<sup>92</sup>

Quit Victoria has also recommended the inclusion of such a provision in order to prohibit the sale of novelty packs:

‘Australia stipulates minimum and maximum height, width and depth dimensions for cigarette packaging so that novelty packs such as very small and slim “lipstick” packs or thin “nano” packs cannot be sold.’<sup>93</sup>

### *Inner packaging*

Quit Victoria recommend that the inner packaging of tobacco products be the same colour as the outside surface so as to further reduce the appeal of such products:

‘It is inconsistent that the outside of tobacco packaging should look unattractive and provide graphic images...while the inside...remains pristine, white/silver in colour. This may give the false impression that tobacco use is somehow less damaging than the outside implies.’<sup>94</sup>

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<sup>91</sup> Health Services Executive Submission in relation to the Health (Standardised Packaging of Tobacco) Bill 2013, 15 January 2014

<sup>92</sup> Environment Officer, National Office of Tobacco Control, Parliamentary Debates, 23 January 2014, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

<sup>93</sup> General scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013, Submission to the Oireachtas Joint Committee on Health and Children, Quit Victoria.

<sup>94</sup> General scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013, Submission to the Oireachtas Joint Committee on Health and Children, Quit Victoria.

According to the group in the lead up to the introduction of plain packaging legislation in Australia, one tobacco manufacturer exploited this exact message producing packaging with the slogan “*It’s what’s inside that counts.*”

In its submission to the Joint Committee the Australian Department of Health highlighted a technical manufacturing issue which was raised by tobacco manufacturers in relation to the contours of the inside lip of cigarette packs. The Australian Government introduced an amendment to permit rounded corners to be used on the inside lip to address a technical manufacturing issue relating to the requirement that the inside lip of cigarette packs have a straight edge.

### *Brand v variant requirements*

The Thoracic Society of Australia and New Zealand in their submission to the Joint Committee highlighted the need for specific provisions within the legislation to prevent tobacco manufacturers from promoting variants to the status of brands. They state that ‘*[i]n Australia, some tobacco companies have taken advantage of the larger text allowed for Brand vs Variant and have re-registered the brand name to incorporate the variant name, for example Marlboro Red.*’

Quit Victoria in its submission to the Joint Committee recommends that the proposed legislation include a distinct definition for brand, company and business name so that tobacco companies would be prohibited from registering new trademarks that incorporated both the brand and variant name:

‘Prior to the introduction of Australia’s Act, manufacturers began to register new trademarks that included variant names. Because ‘brand, company or business name’ is not defined in the Act, this practice allowed manufacturers to put both the commonly understood brand and variant name on the same line on the packaging, for example ‘Marlboro Red’, as these terms have been registered with the relevant copyright authorities...Marlboro is clearly the brand name and Red the variant name, but without a definition in the Australian Act of ‘brand, company or business name’, it is difficult to enforce this aspect of the legislation.’<sup>95</sup>

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<sup>95</sup> Quit Victoria, General scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013, Submission to the Oireachtas Joint Committee on Health and Children, 15 January 2014

### *Length of brand and variant names*

Quit Victoria warns that tobacco manufacturers may lengthen variant names to include descriptors, such as colour, giving rise to unusually long and evocative names, while potentially taking away from the graphic warnings.<sup>96</sup> They refer to the following examples in Australia:

‘Pall Mall Amber became Pall Mall Smooth Amber...Pall Mall Blue became Pall Mall Rich Blue...Several new products...introduced into the market...Peter Stuyvesant New York Blend and Marlboro Silver Fine Scent.’

Quit Victoria recommends that consideration be given to limiting the length (i.e. number of characters) of brand and variant names, and to prohibit the use of brand and variant names which suggest reduced harm, enjoyment, social or sexual success.

### *Distinguishing marks*

RGDATA and the Convenience Stores and Newsagents Association (CSNA) raise a practical concern in relation to the risks associated with the stocking of different brands of cigarettes in the gantries for retail sale:

‘At present, a retailer or the staff can clearly distinguish between the different brands of cigarettes when stocking the packages in the gantry. With plain packaging, this will be difficult and there will be a real risk that in a busy shop environment, the wrong brand could be stocked in the wrong holder or container given the absence of clear distinguishing marks. This could mean that a customer is supplied the incorrect brand by accident...’<sup>97</sup>

‘If all packets are the same shape and colour, only distinguished by a name and variant, we have little doubt that retailers will suffer considerable delays and errors in what has been, to now, a straightforward adult transaction. We anticipate that there will be errors in stocking levels, ordering and inventory controls and that these errors will reduce individual retailer’s abilities to provide efficient service levels to their customers.’<sup>98</sup>

RGDATA suggests that consideration be given to some small distinguishing mark being applied to the bottom surfaces of cigarette packs. This could be a simple and discreet colour

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<sup>96</sup> Examples of the graphic warnings used in Australia are available online at: <http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-warn-A#pvd> and samples are included in Appendix 3 to this report.

<sup>97</sup> RGDATA, Public Health (Standardised Packaging of Tobacco) Bill 2013 – Response to request for Submissions, January 2014.

<sup>98</sup> Submission to the Joint Oireachtas Committee on Health and Children to consider the outline heads of the Public Health (Standardised Packaging of Tobacco) Bill 2013, Convenience Stores and Newsagents Association, 15 January 2014.

code to distinguish one brand from another, not obvious to the consumer, or making the packaging more attractive or appealing:

'From a retailers' perspective, it would reduce the risk of consumers being misled to purchase a brand of tobacco that they did not choose. We would ask the committee to consider as part of what can be put on the packaging that perhaps a discreet mark be put on the bottom of the pack so that when they are put into the gantries, one would be able to see this coloured mark and the staff member would know that he or she had put the correct brand into the correct container.'

## **Conclusions**

That the proposed legislation would 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).

### **6.4 Labelling Requirements (Head 6)**

Head 6, which is in line with the draft revised E.U. *Tobacco Products Directive*, provides that the General Health warning must cover 65% of the external area of the surface, or any outside packaging, of any unit pack and it must be positioned at the top edge of the pack and packaging.

The Combined warning must also cover 65% of the external area of the surface or any outside packaging and must be positioned at the top edge of the pack and packaging. In

addition it must be a minimum width of not less than 52 mm. This should also have the effect of eliminating slim/lipstick packs from the market.

### **Stakeholder comment**

The HSE welcomes the increase in size of the health warnings, stating that:

‘...research informs us that larger pictorial warning prominently displayed on the pack front, in addition to those on the back...will help make these warnings more significant and relevant to the consumer. Research also demonstrates that they draw more attention on the plain packs. Ease of enforcement is facilitated by larger warnings of the same size on both the front and back of the pack.’<sup>99</sup>

However, the Irish Medical Organisation (IMO) and Quit Victoria believe that the proposed measures do not go far enough in relation to health warnings and recommends that the area be increased to 75% of the packaging.

### **Conclusion**

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.

### **6.5 Requirements for the appearance of cigarettes (Head 7)**

Head 7 provides, among other things, that the cigarette stick itself must be plain white in colour. However, the brand and/or variant name may appear once on the stick itself. The brand or variant must be in a dull drab colour in a matt finish and in a font type/size as prescribed by the Minister in regulations.

The Explanatory Note states that *‘it is important that design features on tobacco products [are] similarly regulated to avoid transferring branding, trademarks etc to the product.’*

### **Stakeholder comment**

Quit Victoria in their submission to the Joint Committee, state that this does not reflect best practice:

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<sup>99</sup> Health Services Executive Submission in relation to the Health (Standardised Packaging of Tobacco) Bill 2013, 15 January 2014

'The Australian Act does not allow for the brand or variant name to appear on the cigarette and we do not agree...that this is required for identification by the consumer. It is unlawful for cigarettes to be sold individually and as such identification of the product occurs when a pack is purchased...The Australian Act allows manufacturers to print an alphanumeric code on cigarette sticks to assist with the manufacturing process and identification of illicit tobacco.'<sup>100</sup>

Quit Victoria recommend that brand and variant names be prohibited from appearing on cigarette sticks and instead an alphanumeric code similar to that in Australia be used

### **Conclusion**

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.

### **6.6 Requirements for retail packaging of roll your own (Head 8 and 9)**

Head 8 provides that a pack of roll-your-own tobacco must have the form of a pouch and flap, must be cylindrical or cuboid in shape and must contain tobacco weighing at least 20gr per unit pack. The pack must be a dull drab colour with matt finish, must not contain any trademarks (other than brand and variant name, health warnings and tax stamp), and must not contain any embellishments (decorative ridges, embossing etc).

Head 9 provides for the General Health warnings and the Combined warnings on the same basis as Head 6.

### **Stakeholder comment**

The HSE welcomes the increase in the content size of roll-your-own tobacco pouches stating that:

'The increase...to 20gr per unit pack is essential in the restriction of access to tobacco products by young persons. It is a common understanding that pouch tobacco is a cheaper product and aimed at young people and lower socio economic groups. The increase in pouch size will increase the cost and in turn

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<sup>100</sup> General scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013, Submission to the Oireachtas Joint Committee on Health and Children, Quit Victoria.



should decrease the appeal of RYO and its price attractiveness to young people and lower socio economic groups.<sup>101</sup>

### **6.7 Requirements for the retail packaging for tobacco products other than cigarettes and roll-your-own tobacco (Head 10)**

Head 10 sets out the requirements for the retail packaging of tobacco products other than cigarettes and roll-your-own.

#### **Stakeholder comment**

The HSE welcomes this provision, given that tobacco companies continually develop new and novel products:

‘it is very important that all tobacco products are encompassed under the legislation, including cigars, cigarillos, pipe tobacco, and the more niche type, tobacco blunts, shisha tobacco, snuff etc.’<sup>102</sup>

According to Quit Victoria it is not entirely clear whether single cigars are captured under Head 10. In Australia single cigars must be placed in a bag or cylinder with plain packaging and the required health warnings. Quit recommends:

‘...that if not already provided for, similar provisions to those in Australia be included in the final [legislation]...to ensure that single sale cigars are sold in packaging that is consistent with standardised packaging...for other tobacco products.’<sup>103</sup>

### **6.8 Authorised officer (Head 12)**

Head 12 provides that authorised officers within the meaning of the *Public Health (Tobacco) Acts 2002 -2013* are also authorised officers for the purposes of the proposed legislation.

#### **Stakeholder comment**

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<sup>101</sup> Health Services Executive Submission in relation to the Health (Standardised Packaging of Tobacco) Bill 2013, 15 January 2014

<sup>102</sup> Health Services Executive Submission in relation to the Health (Standardised Packaging of Tobacco) Bill 2013, 15 January 2014

<sup>103</sup> General scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013, Submission to the Oireachtas Joint Committee on Health and Children, Quit Victoria.

In more general terms, the HSE suggests that provisions dealing with powers of enforcement should be expanded so as to provide ‘for seizing, removing and detaining non-conforming products, as well as payment by the offender for destruction.’<sup>104</sup>

### **Conclusions**

That consideration 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.

That consideration also be given to providing that the offender pay the costs associated with the seizure, removal and detention of non-conforming products including the cost of their destruction.

### **6.9 Creation of offences (Head 13)**

Head 13 creates a number of offences relating to non-compliance with the provisions of the proposed legislation in respect of the sale, supply, purchase, packaging, and manufacture of tobacco products for retail sale in Ireland.

Subsection 12 provides that where a person registered to sell tobacco is convicted of an offence under the proposed legislation the Court can order that the registration cease to have effect.

### **Stakeholder comment**

The Thoracic Society of Australia and New Zealand in their submission to the Joint Committee recommends that the definition of offence be extended for tobacco retailers to include possession of non-conforming tobacco products.

In its submission to the Joint Committee John Player have claimed that subsection 12 ‘is a draconian sanction [which] differs substantially from the maximum 3 month suspension...that applies

to other offences under the Public Health Tobacco Acts.’<sup>105</sup>

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<sup>104</sup> Mr Gavin Maguire, Assistant National Director Environmental Health and Emergency Planning Health Service Executive, Parliamentary Debates, 23 January 2014, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

## Conclusion

That the proposed legislation includes an offence for the possession by retailers of non-conforming tobacco products.

### 6.10 Fines and Penalties (Head 14)

Head 14 sets out the penalties for offences committed under the proposed legislation. These range from a class B fine and/or imprisonment up to 6 months to an unlimited fine and/or imprisonment up to 8 years. A conviction will also result in liability for the costs and expenses of the proceedings unless there are particular reasons for not making such an order.

#### Stakeholder comment

The HSE welcomes the levels of fines and penalties envisaged in the proposed legislation, stating that *'the fines and penalties need to be sufficient as to deter the tobacco companies from non-compliance with the law and to prevent test marketing and trying out new marketing innovations for a short period of time.'*<sup>106</sup>

In terms of the enforcement of current legislation the HSE submits that the levels of fines imposed do not act as a sufficient deterrent, particularly, *'because we are referring to tobacco companies with very deep pockets.'*<sup>107</sup>

The Thoracic Society of Australia and New Zealand recommend widening the penalties available based on individual or repeat offences, with the primary sanction being the loss of the privilege to sell tobacco products for profit:

*'This yellow-card/red-card/suspension system is fair to all concerned and has the potential to dramatically impact on illicit and non-conforming pack sales. It will also be seen by the public as fair.'*<sup>108</sup>

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<sup>105</sup> A response to the Oireachtas Joint Committee on Health and Children's Consultation on Public Health (Standardised Packaging of Tobacco) Bill 2013, John Player, 15 January 2014.

<sup>106</sup> Health Services Executive Submission in relation to the Health (Standardised Packaging of Tobacco) Bill 2013, 15 January 2014.

<sup>107</sup> Mr Gavin Maguire, Assistant National Director Environmental Health and Emergency Planning Health Service Executive, Parliamentary Debates, 23 January 2014, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

<sup>108</sup> Submission by Thoracic Society of Australia and New Zealand, 14 January 2014.

They recommend the following:

First offence:	Official caution
Second offence within 12 months	One month on-the-spot suspension of right to sell
Third offence within 12 months	Three month interim suspension of right to sell pending action pursued in the courts. For chain-type retailers a court should have the right to consider patterns of offences at any and all sites and suspend licences at all locations for a period it determines.

### **Conclusions**

That the primary sanction upon conviction would be the suspension, and in the case of repeat offences, the loss of the privilege to sell tobacco products.

That the proposed legislation provide a wider range of penalties available to include official warnings/cautions and on-the-spot fines.

## 7. General stakeholder comment

### ❖ *Will plain packaging reduce the number of people smoking?*

Initial research, albeit subject to limitations,<sup>109</sup> carried out by the Australian Centre for Behavioural Research in Cancer, indicates that compared to smokers of branded cigarette packs, smokers of plain cigarette packs were more likely to:

- perceive their tobacco to be of lower quality and less satisfying than a year ago;
- think about and prioritise quitting; and
- support the plain packaging policy.<sup>110</sup>

In her evidence to the Joint Committee, Ms. Niamh Kelly of the Asthma Society of Ireland highlights that while initial findings from Australia indicating a reduction in smoking prevalence are positive, they are still relatively new. However, she goes on to state that:

‘...something that points to a reduction in prevalence is the tobacco industry’s assertion of the loss in revenue that standardised packaging will cause. If the industry did not believe this was going to cut the amount of people smoking, the figures would be much lower.’<sup>111</sup>

PJ Carroll and Company dispute these findings stating that based on industry sales data and research by KPMG, *Illicit Tobacco in Australia*, and London Economics, *An analysis of smoking prevalence in Australia*, the legitimate tobacco industry in Australia remained on trend in 2012:

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<sup>109</sup> According to NHS Choices there are important limitations to the conclusions that can be drawn from this research, including that people were surveyed at only one point in time and attitudes may have changed if surveyed at a different period of time, the study could not assess whether a change in packaging achieves the desired outcomes – of an increase in quit rates and whether the change in packaging prevented people from starting smoking in the first place. See *Standardised packaging of tobacco products - Commons Library Standard Note*, 10 February 2014

<http://www.parliament.uk/business/publications/research/briefing-papers/SN06175/standardised-packaging-of-tobacco-products>

<sup>110</sup> See Wakefield et al, *Introduction effects of the Australian plain packaging policy on adult smokers: a cross-sectional study*, July 2013 <http://bmjopen.bmj.com/content/3/7/e003175.full>

<sup>111</sup> Asthma Society of Ireland, Parliamentary Debates , 30 January 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

'There has been no additional decrease in smoking rates beyond the slight downward trend of recent years.'<sup>112</sup>

Retail Excellence Ireland agree that '*there is no credible evidence that plain packaging as a policy proposal will lead to a reduction in youth smoking or prevent youth initiation.*'<sup>113</sup> They have asked that consideration be given to other means of tackling tobacco consumption which would not severely impact the responsible sale of tobacco products.

The Institute of Public Health believes that plain packaging legislation is '*an evidence-based, logical, cost-effective and necessary response to the tobacco epidemic in Ireland.*'<sup>114</sup>

In 2011 the Department of Health in the United Kingdom commissioned a systematic review to examine all available evidence on the effects of plain packaging (The review outlines the findings from 37 studies). The review found that:

'there is strong evidence to support the propositions set out in the Framework Convention on Tobacco Control relating to the role of plain packaging in helping to reduce smoking rates; that is, that plain packaging would reduce the attractiveness and appeal of tobacco products, it would increase the noticeability and effectiveness of health warnings and messages, and it would reduce the use of design techniques that may mislead consumers about the harmfulness of tobacco products. In addition, the studies in this review show that plain packaging is perceived by both smokers and non-smokers to reduce initiation among non-smokers and cessation-related behaviours among smokers.'<sup>115</sup>

A recent follow up to this review, which examined an additional 17 studies<sup>116</sup>, provides further support for the proposed benefits of plain packaging suggesting, that in general plain packaging would: reduce the appeal of cigarettes and smoking; enhance the salience of health warnings on packs; and address the use of packaging elements that mislead smokers about product harm.

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<sup>112</sup> A Submission to the Joint Oireachtas Committee on Health and Children regarding the proposal to introduce standardised packaging of tobacco products, PJ Carroll and Co., January 2014

<sup>113</sup> Retail Excellence Ireland, Submission 9 January 2014

<sup>114</sup> Dr. Helen McAvoy, Director of Policy, Institute of Public Health, Parliamentary Debates, 6 February 2014,

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140206~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140206~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>115</sup> Moodie C, et al (2012). *Plain tobacco packaging: A systematic review*. Report prepared for the Department of Health. Stirling: Centre for Tobacco Control Research, University of Stirling  
[http://phrc.lshtm.ac.uk/papers/PHRC\\_006\\_Final\\_Report.pdf](http://phrc.lshtm.ac.uk/papers/PHRC_006_Final_Report.pdf)

<sup>116</sup> Moodie C, et al (2013). *Plain Tobacco Packaging Research: An Update*. Stirling, Scotland: Centre for Tobacco Control Research, Institute for Social Marketing, University of Stirling.  
<http://www.stir.ac.uk/media/schools/management/documents/Plain%20Packaging%20Studies%20Update.pdf>

JTI Ireland Limited in its submission to the Joint Committee states that the systematic reviews are '*subject to serious methodological limitations*' and are '*inherently biased and self-interested*.'<sup>117</sup>

In November 2013, the U.K. Department of Health commissioned a further independent review of the public health evidence on the standardised packaging of tobacco products, to advise, based on existing and/or new evidence, whether or not the introduction of standardised packaging is likely to have an effect on public health, in particular children's health. This Report, the Chantler Report, is expected to be published in March 2014. The U.K. Government have indicated that it will consider legislative measures following the publication of this Report.

PJ Carroll and Company in its submission to the Joint Committee states that:

'There is no credible evidence that demonstrates that plain packaging will work. Any evidence in support of this proposal rests on attitudes, perceptions and intentions, rather than actual behaviour. Extensive evidence shows that the influence of peers and family, access to cigarettes and price are the main factors in the decision to smoke, not packaging.'<sup>118</sup>

In response to the research cited in support of this proposal, for example Moodie et al (2012) and (2013), PJ Carroll and Company state that these studies only refer to the impact of plain packaging on how appealing a packet of cigarettes looks:

'None of the research referenced by Moodie addresses the fundamental question of whether plain packs will affect the decision to smoke or not. These studies generally do not demonstrate any impact on actual smoking behaviours.'<sup>119</sup>

❖ *Does branding entice people to start smoking?*

According to Ibec, branding is a central part of how businesses communicate with their customers:

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<sup>117</sup> For more information see Response to the Oireachtas Joint Committee on Health and Children Request for Written Submissions on the Outline Heads of the Public Health (Standardised Packaging of Tobacco) Bill 2013, JTI Ireland Limited, 15 January 2014.

<sup>118</sup> A Submission to the Joint Oireachtas Committee on Health and Children regarding the proposal to introduce standardised packaging of tobacco products, PJ Carroll and Co., January 2014

<sup>119</sup> A Submission to the Joint Oireachtas Committee on Health and Children regarding the proposal to introduce standardised packaging of tobacco products, PJ Carroll and Co., January 2014

'It provides consumers with information on everything from product characteristics to heritage allowing them to make informed purchasing decisions. It also allows product differentiation which drives competition and innovation.'<sup>120</sup>

The Joint Committee heard evidence from Ash Ireland that in 2006 alone, the five largest tobacco manufacturers in the United States spent €12.49 billion on marketing:

'This marketing is entirely centred and focused on brand promotion and awareness. It goes without saying that if the tobacco industry is spending \$12.5 billion dollars on supporting brand awareness and promotion, it is fully aware of the vital importance of branding in enticing young people to smoke and encouraging brand loyalty and continuance of the practice among smokers. It is clear that the legislation which is now before the committee is running directly contrary to the highly expensive and focused marketing campaigns of [the tobacco] industry... I have no doubt whatsoever but that the introduction of plain packaging will make it more difficult for the industry to market its products to young and old.'<sup>121</sup>

The Joint Committee also heard from the Asthma Society of Ireland that despite the associated risks many asthma sufferers continue to smoke. This the Society believes is due in part to branding:

'Those with asthma feel the adverse effects that tobacco has on their health the minute they smoke their first cigarette, and yet they smoke. This is because branding works. Parents of children with asthma smoke in their homes and in their cars, despite the risk to their children's health. This is because branding works. The tobacco industry is fighting to defeat this proposed legislation in order to maintain its profits and its power to recruit new smokers. Branding sells products and is so powerful that it can even sell a 50:50 chance of death. Addiction keeps people smoking and branding entices them to start.'<sup>122</sup>

A number of young people involved in the Tipperary Regional Youth Service gave evidence to the Joint Committee on the impact of branding and the proposed plain packaging measures. Ms. Maher stated that:

'By introducing this legislation, we are protecting our future generations by changing young people's attitudes to smoking so that it will no longer be what I

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<sup>120</sup> Submission to Joint Committee on Health and Children Public Health (Standardised Packaging of Tobacco) Bill 2013, January 2014

<sup>121</sup> Dr. Ross Morgan, Parliamentary Debates, 30 January 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>122</sup> Parliamentary Debates, 30 January 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)



may term “the norm”... we organised focus group discussions with young people who were both smokers and non-smokers...to find out what young people felt about the idea of plain packaging, whether it would impact on their decision to smoke and whether they placed much importance on smoking as an image factor. They discussed how “purple skins” or “flavoured skins” were “class” and mentioned a friend who, while not a smoker, had brought home pink-coloured cigarettes from holidays abroad because she wanted to have them at a disco to offer to people. This highlighted to us the importance young people place on how things look and that the appearance of cigarettes plays a huge role in young people smoking...We feel that young people should have a right to be protected from the marketing of a highly addictive and seriously harmful product. Plain packaging is one way we can do this. By making smoking less appealing and health warnings more effective, the misguided opinion young people have that smoking is “cool” or “class” will be changed, stopping them from smoking in future.<sup>123</sup>

❖ *The effect, if any, of the proposed legislation on the retail sector*

Retail Excellence Ireland (REI) has expressed concern that the proposed legislation ‘will have a profoundly negative effect on [their] members businesses.’<sup>124</sup> The Group believes that the measures will have a disproportionately negative effect on legitimate Irish retailers of tobacco product, citing the findings of the Roland Berger Report on [The Potential Economic Impact of Plain Packaging for Cigarettes and Fine Cut Tobacco in Ireland](#) that an estimated 1,900 jobs and €125 million in annual tax revenue could potentially be lost if the measure is introduced.

According to research prepared for Philip Morris Limited, on the impact of the plain packaging on small retailers in Australia:

- 9 in 10 small retailers have experienced an increase in the time taken to serve adult smoker customers;
- 3 in 5 have seen an increase in the frequency of staff giving the wrong products to customers (primarily due to difficulty in recognising/distinguishing between brands); and

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<sup>123</sup> Parliamentary Debates, 30 January 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openement)

<sup>124</sup> Retail Excellence Ireland, Submission 9 January 2014

- nearly half of small retailers consider that plain packaging has negatively affected the level of service they are able to provide to their non-tobacco customers.<sup>125</sup>

However, Mr. Chris Macey, Irish Heart Foundation, in his evidence to the Joint Committee stated that there is no evidence that the proposed legislation will negatively impact the retail trade:

‘Plain packaging is primarily intended to discourage young people from starting to smoke and is not likely to have as much impact on current smokers. Therefore, sales reductions resulting from the policy will be gradual, giving retailers considerable time to diversify their business. In addition, tobacco sales only account for a small proportion of small retailers’ profits. While tobacco may account for up to one third of a small retailer’s turnover, profit is minimal as, according to one representative organisation, retailers receive an average of 8.7% of the price of tobacco products. The size of this income stream is reflected in assertions by retailers’ representatives that it will not be worth their members’ while selling cigarettes when the licence fee increases to €500.’<sup>126</sup>

In their submissions to the Joint Committee, Retail Ireland – Ibec, and ADM Londis plc<sup>127</sup> state that the Irish retail market has contracted by 25% since the start of the economic downturn and 50,000 jobs have been lost in the sector. Retail Ireland – Ibec states that ‘*it is imperative that public policy does not lead to a worsening of this situation, even if it does so unintentionally.*’<sup>128</sup>

❖ *The impact, if any, on Exchequer figures*

The study, [The Potential Economic Impact of Plain Packaging for Cigarettes and Fine-Cut Tobacco in Ireland](#), conducted by Roland Berger, estimates that if plain packaging is introduced in Ireland a total of €125 million in annual tax revenue could be lost.

According to Ms. Sharon Cosgrove, CEO of the Asthma Society of Ireland:

‘The tobacco industry and other interests may argue that this legislation will cost the economy and reduce the approximately €1 billion in State revenue from the

<sup>125</sup> *Impact of Plain Packaging on Small Retailers Final Report*, 25 January, 2013  
<http://www.aacs.org.au/wp-content/uploads/2013/03/Impact-of-Plain-Packaging-on-Small-Retailers-Final-Report.pdf>

<sup>126</sup> Parliamentary Debates, 30 January 2014,  
[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openement)

<sup>127</sup> ADM Londis plc, Re. General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013, 14 January 2014

<sup>128</sup> Submission, Retail Ireland – Ibec, 13 January 2014.

sale of tobacco products. Yet the costs of maintaining the status quo are much greater...It is estimated that the overall cost of smoking-related illness to the State is in excess of €4 billion.<sup>129</sup>

The Thoracic Society of Australia and New Zealand in their submission state that:

'The purported negative economic impact of [a] decline in tobacco sales should never be modeled in isolation. There should be no impact on VAT assuming that ex-smokers or those who never commence smoking expend money alternatively on other goods and services. Excise income will fall, but non-tobacco expenditure will also generate taxes on wages income and profits and this tax revenue will substantially offset any revenue shortfall from tobacco excise. These changes will occur slowly.'<sup>130</sup>

In their submission to the Joint Committee the Government of the Dominican Republic<sup>131</sup> stress that it is not only the Irish Exchequer which may suffer if plain packaging is introduced:

'...plain packaging risks undermining decades of investments in the tobacco sector of our small and vulnerable country.'

❖ *The effect, if any, of plain packaging on the illegal sale of cigarettes*

Tobacco tax is recognised as a key policy instrument in reducing tobacco consumption in Ireland but it is also a significant source of tax revenue. According to Mr. Gerard Morgan, Assistant Director of the Office of the Revenue Commissioners, while the illegal sale of cigarettes is a global problem, this is particularly so in a number of E.U. member states, including Ireland, which pursue a policy of high tobacco taxes. Evidence was given to the Joint Committee that €1.4 billion is collected annually in tax and VAT on tobacco products. According to Mr. Steven Donaldson, General Manager of PJ Carroll and Company Limited:

'Some 87.4% of our total revenue goes to the Government in taxes and excise.'<sup>132</sup>

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<sup>129</sup> Parliamentary Debates, 30 January 2014,

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>130</sup> The Thoracic Society of Australia and New Zealand, Submission on Plain Packaging Legislation, 14 January 2014

<sup>131</sup> The Government of the Dominican Republic is currently challenging the introduction of plain packaging measures in Australia before the World Trade Organisation.

<sup>132</sup> Mr. Steven Donaldson, General Manager of PJ Carroll and Company Limited, Parliamentary Debates, 13 February 2014,

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140213~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140213~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

Based on a recent survey (2012), Revenue estimates that 13% of cigarette consumption in Ireland is illicit (slightly above the EU average). The tobacco industry estimates that this figure is in the region of 19%.

### Types of Illicit tobacco

There are three main types of illicit tobacco with which the Irish authorities are concerned:

- genuine tobacco which has been smuggled or diverted due to discrepancies in price between jurisdictions;
- the smuggling of “Cheap Whites”, these are non-counterfeit cigarettes that are often produced legitimately, then smuggled avoiding tax; and
- counterfeit tobacco which has been manufactured covertly and smuggled into the country.

Source: An Garda Síochána appearance before the Joint Committee - Opening Statement 23 January 2014; Office of the Revenue Commissioners Opening Statement, 23 January 2014.

According to the Irish Heart Foundation of this 13% just 1% is counterfeit - virtually all the rest is the product of the legal industry.<sup>133</sup> Mr. Chris Macey gave evidence that counterfeit tobacco in an Irish context is therefore virtually irrelevant and provides no valid argument against the introduction of plain packaging:

‘...the fact is that while the industry has cited concerns about smuggling to prevent budget tax increases and then hiked up its own prices in each of the past ten years, there is growing suspicion that the legal industry is again involved in smuggling. This was echoed in the Dáil in November last when the Finance Minister, Deputy Noonan, said he suspected that the legitimate trade is involved in the production of illicit cigarettes. Stronger concerns have been voiced in the UK Parliament’s Committee of Public Accounts and just this week in Europe, MEPs met international experts to discuss smuggling and the role still being played by the big tobacco manufacturers.’<sup>134</sup>

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<sup>133</sup> Mr. Chris Macey, Head of Advocacy, Irish Heart Foundation, Parliamentary Debates, 30 January 2014,

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>134</sup> Parliamentary Debates, 30 January 2014

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

The Office of the Revenue Commissioner estimates the total loss in terms of tax revenue<sup>135</sup> to be in the region of approximately €240 million<sup>136</sup> annually. In its submission to the Joint Committee, PJ Carroll & Company puts this figure at €569 million per annum:

'To put this into context, while PJ Carroll has an approximate 17% share of the legitimate tobacco market, smugglers sell twice as many cigarettes in Ireland as we do.'<sup>137</sup>

Tackling the illegal sale of cigarettes and tobacco products is a key priority for Revenue. The following statistics were presented to the Joint Committee:

### **Enforcement**

In 2010, 178 million illicit cigarettes were seized in Ireland, in 2011 the figure was 109 million; 96 million in 2012, and in 2013 this figure had dropped to 41 million. Revenue attributes this sharp decline to a shift in the way illicit cigarettes are trafficked:

'...criminal gangs have been moving away from very large consignments in favour of smaller volumes as a result of a number of large seizures being made throughout the European Union, including Ireland.'<sup>138</sup>

In 2013, 100 people were convicted for smuggling or other illicit cigarette offences. Custodial sentences were imposed in 38 cases and average fines of over €2,600 in 62 cases.<sup>139</sup>

The Office of the Revenue Commissioners highlighted the importance of scrutinising developments such as standardised packaging in order to assess their impact on the illicit tobacco market. However, it remains satisfied that standardised packaging will not damage its efforts to tackle the illicit market. This is primarily because of its use of the tax stamp:

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<sup>135</sup> Inclusive of the 6% of cigarettes purchased abroad and brought into Ireland legitimately for personal use.

<sup>136</sup> This estimate is based on the unrealistic assumption that in the absence of cheap illicit cigarettes, smokers would consume the same amount of more expensive taxed cigarettes using money they are not currently spending on taxable cigarette consumption.

<sup>137</sup> A Submission to the Joint Oireachtas Committee on Health and Children regarding the proposal to introduce standardised packaging of tobacco products, PJ Carroll and Co., January 2014

<sup>138</sup> Mr Gerard Moran, Assistant Secretary, Indirect Tax Evasion, Office of the Revenue Commissioners, Parliamentary Debates, 23 January 2014, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

<sup>139</sup> Mr Gerard Moran, Assistant Secretary, Indirect Tax Evasion, Office of the Revenue Commissioners, Parliamentary Debates, 23 January 2014, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

'We rely on our tax stamp to identify tax paid tobacco products and the standardised packaging legislation will accommodate the stamp...If they can counterfeit the packages already available, they can counterfeit the others. We do not see a dramatic change in the landscape. What is of primary importance for us is that we have a state-of-the-art tax stamp that is highly resistant to counterfeiting and that the technology includes secret features that our scanning devices can identify.'<sup>140</sup>

The Revenue Commissioners believe that '*the new packaging rules will ensure effective security features to make counterfeiting very difficult; the tax stamp will certainly contain all the features possible to minimise the risk of counterfeiting.*'<sup>141</sup>

In addition, the revised *Tobacco Products Directive* looks set to include an EU-wide tracking and tracing system with security features (e.g. holograms) to combat illicit trade in tobacco products. Cigarettes and roll-your-own tobacco products will be the first to be phased in to this system, with other tobacco products following after.<sup>142</sup>

Although the smuggling of tobacco is primarily policed by the Office of the Revenue Commissioners (i.e. Customs), An Garda Síochána works closely with them and other agencies, both national and international, to identify groups and individuals involved in organised crime, including counterfeiting, laundering and smuggling goods.

According to An Garda Síochána there is no evidence available which would indicate that the implementation of plain packaging in Ireland would lead to an increase in the trade in illicit tobacco. An Garda Síochána has committed to closely monitor the illicit tobacco environment, post implementation of the proposed legislation, and where any new challenges are identified, it in conjunction with national and international agencies, will respond to ensure compliance with the legislation:

'...we will watch the matter very closely. We must wait and see how enterprising criminal elements adapt to the legislation. It is at that stage that we will be able to give some greater indications of what the situation is likely to look like in terms of

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<sup>140</sup> Mr Gerard Moran, Assistant Secretary, Indirect Tax Evasion, Office of the Revenue Commissioners, Parliamentary Debates, 23 January 2014, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

<sup>141</sup> Revenue Opening Statement, 23 January 2014.

<sup>142</sup> *Commissioner Borg welcomes agreement on the revision of the Tobacco Products Directive*, 18 December 2013 [http://europa.eu/rapid/press-release\\_MEMO-13-1177\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-1177_en.htm)

what must be done by the Garda Síochána, Revenue and Customs and Excise.<sup>143</sup>

Stakeholders, including An Garda Síochána, have pointed out that it is not possible at this stage to ascertain from the Australian experience whether there has been any impact on the trade in illicit tobacco there. However, An Garda Síochána points out that the markets for illicit tobacco in other countries differ from that in Ireland, consequently:

'Lessons learned from the Australian experience may not necessarily be directly transferrable to the Irish context.'<sup>144</sup>

In their submission to the Joint Committee the Australian Department of Health state that:

'Australia does not consider that plain packaging will lead to an increase in the illicit trade in tobacco products. The quality of the packaging and labelling of counterfeit cigarettes seized in Australia is often very high due to the easy availability of copying software and technology. The Australian Government believes that plain packaging is unlikely to be a significant factor in facilitating the activity of counterfeiters.'<sup>145</sup>

Quit Victoria agree with this position stating:

'It is...highly unlikely that any change to the design of tobacco packaging will create new opportunities for illicit trade. This trade is responsive to active anti-smuggling measures, not to changes in product design.'<sup>146</sup>

The Criminal Assets Bureau also accepts that it is difficult to assess what the likely impact of standardised packaging will be on the illicit market however it makes the point that:

'The current packaging presents little or no difficulty for illicit traders to carry on trading. Whether plain packaging presents an easier route for them to disguise the packaging is a moot point. They are largely indifferent to packaging in terms of the trade that they engage in...'<sup>147</sup>

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<sup>143</sup> Mr Derek Byrne, Assistant Commissioner of An Garda Síochána, Parliamentary Debates, 23 January 2014, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

<sup>144</sup> The impact of the proposal to introduce plain packaging on criminal activity and smuggling, An Garda Síochána, Opening Statement to the Joint Committee, 23 January 2014

<sup>145</sup> Australian Department of Health, Submission to Ireland's Joint Committee on Health and Children Public Health (Standardised Packaging of Tobacco) Bill 2013, 14 January 2014

<sup>146</sup>  
<sup>147</sup> Detective Chief Superintendent Eugene Corcoran, Chief Bureau Officer, Criminal Assets Bureau, Parliamentary Debates, 23 January 2014,

Evidence has been presented by the tobacco industry and the retail sector which suggests that plain packaging will make the process of counterfeiting substantially easier and cheaper, while providing a stimulus to the black market.

REI expressed concern that standardised packaging will create a significant reduction in barriers to counterfeiting. According to REI, tobacco sales amount to between 10% - 30% of turnover across the retail industry as a whole. It claims that the introduction of plain packaging will dramatically increase the amount of smuggled and illicit tobacco being sold and increase the numbers of job losses in the legitimate retail trade:

'In 2012, loss in turnover to retailers as a result of illicit sales was estimated at around €450 million.'<sup>148</sup>

ADM Londis plc notes that the sale of tobacco products accounts for a higher percentage of trade within the convenience sector and therefore '*any measure which encourages the illicit trade in tobacco will disproportionately affect the smaller, independent retailers in the trade. Unintended consequences such as lost sales and store closures will impact these smaller retailers and therefore lead to a grocery retail landscaper further dominated by international multiples.*'<sup>149</sup>

In its submission to the Joint Committee the Petrol Retailers Association highlight that the illicit trade of tobacco undermines the responsible retailer and is wholly detrimental to small retailers '*by depriving them of key earnings whilst having a detrimental effect on general footfall as consumers do not enter their shops to buy other groceries.*'<sup>150</sup>

Stakeholders, including Naas Vending Services, have highlighted the potential impact plain packaging measures will have on the sale of illicit whites in Ireland. They maintain that the sale of illicit whites has become a major problem in Ireland, gaining market share rapidly:

'Plain packaging will...allow...criminals to continue to supply non taxed branded products in the black market.'<sup>151</sup>

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<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

<sup>148</sup> 9 January 2014

<sup>149</sup> ADM Londis plc, Re. General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013, 14 January 2014

<sup>150</sup> Petrol Retailers Association, Evidence to the Joint Oireachtas Committee on Health and Children – re Public Health (Standardised Packaging of Tobacco) Bill 2013, 13 January 2014.

<sup>151</sup> Naas Vending Services,



Representatives from the tobacco industry claim that plain packaging will create a big opportunity for criminals:

'they will only have to produce one pack design ever again...By making it harder for consumers to distinguish between brands, price will become a more important factor...More people will turn to the cheapest available cigarettes and these will be found on the black market...This will undermine the interests of honest retailers, the law-abiding and tax compliant tobacco industry, Government excise returns and public health objectives. The black market in cigarettes already costs the state hundreds of millions of euro and provides children with access to cigarettes. Plain packaging, while well intentioned, will only make this worse.'<sup>152</sup>

The tobacco industry relies on a recent KPMG Report [Illicit Tobacco in Australia](#) which indicates that Australia's illegal tobacco market rose from 11.8% to approximately 13% in the first six months after plain packaging measures were introduced.

Quit Victoria dispute these figures however stating that their most recent critique<sup>153</sup> of the KPMG study highlights that the no conclusion is drawn about the impact of plain packaging on illicit tobacco:

'Inferences are being drawn by British American Tobacco Australia but these can in no way be supported by anything in the report itself...The Australian Department of Health and Ageing has also indicated that they do not accept the validity of these reports as they do not include a detailed or transparent methodology.'<sup>154</sup>

Philip Morris International, (PMI) in their submission to the Joint Committee, highlight the effect illicit trade in tobacco has on young people, in particular:

'It helps circumvent age restrictions...makes tobacco more affordable...increases smoking intensity...[and] increases children's exposure to other illicit and dangerous products and people.'<sup>155</sup>

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<sup>152</sup> Mr. Steven Donaldson, General Manager of PJ Carroll and Company Limited, Parliamentary Debates, 13 February 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140213~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140213~HEJ/$File/Daily%20Book%20Unrevised.pdf?openement)

<sup>153</sup> [http://www.cancervic.org.au/downloads/mini\\_sites/Plain-facts/analysis-kpmg-llp-report-illicit-tobacco-aust-2013.pdf](http://www.cancervic.org.au/downloads/mini_sites/Plain-facts/analysis-kpmg-llp-report-illicit-tobacco-aust-2013.pdf)

<sup>154</sup> General scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013, Submission to the Oireachtas Joint Committee on Health and Children, Quit Victoria.

<sup>155</sup> Written submissions on the Public Health (Standardised Packaging of Tobacco) Bill 2013, Philip Morris International, 15 January 2014

It claims that plain packaging will boost the illicit trade in tobacco for three reasons:

‘...it encourages people to select tobacco based on price...tax increases...to counteract downward pricing pressure will increase the profit margins for smugglers...[and] plain packaging will facilitate counterfeiting.’

JTI Ireland Limited also suggests that plain packaging will make it more difficult for consumers to identify counterfeit products.

The Office of the Revenue Commissioners submit that the higher estimated levels of illicit consumption and associated Exchequer costs produced by the tobacco industry ‘*need to be viewed in terms of their interest in minimising tax increases, while imposing significant price increases of their own.*’<sup>156</sup>

REI recommend that the Government ensure that sufficient resources are provided to the law enforcement agencies charged with tackling the illicit tobacco trade in Ireland.

❖ *Alternatives to plain packaging in achieving the aim of a reduction in smoking prevalence*

In the course of its hearings, the Joint Committee was presented with a number of alternatives to the standardisation of tobacco packaging which it was claimed would achieve the Government’s aim of a reduction in smoking prevalence. The Minister may wish to consider some of the following in addition to the proposed measures.

i. A ban on proxy purchasing;

The tobacco industry, has expressed its support for Government efforts to ensure that children cannot access tobacco products and are in favour of a ban on the proxy purchasing of tobacco products (i.e. the purchasing by adults of cigarette products for those under 18 years of age.)

The Scottish Government | *Riaghaltas na h-Alba*<sup>157</sup> introduced the offence of the proxy purchase of tobacco in 2011 as part of a wider package of tobacco control measures contained in the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#). A study of the

<sup>156</sup> Revenue Opening Statement, Impact of the proposed legislation on excise duties/customs and smuggling and the Revenue Commissioners Tobacco Smuggling Strategy in this regard, 23 January 2014

<sup>157</sup> An overview of that Government’s smoking policy is available at: <http://www.scotland.gov.uk/Topics/Health/Services/Smoking>

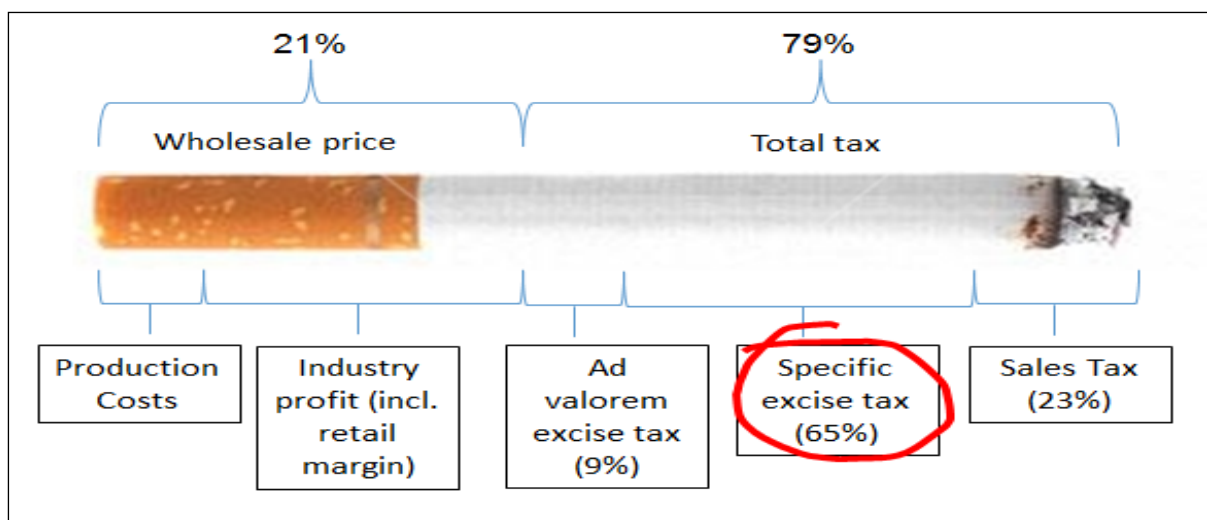
effectiveness of this package of measures, including the proxy purchase offence, is currently being conducted by the University of Stirling. This long-term study is due for completion in 2017.<sup>158</sup>

A recent amendment was tabled to the *Children and Family Bill* before the UK parliament which creates the offence of proxy purchasing of tobacco products and cigarette papers in England and Wales. This would make it an offence for a person aged 18 years or over to buy, or attempt to buy, tobacco or cigarette papers on behalf of a person under the age of 18.<sup>159</sup>

ii. Higher taxation

Taxation of tobacco products is ‘a key policy instrument in reducing tobacco consumption.’<sup>160</sup> Ireland has one of the highest tax takes on cigarettes in the EU (See figure 2 below for a breakdown of the average price of a cigarette in Ireland.)

**Figure 2: Average breakdown of cigarette price.**



Source: Irish Heart Foundation and Irish Cancer Society [Pre-Budget Submission 2014](#)

<sup>158</sup> Written Answers, Tobacco: Scotland, 27 January 2014  
<http://www.publications.parliament.uk/cm201314/cmhansrd/cm140127/text/140127w0003.htm>

<sup>159</sup> Children and Families Bill, Explanatory Notes on Lords Amendments  
<http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0171/en/14171en.htm>

<sup>160</sup> Mr. Gerard Moran, Assistant Secretary, Office of the Revenue Commissioners, Parliamentary Debates, 23 January 2014,  
<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2014012300003?opendocument#E00700>

According to the HSE raising the price of tobacco products is the single most effective measure to reduce tobacco consumption and encourage tobacco users to quit:

‘Increases in tobacco excise taxes by 10% worldwide would according to the World Bank reduce demand for cigarettes by about 4% in high income countries like Ireland. Young people, minority groups and low income smokers in particular are two to three times more likely to quit or smoke less in response to price increases’<sup>161</sup>

The HSE in its submission to the Joint Committee advocates tax increases on tobacco products pointing out its importance as one of the most significant and effective tobacco control measures. *Tobacco Free Ireland* also recommends an increase in excise duty on tobacco products to be applied over a continuous five year period (see figure 3 below for a breakdown of the tax increases imposed on tobacco products in Budgets 2004 – 2014.)

**Figure 3: Tobacco tax increases - Budgets 2004 – 2014**

Budget												
Year	2014	2013	2012	2011	2010	April '09	2009	2008	2007	2006	2005	2004
Tax increase	10c	10c	25c	N/A	N/A	25c	50c	30c	50c	N/A	N/A	25c

Source: Irish Heart Foundation and Irish Cancer Society [Pre-Budget Submission 2014](#) and Citizens Information [Excise duties](#)

As Ireland already has one of the highest tax takes on tobacco products, and it has been submitted that even higher prices will lead to an increase in the sale of illicit tobacco products, something which the Minister for Finance, Mr. Michael Noonan, T.D. has commented on recently:

<sup>161</sup> The Health Service Executive, *Tobacco Control Framework*, February 2010, <http://www.hse.ie/eng/about/Who/TobaccoControl/framework/framework.pdf>

‘...ordinary decent citizens are buying illicit cigarettes and illicit tobacco, mainly for price reasons...As we continue to use price to discourage people from smoking, I think we will divert more and more of the trade to the illicit trade.’<sup>162</sup>

In addition to the introduction of plain packaging Australia’s comprehensive package of tobacco control measures, include a 25% increase in tobacco excise (April 2010) and a four-staged increase in excise and excise-equivalent customs duty on tobacco and tobacco-related products: the first 12.5% increase on 1 December 2013 and further 12.5% increases on 1 September 2014, 1 September 2015 and 1 September 2016. These increases are in addition to the change to bi-annual indexation of tobacco products (from the Consumer Price Index to Average Weekly Ordinary Time Earnings), which will take effect from 1 March 2014.<sup>163</sup>

In their 2012 Budget, the New Zealand Government announced a 40% increase in taxes on tobacco products to be applied annually at 10% between 2013 and 2016. The rationale -‘to reduce tobacco use by triggering quitting and preventing uptake, especially for smokers living in low-socioeconomic areas.’<sup>164</sup> Current cigarette prices in New Zealand average \$14.20 (approximately €8.70) per pack.<sup>165</sup>

iii. The need for more investment in public education programmes

REI believe that education as to the risks involved in consumption of tobacco products is vital if sustainable progress is to be made in smoking initiation rates among Irish children. It recommends that the Government should implement targeted and mandatory education initiatives in schools.

Representatives from the tobacco industry have pointed in particular to the ‘German model’ as best practice. According to Mr. Steven Donaldson, General Manager of PJ Carroll and Company Limited:

‘Germany does not ban advertisement or display of products. Instead, it focuses on education programmes such as Class2000, ClearSight and “Be smart-don’t

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<sup>162</sup> *Illicit Trade in Tobacco*, Parliamentary Debates, 27 November 2013  
[http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/\(indexlookupdail\)/20131127~W?opendocument](http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/(indexlookupdail)/20131127~W?opendocument)

<sup>163</sup> Australian Department of Health, Submission to Ireland’s Joint Committee on Health and Children Public Health (Standardised Packaging of Tobacco) Bill 2013, 14 January 2014

<sup>164</sup> Supplementary paper, Submission on Customs and Excise (Tobacco Products – Budget measures) Amendment Bill, <http://www.parliament.nz/resource/0000207341>

<sup>165</sup> *New Zealand aims to be smoke-free by 2025, raises tobacco taxes*, Talia Ralph, Global Post, May 2012, <http://www.globalpost.com/dispatch/news/health/120524/new-zealand-smoke-free-2025-taxes>

start". Education and preventing access are proven ways to stop children from starting smoking. They tackle the real drivers of youth initiation – peer pressure, social and cultural norms and access.<sup>166</sup>

Other stakeholders, including Dr. Ross Morgan<sup>167</sup> however state that the German model based on education and awareness does not appear to be working nor can it be associated significantly with any impact on smoking:

'Germany still permits advertising and is very much in the hands of the tobacco industry...Germany is not doing as well as we might think and it is looking to Ireland for support and encouragement.'<sup>168</sup>

Ms. Cliona O'Neill gave evidence to the Joint Committee that '[young people] *learned a lot more on the youth project than [they] learned in school about smoking and drugs.*'

While Mr. Paul Gilligan of the Children's Right Alliance highlighted that the longer people can be deterred from smoking the less likely they are to start:

'All the work we know of...indicates that the longer we can delay somebody starting, the better chance that person will never start and will never develop an addiction...The longer we can delay a person having a first cigarette, the better chance we have of ensuring they never do it.'<sup>169</sup>

iv. The need for more investment in cessation and quit programmes;

The Joint Committee heard evidence that the highly addictive nature of tobacco causes people to continue smoking despite the many risk factors. Evidence was presented that more than 50% of stroke victims return to smoking within six months.<sup>170</sup> Although many stakeholders have stressed that the most important thing legislators can do is to stop people from starting to smoke, it is equally important that those who have started to smoke are

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<sup>166</sup> Mr. Steven Donaldson, General Manager of PJ Carroll and Company Limited, Parliamentary Debates, 13 February 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140213~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140213~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>167</sup> Chairperson of Ash Ireland

<sup>168</sup> Ms. Norma Cronin, Ash Ireland, Parliamentary Debates, 30 January 2014 [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>169</sup> Parliamentary Debates, 30 January 2014 [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

<sup>170</sup> Mr Chris Macey, Head of Advocacy, Irish Heart Foundation, 30 January 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

provided with the necessary supports to stop. The Joint Committee heard evidence that the level of service provided by cessation and quit programmes vary throughout the country:

‘...we do not do enough in this country in that regard. The quit programmes in some places throughout the country are good but in many places they are not. We need to do more. We cannot let down smokers. We have a duty of care to them... A total of four out of five smokers want to quit...’<sup>171</sup>

The Joint Committee also heard evidence that normal advertising messages to quit smoking are not sufficient for particular groups in society whose smoking habit may be linked to other factors such as poverty and dependence.

v. Suggested additional provisions

The Joint Committee was presented with a number of additional provisions which it is believed would help meet the Government’s objective of reducing smoking prevalence and the harm caused as a result of smoking. These include:

- incentivising retailers to become tobacco free zones (for example by way of differential VAT rates); and
- introducing a ‘polluter pays’-type levy;

The Irish Medical Organisation has recommended the introduction of a ‘polluter pays’-type levy on tobacco manufacturers so that they must make a contribution to the health care costs associated with tobacco use.

- opening/trading hours for tobacco products (i.e. not during or after a certain time, for example, between 7am and 9am and not after 6pm);
- that consideration should be given to prohibiting the sale of cigarettes in licensed premises (for example pubs and clubs);
- that consideration should be given to regulating the sale of e-cigarettes;
- that a freephone complaints line/email address to set up to encourage compliance (through answering enquiries) and the reporting of breaches of the legislation.

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<sup>171</sup> Mr Chris Macey, Parliamentary Debates, 30 January 2014, [http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/\(\\$vLookupByConstructedKey\)/committees~20140130~HEJ/\\$File/Daily%20Book%20Unrevised.pdf?openement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/($vLookupByConstructedKey)/committees~20140130~HEJ/$File/Daily%20Book%20Unrevised.pdf?openement)

## **Conclusions**

That consideration should be given to introducing a ban on proxy purchasing as a matter of urgency;

That the Department should assess the potential impact raising excise duties would have on the sale of illicit tobacco products;

That more investment should be made into educational programmes/youth projects designed to raise awareness around smoking and prevent young people from starting to smoke;

That more investment should be made into cessation and quit programmes so as to give the 4 out of 5 people who want to quit smoking the necessary aids and supports to do so;

That consideration should be given to ways of incentivising retailers to become tobacco free zones;

That consideration should be given to the introduction of a 'polluter pays' type levy on tobacco manufacturers to be used to offset the health care costs associated with tobacco use;

That consideration should be given to the introduction of mandatory opening/trading hours for tobacco products (i.e. not during or after a certain time, for example, between 7am and 9am and not after 6pm);

That consideration should be given to prohibiting the sale of cigarettes in licenced premises (for example pubs and clubs);

That consideration should be given to regulating the sale of e-cigarettes;

That consideration should be given to setting up a Freephone complaints line/email address to encourage compliance (through answering enquiries) and the reporting of breaches of the legislation.



## Appendix 1: Key developments in Irish tobacco control 1964-2014

1964	A voluntary code on advertising was introduced.
1971	Tobacco advertising was banned on Television.
1978	<b><i>The Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act 1978<sup>1</sup></i></b> was enacted.
1988	<b><i>The Tobacco (Health Promotion and Protection) Act 1998<sup>1</sup></i></b> was enacted which banned the sale of tobacco products to under 16 year olds and made the sale of smokeless tobacco products illegal in Ireland
1991	<p><b><i>Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations 1991<sup>1</sup></i></b></p> <p>Regulations under the 1978 Act set out that advertising could only take place internally in premises at points of retail sale provided the advertising did not use electronic media or sound.</p> <p>Advertising in print media which was directed primarily at under 18's was banned.</p> <p>Health warnings were introduced on tobacco products.</p> <p>Tobacco industry sponsorship and selling cigarettes at discount prices was restricted.</p>
1994	<b><i>Shaping a Healthier Future</i></b> - a strategy for effective healthcare in the 1990s'

	<p>was published and set targets for a reduction in smoking prevalence.</p> <p>A Smoking Target Action Group (STAG) was set up by the CEOs of the health boards in response to the targets set out for tobacco control in the health strategy. Its membership included representatives from the Office for Health Gain, the eight health boards, the Department of Health and Children, the Irish Cancer Society, the Irish Heart Foundation and ASH Ireland. The function of the STAG group was to co-ordinate work towards achieving the reduction in smoking levels targeted in the National Health Strategy of 1994.</p> <p>Further amendments to the list of health warnings on tobacco products were enacted.</p>
1996	<p><b><i>Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) (Amendment) Regulations, 1996<sup>1</sup></i></b></p>
1997	<p>The Irish Cancer Society established the 'Quitline' service to support smokers in quitting. Subsequently they entered into partnership with the Health Boards and Eastern Regional Health Authority to provide this service. The service is now funded by the Health Service Executive.</p>
1999	<p>The Department of Health and Children published <b><i>Building Healthier Hearts</i></b>, a national strategy for dealing with heart disease. It included recommendations in tackling the tobacco epidemic, with particular emphasis on cessation supports.</p> <p>The Oireachtas Joint Committee on Health and Children published '<i>A National Anti-Smoking Strategy – A Report on Health and Smoking</i>'.</p> <p>Budget increase of 50 pence (64 cent) on the price of a packet of cigarettes (16% increase) to help fund Building Healthier Hearts.</p>
2000	<p><b><i>Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) (Amendment) Regulations, 2000<sup>1</sup></i></b></p> <p><b><i>Tobacco Products (Control of Advertising, Sponsorship and Sales</i></b></p>

	<p><b><i>Promotion) (Amendment) (No.2) Regulations, 2000<sup>1</sup></i></b></p> <p>The Department of Health and Children Tobacco Free Policy Review Group published their report on Health and Tobacco '<b><i>Towards a Tobacco Free Society<sup>1</sup></i></b>' which was adopted as Government policy. The Report proposes an integrated strategy for tackling the tobacco problem and promoting a tobacco free society.</p> <p>European Ministers enact new laws on disclosure of content in tobacco products and ensures that warnings about the dangers of the product are to be included on each pack.</p> <p>A ban on all tobacco advertising in the print media other than limited retail and trade advertising was introduced in Ireland. Sponsorship by tobacco companies was also ended.</p> <p>The Office of Tobacco Control was set up on an administrative basis.</p> <p>The Research Institute for a Tobacco Free Society (RIFTFS) was established to form a trans-disciplinary academic community around the issue of tobacco control and to support the development of a tobacco free society by engaging in all aspects of research from a public health perspective.</p>
<p><b>2001</b></p>	<p><b><i>The Health (Miscellaneous Provisions) Act 2001<sup>1</sup></i></b> was enacted.</p> <p>The Joint Committee on Health and Children published their Second Interim Report on Health and Smoking.</p> <p>Free nicotine replacement therapy for medical card holders was introduced.</p> <p>The legal age at which a person can be sold tobacco products was raised to eighteen years.</p>
<p><b>2002</b></p>	<p><b><i>The Public Health (Tobacco Act), 2002<sup>1</sup></i></b> was passed.</p> <p><b><i>Public Health (Tobacco) Act, 2002, (Commencement) Order, 2002<sup>1</sup></i></b></p>

	The Office of Tobacco Control became a statutory body.
2003	<p><b><i>Tobacco Smoking (Prohibition) Regulations 2003<sup>1</sup></i></b></p> <p><b><i>Public Health (Tobacco) Act 2002 (Commencement) Order 2003<sup>1</sup></i></b></p> <p><b><i>European Communities (Manufacture, Presentation and Sale of Tobacco Products) Regulations 2003<sup>1</sup></i></b></p> <p>The report on 'The Health Effects of Environmental Tobacco Smoke in the Workplace' was published by the Health and Safety Authority (HSA) and the Office of Tobacco Control (OTC).</p> <p>World Health Assembly adopted the <b><i>Framework Convention on Tobacco Control</i></b> (FCTC).</p> <p>The <b><i>European Communities Manufacture Presentation and Sale of Tobacco Products Directive</i></b> was transposed into Irish Law. This set out the nicotine and tar levels in tobacco products, and imposed certain restrictions on the colour font of tobacco advertising on products as well as setting a minimum size for health warnings.</p> <p>Hospitals and health services working within the Irish HPH Network adopt and commence implementation of the European Network of Smoke Free Health Care Service (ENSH) standards. These standards include in addition to tobacco control, staff training and education, development of cessation services and systematic monitoring and review procedures for tobacco policies.</p>
2004	<p><b><i>The Public Health (Tobacco) (Amendment) Act 2004<sup>1</sup></i></b> came in to operation. It banned smoking in specified enclosed buildings in order to protect the public from second-hand smoke (SHS). It made it compulsory to display no smoking signage and made it an offence to obstruct the work of an environmental health officer who was trying to ensure compliance.</p> <p><b><i>Public Health (Tobacco) (Amendment) Act 2004 (Commencement) Order 2004<sup>1</sup></i></b></p>

	<p><b><i>Public Health (Tobacco) Act 2002 (Commencement) Order 2004<sup>1</sup></i></b></p> <p><b><i>Tobacco Smoking (Prohibition) (Revocation) Regulations 2004<sup>1</sup></i></b></p> <p>An EU Conference on the 'Future Directions in Tobacco Control' was hosted in Ireland by the Office of Tobacco Control, the EU Commission, the Department of Health and Children and the Mid-Western Health Board.</p>
2005	<p>The Irish government ratified the World Health Organisations' <b><i>Framework Convention on Tobacco Control</i></b> (FCTC).</p>
2006	<p><b><i>Tobacco Products (Tax Stamps) (Amendment) Regulations 2006<sup>1</sup></i></b></p> <p><b><i>Tobacco Products Tax Regulations 2006<sup>1</sup></i></b></p> <p>The High Court (Mr Justice Roderick Murphy) supported the protocol which facilitates Environmental Health Officers of the Health Service Executive in using children to test purchase cigarettes in retail outlets.</p> <p>An EU Court of Justice decision ensures that individuals must continue to pay domestic custom duties when buying tobacco products from another EU country and having it delivered to their home.</p>
2007	<p><b><i>Public Health (tobacco) (Amendment) Act 2004 (Commencement) Order 2007<sup>1</sup></i></b></p> <p><b><i>Public Health (tobacco) Act 2002 (Commencement) Order 2007<sup>1</sup></i></b></p> <p>A number of plaintiffs, including PJ Carroll &amp; Company Ltd, John Player &amp; Sons Limited and Gallaher (Dublin) Limited, discontinued their legal challenge to key provisions of the <i>Public Health (Tobacco) Acts 2002 and 2004</i>. The plaintiffs agreed that it was appropriate for the Court to make an order that the plaintiffs would pay the full costs of the state in relation to the litigation.</p> <p>Sections 38(1) and 38(3) of the <i>Public Health (Tobacco) Acts 2002 to 2004</i> were</p>

	<p>commenced banning the sale of cigarettes in packets of less than 20 and confectionary which resembles tobacco products.</p> <p>Hospitals and health services working within the HSE Irish HPH Network work towards the full implementation of the revised European Network of Smoke Free Health Care Service Standards (ENSH) that moves health services towards being totally tobacco free.</p> <p>HSE Tobacco and Mental Health Services develop at National and European level a set of Guidelines for Tobacco Management in the Mental Health Setting.</p>
2008	<p><b><i>Public Health (tobacco) (Amendment) Act 2004 (Commencement) Order 2008<sup>1</sup></i></b></p> <p><b><i>Public Health (tobacco) Act 2002 (Commencement) Order 2008<sup>1</sup></i></b></p> <p><b><i>European Communities (Manufacture, Presentation and Sale of Tobacco Products) (Amendment) Regulations 2008<sup>1</sup></i></b></p> <p>Guidelines for Tobacco Management in the Mental Health Setting are launched and endorsed for implementation within all Health Service Executive Mental Health Services.</p> <p>Dual language health warnings (Irish and English) on tobacco products commence.</p> <p>Public consultation takes place on graphic pictorial warnings.</p>
2009	<p><b><i>Public Health (Tobacco) (Amendment) Act 2009<sup>1</sup></i></b></p> <p><b><i>Public Health (Tobacco) (Self Service Vending Machines) Regulations 2009<sup>1</sup></i></b></p> <p><b><i>Public Health (Tobacco) (Registration) Regulations 2009<sup>1</sup></i></b></p> <p><b><i>Public Health (Tobacco) (Retail Sign) Regulations 2009<sup>1</sup></i></b></p> <p><b><i>Tobacco Products (Control of Advertising, Sponsorship and Sales</i></b></p>

	<p><b><i>Promotion) (Amendment) Regulations 2009<sup>1</sup></i></b></p> <p><b><i>Public Health (Tobacco) Act 2002 (Commencement) Order 2009<sup>1</sup></i></b></p> <p>From 1 July 2009 no advertising or display of tobacco products is permitted in retail outlets with some exemption for specialist and duty free stores. Tobacco products must be out of view within a closed container or dispenser, only accessible by the retailer and retail staff. Self-service vending machines are prohibited except in licensed premises and registered clubs and must be operated in accordance with Regulations. All retailers wishing to sell tobacco products must register with the Office of Tobacco Control <b>[now the HSE]</b>.</p> <p>Section 33 of the <i>Public Health (Tobacco) Act 2002 to 2009</i> provides that a person who advertises or causes the advertisement of a tobacco product in contravention of Directive 2003/33/EC shall be guilty of an offence.</p> <p>St Vincent's Hospital entire campus in Dublin became a no smoking zone on January 1, 2009.</p> <p>Connolly Hospital, Blanchardstown became smoke free on the 31st May 2009. The IMO calls on all health sector organisations to follow the leadership shown by St. Vincent's Hospital in making their respective campus' smoke-free.</p> <p>Health Service Executive CEO Professor Brendan Drumm signed the Tobacco Free United (TFU) Charter and appealed to all health care professionals to always ask their patients and clients about their tobacco consumption and give them advice on how to quit.</p>
2010	<p><b><i>Public Health (Tobacco) (Amendment) Act 2010<sup>1</sup></i></b> was enacted to provide for the dissolution of the Office of Tobacco Control. Its functions were transferred to the HSE with effect from 1 January 2011.</p>
2011	<p><b><i>Public Health (Tobacco) (Amendment) Act 2011<sup>1</sup></i></b></p> <p><b><i>Public Health (Tobacco) (General and Combined Warnings) Regulations 2011<sup>1</sup></i></b></p>

2012	<b><i>Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) (Amendment) Regulations 2012<sup>1</sup></i></b>
2013	<b><i>Public Health (Tobacco) (Amendment) Act 2013<sup>1</sup></i></b>  Publication of the <b><i>General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013<sup>1</sup></i></b>

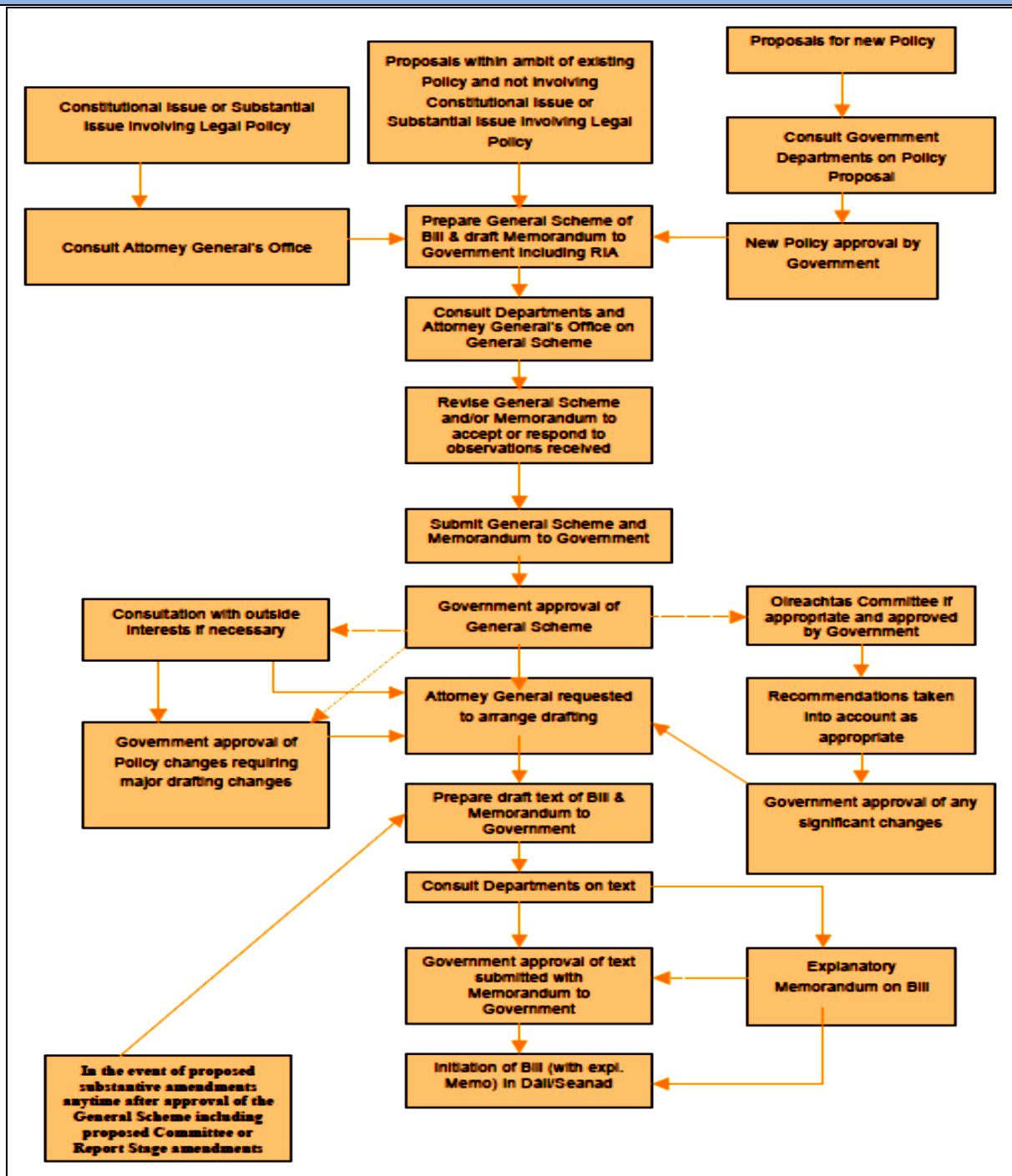
Source: The Health Service Executive Tobacco Control Framework, February 2010.<sup>172</sup>

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<sup>172</sup> <http://www.hse.ie/eng/about/Who/TobaccoControl/framework/framework.pdf>



## Appendix 2: Preparation of legislation



Source: Department of the Taoiseach Cabinet Handbook. Available at [http://www.taoiseach.gov.ie/eng/Publications/Publications\\_Archive/Publications\\_2007/CABINET\\_HANDBOOK2007.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2007/CABINET_HANDBOOK2007.pdf)

# The effects of smoking are now plainer to see



Smoking causes irreversible damage to the back of the eye. This is known as macular degeneration. Central vision is lost, blindness may follow.

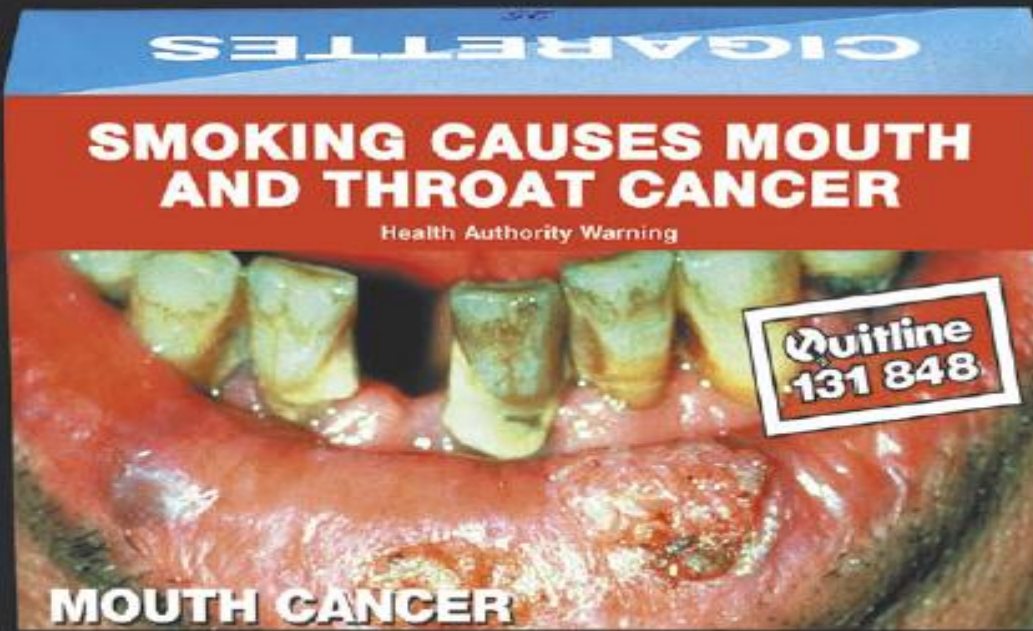
You CAN quit smoking. Call Quitline 131 848, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)

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Australian Government  
Department of Health and Ageing

# The effects of smoking are now plainer to see



**CIGARETTES**

**SMOKING CAUSES MOUTH AND THROAT CANCER**  
Health Authority Warning

**Quitline  
131 848**

**MOUTH CANCER**

Smoking is the major cause of cancers affecting the mouth and throat. These cancers can result in extensive surgery, problems in eating and swallowing, speech problems and permanent disfigurement.

You CAN quit smoking. Call Quitline 131 848, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)

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Australian Government  
Department of Health and Ageing

Source: Department of Health website of the Australian Government.  
<http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-warn-A#pvd>



## **SECTION 2: LIST OF THOSE WHO PRESENTED TO THE COMMITTEE**

Assistant Commissioner Derek Byrne, An Garda Síochána  
Detective Chief Superintendent Eugene Corcoran, An Garda Síochána  
Detective Chief Superintendent Pdraig Kennedy, An Garda Síochána  
Gerard Moran, Office of the Revenue Commissioners  
Emma Clutterbuck, Office of the Revenue Commissioners  
Michael Gilligan, Office of the Revenue Commissioners  
Gavin Maguire, Health Service Executive  
Laura Garvey, Health Service Executive  
Kathleen O'Meara, Irish Cancer Society  
Chris Macey, Irish Heart Foundation  
Sharon Cosgrove, Asthma Society of Ireland  
Niamh Kelly, Asthma Society of Ireland  
Dr. Ross Morgan, ASH Ireland  
Norma Cronin, ASH Ireland  
Damien Peelo, COPD Support Ireland  
Cliona O'Neill, Tipperary Regional Youth Service  
Danielle Gayson, Tipperary Regional Youth Service  
Amy Maher, Tipperary Regional Youth Service  
Paul Gilligan, Children's Rights Alliance  
Caroline O'Sullivan, ISPCC  
Dr Matthew Sadlier, Irish Medical organisation (IMO)  
Dr Anthony O'Regan, Irish Thoracic Society  
Owen Metcalfe, Institute of Public Health in Ireland  
Dr Helen McAvoy, Institute of Public Health in Ireland  
Dr. Patrick Doorley, Royal College of Physicians of Ireland  
Prof Luke Clancy, TobaccoFree Research Institute Ireland  
Dr Kate Babineau, TobaccoFree Research Institute Ireland  
Dr. Finbarr O'Connell, St James's Hospital  
Tara Buckley, Retail Grocery Dairy & Allied Trades Association (RGDATA)

Sharon Higgins, Ibec

Joe Sweeney, National Federation of Retail Newsagents Ireland

Vincent Jennings, Convenience Stores and Newsagent Association

Paul Candon, Retail Excellence Ireland

Mike Ridgway

Steven Donaldson, PJ Carroll and Company Limited

Ronald Ridderbeekx, PJ Carroll and Company Limited

Andrew Meagher, John Player & Sons Ltd.

Dr. Axel Gietz, Imperial Tobacco

John Freda, JTI Ireland Limited

Michiel Reerink, JTI Ireland Limited

John Mallon, Forest Éireann

Ken Murphy, Law Society of Ireland

John P. Shaw, Law Society of Ireland

## **Section 3: Oral Presentations**





**“The impact of the proposal to introduce plain packaging on criminal activity  
and smuggling”**

There is no evidence available to An Garda Síochána that would indicate that the implementation of plain packaging for all tobacco products sold in Ireland would lead to an increase in the trade in illicit tobacco.

An Garda Síochána notes that Australia implemented similar provisions in 2013, making them the first country in the world to do so. It is not, however, possible at this stage to ascertain from the Australian experience if there has been any impact on the trade in illicit tobacco because of this legislative change.

It is also relevant to point out that the markets for illicit tobacco and neighbouring countries differ. Lessons learned from the Australian experience may not necessarily be directly transferrable to the Irish context.

It has been asserted by certain interested parties that the move to plain packaging may lead to an increase in the trade in illicit tobacco products in Ireland. An Garda Síochána has not, however, been presented with evidence which supports this proposition.

The quality of counterfeit goods, which are already readily available across international markets, is so good, that the identification of the authentic product is

often difficult for experts in the field. Those involved in counterfeiting can counterfeit what they need. Changes to plain packaging are not going to impact on this.

The growth in the international markets of the sale of illicit whites is also relevant here. This area is increasingly attractive for those involved in both the manufacture and distribution of these products. Those involved in the manufacture of illicit whites are not in breach of copyright legislation. This means they do not run the risk of law enforcement action for counterfeiting offences. It also reduces the necessity to bribe public officials.

Representatives from *Her Majesties Revenue and Customs* and from *OLAF, the European Anti-Fraud office* have recently given evidence to the House of Lords Select Committee on European Union in relation to this issue. Both organisations have significant expertise and experience in the illicit trade in tobacco products area. Both organisations have stated clearly that there is no evidence to indicate that the introduction of plain packaging will lead to an increase in the illicit trade of tobacco products.

An Garda Síochána is always alert to the possibility that changes in criminal legislation and other regulatory statutes can cause changes in the behaviour of criminal enterprises. The illicit tobacco environment, post implementation of the proposed legislation, will be monitored closely by An Garda Síochána. Where any new challenges are identified, An Garda Síochána, in conjunction with our national and international partners, will respond appropriately to ensure compliance with legislation.

## **“The Garda Strategy on tackling smuggling in this regard”**

### **National Policing Plan 2014**

The Policing Plan, 2014 of An Garda Síochána sets out the commitment of An Garda Síochána to pro-actively target groups and individuals engaged in organised criminal activities, this includes the illicit trade in tobacco products. To this end, An Garda Síochána is committed to the use of intelligence-led operational tactics, including those of specialist national units. The monitoring of such groups is ongoing and kept under constant review.

The smuggling of Tobacco is primarily a revenue offence and as such is enforced by the Revenue Commissioners (Customs). An Garda Síochána continues to commit to working closely with the Revenue Commissioners and other agencies both national and international, to proactively target groups and individuals involved in organised crime including counterfeiting, laundering and smuggling goods. An Garda Síochána provides support and assistance to the Revenue Commissioners on a continuing basis.

An Garda Síochána continues to develop and implement operations and strategies aimed at targeting, dismantling and disrupting criminal networks, utilising advanced analytical and intelligence methodologies.

Multi-disciplinary approaches are utilised to ensure the activities of individuals and groups involved in criminal enterprise, including those involved in the importation,

sale and distribution of illicit tobacco, are effectively targeted, including the use of the Proceeds of Crimes legislations, money-laundering legislation and the powers of the Criminal Assets Bureau.

Specifically, the Garda Síochána Policing Plan 2014 outlines the organisations commitment to;

- Improved intelligence gathering and surveillance and analysis capabilities
- Continuing to build on partnerships and share intelligence with appropriate national bodies and international law enforcement agencies
- Ensuring proactive policing interventions based on intelligence and analysis
- Utilising regional multi-agency capabilities to target persons engaged in crime
- Identifying and targeting organised crime groups
- Targeting criminals by maximising the use of the Proceeds of Crime act 1996 as amended, and asset recovery opportunities at national and regional level

Due to the transnational nature of counterfeit products, An Garda Síochána works with other state and private agencies to monitor any new innovations in this type of criminal activity. This includes liaising with other policing and customs agencies in neighbouring jurisdictions. Cigarette smuggling has been identified as a low risk high profit enterprise for organised crime groupings within the European Union. An Garda Síochána continue to liaise with other national Police forces, Interpol and Europol to keep abreast of developing transnational crime trends.

Ireland, like the rest of the European Union, is dealing with three main types of illicit tobacco; first, genuine tobacco which has been smuggled or diverted due to discrepancies in price between proximal jurisdictions. Second, the smuggling of “Cheap Whites”, these are non-counterfeit cigarettes that are often produced legitimately, then smuggled avoiding tax. The third type of illicit tobacco is counterfeit tobacco which has been manufactured covertly and smuggled into Ireland.

An Garda Síochána approaches the policing of illicit tobacco at both national and local levels.

### **National Operations**

The Intellectual Property Crime Unit at the National Bureau of Criminal Investigation is responsible for the protection of intellectual property rights and to ensure a structured and co-ordinated approach in tackling the problem of counterfeit products and illicit tobacco. They liaise on a national basis with investigating Gardaí and assist in all aspects of this particular criminality.

The unit works closely with other Police Forces and agencies in the discharge of its role.

Members on the Intellectual Property Crime Unit are trained in the area of International Intellectual Property Crime and are actively involved the provision of this training for members of An Garda Síochána in outside districts.

Also working at a national level to tackle the trade in illicit tobacco is the Criminal Assets Bureau. The Bureau is a member of the Cross Border Tobacco Fraud Enforcement Group (CBTFEG). This group was set up to deal with the issue of cross border cigarette smuggling. The CBTFEG was convened arising from workshop recommendations from the Organised Crime Cross Border Conference in Dundalk in 2009 and is operated under this Inter-Agency Law Enforcement Cross Border Initiative. The group's meetings are attended by representatives from the PSNI, HMRC, SOCA, Revenue Customs, An Garda Síochána and the Criminal Assets Bureau. The group is chaired by the Revenue Commissioners (Customs).

Arising from meetings of this Group a number of organised crime groups, involved in the sale and distribution of tobacco products, operating in both jurisdictions, have been identified and targeted.

Two organised crime gangs involved in the trading of illicit tobacco products have been successfully targeted to date as a result of this initiative. The Criminal Assets Bureau has been successful in seizing assets and raising revenue assessments against the personnel concerned. Matters arising from these meetings are the subject of ongoing investigations at national crime units in An Garda Síochána.

A recent intelligence led Operation, against an organised crime gang involved in the importation of illicit cigarettes into Ireland, conducted in conjunction with Europol and other international police agencies is a great example of our success in the area.

Operation Bonanza culminated on the 17<sup>th</sup> September 2013 in the recovery of approximately 9 million contraband cigarettes, cash and a stolen agricultural vehicle. Four suspects were arrested and a file is being prepared for the Director of Public Prosecutions.

### **Operation Decipher (Local Operations)**

In conjunction with cooperation at National level and high profile intelligence led initiatives, An Garda Síochána continues to target street level offenders and the distribution networks surrounding these criminal activities.

Operation Decipher, led by the Intellectual Property Crime Unit, was established in 2013 to tackle the sale of illicit tobacco products across Garda Divisions. The focus of the operation is directed towards the sale of illicit tobacco products through local markets, fairs, shops and by individuals.

A national day of action was held on the 12<sup>th</sup> September 2013 under the auspices of Operation Decipher. 16 searches were carried out and thirteen of these searches resulted in the seizure of illicit tobacco products.

There is a nominated Inspector in each Division to coordinate activities and liaise with the national point of contact at the Intellectual Property Crime Unit.

The operation is increasing awareness of the illegal trade among operational Gardaí. It is hoped that throughout 2014 there will be an increase in the seizures of illicit tobacco products and a resulting increase in the prosecution of offenders.

At a strategic level, building the policing of illicit tobacco sales Divisional policing plans will make this issue an ongoing priority.



## Joint Committee on Health and Children: Public Hearings on the Public Health (Standardised Packaging of Tobacco) Bill 2013

- **Impact of the proposed legislation on excise duties/customs and smuggling and the Revenue Commissioners Tobacco Smuggling Strategy in this regard**

23 January 2014

### Revenue Opening Statement

Tobacco tax is a key policy instrument in reducing tobacco consumption and a significant source of tax revenue. Illicit tobacco impacts these objectives very significantly and therefore tackling illicit tobacco is a key priority for Revenue. We collect €1.4 billion in tobacco tax and VAT from tobacco consumption annually, so any material level of illicit tobacco consumption translates into a significant loss of tax revenue. It's important therefore that developments, such as the *standardised packaging* legislation, are scrutinised as to their impact on the illicit tobacco market.

It might be helpful for the Committee if I outline very briefly the scale and character of the illicit tobacco problem and what we're doing to tackle it, before dealing with the impact of the proposed legislation.

Every country with high tobacco taxes has an illegal tobacco problem. Ireland, which has exceptionally high tobacco taxes and tobacco prices, has a significant problem. To provide some international context, the World Health Organisation estimates that 10% of the global cigarette market is illicit and this figure rises to over 50% in some countries. OLAF, the European Anti-Fraud Office, estimates that illicit cigarettes result in losses of over €10 billion annually in tax revenues in the EU. This is a global problem, which is particularly significant in a number of EU Member States, including Ireland, which pursue a policy of high tobacco taxes.

In Ireland, the best estimate we have of the scale of the problem comes from the IPSOS /MRBI surveys conducted for Revenue and the National Tobacco Control Office. The most recent survey, conducted in late 2012, found that 13% of cigarette consumption was illicit. It also found that a further 6% of consumption was accounted for by cigarettes purchased abroad and brought into Ireland legitimately for personal consumption. The comparable figure for illicit consumption in 2010 and 2011 was 14%. As you can see, while we haven't been able to make dramatic inroads into the problem, it has been contained and some modest progress has been made.

The nominal cost in terms of lost tax revenues is approximately €240m annually. This is a useful way of flagging and tracking the financial significance of the problem, but it is important to stress that this is a nominal cost, based on the unrealistic assumption that in the absence of cheap illicit

cigarettes, smokers would consume the same amount of more expensive, taxed cigarettes, using money that they're not currently spending on taxable consumption. These caveats aside, the problem is very significant in terms of its impact on the exchequer and in undermining the government's demand reduction objectives.

The tobacco industry produces much higher estimates of the level of illicit consumption and the associated exchequer costs, but their claims need to be viewed in terms of their interest in minimising tax increases while imposing significant price increases of their own. All estimation methodologies have their limitations, but we are satisfied that the IPSOS /MRBI surveys provide a reasonable indication of the extent of the problem and in particular, because of the consistency of the methodology, allows us to track changes in illicit consumption levels.

As I mentioned earlier, the problem is very much a global one, driven by a number of key regions in Asia, the Middle East and Eastern Europe, where there is large-scale production of cigarettes for illicit distribution to other countries or which serve as distribution centres for illicit product. A European Commission map circulated with this statement illustrates the main international trafficking routes. Internationally and domestically the field is dominated by organised crime groups.

Revenue's response to the problem includes a number of key elements:

- We work very closely with our EU partners to tackle source countries and apply the maximum pressure on the governments concerned;
- We also work very closely with EU and other Member State law enforcement agencies, particularly OLAF, to get the best possible intelligence on illicit shipments into Ireland;
- We work very closely with An Garda Síochána, CAB, the PSNI and Her Majesty's Revenue and Customs in identifying and tackling the illicit trade on an all-island basis;
- We examine shipping and passenger traffic on the basis of intelligence and risk profiling;
- In terms of detection technologies we use scanning equipment and sniffer dogs in Ports and Airports;
- We conduct regular street-level exercises to tackle illicit cigarette sales; and
- Finally, our enforcement activities are kept under continuous review by a Tobacco Executive, which is chaired at Commissioner level.

In terms of assessing the adequacy of our response we have had a good deal of success in seizing illicit cigarettes intended for sale here or in the UK. In 2010 we seized 178 million cigarettes; in 2011 the figure was 109 million; 96 million in 2012 and 41 million in 2013. These figures show a marked decline, which reflects, we believe, a shift in the way illicit cigarettes are trafficked. It is believed that criminal gangs have been moving away from very large consignments in favour of smaller volumes as a result of the number of large seizures being made throughout the EU, including in Ireland. However, the most important measure for us is the survey data on illicit consumption, which indicates containment and some modest progress.

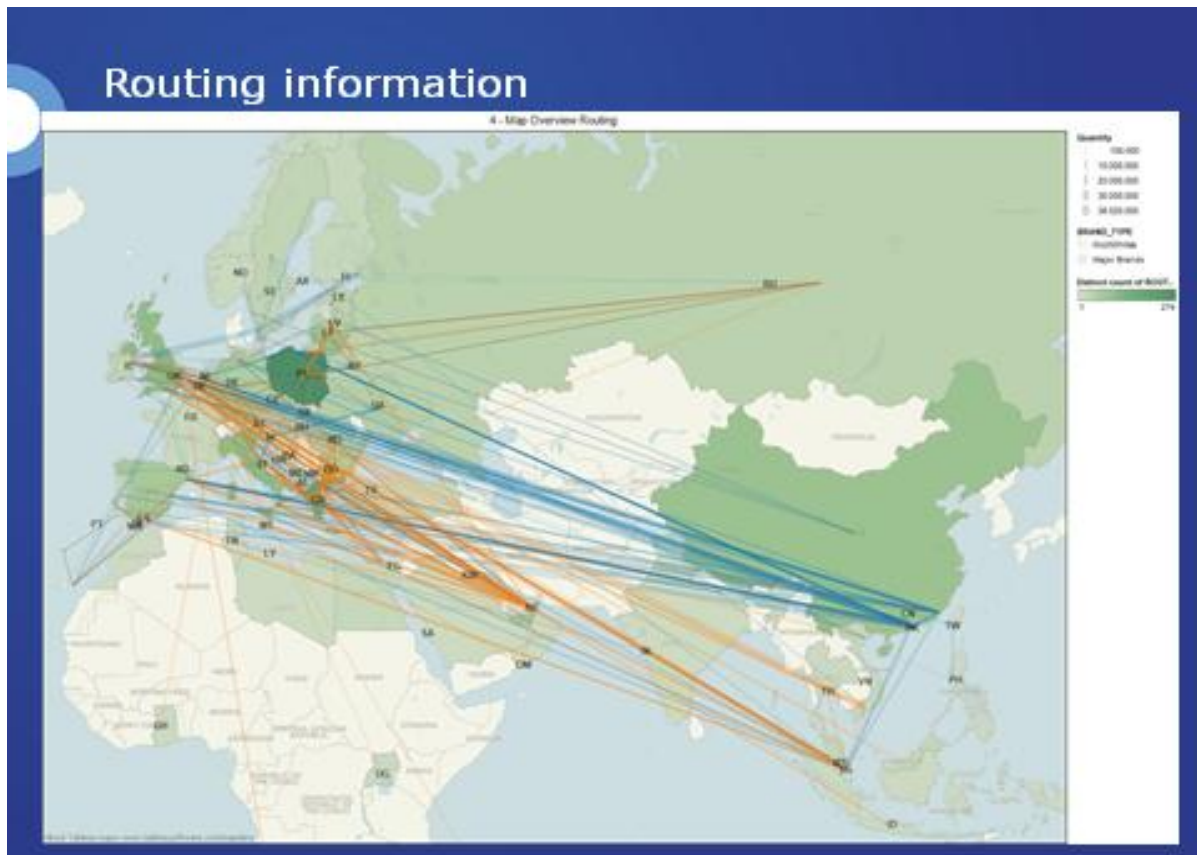
Where possible we prosecute those involved in smuggling, distributing or selling illicit cigarettes. In 2013, 100 people were convicted for smuggling or other illicit cigarette offences. The Courts imposed custodial sentences in 38 cases and imposed average fines of over €2,600 in 62 cases.

In terms of the impact of the standardised packaging legislation on the illicit cigarette market, we are satisfied that it will not damage our efforts to tackle the problem. We rely on our tax stamp to identify tax paid tobacco products and the standardised packaging legislation will accommodate the stamp. We expect that the new packaging rules will ensure effective security features to make counterfeiting very difficult; the tax stamp will certainly contain all the features possible to minimise the risk of counterfeiting.

In conclusion, I want to assure the Committee that tackling illicit tobacco is a key priority for Revenue. We are planning on the basis that Ireland will remain a very high tax country for tobacco products and are undertaking a fundamental review of our tobacco strategy over the next couple of months.

Thank you.

## Appendix



## **Health Services Executive Opening Statement in relation to the Health (Standardised Packaging of Tobacco) Bill 2013**

The HSE strongly supports this Bill as another important step in the denormalisation of Tobacco smoking. 1 in every 2 smoker's die of smoking related illnesses in Ireland. These illnesses and deaths are preventable.

Improving Health and Wellbeing is one of four pillars of reform outlined in *Future Health*, the government's health reform programme for the Health Service Executive (HSE). The programme involves a shift in policy and practice away from simply treating sick people, to keeping people healthy and well. The HSE actions in relation to Tobacco Control include tobacco free campuses, targeted Health Promotion programmes, HSE QUIT campaign, brief intervention training, research and enforcement of the Public Health (Tobacco) Acts and Tobacco Control Legislation.

The elimination of this form of advertising by tobacco companies through the use of attractive, glossy, and sometimes cosmetic like packaging designed to appeal to young people is a hugely important intervention. The tobacco industry has invested heavily in pack design in order to communicate to this specific group. The evidence strongly suggests that standardised packaging will reduce the appeal of packaging and of smoking in general. Research further suggests that standardised packaging will go some way to reduce consumer misperceptions regarding product harm particularly the perception that one brand of Tobacco is less harmful than another and will help to make the legally required health warnings more visible.

Tobacco companies have introduced extensive cigarette pack innovations in recent years. The introductions of these new types of packages have posed serious challenges for the enforcement of current Tobacco Control Legislation. The clear stipulation of the pack features in this Bill will make it easier to enforce.

The restrictions on the wrapper of the tobacco products (cigarettes, RYO etc) will remove the current trend of highlighting lower pack price across the top of the product, suggesting to the consumer that they are selling them at a reduced price and thus using it as a sales promotion device.

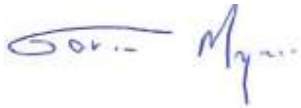
We welcome the inclusion in the Bill that the offence is on the manufacturer / distributor as well as the retailer. In many incidences the supplier stocks the machine and the retailer may not look at the product packaging until it is requested by the customer. Therefore the onus must be on both the retailer, the manufacturer and the supplier to ensure the product complies with the legislation.

Fines and penalties need to be sufficient as to deter the tobacco companies from non compliance with the law and we therefore welcome the levels of fines and penalties identified in this Bill. We also welcome that upon conviction the court shall order the person to pay the costs and expenses associated with the inspections and institution of legal proceedings.

Roll your own tobacco products are a growing segment of the industry. The increase of the pouch size to 20gr per unit pack is important in the restriction of access to tobacco products by young persons and lower socio economic groups.

We suggest an additional requirement on standardisation of the pack size. This would make the packaging for slims or smaller packs less attractive to the consumer. Restrictions on the size of tobacco packaging are currently not captured under this Bill. It would also eliminate tobacco companies from making tobacco packs smaller thus reducing the size of the required health warnings or indeed bigger to increase their brand name, business or company name.

We also suggest that improved powers of enforcement may be necessary for seizing, removing and detaining of non compliant product and payment by the offender for destruction.



**Gavin Maguire**  
**Assistant National Director**  
**Environmental Health and Emergency Planning**  
**Health Service Executive**  
**Dated: 21<sup>st</sup> January 2014**



**Opening Statement to the Joint Oireachtas Committee on Health and Children**

**Public Hearings on the Public Health (Standardised Packaging of Tobacco) Bill 2013**

**by**

**Kathleen O'Meara**

**Head of Advocacy and Communications**

**Irish Cancer Society**

**30 January 2014**

Thank you, Chairman and members of the Committee.

I am delighted to be here today on behalf of the Irish Cancer Society to present to you the evidence already available, which demonstrates that the plain packaging of cigarettes does, and will, work.

Chairman and members, our vision and our ambition is nothing less than a future without cancer. That's why we fight tobacco with everything we've got.

Smoking is the single biggest preventable cause of cancer in Ireland. Almost one in five of all deaths is attributable to smoking. If we tackle smoking, then as a country we will have delivered the single biggest blow to cancer possible. We fully support the efforts of the Minister for Health in his ambitious target to make Ireland Tobacco Free by 2025.

It can be done, and the key is the next generation. It is possible to have a generation that doesn't start smoking. How? To successfully protect them from the tactics of the tobacco industry who need to recruit 50 new smokers a day in Ireland to replace those who quit and those who die. The answer is the plain packaging of cigarettes.

Plain packaging does four things.

Firstly, and crucially, it reduces the appeal of tobacco to young people. Secondly, it stops smokers believing that some brands are 'less harmful' than others. Thirdly, it encourages current smokers to quit, and fourthly, it increases negative feelings around tobacco.

I want to focus today on that first point – reducing the appeal of tobacco to young people.

We wanted to show you a short video – two minutes long – in which the children of Scoil Aonghusa in Tallaght demonstrate their response to branded cigarettes and plain packs, but unfortunately that was not possible. The video is available to see on our website – [www.cancer.ie](http://www.cancer.ie) - and we have sent the link to all of the members so you can have a look for yourself.

The message from the video is clear – plain packs significantly reduces the appeal of cigarettes to children.

And what about young people and teenagers, who are also the target of the tobacco industry? 78% of smokers start before they are 18,<sup>1</sup> and even though the rate of those starting to smoke is falling among young people, clearly we have more to do to protect this particular group.<sup>2</sup>

The Irish Cancer Society together with our collaborators, the Irish Heart Foundation commissioned research into the impact of tobacco branding and standardised packaging on young people.<sup>3</sup> It was conducted last summer. Focus group research was conducted among a group of 15 and 16 year olds, both smokers and non smokers, who were first shown branded packs.

These sleek, expertly designed, coloured packs influenced everything from the teenagers' perception of the quality of the cigarette to the likely users of the brand and ultimately their likelihood to try them.

They were then shown examples of standardised packaging.

These packs, with their dull colour and graphic health warnings are immediately rejected by teens. The images showing the health effects of smoking strip away any glamour or fun attributes imbued by branded packs.

For those teens that have tried smoking, most reported that the introduction of plain packaging would be enough to prevent them from trying cigarettes again. For those who smoked on a daily basis, plain packaging would encourage them to give up sooner.

The findings of our research mirrors similar research carried out in different parts of the world. Time does not allow me to name them all but I would like to refer to a study published in September 2013 by the Centre for Tobacco Control Research in the University of Stirling which sets out a comprehensive overview of 17 studies carried out between August 2011 and September across the UK, New Zealand and Australia.<sup>4</sup>

The findings of these 17 studies confirm that the plain packaging of cigarettes would reduce their appeal, enhance the effectiveness of health warnings, and ensure that smokers are not misled about the level of harm done by cigarettes.

And what about Australia, the first country to introduce plain packs, just over one year ago?

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1 Department of Health, Tobacco Free Ireland, <http://www.dohc.ie/publications/pdf/TobaccoFreeIreland.pdf?direct=1>

2 HSE, Cigarette Smoking Trends in Ireland, <http://www.hse.ie/eng/about/Who/TobaccoControl/Research/>

3 The Impact of tobacco branding and standardised packaging on young people' (2013), Ignite Research for the Irish Cancer Society and the Irish Heart Foundation

4 Moodie, et al (2012), Plain tobacco packaging: a systematic review. London: University of London, Institute of Education, Social Science Research Unit, EPPI-Centre. EPPI Report.



Interestingly, very soon after the introduction of plain packs, smokers began to complain about the taste of their cigarettes, convinced that they had changed. In fact they hadn't. It was the effect of the removal of colour and branding and the impact of stark pictorial warnings which were now enhanced.

A recent study published in the British Medical Journal showed that those smoking from standardised packs:

- perceived their cigarettes to be lower in quality
- perceived their cigarettes as less satisfying than the previous year
- were more likely to have thought about quitting at least once a day
- rated quitting as a higher priority
- tended to support the policy on standardised packaging<sup>5</sup>

A more recent study by the Cancer Council of Victoria into the impact of plain packs on the behaviour of smokers in cafes showed that pack display on cafe tables declined by 15% after the introduction of plain packaging, which was mostly due to a 23% decline in the percentage of patrons who were observed smoking.<sup>6</sup>

All these studies also show that the inclusion of a Quitline phone number on packs in Australia to be essential. The Medical Journal of Australia has recorded a massive 78% jump in the number of calls to the Quitline since plain packaging was introduced.<sup>7</sup>

On this basis, the Irish Cancer Society would strongly recommend the inclusion of a Quitline in the legislation being brought forward by the government.

It is still too early to analyse some of the long-term effects on smokers in Australia but these early studies do confirm the findings of our own research.

Chairman and Members, I am pleased to have had the opportunity to share with you, the evidence demonstrating that plain packs work.

No one wants to see their child smoking. As legislators, you have the power to ensure that children and young people are protected from the tactics of the tobacco industry, which does target them. We urge you to take this opportunity to protect the lives of the next generation, and to make smoking history in Ireland.

Thank you, Chairman.

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5 Wakefield, M (2013); Introduction effects of the Australian plain packaging policy on adult smokers: a cross-sectional study; *BMJ Open* 2013; 3e003175 doi:10.1136/bmjopen-2013-003175

6 Zacher, M. *et al.* (2014) 'Personal tobacco pack display before and after the introduction of plain packaging with larger pictorial health warnings in Australia: an observational study of outdoor cafe strips'. *Addiction*. DOI: 10.1111/add.12466 <http://onlinelibrary.wiley.com/doi/10.1111/add.12466/abstract>

7 Young, F *et al.* (2014) 'Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time series analysis'. *Medical Journal of Australia*, 200, 29-32. <https://www.mja.com.au/journal/2014/200/1/association-between-tobacco-plain-packaging-and-quitline-calls-population-based>

## **Irish Heart Foundation Oireachtas Health Committee Submission 29/01/2014**

Thank you chairman for the opportunity to address the Committee on legislation we believe will save the lives and quality of life of untold numbers of people in Ireland in the years and decades ahead. We commend the Government and Minister for Health Dr Reilly in particular, for their uncompromising stance against the might of the global tobacco industry to protect the nation and particularly our children from the lethal effects of tobacco.

You have heard the evidence on the need for plain packaging. I will address the bogus arguments concocted by the tobacco industry and its funded groups to protect a business model which, given that 80% of smokers start before they're 18, relies on replacing dead smokers with children and young people.

In addressing their claims, it's useful to first look at Big Tobacco's broader strategy to maintain profit levels by subverting national and international health policy.

Because the industry has been so discredited, not least by years of lying about the health impact of smoking, it needs others to make arguments on its behalf. For many years it has provided funding to a diverse range of organisations to achieve its aims, including retailers groups, business and trade organisations, fake grass roots organisations and others.

It's highly likely that every organisation opposing plain packaging at these hearings will have a funding link – direct or indirect – to the tobacco industry, even if some do have genuine if misplaced concerns. Whilst its coffers are empty in terms of credibility, the industry has no shortage of cash to pay for support. The five biggest tobacco companies alone make profits of over \$37 billion a year – bigger than Coca Cola, Microsoft and McDonalds combined.

The model of who the industry funds to make its case is strikingly similar from country to country. Likewise, the arguments it makes against policies to protect the public from smoking tend to be the same regardless of the planned intervention.

For example, on issues ranging from increasing taxation, legislation banning shop displays, or now plain packaging, the industry claimed that each would increase smuggling, hit retail jobs and be ineffective. But whilst legislation has spearheaded a decline in smoking rates from 29% six years ago to 22% last year – a reduction of 200,000 smokers, none of the industry's dire predictions have come true.

As regards smuggling, plain packs will still carry current security markings, health warnings and other labels. Consequently, the Gardai and Revenue stated categorically at the first day of these hearings there was no evidence plain packaging would increase smuggling. Clearly it's not in their interest to make such a clear assertion if there is room for doubt.

Yet the truth hasn't deterred the industry. Since the Garda and Revenue Committee appearance, tobacco companies – at least one of whom has a plain packaging campaign co-ordinator – visited retailers claiming plain packaging will reduce their sales by 20% due to increased illicit trade.

One of the industry's favourite phrases is that plain packaging will be 'counterfeiter's charter'. Anyone making this argument in the Irish context either has no idea what they're talking about or is simply not telling the truth.

Revenue and HSE statistics – the only tobacco smuggling survey here not produced for the industry – show that our smuggling rate is 13% - slightly above the EU average. Of this just 1% is counterfeit and virtually all the rest is the product of the legal industry. So counterfeit tobacco in an Irish context is virtually irrelevant and therefore anyone making claims about it should be viewed with suspicion.

The breathtaking fact is that whilst the industry has cited concerns about smuggling to prevent Budget tax increases and then jacked up its own prices in each of the last 10 years, there is growing suspicion that the legal industry is again involved in smuggling.

This was echoed in the Dail last November when Finance Minister Michael Noonan said: 'I have a suspicion that the legitimate trade is involved in the production of illicit cigarettes'. And just this week in the European Parliament, MEPs met with international experts to discuss smuggling and the role still being played by the big tobacco manufacturers.

Consequently, any organisation coming before this committee expressing fears about smuggling that takes tobacco industry funding should be asked what on earth they are doing.

There's also no evidence plain packaging will negatively impact the retail trade. It's primarily intended to discourage young people from starting to smoke and isn't likely to have as much impact on current smokers. Therefore sales reductions resulting from the policy will be gradual, giving retailers considerable time to diversify their business.

In addition, tobacco sales only account for a small proportion of small retailers' profits. While tobacco may account for up to a third of a small retailer's turnover, profit is minimal as retailers receive an average of 8.7% of the price of tobacco products. The size of this income stream is reflected in assertions by retailers' representatives that it won't be worth their members selling cigarettes when the licence fee increases to €500.

On intellectual property rights, the industry says plain packaging is tantamount to Government appropriating their trademarks. Apart from the grotesque notion that intellectual property rights for tobacco firms are more important than our children's health, this is not a sustainable argument. In Australia the courts ruled plain packaging did not represent an 'acquisition of property' by Government, from which they could benefit. Here, a legal challenge cannot succeed once the State shows it is rationally connected to improving public health and is a proportionate response. Aside from that, trademarks prevent others from using a company's branding, but don't confer an exclusive right to use to the owner.

Finally, when all else fails, the industry and its supporters complain that tobacco control legislation is an attack on individual freedom and interference from the Nanny State. This is their most ludicrous argument of all. Tobacco is quite possibly the greatest usurper of

individual freedom in the history of the planet. Not only is it among the most addictive substances known to man, it kills half its regular users. What more conclusive denial of freedom is there than your premature death? Similarly, if we really had a Nanny State, would 5,200 people be allowed to die each year from smoking?

The strong evidence supporting plain packaging and the absence of evidence put forward by multi-billion euro companies that would do anything to this legislation shows plain packaging comes down to a simple choice between protecting our children's health, or the profits of the tobacco industry regardless of the human cost.

Ends



## Public Hearings on the Public Health (Standard Packaging of Tobacco) Bill 2013 Opening Statement

### **Introduction**

Good morning Mr Chairman and members of the Committee. Thank you for inviting us to this hearing today. We are here representing the hundreds of thousands of people living with asthma and we welcome the opportunity to share our views.

As many of you know, asthma is the most common chronic disease in the country and affects around one in ten adults and one in five children. Tobacco smoke is one of the most common and dangerous asthma triggers. As others have said, tobacco is a unique product in that it causes the death of half of its users and is more addictive than any other product available legally in this country.

### **Irish Lung Health Alliance**

We are members of the Irish Lung Health Alliance- a coalition of 14 organisations working to improve lung health in Ireland. Ireland has one of the highest rates of respiratory illness in Europe, at almost double the EU average. One in every five deaths in Ireland is from lung disease and smoking is the leading cause of respiratory death. The Irish Lung Health Alliance also fully supports this legislation.

### **Passive smoking & asthma**

Tobacco not only adversely affects the user but also those around them. Passive smoking is particularly problematic for people with chronic respiratory conditions such as asthma. The 2004 workplace smoking ban allowed people with asthma to work, study and socialise without fear of an attack. Yet people with asthma are still exposed to tobacco smoke every day and our members tell us smoking poses a problem day to day, even when going to their hospital appointments. Most worrying, is that children with asthma are often exposed to tobacco smoke in the home and in cars.

### **Smoking & asthma**

Breathing tobacco smoke increases the risk of developing asthma. For every 1% increase in smoking prevalence, asthma admissions rise by 1%.<sup>1</sup>Babies born to mothers who smoke while pregnant are more likely to develop asthma. Tobacco worsens asthma control and lung function, reduces the effectiveness of medication, and increases the risk of virus and infection. Smoking with asthma greatly increases the chances of developing irreparable, life threatening conditions such as COPD.

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<sup>1</sup> Purdy S et al Emergency respiratory admissions: influence of practice, population and hospital factors J Health Ser Res Policy Vol 16 No 3 July 2011

One quarter of our service users in 2013 were smokers-so despite the risks people with asthma still smoke.

### **Tobacco Branding & Packaging**

So why introduce standardised tobacco packaging? Well, because branding works. People with asthma feel the adverse affects that tobacco has on their health the minute they smoke their first cigarette, yet they still smoke. Because branding works. Parents of children with asthma smoke in the home and in cars despite the risk to their child's health. Because branding works. The tobacco industry is fighting to defeat this legislation in order to maintain its profits and its power to recruit new smokers. Because branding sells products. In fact branding is so powerful it can even sell a 50/50 chance of death. Addiction keeps people smoking, branding entices them to start.

Countless research studies throughout the globe show that standardised tobacco packaging reduces smoking prevalence by reducing the appeal of smoking and increasing awareness of the health risks. It is especially effective in young people. Furthermore, plain tobacco packaging is found to be even more effective on young people than the rest of the population.

### **The Cost**

The tobacco industry and other interests may argue that this legislation will cost the economy and cut the approximately €1 billion state revenue from the sale of tobacco products. Yet the costs of maintaining the status quo are much greater. Lost work days due to asthma costs the economy €262 million each year. The total state cost of respiratory illness is estimated at €1.036 billion, with asthma accounting for €501 million of this. Furthermore, it is estimated that the overall cost of smoking related illness to the state is in excess of €4 billion.<sup>2</sup>

### **Ireland at the Forefront of Tobacco Control**

The example set by Australia is inspiring countries throughout the world to take action against tobacco. Public opinion is also in favour of plain packaging. A recent survey carried out by an Alliance of Health and Children's charities, including those here today, found that the majority of Irish people support this legislation.<sup>3</sup> Ireland was the first European country to introduce a workplace ban on smoking. It is now time for Ireland to again take the lead in protecting the lives and lungs of future generations.

We fully support this legislation and urge its speedy implementation.

Thank you.

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<sup>2</sup> All study details from Dept. Health (2013) *Tobacco Free Ireland*.

<sup>3</sup> <http://asthma.ie/news/children-say-plain-packaging-would-deter-them-starting-smoke>

## **Presentation from ASH Ireland to the Joint Oireachtas Committee on Health and Children in respect of the Public Health (Standardised Packaging Bill) 2013**

**Dr Ross Morgan and Norma Cronin**

Chairman and Members,

I want to thank you and members of this committee for affording ASH Ireland an opportunity to make this presentation on what I believe is ground-breaking public health legislation – legislation which will contribute to saving thousands of lives in future decades and protecting further thousands of young people from the scourge of tobacco and related nicotine addiction.

I want to advise this committee that the only agenda of ASH Ireland is health. We are the only single-issue anti-smoking advocacy group in this jurisdiction. We have been deeply involved in supporting this and past governments in the introduction of anti-smoking legislation, which contributes to saving lives and protecting people from the harmful effects of environmental tobacco smoke. My colleague Norma Cronin, who is here with me today has worked in smoking cessation and advocacy for tobacco related legislative change for many decades. She has a deep knowledge of the effects of smoking and the industry which promotes it. Our Board which is comprised of medical, environmental and legal experts is strongly supportive of this potentially ground-breaking legislation which is proposed by Minister Reilly and supported by the government.

We strongly urge this committee to hear the voice of the health sector in your deliberations. Our voice is not about profit, our voice is about health, the health of young people, the health of adults, the health of elderly people; all of whom can be affected by the harmful effects of smoking and environmental tobacco smoke. Any initiative which can reduce the impact of smoking on Irish society has our support and I trust will have the full support of this committee.

I am a Respiratory Physician by profession, and on a daily basis I treat many people who are suffering ill health for one reason only; they smoke. We must help these people with every avenue open to us, and in my view effective legislation is perhaps the most powerful tool in tackling the smoking dilemma. Almost every one of my patients who smoke wants to quit and virtually all wished they had never started. The vast majority started smoking in their teenage years and continue to smoke because nicotine addiction quickly takes hold. It is specifically in this area that we believe the proposed legislation would have most impact.

This legislation is essentially about restricting a specific industry in marketing a unique product which costs this state well in excess of €1 billion annually in treating a raft of related diseases and which kills 50% of the people who use it. New users of the tobacco must then be recruited.

I would like to offer you some quotations from Tobacco Industry.

RJ Reynolds Tobacco “Brands which fail to attract their fair share of younger adult smokers face an uphill battle”. The quote continues “if younger adults turn away from smoking, the Industry must decline just as a population which does not give birth will eventually dwindle”.<sup>1</sup> I offer you another quote from this company dating back to 1974 when talking about young people, RJ Reynolds said “they represent tomorrow’s cigarette business...As this 14-24 age group matures”, (and I point out this age 14 to you), “they will account for a key share of the total cigarette volume for at least the next 25 years”.<sup>2</sup>

From 1981, market research conducted by Philip Morris states the following “it is important to know as much as possible about teenage smoking patterns and attitudes.... The smoking patterns of teenagers are particularly important to Philip Morris....The share index is highest in the youngest group for all Marlboro and Virginia Slims packings. At least part of the success of Marlboro Red was because it became the brand of choice among teenagers who then stuck with it as they grew older.”<sup>3</sup>

This quote is from a Marketing and Design Executive representing Lorillard, another large tobacco firm, “...We have been asked by our client to come up with a package design... a design that is attractive to kids... While this cigarette is geared to the youth market, no attempt (obvious) can be made to encourage persons under twenty-one to smoke. The package design should be geared to attract the youthful eye... not the ever-watchful eye of the Federal Government.”<sup>4</sup>

The point I am making to this committee in presenting those quotes to you is the number of times that brand, marketing and worryingly, young people and teenagers are mentioned by an industry which tries to convince us that it does not market to and target young people. This of course is a blatant lie. For every smoker that dies the Tobacco Industry is determined to replace that smoker with a young person who will quickly become addicted and thereby continue to smoke for the remainder of their lives.

When we consider the current challenges facing our health services both here in Ireland and elsewhere you will find this particular statistic interesting. In 2006 alone, the five largest tobacco manufacturers in the United States spent \$12.49 billion (note Billion) on marketing

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<sup>1</sup> February 29, 1984 RJR report, "Young Adult Smokers: Strategies and Opportunities". Bates No. 501928462-8550. <http://www.tobaccofreekids.org/research/factsheets/pdf/0114.pdf>.

<sup>2</sup> September 30, 1974 R.J. Reynolds Tobacco Co. marketing plan presented to the company's board of directors. Bates No. 501421310-1335. <http://www.tobaccofreekids.org/research/factsheets/pdf/0114.pdf>.

<sup>3</sup> March 31, 1981 market research report on young smokers titled "Young Smokers Prevalence, Trends, Implications, and Related Demographic Trends," written by Philip Morris researcher Myron E. Johnston and approved by Carolyn Levy and Harry Daniel. Bates No. 1000390803. <http://www.tobaccofreekids.org/research/factsheets/pdf/0114.pdf>

<sup>4</sup> August 13, 1970 letter from Lorillard advertising account executive to a marketing professor, soliciting help from his students with advertising design. Bates No. 92352889. <http://www.tobaccofreekids.org/research/factsheets/pdf/0114.pdf>



their products in the United States.<sup>5</sup> This marketing, of course, is entirely centred and focussed on brand promotion and awareness. So, it goes without saying that if the Tobacco Industry itself decides to spend \$12.5 billion dollars on supporting brand awareness and promotion, they are fully aware of the vital importance of brand in regard to enticing young people to smoke and encouraging brand loyalty and continuance of the practice among smokers. So, it is very clear that the legislation which is now before you is running directly contrary to the highly expensive and focussed marketing campaigns of an industry which supplies a product which is highly addictive and the leading cause of premature death and disability in our country.

I do expect that in the latter stages of your hearings the Irish Tobacco Industry will enter this room and try to convince you that they have a right to market their product and they will probably try to say that this important legislation which now rests before you will have no impact.

In relation to that, can I say that no industry has the right to market, in a normal fashion, a product that is known to kill 50% of those who use it. Tobacco is a unique product in terms of its addiction, which is often referenced as being similar to the addiction to heroin. It is not a food or beverage that can be life sustaining. It is not a product that has a threshold of effect, a safe level of use, a product that can be used safely in moderation. It is unique in regard to related mortality and it is unique in that no other product on sale worldwide costs the health services such massive amounts of money in treating the related diseases.

I have no doubt whatever but that the introduction of plain packaging will make it more difficult for this industry to market this product to young and old and surely, every responsible individual and organisation in this jurisdiction should support such an initiative. There is emerging evidence in Australia to show that the introduction of plain packaging is having a positive impact on the nation's health. The Medical Journal of Australia showed that there was a 78% increase in calls to their National Quitline, which can be directly associated to the introduction of the plain packaging legislation.<sup>6</sup> This peak occurred four weeks after the initial appearance of plain packaging on the shelves. There are certainly early indications from Australia that plain packaging is now associated with lower smoking appeal, more support for the actual policy and more urgency to quit among adult smokers. It is all good news for the health sector in Australia and all bad news for their tobacco industry who fought tooth and nail to block the standardised packaging legislation.

There is also evidence from New Zealand in 2010 showing that the introduction of a plain pack with 75% warning was much more likely to elicit cessation related behaviours from smokers than normal packs with standard warnings.<sup>7</sup> Similarly, there is also a report from the University of Cambridge in 2013 which estimates that two years after the introduction of plain packaging, the number of adult smokers would be reduced by 1 percentage point and

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<sup>5</sup> Federal Trade Commission. Cigarette Report for 2006. Issued August 2009. <http://www.lung.org/stop-smoking/about-smoking/facts-figures/tobacco-industry-marketing.html>.

<sup>6</sup> <https://www.mja.com.au/journal/2014/200/1/association-between-tobacco-plain-packaging-and-quitline-calls-population-based>

<sup>7</sup> <http://tobaccocontrol.bmj.com/content/20/3/183.abstract>

that the percentage of children experimenting with tobacco would be reduced by 3 percentage points.<sup>8</sup>

Again, I urge the committee to proceed with this legislation and in our earlier submission we had put forward amendments under Head 3, Head 4, and Head 14, and we ask that you look positively at these proposals.

10 years ago, the workplace smoking ban was introduced despite the resistance of many interests that decried the legislation and predicted it would fail. Nobody could speak now against the success of that legislation. Ireland can once again take the lead in Europe by putting the health of the nation ahead of the profits of any single industry - and the leadership of our legislators is a key element in this.

I want to thank you again for the opportunity to address you.

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<sup>8</sup> <http://www.cam.ac.uk/research/news/experts-believe-plain-packaging-of-tobacco-products-would-cut-smoking>

## **Public Hearings on the Public Health (Standard Packaging of Tobacco) Bill 2013 Opening Statement**

### **Introduction**

Good morning Mr Chairman and members of the Committee. Thank you for inviting COPD Support Ireland to this hearing today. COPD Support Ireland is a national network of local groups led by people living with COPD. Our focus is to raise awareness of COPD and the profound link between the dangers of smoking and the development of COPD.

There is estimated to be 440,000<sup>1</sup> people living with Chronic Obstructive Pulmonary Disease (COPD).

Smoking is the leading cause of COPD and there is approximately 1500 deaths a year from this disease. Over 90% of sufferers of COPD smoke or are ex- smokers.

COPD is a collective name for lung conditions that make it hard for sufferers to breathe due to obstruction in the air passages of their lungs. It is a progressive disabling disease with significant extra-pulmonary effects and has a major impact on the life of patients, families and carers as well as on the health care system. It cannot be cured. Even when a person quits smoking the damage to the lungs is not reversible and the consequences of smoking are life-long.

*“It is like trying to take a breath with an elephant sitting on your chest” (Ann – COPD sufferer Dublin)*

There are approximately 11,000 admissions to our hospitals each year of COPD patients, representing approximately 120,000 bed days utilised.

The cost of a COPD admission is €4086 for an uncomplicated admission and €7749<sup>2</sup> for a complicated one. The average length of stay is 9 days.

While smoking is the leading cause of COPD, 77% of Irish people don't know this<sup>3</sup>. This would indicate that the health warnings are not currently effective enough in deterring the take up of smoking and more needs to be done.

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<sup>1</sup> Mathers CD, Loncar D, Projections of Global Mortality and Burden of Disease

<sup>2</sup> Ready Reckoner of acute hospital inpatient and day case activity & costs relating to 2010

<sup>3</sup> Empathy Research, COPD Awareness and Patient Research 2012

## Smoking prevalence

Smoking is a factor in 90% of those with COPD. Most of those affected have smoked over 20 per day for 20 years. Up to 50% of lifelong smokers develop COPD. Individuals highly exposed to passive smoking (>40hr/week for >5 years) are 48% more likely to present with COPD than are unexposed individuals<sup>4</sup>. Given that the adverse effects of cigarettes in terms of COPD can have a lag period of 15-20 years, these rates have significant health implications for the medium and long term.

### Passive smoking & COPD:

Smoking not only adversely affects the user but also those around them. Passive smoking is particularly problematic for people with chronic respiratory conditions such as COPD. The 2004 workplace smoking ban allowed people with COPD to work, study and socialise without fear of an attack. Yet people with COPD are still exposed to tobacco smoke every day and our members tell us that coming into contact with smoking poses a problem on a daily basis. Walking past smokers on the street or gathered outside a public building such as hospital, pub, café or being in a vehicle where smoking recently occurred can induce a coughing fit that can immobilise a person with COPD.

### Social status and income levels and Smoking:

COPD is adversely associated with socio-economic status. The effects are reflected in risk factors for COPD – the smoking rate in Ireland among those in more deprived social groups is high compared with the national rate. Among homeless men in Dublin the smoking prevalence was 78% . These social and economic gradients are reflected not just in the prevalence of smoking but also in the prevalence of COPD and the outcome for those with COPD in terms of morbidity and mortality.

### Standard Packaging

COPD Support Ireland fully supports the Bill to standardise packaging of tobacco because smoking is the dominant cause of COPD and discouraging young people from taking up smoking is a key preventative measure in tackling COPD.

On seeing a mock up version of a potential plain packet of cigarettes a 50 year old woman commented,

*“I wish I never smoked and I would not have taken up smoking if those images were on the packs, you would be mortified to take that out”* (Paula, who smoked 10 a day since the age of 16).

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<sup>4</sup> Epidemiology and Burden of Disease, COPD Model of Care 2013

**In Conclusion:**

COPD has considerable impact on the quality of life of the patient, involving long term medical care, frequent hospital admissions for many for treatment of exacerbations and, often resulting in premature death. As with many chronic conditions, COPD not only affects the patient, but also has significant impact on the family and carer as well as the health services and wider society.

Given that 90% of cases is caused by smoking it is imperative that we act now to minimise future generations from starting the addictive habit of smoking.

The Public Health (Standardised Packaging of Tobacco) Bill 2013 represents an important step towards protecting young people and future generations from addiction to tobacco products. The swift introduction of this legislation will ensure that the health of Irish citizens is prioritised over the efforts of the tobacco industry to weaken and delay significant public health protections.

**Public Hearings by the Joint Committee on  
Health and Children  
on the Public Health (Standardised  
Packaging of Tobacco) Bill 2013**

**Presentation by Paul Gilligan, Chair, Children's Rights  
Alliance**

**30 January 2014**

The Children's Rights Alliance unites over 100 organisations working together to make Ireland one of the best places in the world to be a child. We improve the lives of all children and young people by ensuring Ireland's laws, policies and services comply with the standards set out in the United Nations Convention on the Rights of the Child.

## Members

Alcohol Action Ireland  
Amnesty International Ireland  
Ana Liffey Drug Project  
Arc Adoption  
The Ark, A Cultural Centre for Children  
Assoc. for Criminal Justice Research and Development (ACJRD)  
Association of Secondary Teachers Ireland (ASTI)  
ATD Fourth World – Ireland Ltd  
Barnardos  
Barretstown Camp  
BeLonG To Youth Services  
Bessborough Centre  
Border Counties Childhood Network  
CARI Foundation  
Carr's Child and Family Services  
Catholic Guides of Ireland  
Catholic Youth Care  
Childhood Development Initiative  
City of Dublin YMCA  
COPE Galway  
Crosscare  
DIT – School of Social Sciences & Legal Studies  
Doras Luimni  
Down Syndrome Ireland  
Dublin Rape Crisis Centre  
Dun Laoghaire Refugee Project  
Early Childhood Ireland  
Educate Together  
School of Education UCD  
EPIC  
Focus Ireland  
Forbairt Naíonraí Teoranta  
Foróige  
GLEN - Gay and Lesbian Equality Network  
Headstrong - The National Centre for Youth Mental Health  
Immigrant Council of Ireland  
Inclusion Ireland  
Inspire Ireland  
Institute of Community Health Nursing  
Integration Centre  
International Adoption Association  
Irish Association of Social Care Workers (IASCW)  
Irish Association of Social Workers  
Irish Association of Suicidology  
Irish Autism Action  
Irish Centre for Human Rights, NUI Galway  
Irish Congress of Trade Unions (ICTU)  
Irish Council for Civil Liberties (ICCL)  
Irish Foster Care Association  
Irish Girl Guides  
Irish National Teachers Organisation (INTO)  
Irish Penal Reform Trust  
Irish Premature Babies  
Irish Refugee Council  
Irish Second Level Students' Union (ISSU)  
Irish Society for the Prevention of Cruelty to Children  
Irish Traveller Movement  
Irish Youth Foundation (IYF)  
Jack & Jill Children's Foundation  
Jesuit Centre for Faith and Justice  
Junglebox Childcare Centre F.D.Y.S.  
Kids' Own Publishing Partnership  
Lifestart National Office  
Marriage Equality – Civil Marriage for Gay and Lesbian People  
Mary Immaculate College  
Mental Health Reform  
Mothers' Union of Ireland  
Mounttown Neighbourhood Youth and Family Project  
MyMind  
National Association for Parent Support  
National Organisation for the Treatment of Abusers (NOTA)  
National Parents Council Post Primary  
National Parents Council Primary  
National Youth Council of Ireland  
One Family  
One in Four  
OPEN  
Parentline  
Parentstop  
Pavee Point  
Peter McVerry Trust  
Rape Crisis Network Ireland (RCNI)  
Realt Beag  
SAFE Ireland  
Saoirse Housing Association  
SAOL Beag Children's Centre  
Scouting Ireland  
Society of St. Vincent de Paul  
Sonas Housing Association  
SpunOut.ie  
St. Nicholas Montessori College  
St. Nicholas Montessori Society  
St. Patrick's Mental Health Services  
Start Strong  
Step by Step Child & Family Project  
Sugradh  
The UNESCO Child and Family Research Centre, NUI Galway  
Treoir  
UNICEF Ireland  
Unmarried and Separated Families of Ireland  
Yoobyoo  
youngballymun  
Youth Advocate Programme Ireland (YAP)  
Youth Work Ireland

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## Children's Rights Alliance

31 Molesworth Street, Dublin 2, Ireland

Ph: +353 1 662 9400

Email: [info@childrensrights.ie](mailto:info@childrensrights.ie)

[www.childrensrights.ie](http://www.childrensrights.ie)

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## Introduction

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The Children's Rights Alliance unites over 100 organisations working together to make Ireland one of the best places in the world to be a child. We improve the lives of all children and young people by ensuring Ireland's laws, policies and services comply with the standards set out in the United Nations Convention on the Rights of the Child.

The Children's Rights Alliance fully supports the Public Health (Standardised Packaging of Tobacco) Bill 2013 and the introduction of standardised packaging on all tobacco products sold in Ireland. We are proud to stand with the Irish Heart Foundation, the Irish Cancer Society and children's charities in support of this legislation.

We do so because we believe that this measure will positively impact on children's health in a number of ways; namely

- reducing the number of children who try smoking
- reducing the number of children who become regular smokers
- increasing the number of current adult smokers who quit
- increasing awareness among children of the dangers of smoking which they take with them into adulthood

## The Child's Right to Health

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Article 24 of the United Nations Convention on the Rights of the Child<sup>1</sup> holds that state parties shall recognise the right of the child to the enjoyment of the highest attainable standard of health.

The UN Committee on the Rights of the Child,<sup>2</sup> in its General Comment 15, interprets children's right to health as an inclusive right. This means it extends not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right for children to grow and develop to their full potential. This includes the implementation of programmes that address the underlying determinants of health. The Committee recommend the adoption of a holistic approach to health, placing the realisation of the child's right to health within the broader framework of human rights obligations.

The Committee has recommended that the marketing of tobacco and other potentially harmful substances should be regulated - especially when such marketing is focused on children – and their availability in schools and other places controlled.<sup>3</sup>

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<sup>1</sup> UN Convention on the Rights of the Child -

[http://www.childrensrights.ie/sites/default/files/submissions\\_reports/files/UNCRCEnglish\\_0.pdf](http://www.childrensrights.ie/sites/default/files/submissions_reports/files/UNCRCEnglish_0.pdf)

<sup>2</sup> UN Committee on the Rights of the Child General Comment 15 on the Right to Health (2013)

[http://crin.org/docs/CRC-C-GC-15\\_en-1.pdf](http://crin.org/docs/CRC-C-GC-15_en-1.pdf)

<sup>3</sup> UN Committee on the Rights of the Child General Comment 15 on the Right to Health (2013)

[http://crin.org/docs/CRC-C-GC-15\\_en-1.pdf](http://crin.org/docs/CRC-C-GC-15_en-1.pdf) para 65



Article 24(2)(f) of the Convention on the Rights of the Child outlines that states shall take appropriate measures to ‘develop preventative health care [...]’. This has been interpreted by the UN Committee on the Rights of the Child as placing an obligation on the state to protect children from harmful substances with tobacco specifically listed. Further the Committee recommended that states increase the collection of relevant evidence and take appropriate measures to reduce the use of such substances among children. In this context, the committee recommended that states should regulate the advertising, promotion and sale of substances harmful to children’s health in places where children congregate, as well as in media channels and publications that are accessed by children.

This is supported by an earlier General Comment of the Committee on the Rights of the Child on adolescent health in 2003 where the committee urged states to: “regulate or prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents.”<sup>4</sup>

The State already recognises the damage tobacco products do to children as evidenced in the prohibition of sale of tobacco substances to under 18s and 2009 laws restricting promotion of tobacco products at point-of-sale. The *Report on a Tobacco Free Ireland*<sup>5</sup> highlighted that 78% of smokers start smoking regularly before they are 18. Half of all smokers who start smoking as children die prematurely from a smoking related disease. Research has shown that nicotine is a highly addictive substance and children can become addicted within weeks of experimenting with tobacco.

In the United Kingdom, these figures are even higher with some reports that 91% of smokers began the habit when they were under 18.<sup>6</sup>

## Packaging is Advertising

The Children’s Rights Alliance submits that the current packaging of cigarettes and tobacco products effectively constitutes advertising of the products and should therefore be prohibited.

Currently, the shape and colour of tobacco packaging, combined with the brand logo all help to make the tobacco product attractive to new consumers with Young people the primary target for tobacco industry marketing. The tobacco industry uses different colours and brand imagery to market their killer products to children and young people.

Children are particularly susceptible to branding and advertising. International experts believe that children younger than 8 or 9 years of age do not understand advertising’s persuasive intent or that the branding / marketing is paid for by the manufacturer in order to encourage consumption.<sup>7</sup>

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<sup>4</sup> UN Committee on the Rights of the Child General Comment 4 on the Right to Adolescent Health (2003) – [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/504f2a64b22940d4c1256e1c0042dd4a/\\$FILE/G0342724.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/504f2a64b22940d4c1256e1c0042dd4a/$FILE/G0342724.pdf)

<sup>5</sup> Report on Tobacco Free Ireland (2013) <http://www.dohc.ie/publications/pdf/TobaccoFreeIreland.pdf?direct=1>

<sup>6</sup> Cancer Research UK (2013) <http://www.cancerresearchuk.org/cancer-info/cancerstats/types/lung/smoking/#children>

The British Health Ministry has dubbed current cigarette packaging as 'exploitation of children'. We would support this view.<sup>8</sup>

In relation to evidence that plain packaging reduces the number of children who try smoking and the number of adults who quit (remembering that children copy what they see adults doing); there is significant evidence from Ireland and internationally that approving this measure will reduce overall smoking numbers, particularly among children.

In Australia for example, researchers from the University of Sydney and Cancer Institute NSW studied calls to a national quitline over 9 years and found that after plain packaging was introduced there was a 78% spike in callers asking for help to quit smoking.<sup>9</sup>

Cambridge health and statistical academics conducted a study among international tobacco control experts who agreed that with standardised packaging there would be a reduction in adult smokers but an even greater reduction in children smoking. Standardised packaging would be especially effective for children because they would reduce the appeal of the packs, increase the salience of health warnings and standardise pack colour. Colour is particularly important for children.<sup>10</sup>

One expert in the study said, "From just looking at the evidence – attractiveness of product, smoking-related beliefs and behaviours – most indicate greater effects in children, so I'm more certain plain packaging would have an effect here. If we look at adult smokers – addicted smokers – they're likely to be less interested in the packaging, and more on getting their hit, so are more likely to carry on smoking. Plain packaging is likely to impact on not starting smoking, to have more of an effect on uptake and experimentation".<sup>11</sup>

We want to stop our children from starting smoking. We want them to refuse to even try one.

Last year, the Irish Heart Foundation and Irish Cancer Society commissioned Ignite Research to assess the impact of standardised packaging on young people in Ireland. The focus group research with 15 and 16 year olds showed that cigarette branding encourages teenagers to start smoking but non-smokers would be discouraged from even trying them and current smokers would quit if cigarettes came from standardised packs.<sup>12</sup>

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<sup>7</sup> Stephen Frith, 'What's the Problem?', in Tracy Newlands and Stephen Frith (eds), *Innocent Advertising? Corporate Sponsorship in Australian Schools* (Sydney: New College Institute for Values Research, University of NSW, 1996)

<sup>8</sup> The British Health Ministry

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/270768/Independent\\_review\\_into\\_standardised\\_packaging\\_of\\_tobacco\\_PHE\\_response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270768/Independent_review_into_standardised_packaging_of_tobacco_PHE_response.pdf)

<sup>9</sup> Medical Journal of Australia <https://www.mja.com.au/journal/2014/200/1/association-between-tobacco-plain-packaging-and-quitline-calls-population-based>

<sup>10</sup> Impact of plain packaging of tobacco products on smoking in adults and children: an elicitation of international experts' estimates <http://www.biomedcentral.com/1471-2458/13/18>

<sup>11</sup> Impact of plain packaging of tobacco products on smoking in adults and children: an elicitation of international experts' estimates <http://www.biomedcentral.com/1471-2458/13/18>

<sup>12</sup> Ignite Research (2013) 'The impact of tobacco branding and standardised packaging on young people'. Commissioned by the Irish Heart Foundation and the Irish Cancer Society.

When shown the new standardised packaging being used in Australia, the teenagers rejected them. All said they would not smoke when the new packs are introduced because they are at odds with the image they want to portray.<sup>13</sup>

We must ask ourselves, if tobacco companies did not believe that their packaging was effective in recruiting new younger smokers then why do they put their considerable financial weight behind resisting moves on any restriction? The short answer is that it would reduce the smoking population and the number of children who start.

To fully protect the right of children to health under the UN Convention on the Rights of the Child that state must regulate how tobacco products are marketed targeting children. The research has shown that the introduction of standardised packaging is an effective means of doing this.

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<sup>13</sup> <http://www.asthma.ie/news/children-say-plain-packaging-would-deter-them-starting-smoke>

# **Presentation by Youth Project Members from**

## **Tipperary Regional Youth Service**

### **Presentation Cliona O Neill**

Hi my name is Cliona o Neill, this is Danielle Gayson and Amy Maher and we are from Tipperary Regional Youth Service. I just want to give you some back ground information on our organisation.

Tipperary Regional Youth Service which is affiliated to Youth Work Ireland is an integrated youth service which works with young people aged between 8 and 25 years of age. The mission of the youth service is to provide a range of quality and professional services to young people in a safe and inclusive environment, contributing to a changing society for the benefit of young people.

Geographically, there are three regions under the remit of Tipperary Regional Youth Service- Tipperary South, Tipperary North and East Limerick, with four Youth Centres in Cashel, Templemore, Thurles and Tipperary. We deliver youth projects and services funded in the main through the Department of Children and Youth Affairs, HSE, Department of Justice and Law Reform and the Department of Social Protection. Our services include working with disadvantaged young people, providing targeted interventions in the areas of justice, substance misuse, family support, as well as supporting volunteer led clubs and community initiatives. Tipperary Regional Youth Service has a voluntary Board of Directors holding overall responsibility for the organisation, working through the Chief Executive Officer, staff and volunteers. This Board of Directors is made up of local club and community representatives with an interest in youth in Co. Tipperary and East Limerick.

One of the Centres is Cashel Neighbourhood Youth Project which has been in existence since the mid 1990's and has a high level of youth participation. There are a number of Youth led initiatives that members of the project participate in and this is the project we are members of.

I'm now going to hand you over to Danielle who is going to tell you a little bit about what we have been doing to help prevent young people smoking.

### **Presentation Danielle Gayson**

In 2012 we received funding from the Irish Cancer Society through the X-HALE Youth Awards for a group of 22 young people aged 14-17 in Cashel Neighbourhood Youth Project to develop a peer led anti-smoking programme for 6<sup>th</sup> class students entitled "Lungs on the Run".

We worked hard throughout summer 2012 creating an animation, a programme and a workbook which highlighted the dangers of smoking.

In September of that year, four members of the group went to our local primary school, facilitated our programme, showed the animation and asked the class of 30 students to make a pledge not to smoke; each student received a workbook and a wrist band to remind them of their pledge not to smoke. One teacher stated "the students really took on board the information provided because it came from their peers".

In October we attended a showcase hosted by the Irish Cancer Society to highlight the X- Hale projects and we received an award for the creation of our animation. Due to the positive feedback from our work we have gone on to secure further funding through the X-HALE Youth Awards to further develop our programme into a training resource pack and to train young people in other projects to roll out an anti-smoking workshop to their peers. Also in 2013 we contributed some of the activities from our workshops to a resource pack that the Irish Cancer Society is developing for schools and youth projects throughout Ireland.

As part of our workshop in the schools we asked the students what information impacted on them the most and 25 of the 30 young people stated the images they saw and the fact that they didn't like being a target of the tobacco industry were identified as having the most effect. We felt as a group it was important to work from a preventative approach to smoking and that by giving young people the right information from people they look up to as role models would empower them to make positive choices in their future.

One of the main things that we highlight to primary school students when we run our workshop is that the tobacco industry has to attract 50 new smokers a day to replace those who have either died or quit and given that most smokers start smoking before they are 18, most of these new recruits are young people, highlighting this to young people has shown to impact on their thinking about smoking.

Amy will now tell you why we as a group of young people think the introduction of plain packaging is so important.

### **Presentation Amy Maher**

As a group who focus a lot of our work on prevention we feel that the introduction of plain packaging is an important step towards preventing young people ever starting to smoke.

By introducing the legislation we are protecting our future generations by changing young people's attitudes to smoking and that it won't be the "norm" anymore.

When we started to look at making a submission as a group we organised focused group discussions with young people who were both smokers and non smokers, we wanted to find out what young people felt about the idea of plain packaging, whether they felt it would impact on young people's decision to smoke and also to look at whether young people place a lot of importance on smoking as an image thing.

After the discussions with young people they discussed how purple skins or flavoured skins were 'class' and they spoke about a friend who doesn't smoke, had brought home pink coloured cigarettes from holidays abroad because she wanted to have them at the disco to offer to people. This highlighted to us the importance young people place on how things look and that the appearance of cigarettes plays a huge role in young people smoking. Young people discussed the health implication of smoking on them with some young people experiencing difficulties with their teeth, lungs and their ability to engage in physical activities and sports. Young people expressed they would not like to see their younger siblings smoking and that they feel the plain packaging would have a huge impact on preventing young people from ever starting to smoke.

We feel that young people should have a right to be protected from the marketing of a highly addictive and seriously harmful product. Plain packaging is one way we can do this by making smoking less appealing and health warnings more effective, this will in turn change the misguided opinion young people have that smoking is 'cool' or 'class' and stop young people from smoking in the future.

We recommend:

- That the Public Health (Standardised Packaging of Tobacco) Bill is brought in as a matter of urgency.
- That the members of the Committee appreciate that plain packaging seeks to stop young people from taking up smoking and that branding cigarettes undermines the work of our group.
- That the Bill takes account of the EU Product Directive on flavoured and coloured cigarettes.
- That the legislation seeks to further 'denormalise' smoking and is considered a public health measure.
- That the Bill takes into account the effect of branding on young people and the desire of young people to be seen with a 'cool' product such as cigarettes.

We would like to thank you for the opportunity to come here and share the views of our group with you today, we hope you take into consideration our recommendations and we welcome any questions you have for us. Thank you.

**The ISPCC Oral Presentation Points to the Joint Oireachtas Committee on Health and Children on the Public Health (Standardised Packaging of Tobacco) Bill 2013.**

**30<sup>th</sup> January 2014**

- The ISPCC welcomes the proposed legislation and developments contained in the Public Health (Standardised Packaging of Tobacco) Bill and this opportunity to address the Committee.
- The ISPCC sees smoking, addiction and the targeted marketing of such tobacco products to young people as a serious child protection issue. As an organisation dedicated to the protection of children, we believe that children should be protected from the preying marketing of a highly addictive and fatally harmful product.
- This Draft is a hugely important step in improving the protection and welfare of children, reducing the potential for addiction to an internationally recognised fatally harmful substance.
- In our submission, we referred to Head 3 which outlines the purposes of the Bill;
  - We consider it imperative that any normalisation of harmful drug usage be addressed in a concerted and robust fashion such as this.
  - We know that the tobacco industry requires the continuous recruitment of new consumers to counter those existing customers who have either beaten the addiction of tobacco or died from it.
  - As 78% of smokers start the habit before the age of 18<sup>1</sup> then the majority of new recruited smokers will be children. Such a specific and targeted campaign ideal by any industry to the detriment of children's health must be seen as a child protection issue and this Bill ought to directly reflect this in its wording.
- The ISPCC works directly with children and can readily attest to the nature of learned behaviours, peer pressure and environmental influences upon children.
  - Any product that communicates fun and style and that you would look and feel better about themselves will be the subject of peer pressure. Bad enough if that peer pressure is about shoes/ clothes/ bags etc. a lot worse if that product seriously damages health.
  - The concept of standardised packaging as a means of reducing the likelihood of smoking or making children more aware of the dangers of tobacco products can only be a positive step forward.

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<sup>1</sup> Office of Tobacco control (Nov 2006). Children, Youth and Tobacco: Behaviour, Perceptions and Attitudes. Dublin: OTC.

- Advertising and the normalisation of drug usage within it can be heavily influential to impressionable young minds.
- Looking to children and asking them about what matters and what impacts on them is the best way to understand what motivates them;
- Recently conducted research<sup>2</sup> (commissioned by Irish Heart Foundation and Irish Cancer Society) showed that the packaging and marketing of cigarettes is an important factor for young people and their likelihood to take up smoking.
- One quote really highlights this:  
***“It’s not even just the cigarettes, it’s the packaging. It’s all the swirls on the pack, the colours, they look fashionable, you kind of want them sitting on the table to be able to say “yeah they’re mine”***

The elimination of such marketing would have a huge positive impact on the numbers of children taking up or continuing smoking.

- The ISPCC believes that legislation needs to reflect the influential nature of marketing and advertising on children, in support of its goal on standardisation of branding.
- A duty of care exists between the Irish Government and its citizens, and in particular a duty for the protection of children. Ireland also has international obligations under the Framework Convention on Tobacco Control to ensure it protects the development of public health policy from the influence of the tobacco industry.
- Any legislation ought to acknowledge these obligations in support of standardised packaging of tobacco products.

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<sup>2</sup> Ignite Research “The impact of tobacco branding and standardised packaging on young people” jointly commissioned by Irish Cancer Society and Irish Heart Foundation.



## Irish Medical Organisation Presentation to the

Oireachtas Joint Committee on Health and Children – 6<sup>th</sup> February 2014

### General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013

I would like to thank the Chairman and members of the committee for the opportunity to address them on the issue of standardised packaging for tobacco products. Ireland has been a global leader in the fight against tobacco since implementing a ban on smoking in the workplace in 2004. As such, it is crucial that Ireland continues to lead the way by legislating for cigarette packaging that is plain and contains appropriate health warnings.

Tobacco is unlike any other product on the market. It is the only legal consumer product that kills when used as intended by the manufacturer. Half of all smokers will die from a tobacco related disease. Some 90% of lung cancers and 30% of all cancers are caused by smoking.<sup>1</sup> One quarter of deaths from coronary heart disease and 11% of all stroke deaths are attributable to smoking. Smokers are two to three times more likely to suffer a heart attack compared to non-smokers.<sup>2</sup> Second-hand smoke also increases the risk of coronary heart disease among non-smokers by 25-35% and is a risk factor for asthma in children.<sup>3</sup> Tobacco is one of the leading preventable risk factors for non-communicable diseases such as cardiovascular disease, cancer, chronic lung disease and diabetes.

The overall prevalence of smoking is declining, in 2012 22% of the population still smoke.<sup>4</sup> Smoking is an addiction that begins in adolescence. According to a survey commissioned by the Office of Tobacco Control, 78% of smokers started smoking before they reached the age of 18, and 53% before they reached the age of 15.<sup>5</sup> In 2010, 7.9% of children aged 10-17 reported smoking cigarettes every week.<sup>6</sup> However, the percentage of children aged 10-17 who report never smoking has increased from 50.8% in 1998 to 73.5% in 2010.<sup>7</sup> This new Bill provides the opportunity to capitalise on these developments further by reducing the attractiveness and appeal of tobacco products to children. The IMO has long championed efforts to reduce the number of smokers in Ireland. At our last AGM, we passed a motion supporting the Minister for Health's planned introduction of standardised packaging for tobacco products. As such, the IMO welcome the proposed Bill.

However, the *Public Health (Standardised Packaging of Tobacco) Bill 2013* only legislates for 65% health warnings on packages, which is the minimum required by the forthcoming EU Tobacco Products Directive. The IMO believes this does not go far enough and advocates for 75% health warnings in order to protect the wellbeing of Irish citizens. There is a growing body of evidence on the effectiveness of graphic warnings. For example, a Canadian research paper, which surveyed individuals over a ten year period, found that graphic warnings had a statistically significant effect on

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<sup>1</sup> ASH Ireland, Key facts downloaded from <http://www.ash.ie/Resources/Resources/Navigation.html>

<sup>2</sup> Office of Tobacco Control (OTC) 2007, Annual Report 2006

<sup>3</sup> OTC 2004, Second-hand Smoke: the facts

<sup>4</sup> Dept of Health, Tobacco Free Ireland 2013

<sup>5</sup> OTC 2006, Children, Youth and Tobacco: Behaviour, Perceptions and Public Attitudes

<sup>6</sup> Office of the Minister for Children and Youth Affairs, State of the Nation's Children 2012 The Stationery Office, Dublin 2013

<sup>7</sup> HSBC Survey 2010; Kelly, Gavin, Molcho, Nic Gabhainn, "The Irish Health Behaviour in School-aged Children" (HBSC) Study 2010 Health Promotion Research Centre NUIG and DOHC 2012- While smoking rates among young people are declining, approximately 19% of boys and 22% of girls in the 15-17 years age group report that they are current smokers

smoking prevalence and quit attempts. In particular, the warnings decreased the odds of being a smoker and increased the odds of making a quit attempt.<sup>8</sup>

Cancer Research UK reports that all quantitative studies found standard packs less attractive, than branded equivalents, to both adults and children. Furthermore, a major piece of research by Cancer Research UK and the University of Stirling<sup>9</sup> found that “branded packaging presented positive user imagery and functional and emotional benefits to young people. Conversely plain cigarette packaging was perceived as unattractive, reduced emotional attachment to the packaging and enforced negative smoking attitudes among young people.”

Evidence is already available: plain packaging works. In Australia, the introduction of plain packaging for cigarettes spurred a 78 per cent increase in calls to the Quitline, according to a new study by the Cancer Institute of New South Wales.<sup>10</sup> Smokers are more likely to consider giving up, and they're also more likely to think the quality of their cigarettes has diminished. Research also shows that when young people look at plain cigarette packs, they believe the product is used by people who are less stylish and sociable, and not as attractive to mimic.

An oft-cited point by big tobacco companies is that plain packaging will increase illicit trade. However, a report conducted by Cancer Research UK in 2012<sup>11</sup> in relation to smuggling and the tobacco industry found that there was no evidence that plain packs increase smuggling or illegal trade in cigarettes. In relation to smuggling, the IMO would like to congratulate the Government on signing the Protocol to Eliminate Illicit Trade in Tobacco Products. This treaty will hopefully help mitigate the illicit trade of tobacco products globally.

These companies try to influence policy for the sole purpose of increasing their profits to the detriment of public health. The IMO is also calling on the Government to place a “polluter pays” levy on tobacco manufacturers in order to make a contribution to the healthcare costs of tobacco use.

The IMO believes that Ireland needs to continue to be a frontrunner in the fight against tobacco. As such, introducing plain packaging with appropriately sized graphic health warnings would be a crucial investment in the long-term health of the country.

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<sup>8</sup> Azagba & Sharaf, “The Effect of Graphic Cigarette Warning Labels on Smoking Behavior: Evidence from the Canadian Experience”, *Nicotine & Tobacco Research*, March 2013, Vol. 15 Issue 3, p708

<sup>9</sup> Cancer Research UK, University of Stirling, “The Packaging of Tobacco Products”, The Centre for Tobacco Control Research Core funded by Cancer Research UK, March 2012, p.5 - <http://cruk01.prod.acquia-sites.com/sites/default/files/Cancer-campaings-the-packaging-of-tobacco-products.pdf>

<sup>10</sup> Young, Stacey, Dobbins, Dunlop, Dessaix and Currow, “Association between Tobacco Plain Packaging and Quitline Calls: A Population-based, Interrupted Time-Series Analysis, *Medical Journal Australia*, Vol 200 (1), 2004, pp 29-32

<sup>11</sup> Joossens, “Smuggling, The Tobacco Industry and Plain Packs”, *Cancer Research UK*, November 2012, pp 1-7



## Public Hearings on the Public Health (Standardised Packaging of Tobacco) Bill 2013 Opening Statement

Dr Anthony O'Regan,  
President the Irish Thoracic Society  
Consultant Physician, Galway University Hospital

6<sup>th</sup> February 2014

Priory House, 19 Priory Hall, Stillorgan, Co Dublin Tel 01 2835252 Fax 01 2835251  
Email [info@irishthoracicsociety.com](mailto:info@irishthoracicsociety.com) Web [www.irishthoracicsociety.com](http://www.irishthoracicsociety.com)

**President** Dr Anthony O'Regan **Vice President** Dr Jacqueline Rendall **Past President** Dr Edward McKone  
**Treasurer** Dr Ross Morgan **Secretary** Dr Aidan O'Brien **Assistant Secretary** Dr Dubhfeasa Slattery  
**Charity No.** CHY17510 **Company Registration No.** 462103

## **1. Introduction**

Good Morning Mr Chairman and Members of the Committee. Thank you for inviting us here today to share our views on The Public Health (Standardised Packaging of Tobacco) Bill 2013.

Over 5200 people die in Ireland each year from tobacco related disease<sup>1</sup>. The Irish Thoracic Society represents respiratory healthcare professionals throughout Ireland – our members include physicians, thoracic surgeons, clinical nurse specialists, scientists, and physiotherapists. Every day of our working lives our members meet patients who are seriously ill and dying because of tobacco – this includes smokers and ex-smokers as well as non-smokers who have been exposed to high levels of tobacco smoke in their home or work environment. Lung conditions such as COPD and lung cancer are painful, debilitating and often fatal. They are also preventable and the most powerful form of prevention is ensuring that young people never take up their first cigarette. That is why this legislation is so important - it represents a major step towards the government's vision of a tobacco free Ireland by 2025, it builds on previous initiatives and will put Ireland to the forefront of global health protection.

## **2. Tobacco and Lung Disease in Ireland**

This legislation is vital for respiratory health in Ireland. We have high rates of lung disease compared to the European average. In Ireland lung diseases account for 20% of all deaths, it is the 3<sup>rd</sup> most common reason for acute hospital admission, and is the most common reason to visit a GP.<sup>2</sup>

Smoking is the major preventable cause of respiratory illness. Lung disease accounts for over 60% of the 5,200 deaths from smoking annually in this country. Specifically each year in Ireland 1500<sup>3</sup> people die from COPD (giving us one of the highest death rates for the disease in Europe) and 1700<sup>4</sup> people die from lung cancer. Smoking causes over 85% of these diseases. Smoking has also been shown to exacerbate many other lung diseases including asthma, pulmonary fibrosis, cystic fibrosis, and even tuberculosis. Taken with its role in non-respiratory diseases, including cardiovascular disease, other cancers, and osteoporosis, tobacco kills 1 out of every 2 smokers.

### **3. Smoking and Lung disease in specific population groups.**

Tobacco use is among the biggest causes of health inequalities. Smoking rates are higher in disadvantaged groups and communities, and this is where the burden of tobacco related disease is highest. Tobacco accounts for up to half the difference in life expectancy between the richest and the poorest groups in our society.<sup>5</sup> Not surprisingly these differences are strikingly reflected in the prevalence and outcomes of respiratory disease. For instance the mortality rates for lung cancer and COPD are over two-fold higher in the lowest socioeconomic class.<sup>2</sup>

Another significant trend is the increasing prevalence of smoking related lung disease in women. It is apparent that from the 1970s onward that the tobacco industry targeted advertising at women. The fallout from increased smoking in women is now apparent. In COPD there is a convergence of deaths and hospital in-patient discharges for men and women that mirrors the trends in female smoking rates.<sup>6</sup> In lung cancer there is a 0.5% increase in female mortality each year and lung cancer is now the main cause of cancer death in women outnumbering breast cancer deaths by 6%.<sup>4</sup> Lung cancer incidence and mortality in Irish women is amongst the highest in Europe.

### **4. The tobacco time lag**

Smoking causes damage to the lungs long before it results in clinically symptomatic disease. Although the majority of people diagnosed with smoking related lung conditions are of middle or older age, most will have started smoking in adolescence or early adulthood. In fact 80% of smokers start and become addicted before the age of eighteen.<sup>7</sup> This illustrates the importance of early interventions to reduce smoking rates among our teenagers and young adults to ensure healthier life expectancy for our population into the future.

We know that legislation works. Over the last decade Ireland has made great strides in the 'denormalisation' of smoking thanks to the workplace ban, the ban on advertising and on point of sale display. The success of these initiatives is best illustrated by the reduction in smoking in both children - from 21% in 1998 to 12% in 2010, and in adults - from 31% in 1998 to 24% in 2010. We must continue on this path and indeed accelerate our efforts to ensure that today's generation of children and teenagers do not become tomorrow's COPD and lung cancer patients. The introduction of standardised packaging together with graphic images represents a significant step in achieving this goal.

## **5. Standardised packaging works**

It is clear that marketing works. It has worked on behalf of the tobacco industry to the detriment of the lives of 100s of thousands of Irish men and women throughout the 20<sup>th</sup> and into the 21<sup>st</sup> century. We now have an opportunity to remove the last vestige of marketing power that the tobacco industry holds and we must grab it with both hands.

Australia introduced standardised packaging 1 year ago. While it will take time to fully measure the effects of this policy, preliminary evidence shows that compared with smokers who are still using branded packs, the plain pack smokers are over 66% more likely to think their cigarettes are of poorer quality and less satisfying, and 81% more likely to think about quitting on a daily basis.<sup>8</sup> Plain packaging has also been shown to reduce pack and product appeal; increase impact of health warnings; and to reduce confusion about product harm that can result from branded packs.<sup>9</sup> Most importantly, research indicates that standardised packaging will reduce the appeal of tobacco products to young people, who are the primary target for tobacco industry marketing.<sup>10</sup> The campaign in Australia waged by the Tobacco industry challenging this policy is clear evidence of the perceived impact of branding on target populations by these companies.

## **6. Conclusion**

In conclusion, the Irish Thoracic Society would like to commend the government for its commitment to the introduction of standardised packaging and all parties for their support of this policy. This again places Ireland as a leader in the global battle to protect public health from the effects of tobacco. In particular it puts Ireland to the forefront in the implementation of our legal obligations under the UN treaty – The World Health Organisation’s Framework Convention on tobacco Control. By setting an example to other European countries the benefits of this legislation will not be confined to our shores alone.

In order to ensure that this and future generations of Irish children, particularly those from underprivileged areas, can look forward to long healthy lives free of tobacco related illness, we urge the speedy adoption of this legislation by the Houses of the Oireachtas.

<sup>1</sup> Department of Health (2013). *Tobacco Free Ireland*

<sup>2</sup> INHALE Report, Irish Thoracic Society 2008

<sup>3</sup> National Clinical Programme for COPD

<sup>4</sup> Cancer in Ireland 2013: Annual report of the National Cancer Registry. National Cancer Registry Ireland.

<sup>5</sup> [http://ash.org.uk/files/documents/ASH\\_82.pdf](http://ash.org.uk/files/documents/ASH_82.pdf)

<sup>6</sup> O'Farrell A, De La Harpe D, Johnson H, Bennett K. Trends in COPD mortality and in-patient

<sup>7</sup> Office for Tobacco Control (Nov. 2006). *Children, Youth and Tobacco: Behaviour, Perceptions and Attitudes.*

<sup>8</sup> Wakefield M et al (2013); Introduction effects of the Australia plain packaging policy on adult smokers: a cross-sectional study; *BMJ Open* 2013-003175

<sup>9</sup> Moodie C, Stead M, Bauld L, McNeill A, Angus K, Hinds K, Kwan I, Thomas J, Hastings G, O'Mara-Eves A (2012) *Plain tobacco packaging: a systematic review.* London: Public Health Research Consortium.

<sup>10</sup> Ignite Research (2013) 'The impact of tobacco branding and standardised packaging on young people'. Commissioned by the Irish Heart Foundation and the Irish Cancer Society

**Institute of Public Health in Ireland**  
**Opening Statement to Joint Oireachtas Committee on Health & Children**

**Public Hearings on the Public Health**  
**(Standardised Packaging of Tobacco) Bill 2013**

**6 February 2014**



**Institute of Public Health in Ireland**

5th Floor  
Bishop's Square  
Redmond's Hill  
Dublin 2

Tel: 00353 1 478 6300  
Fax: 00353 1 478 6319

Forestview  
Purdy's Lane  
Belfast  
BT8 7ZX

Tel: 0044 28 9064 8494  
Fax: 0044 28 9069 4409

[www.publichealth.ie](http://www.publichealth.ie)

**Contact persons:**

Mr Owen Metcalfe – Chief Executive  
Email: [owen.metcalfe@publichealth.ie](mailto:owen.metcalfe@publichealth.ie)  
Tel: 00353 1 478 6300

Dr Helen McAvoy – Director of Policy  
Email: [helen.mcavoy@publichealth.ie](mailto:helen.mcavoy@publichealth.ie)

Tel: 00353 1 478 6300

Dr Elizabeth Mitchell – Director of Development  
& Capacity Building  
Email: [elizabeth.mitchell@publichealth.ie](mailto:elizabeth.mitchell@publichealth.ie)

Tel: 0044 28 90648494



**Institute of Public Health in Ireland**  
**Opening Statement to Joint Oireachtas Committee on Health & Children**

Thank you chair and committee members for the invitation to address you today. IPH is an all island body established to achieve greater cooperation for public health on the island. Tackling health inequalities, a situation where poorer people experience poorer health outcomes than better off people is core to our work. Higher smoking prevalence rates amongst lower socio-economic groups mean this Bill is of particular importance to us. IPH was pleased to forward a written response in advance and our oral presentation will present key issues from the paper.

IPH strongly supports the introduction of standardised packaging under the Public Health (Standardised Packaging of Tobacco) Bill 2013.

IPH has a strong track record of work on tobacco and our latest publication with the Tobacco Free Research Institute is “A tobacco free future – an all island report on tobacco, inequalities and childhood”. The introduction of this Bill is necessary to support Ireland’s goal of being tobacco free by 2025 and is an important stepping stone for our children on the road to a tobacco free future. Smoking is a major public health issue, with around 1 million people in Ireland currently smoking resulting in a cost of 6 – 15% of the total health budget being spent on treating tobacco related disease.

A key message is that tobacco control works. A trend of lower uptake of smoking among young people in Ireland is consistent from 1998 to 2010 and is the direct result of a stepwise introduction of tobacco control measures which have succeeded in reducing the appeal and accessibility of smoking to young people. Such measures have included banning of advertising, removal of point of sale display and the introduction of smoke-free environments in workplaces and public spaces. International evidence shows that the more comprehensive the basket of tobacco control measures, the better the results - standardised packaging is a logical progression for policy in Ireland.

Another key message is that standardised packaging works. Systematic reviews consisting of 37 studies identified from screening 4,518 citations addressing the evidence on standardised packaging of tobacco concluded there are strong grounds for believing that current packaging glamorises smoking and that tobacco products packaged in a standardised colour, typeface and form would:

- improve the effectiveness and salience of health warnings
- reduce the misconception of relative harmfulness of various brands
- reduce the overall appeal of smoking.

We believe that reducing the appeal of tobacco to young people is essential and studies have found that plain packaging was considered a deterrent by younger respondents. It projects a less desirable smoker identity and further denormalises tobacco as a regular consumer product.

We view this development as an evidence-based, logical, cost-effective and necessary response to the tobacco epidemic in Ireland. The World Health Organisation has estimated that 20% of all mortality among males and 16% of all mortality among females in Ireland is attributable to tobacco. The current burden of tobacco-related disease, disability and death on this island is unacceptable. There is no age group, no social group and no family in this State that has been untouched by the loss of a loved one or friend through tobacco-related disease.

Over the last decade, Ireland has been successful in improving life expectancy. Many more people can look forward to living into their 80's and beyond. However, this gift comes with an additional responsibility and that is to ensure that those extra years are spent in good health and as free of disability as possible. Successful tobacco control is an imperative if the health system is to meet the challenge of rising chronic disease and disability into the future. Reducing smoking is necessary as a means to end human suffering but it is also necessary to contribute directly to better population health, a cornerstone of human capital and a driver of economic prosperity and growth.

To be really successful in the most cost-effective way possible, tobacco control must extend beyond the use of health education and smoking cessation approaches. It must include evidence-based approaches to reducing the appeal and accessibility of tobacco products to young people and to denormalise smoking in society.

The development of this Bill is in line with current tobacco control policy and Ireland's commitments as a signatory to the Framework Convention on Tobacco Control (World Health Organization, 2003). The move towards standardised packaging of tobacco is now beginning to gain momentum across Europe and globally. In the UK in 2012 a consultation on standardised packaging showed consistent and strong support for standardised packaging by all parties with a declared interest in public health. As an all-island body we welcome a harmonised evidence based approach to tobacco on the island of Ireland. In this regard we note the passing of a Legislative Consent Motion in Northern Ireland this week, whereby the Northern Ireland Assembly agreed that Northern Ireland could be included in amendments to the UK Children and Families Bill which includes standardised packaging, as a step in the right direction.

Your support for this Bill, which represents a significant and necessary step forward for tobacco control nationally and internationally will help to retain Ireland's reputation as a world leader in tobacco control. This measure will contribute to the goals of the public health policy "Healthy Ireland- A Framework for Health and Wellbeing" to increase the proportion of people who are healthy at all stages of their life, to reduce health inequalities and to protect the public from threats to health and wellbeing.

Thank you chair and committee members for your attention.

## Statement to the Oireachtas Joint Committee on Health and Children on Outline Heads of the Public Health (Standardised Packaging of Tobacco) Bill.

Dr Pat Doorley, RCPI

06 Feb 2014

Tobacco is a lethal, addictive drug that kills when it is used as it is supposed to be used. One out of every two people who smoke long term will be killed by tobacco. *Tobacco Free Ireland*, the first policy document to be published in the context of 'Healthy Ireland', the Government's overall policy to promote the health and wellbeing of the nation, aims to reduce smoking prevalence in Ireland to 5% of the population, from its current level of 22%.

Data presented by RCPI's Faculty of Public Health Medicine at its Winter Scientific Meeting in 2011, and referenced in *Tobacco Free Ireland* highlighted that tobacco use is the leading cause of preventable death in Ireland. Each year at least 5,200 people die from diseases caused by tobacco use, representing approximately 19% of all deaths.

In addition to the health costs - which are experienced by both smokers and by exposure to second hand smoke, the high economic cost of smoking is also an imperative for action. Irish health expenditure on smoking related diseases was estimated at €500 million in 2009, and the cost of premature mortality was estimated at €3.5 million in the same year.

Two of the most recent and relevant pieces of research on plain packaging are systematic reviews carried out by the Centre for Tobacco Control Research at the University of Stirling (Moodie reports). The review published in 2013 is an update to a 2012 systematic review carried out by the same group examining the potential impacts of plain packaging. In both reviews, impacts were analysed under the following categories, based on potential impacts identified by the WHO Framework Convention on Tobacco Control:

- Appeal
- Perceptions of harm
- Salience and effectiveness of health warnings

The 2012 review which examined 37 studies stated the following:

*" This review found that there is strong evidence to support the propositions set out in the Framework Convention on Tobacco Control relating to the role of plain packaging in helping to reduce smoking rates; that is, that plain packaging would reduce the attractiveness and appeal of tobacco products, it would increase the noticeability and effectiveness of health warnings and messages, and it would reduce the use of design techniques that may mislead consumers about the harmfulness of tobacco products. In addition, the studies in this review show that plain packaging is perceived by both smokers and non-smokers to reduce initiation among non-smokers and cessation-related behaviours among smokers".*

The subsequent systematic review published in 2013 looked at 17 studies from a number of countries including Australia where plain packaging was introduced in December 2012. The studies reviewed related to both adults and children. The authors found that the evidence from these

studies suggests that plain packaging would reduce appeal, enhance salience of health warnings on packs and would address the use of packaging elements that mislead smokers about product harm.

An Australian study conducted as plain packs were being introduced, compared the views of smokers still using branded packs with the views of smokers who had switched to plain packs. Those using plain packs were more likely than those still using branded packs to perceive that their cigarettes were lower quality and less satisfying than they had been a year ago.

This would seem to back up the findings of an online survey of adult smokers in Australia conducted before the implementation of plain packs and larger front of pack pictorial warnings. The survey found that plain packs were consistently associated with lower brand appeal, and that the plainness of the pack had more of a negative impact on brand appeal than did increasing the size of pictorial warnings.

In addition, The Irish Cancer Society and The Irish Heart Foundation conducted a national study on the effects of plain packaging among 15-16 year olds. The study found that:

- Cigarette packaging that is viewed as appealing has the power to generate buzz and motivate purchase whereas packaging that is seen as 'unattractive' or 'old fashioned' is immediately rejected.
- Teens felt that the positive brand attributes of appealing packs (fun, glamour, masculinity, luxury etc.) can transfer to those who smoke them.
- For teens cigarette packaging is not just about the look and feel of the pack, it is about making the smoker 'look' and feel better about themselves and their status.
- Plain packaging was immediately rejected by teens who expressed concerns about the look and feel of the packaging as well as the perceived users, both of which are completely at odds with the image teens would like to portray of themselves.
- Overall, teen smokers claimed they would quit when plain packs were introduced and non/light smokers said they were unlikely to seek or continue to trial cigarettes.

Health warnings:

Finally it is worth mentioning that a study by Geoffrey T Fong, David Hammond and Sara C Hitchman (2009), which is cited by The World Health Organisation, has found evidence that Health warning labels on tobacco products constitute the most cost-effective tool for educating smokers and non-smokers alike about the health risks of tobacco use, while they also find that pictorial warnings are more successful at achieving this. The findings in this report confirm that pictorial warnings are effective and should be introduced on all cigarette packaging. This is relevant in relation to Head 6 - Labelling Requirements for Retail Packaging of Cigarettes.

There are a number of items we would like to see included in the final legislation:

- Size and dimensions of packs should be specified in the Bill (Head 5).
- The term 'dull and drab colour' requires more definition and should take into account recent research on colour and harm perceptions (Head 5).
- Ambiguity on the use of variant names on packaging should be addressed (eg whether 'menthol', 'light' etc may be used in variant names).
- On the colour of the 'brand text', 'business or company name or variant name', we recommend that the most recent research regarding colour and perception be used to inform these regulations.

The Faculty of Public Health Medicine fully supports the approach set out in *Tobacco Free Ireland* and it is our view that implementation of this Bill, coming as it does, in the context of other strong policy measures in recent years, will bring us one step closer to the day when children in this country can grow up free from tobacco addiction.



**Oral Presentation to the Joint Oireachtas Committee  
on Health and Children in respect of the Public Health  
(Standardised Packaging Bill) 2013**

*Presented by: Professor Luke Clancy*

Chairman and Members,

I wish to thank you and members of your committee for affording the TobaccoFree Research Institute Ireland an opportunity to make an oral presentation on this important public health legislation. This legislation is a further manifestation of the importance this government places on Tobacco Control as a public health intervention. Standardised Packaging of Tobacco Products is an important tool in getting our young people not to start smoking and also an encouragement for all to understand the harm that smoking is doing and to realise that longer and healthier and more prosperous lives are possible without tobacco.

I represent the TobaccoFree Research Institute Ireland (TFRI), which forms a transdisciplinary academic community around the issue of tobacco control and supports the development of a tobacco free society by engaging in research in all aspects of tobacco from a public health perspective. TFRI is a limited company that was formed on the basis of a partnership between the Office of Tobacco Control and ASH Ireland and its parent organisations The Irish Cancer Society and The Irish Heart Foundation. It was set up by the Department of Health and Children in 2002 when Deputy M. Martin was Minister for Health and Children on the recommendation of the Government Report: *Towards a Tobacco Free Society*. It was part funded by the DOHC until stopped in 2007 by Minister M Harney.



I am at present Director General of the **TobaccoFree Research Institute Ireland** and a Consultant Respiratory Physician who has treated patients with smoking induced lung disease all my clinical life. In particular I have treated thousands of patients with Lung Cancer, COPD, Asthma and Tuberculosis, diseases strongly associated with smoking. I also run the only consultant **physician led smoking cessation clinic** in Ireland at St James' Hospital.

My major research contributions have been in Air Pollution, Tuberculosis, Asthma, Lung Cancer and Smoking Related Diseases. I reported the increased **mortality from the Dublin smog in 1982** at a time when it had been assumed that smog, consisting mainly of increased particles, was only a nuisance. Despite industry and scientific opposition, I campaigned through the 1980s for a coal ban and was rewarded in 1990 when we saw **respiratory mortality decline by 20%** when the ban on coal was introduced. My Asthma work has included the **International Survey on Asthma and Allergy in Children (ISAAC)** that showed that Ireland has one of the highest asthma rates in the world in children and that smoking in children has progressively declined over the last 15 years.

TFRI research on Tobacco Control has included most aspects of the health effects of the Irish smokefree law as well as the decreases in secondhand smoke exposure. As coordinator of the **FP7 research project PPACTE** (Pricing Policies and Control of Tobacco in Europe) I led an international team of research scientists including health economists, epidemiologists, oncologists, public health and tobacco control experts to make recommendations to the EC on tobacco price and tax policies. I am a member of the European Network for Tobacco and Smoking (ENSP) and served on its executive for 4 years and was **President of the ENSP from 208-2010**. I have also been Chairman of the European Respiratory (ERS) Tobacco Control Committee for 3 years. Perhaps my most relevant role for this committee is that I was the Chair and Spokesman for the informal Health Alliance representing 1 million workers in Ireland formed to support the introduction of the **Irish Smokefree Law** on 29<sup>th</sup> March 2004.

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My current focus is on the prevention of smoking related diseases by research. I hope that TFRI can continue to make a significant contribution to Tobacco Control by providing the evidence base to underpin the Irish Government's Policy on the creation of a Tobacco Free Ireland including Plain Packaging. In that regard I will concentrate mainly on the research findings which provides the basis for the action that we urge you to take as legislators. I'm hoping that it may be helpful if I put the proposed legislation in the broader Tobacco Control context.

***Health effects of tobacco:***

The submissions from my colleagues from Ash, ICS, IHF, Asthma Society, COPD Support, ITS, IPH and others have stressed the terrible toll of smoking-related-disease in terms of mortality and morbidity. Also in terms of chronic diseases you will have heard of the personal and societal costs, both social and financial, borne because of tobacco. The Institute of Public health has stressed the very important part tobacco plays in causing Health Inequalities in Children and Adults.

I feel it is still important I to restate that tobacco use causes heart disease, cancer, stroke and numerous respiratory diseases COPD, Asthma, Lung Cancer and respiratory infections including TB. The diseases in the womb and childhood are also numerous and include complications of pregnancy, low birth weight and most notably sudden infant death syndrome, also ear infections and asthma. Many of these are explored further in our written submission.

***Illicit Trade:*** One of the claims by the Transnational Tobacco Industry that one already hears is that this legislation will lead to an increase in illicit trade. It is obvious that measuring illicit trade is not easy and not entirely reliable. Still there are established ways of making estimates. These include measuring the total tax take from sale of tobacco, estimating the volume of tobacco consumed based on prevalence of smoking, surveying the population with questions on illicit



trade, asking smokers to 'show their packs' and examining it for different features collecting discarded cigarette packs and examining these in the same manner.

We have studied illicit trade in Europe and found that what the industry or their agents claim is at variance with what we found particularly in the case of Ireland. We found e.g. that 4.6 % of packs were identified as illicit and 10.3% of packs as non-domestic duty paid (14.9%). The KPMG figure was nearly 20%. We have described our methods and our publications have been peer reviewed and are listed in our submission to this committee. The methods used by industry are never fully explained and their findings never peer reviewed. I therefore advise strongly that results from any source which does not fully reveal their methods and allow peer review should not be accepted by you.

### **What works in Tobacco Control?**

There are a number of interventions which the WHO and all national and international health bodies recognise as being **scientifically proven to be effective and cost effective in Tobacco Control (TC)**. These are:

- Price
- Banning advertising of Tobacco
- Restriction of the sale of tobacco to children
- Smokefree Legislation-regulating exposure to Secondhand Smoke
- Regulating the packaging and labelling of tobacco products
- Usage of Mass Media to promote a life free from tobacco
- Smoking cessation services.



With regard to children it has been shown that what works for adults also works for children. School based programmes have not been shown to work in this country but can have a beneficial effect if carefully structured, appropriately funded and integrated with national and, particularly, community linked TC interventions. That is not to say that accurate detailed information is not important to prepare the ground for all TC interventions such as Plain Packaging but information alone does not reduce prevalence of initiation.

In international studies price is the most important measure in tobacco control and we have studied the role of different TC strategies in Ireland using the SimSmoke model and showed that in Ireland too price has been the most successful tool in **reducing prevalence of smoking from 34% in 1998 to 26% in 2010, a 22% relative reduction.**

Further details, including full references, are available in the written submission.

**Evidence from research on the efficacy of plain packaging:**

To date, there are no peer reviewed research papers from Ireland on the possible benefits of Plain Packaging.

International Plain Packaging research over the past 10 years has shown that PP does matter. The peer-reviewed evidence is summarised in our written submission but very briefly –plain packs are **perceived as less attractive, of poorer quality, worse tasting** and cheaper and perhaps more importantly for children **less cool, less sophisticated**. Plain packaging typically increases one's ability to **recall health warnings** and that the type, size, and position of health warning impact on recall ability. Plain packaging helps to prevent the multinationals tobacco companies from using misleading descriptors. PP prevents the use by the manufacturers of words such as 'smooth' or 'light' which have the potential to mislead consumers with regards to the harmfulness of the



cigarettes. The research also shows that lighter coloured packages are perceived as less harmful than darker packages or plain packages.

You will have heard from a previous presentation that an Irish Ipsos/MRBI public opinion poll of adults in Ireland is strongly in favour of plain packaging. When we investigated Smokefree Legislation we found support for the legislation before the law was introduced was strong but also that it increased after the introduction of the legislation and I expect that this will also occur with this proposed legislation. However it is also clear from the Ipsos/MRBI poll that the public is unsure how the legislation will achieve its aims. This highlights the need for planned implementation of the legislation and focused independent monitoring of the resulting effects of the legislation.

We strongly recommend that that you ensure that this legislation is not only introduced but that it be given the resource to ensure appropriate research is performed to measure its effectiveness and meet the predictable challenge of a malevolent industry which will likely claim to have negative data.

TFRI commends the government for its commitment to the introduction of Standardised packaging and for securing all parties support of this policy. And in particular I would like to congratulate Minister James Reilly who has restored momentum to the legislative approach to Tobacco Control in Ireland and made a major contribution to EC Tobacco Control where his work on the Tobacco Products Directive (TPD) has greatly enhanced Ireland's EC standing. As you will know during Michael Martin's time as Minister for health Ireland's TC standing was at its highest with the introduction of Smokefree Legislation, the setting up of the Office for Tobacco Control (OTC) and our own Research Institute. During ex-Minister Mary Harney's tenure we lost TC momentum to the amazement of our international colleagues who are now once again looking to you for leadership in this battle to protect our citizens from prolonged chronic diseases and

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premature death. I have every confidence you will give this leadership and that our children and future generations of Irish men and women will live longer and healthier lives free from the profit driven scourge of tobacco related disease. You can do this by ensuring speedy implementation of this legislation but also by making sure that Ireland persists in using all the other TC interventions that scientific research has proven to be effective and by supporting the continued monitoring of the health and social effects of these interventions through independent scientific research.

Thank you.

# **Submission to the Joint Committee on Health and Children**

Thursday 06/02/2014

by

*Dr Finbarr O'Connell*

*Consultant Respiratory Physician*

*St James's Hospital*

*member, Medical Committee, Irish Cancer Society*

*member, Irish Thoracic Society*

Your Ref 31/H&C/06/B/2014/301

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## **1. Introduction and Summary**

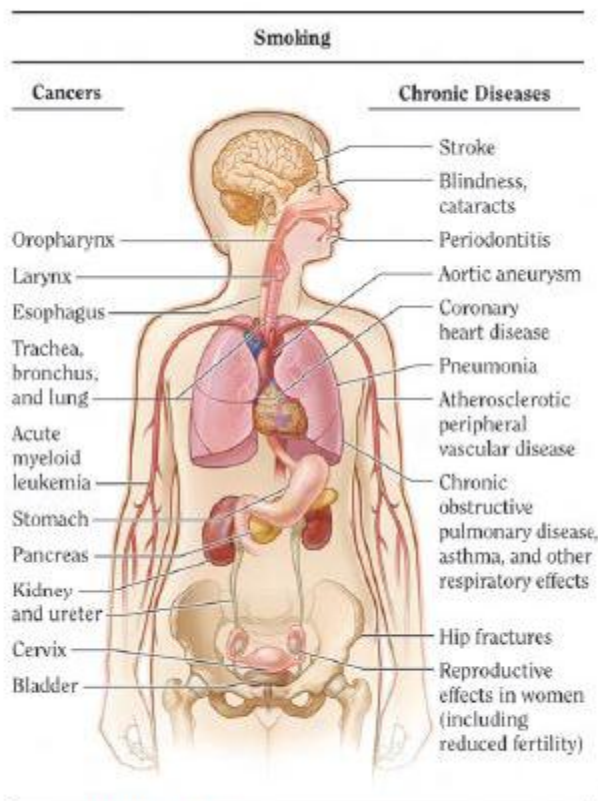
- Smoking is the greatest single preventable cause of death and illness in Ireland and worldwide.
  - Any legislation or measures which assist in “de-normalising” smoking should be supported.
  - Attractive packaging plays an important role in enticing young people to take up smoking.
  - Plain packaging with graphic health warnings help encourage smokers to try to quit and discourage young people from taking up smoking.
- 
- Irish Politicians have shown global leadership in the area of smoking legislation
  - This bill represents an important further step on the road

## **2. Adverse Health Effects of Smoking**

Smoking causes

- over 6 million Deaths per year worldwide
- around 7,000 Deaths per year in Ireland

1 in 2 long term smokers die prematurely from smoking-related disease  
The average loss of life in these people who die prematurely is 16 years



Source: USDHHS 2004, 2006.

Adverse Health Effects of Smoking include –

### **Lung Cancer**

- Smoking causes 95% of Lung Cancers in Ireland
- Lung cancer risk in smokers versus non-smokers is 20 to 1
- Lung cancer causes more deaths than breast cancer

### **Other cancers**

- Upper airway cancer – nose, lip, mouth, throat, larynx
- Oesophageal cancer
- Stomach cancer
- Pancreas cancer
- Kidney cancer
- Bladder cancer
- Cervical cancer
- Bone marrow and blood cancer

### **Chronic Obstructive Pulmonary Disease (COPD)**

- 1 in 4 long-term smokers will develop COPD (conservatively, 1 in 20 Irish people)
- COPD causes severe chronic morbidity, with breathlessness, frequent recurrent respiratory infection, frequent hospital admission and poor quality of life
- COPD ultimately leads to respiratory failure requiring long term Oxygen therapy and premature death

### **Ischaemic Heart Disease (IHD) (Coronary Artery Disease)**

- The relative risk of developing heart disease in smokers vs non-smokers is about 5 to 1
- IHD causes chest pain, angina, heart attack, breathlessness and rhythm disorders of the heart
- IHD ultimately leads to heart failure and premature death

### **Cerebro-vascular disease (Stroke)**

#### **Peripheral Vascular disease**

#### **Adverse effects in Pregnancy and Childbirth**

- Increased rates of pre-term delivery
- Increased rates of stillbirth
- Lower birth weights

#### **Reduced Potency and Fertility in Men**

#### **Osteoporosis (thinning of the bones)**

#### **Dental and gum disease**

#### **Cataracts**

#### **Poor control of diabetes**

*Quitting Smoking reduces the risk of all of the above*

### **3. Health and Other Benefits of Smoking**

NONE



#### **4. References**

- Irish Cancer Society
  - Irish Heart Foundation
  - Irish Thoracic Society
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## **Proposed RGDATA Submission to Joint Oireachtas Committee on Health & Children in relation to The Public Health (Standardised Packaging of Tobacco) Bill 2013**

RGDATA is the representative body for the independent retail grocery sector in Ireland. We represent the owners of shops, convenience stores, forecourt stores and supermarkets many of whom are licensed to sell tobacco products to members of the public in the normal course of their business.

RGDATA has no funding initiatives in place with the tobacco industry however we do accept trade advertising from tobacco companies for our member magazine.

RGDATA has adopted a clear position on the subject of tobacco control measures introduced by the State in the interests of public health. For as long as tobacco is a lawful product for retail sale in the State, RGDATA members who are licenced to sell such products are committed to operating subject to the controls, regulations or restrictions that may be imposed by the State.

RGDATA does not wish to make any substantive challenge to the policy objectives underpinning the Bill. However we have been requested to present to this Committee on the impact of the proposed bill from a retailer's perspective and there are three points in relation to the Heads of the Bill which we wish to bring to Committee's attention:

### **1. General observation**

Our first point is a general observation about the need for enforcement regarding the illegal trade in tobacco in Ireland. RGDATA members are compliant and respect the legal obligations imposed on them for the sale of tobacco products. It remains a matter of concern that notwithstanding their compliance, there is a substantial level of illegal sales of tobacco products in Ireland through the black market. If new tobacco control measures are to be impactful and have credibility, it is important that they are accompanied by a renewed commitment to stamping out the illegal sale of tobacco products. There is nothing more disheartening and disillusioning for a compliant retailer than to see another party flout the law through the sale of contraband, with apparent impunity. Strong enforcement action against black market and contraband sales remains a key factor in proper levels of tobacco control.

### **2. Head 4 (1)**

This head of the Bill provides that the new measures will only apply to tobacco products which are put on the market for retail sale in Ireland. Presumably this means that those purchasing tobacco products outside the jurisdiction and bringing them into the State will not be subject to this new law – in particular people buying Duty Free Cigarettes. Given the policy objectives which the Bill is seeking to address, why does the legislation not go further and prohibit the importation into the State of cigarettes which do not comply with the packaging restrictions contained in the Bill above a certain volume level per person? If the object of the legislation is to render the sale of tobacco products as less attractive, surely this principle should apply regardless of where the Irish based smoker acquires the tobacco products for consumption in the State?

### **3. Head 5 (4)**

A very practical concern which has been raised by retailers in relation to the measures contained in the Bill concerns the risks associated with staff stocking different brands of cigarettes in the

gantries for retail sale. As the Committee is aware cigarettes are sold from closed containers in Irish shops. However at present a retailer or the staff can clearly distinguish between the different brands of cigarettes when stocking the packages in the gantry for sale. With plain packaging this will be very difficult and there will be a real risk that in a busy shop environment, the wrong brand could be stocked in the wrong holder or container given the absence of clear distinguishing marks. This could mean that a customer is supplied the incorrect brand by accident, given that the packet of cigarettes is usually automatically retrieved from a closed gantry container with the brand sight unseen by the retailer or the customer. To address this concern, RGDATA respectfully suggests that consideration be given to some small distinguishing mark being applied to the bottom surfaces of the pack. This could be simple and discrete colour code to distinguish one brand from another. This could be done in a way that would not be obvious to the consumer, nor make the packaging more attractive or appealing. From a retailers' perspective it would reduce the risk of consumers being misled to purchase a brand of tobacco that they did not choose.

These are our observations on the proposed Bill. Thank you for the opportunity to make this brief presentation.

Tara Buckley  
Director General  
Retail Grocery Dairy & Allied Trades Association  
Local Shops – Local Communities

## **Presentation by Ibec to Oireachtas Committee on Health and Children**

Thursday February 6 11.45am

### **INTRODUCTION**

Good morning. On behalf of the membership of Ibec I would like to thank the Committee for the opportunity to present to you today.

Plain packaging of tobacco is a sensitive subject. You have heard and will hear many views on the topic. I am here today to explain the view of Irish business.

As you may know Ibec represents Irish business; indigenous and foreign owned, multinational, big and small, spanning every sector of the economy and includes tobacco companies amongst our membership.

At the outset, we wish to make clear that Ibec supports the objective of the Minister, and this Committee, to protect public health. We have consistently stated that measures to improve public health can bring with them economic benefits. To this end, for example, we supported the introduction of the workplace smoking ban in 2004.

However, it is incumbent upon Government, especially at times of extreme economic difficulty, to ensure that the measures it takes are balanced and do not bring with them unintended consequences that adversely impact upon business and employment. We believe the plain packaging proposals would have such consequences.

## **THE BILL ITSELF**

We believe the Bill as outlined will have substantial negative consequences well beyond the sector directly concerned and affect owners of intellectual property. As such the proposal could affect the business community in general and not just the tobacco sector.

Of particular concern are proposals for standardised packaging of tobacco products which will remove all form of branding - trademarks, logos, colours and graphics. The brand name would be presented in a uniform typeface for all brands and the packs would all be in one plain neutral colour.

As stated in our submission to you, we are very concerned with the effect these proposals could have on branding rights by the removal of all forms of branding. Branding is a central part of how business

communicates with its customers. It provides consumers with information on everything from product characteristics to heritage allowing them to make informed purchasing decisions. It also allows product differentiation which drives competition and innovation.

Wide ranging restraints on the use of branding, including colours, distinctive pack and products sizes and shapes would set a dangerous precedent.

These proposals have the potential to significantly impact on the value and purpose of a company's intellectual property. They would cast doubt on Ireland's continued commitment to protection of property, in particular intellectual property and member state obligations under - Article 10(2)(3)(1) of - the Paris Convention for the Protection of Industrial Property.

In addition, companies that invest in Ireland, do so based on assumptions about, among other things, the standards of protection afforded to property, in particular intellectual property.

These measures, if adopted, would send an immediate signal to foreign countries and investors about the standard of IP protection in Ireland and about Ireland's continued commitment to the protection of property. The signal that it would send is that intellectual property protections are not nearly as solid as previously thought.

## **THE NEED FOR A REGULATORY IMPACT ASSESSMENT**

It should be noted that the Regulatory Impact Assessment Guidelines (RIA) published by the Department of the Taoiseach, stipulate that:

*'RIA[s] should be conducted at an early stage and before a decision to regulate has been taken. Ideally, RIA should be used as the basis for consultation.'* (Section 2.1, Page 5)

It is very concerning that a Regulatory Impact Assessment has not been published prior to a memorandum on the standardised packaging for tobacco products being brought to Cabinet and that the preparation of this legislation so far has not been in accordance with the RIA Guidelines.

Proposals for plain packaging legislation needed to be evidence based, proportional, respectful of intellectual property rights and take into account the growth and job creation prospects of the wider economy. The absence of a Regulatory Impact Assessment in this regard is stark.

## **CONCLUSION**

Thanks for taking the time to listen to me and I am happy to take any questions from the committee members.

**STATEMENT BY JOE SWEENEY, PRESIDENT OF THE NATIONAL FEDERATION OF RETAIL NEWSAGENTS (NFRN) IRELAND TO THE JOINT OIREACTHAS COMMITTEE ON HEALTH AND CHILDREN ON THURSDAY 6 FEBRUARY 2014 AT 11.45 AM**

Mr Chairman, Deputies, Senators:

Thank you for your invitation to address you this morning about the Public Health (Standardised Packaging of Tobacco) Bill 2013.

My name is Joe Sweeney and I am proud to be President of the National Federation of Retail Newsagents in Ireland. Founded in 1919, it is one of Europe's largest retail trade associations with 16,000 members throughout the UK and Ireland. The Irish branch of the NFRN is a membership driven organisation which represents 1,000 retailers across the Island of Ireland, including 500 stores in the Republic of Ireland.

In this statement today would like to draw your attention to some of our members' views and concerns.

At the outset, I would like to briefly address remarks made at your hearing last week by a representative of the Irish Heart Foundation who casually dismissed the concerns of retailers about the likely impact of this legislation as being of no merit. Retailers in Ireland are an aid to the Department of Health as they are the people that enforce Government's policies. I was heartened to hear Deputy Regina Doherty remark that retailers provide both employment for others and as well as themselves and this should be recognised across the committee. Equally important was Deputy Byrne's comment that it is 'all about Education'. This is a sentiment I completely agree with. I have four adult sons and neither they, nor my wife nor I smoke, this is despite having access everyday to our stock of tobacco. When my children were teenagers and at the most likely age to start smoking it was still legal to smoke in the workplace and the cigarette gantry's displayed the tobacco brand. Despite this and their ease of access they didn't start, simply because they were aware and educated on the dangers of smoking. They chose not to smoke as opposed to having the choice put on them and then rebelling against it.

Not in any way am I, or indeed NFRN Ireland pro smoking. Our members are in the front line of legal, heavily regulated tobacco retailing. It is offensive to me and other retailers that there is an incorrect and arrogant assumption that our questioning of this Bill is somehow a defence of the tobacco industry. We are trying to protect our own business interests and whilst the product remains legal we expect to be recognised as responsible retailers who are competing with a criminal underworld. We ask Government to support and protect our businesses and the jobs they represent and acknowledge that criminals will sell an illegal product to children; it is often sold by children to children. As supporters of Government's policies we ask for support in return.

NFRN Ireland contests and disputes the sentiment that plain packaging would reduce the appeal of tobacco and tobacco products as they are not on display here due to the display



ban. It is difficult to understand how the appeal of a brand can attract a smoker, when the product is not visible to him or her and the impulse purchase that might have been prompted by the sight of a product does not occur.

There is no hard evidence to suggest that oversized health warnings or plain packaging will reduce the amount of people currently smoking or those who start to smoke. The only supposed evidence from Australia given to this Committee during these hearings to date has been the tenuous argument that increased calls to a Quitline mean people will actually stop smoking. What the people who mentioned this study failed to point out is that it was undertaken during December & January, a time of year when calls to Quitlines would be expected to increase anyway as smokers make their New Year's resolutions.

Some organisations you have heard from, dismiss our contention that plain packaging will lead to increased illicit trade. If that is so, how do they explain the surge in illicit tobacco sales in Australia in the year since plain packaging was introduced there?

Furthermore, the TPD agreement reached at EU level will give the Department of Health all of the powers needed to tackle cigarette packaging. The TPD will already bring in measures such as 65% of cigarette packets given over to health warnings and outlaw packaging which the Minister for Health James Reilly has said is aimed at attracting young people such as "lipstick" shaped packs.

I want to summarise the key recommendations that NFRN Ireland would like this Committee to consider.

The first is that the Government should promote and endorse the use of electronic cigarettes as a weaning tool for those who wish to give up smoking. It is essential that these products remain on general sale and are not ever restricted to pharmacies. In order to increase the likelihood of a smoker choosing an alternative they must be readily available, the long opening hours of our members' stores supports this.

Secondly, education is key. Through education young people can make informed choices and avoid taking up a dangerous habit. NFRN Ireland would urge the Committee to examine the example of California and introduce a programme similar to the Tobacco Use Prevention Education (TUPE), which resulted in a dramatic decrease in the number of teenagers who started to smoke. The emphasis should be on stopping people from starting to smoke.

Three, NFRN Ireland has on many occasions highlighted the serious level of illicit trade in Ireland. We have put forward a number of potential solutions to various Oireachtas Committees, TDs, Senators and Councillors.

We submitted a proposal to the Minister for Small Business, John Perry TD on developing a smartphone app based on the Codentify software, which will allow consumers to verify that their tobacco products are legitimate. The Garda representatives here two weeks ago spoke positively about this. Such an app would provide law enforcement officials, where there is a suspicion that tobacco products are counterfeit or smuggled, with a simple and effective

tool for determining immediately whether or not this is the case. NFRN Ireland would be willing to pay for the introduction of this app to the Irish market.

Four, the sale of any tobacco products at a market or fair should be banned. To this end, the penalties available under the Casual Trading Act should be made as strict as those which exist under the Finance Acts. Equally landowners where illicit products are sold should be held accountable for the activity on their sites in the same way that retailers are held accountable.

Five, as Ireland is an island, our ports offer an easy means of bringing illicit tobacco into the country. In Ireland there are eight ports but only two mobile scanners meaning the majority of ports remain unmanned. All ports should have a permanent scanner and an investment would not only be self-financing but profitable.

These are all measures which NFRN Ireland believes the Committee should consider carefully as part of an integrated approach to tackling the issue of tobacco control across a range of fronts, rather than pursuing one single, unproven, high profile step such as plain packaging.

Thank you.

**Submission to Joint Oireachtas Committee on Standardised Packaging by Convenience Stores & Newsagents Association CSNA , Thursday 6<sup>th</sup> February 2014**

The CSNA welcomes the opportunity accorded to it to present our views to the Committee with regard to the Heads of Bill.

The WHO has published advice to Governments that they should enlist the support of civil society organisations, and specifically retail organisations when seeking to enact and enforce bans on Tobacco Advertising, Promotion and Sponsorship activities.

We make reference to this advice as it is our opinion that the authors of Tobacco Free Ireland, the Tobacco Policy Review Group elected **not** to consult any representatives of the 13,000 registered tobacco retailers during their deliberations. There is a reference within the report to consultation with stakeholders and CSNA would like to place on record that this consultation was incomplete and contrary to the advice of the World Health Organisation.

As the Review Group made a number of recommendations for legislative change, we believe that, in line with Cabinet Guidelines, and RIA (Regulatory Impact Assessment) should have been conducted by the Policy Review Group and provided alongside the Report which was adopted as Government Policy one month after its publication.

Neither the Committee nor any of the interested parties invited to make submissions on this Bill have had the benefit of an RIA to accompany the Heads of Bill, we consider this to be a significant deficiency in the consultative process.

This Bill, in style and purpose, owes much to the Australian Bill. We need to remind the Committee that a very comprehensive suite of measures were introduced alongside their Bill to provide for the desired outcome, increases in the already very significant reduction in smoking initiation and prevalence of their citizens.

These measures included;

- An annual increase over **each** of the following 4 years of a **25% increase in excises**
- The reduction of Duty Free Allowances from 250 cigarettes to 50 cigarettes
- Pictorial warnings, in existence since 2006 were **revised and enlarged**
- Aus \$85million for social media messaging
- Aus \$28million of this for high risk and disadvantage groups
- 100,000 scripts for nicotine patches
- Exemption from Sales Tax for NRT in non-pharmacy outlets
- Additional subsidies for lower strength NRT
- New penalties specifically for Tobacco smugglers
- Legislation enacted to restrict internet advertising of tobacco products.

We remind the Committee that smuggling to tobacco products in Australia was 4% in 2011

The Australian Government has committed to review the first 12 months since the introduction of these measures. The Head of the Preventative Health Taskforce, Professor Daube has been quoted on saying ‘I don’t think anybody reputable would make claims about adult prevalence until we have the next National Government run survey (ABC’ 7 News Jan 22<sup>nd</sup> 2014).

The CSNA requested sales information from our counterparts in Australia. This data (provided by retailers, not tobacco industry sources) showed that in the first 6 months of 2013, when compared with 2012, overall tobacco sales volumes had increased in the stores surveyed by 4.5% in units from 9.616million units sold to 10.047million units, and from Aus \$124.3million to Aus \$134.6million, an increase of 8.2%.

The worrying aspect of these figures, for Exchequer and retailers, was that there was a dramatic increase in the Value and sub Value categories which increased by 57% collectively in terms of volume, and a very significant additional 22% of sales in the Roll Your Own category. This coincided with decreases in the Premium and Mainstream ranges which decreased by 9.1%. Cigars both wet and dry declined by 90% and 32% in quantity.

Were these ‘down trading’ figures to be replicated in Ireland following the introduction of Plain Packaging, the effect would be significantly disadvantageous for our members but would have little or no measureable financial impact upon the multinational tobacco companies from whom we source our tobacco products.

This is due to the unique positions that the State has provided to these companies, courtesy of the Finance Act.

It is an offence for retailers to sell cigarettes above the Recommended Retail Price, this price is determined by the companies. Regardless of whether we purchase from the companies or are supplied by distributors or cash and carry’s (at higher wholesale prices) we **must** sell at RRP. The companies have subsidised and manipulated this RRP within the Value sector, have stimulated demand through a variety of activities, including ‘holding’ the RRP subsequent to Budget increase and are perfectly positioned to meet the expected additional demand for the Value sector range if plain packaging is implemented.

Retailers will find the wholesale prices will increase for this range yet, due to the unique situation that the Government have provided to these companies, they will be able to fix the RRP at existing levels.

We ask the Committee to consider a number of other matters that we have identified as weaknesses in achieving the dual purposes of reducing harm to children and preventing the continuation of the deception of existing smokers.

- There is an urgent need, not provided for in the Tobacco Free Ireland report, to outlaw proxy purchasing, i.e. the purchase of tobacco by an adult on behalf of minors. This is part of French Criminal Codes.
- We believe that society can register their disapproval of smoking by minors by mirroring our own laws on the attempted purchase and possession in a public place of alcohol and introduce similar prohibitions for tobacco products.

- If the Committee accepts the proposition that the usage by tobacco companies of various colours on their packaging is a subliminal attempt to deceive consumers into believing that one colour is 'lighter' or 'safer', then it is illogical to continue to permit these colours to be continued to be referred to on each occasion that the consumer requests such a product using that exact colour as the description for their purchase.
- We are also most concerned that there is no attempt by this Bill to dilute the effect that 'Duty Paid in another jurisdiction' products will have upon the public health policy of the State. Figures provided by the Revenue have indicated that 330million cigarettes and an unrecorded amount of RYO were imported 'legitimately' last year into the State. The presence of this very significant number of branded packs are in sharp contrast to the determination of the Australian Government to give their Bill the maximum level of effectiveness. CSNA urges the Committee to recommend to the Government that it takes appropriate action to reduce the Personal Allowance for Travellers entering the country, similar to the actions taken by Finland to defend their Public Health Policies.
- We would remind the Committee that the new EUTPD has increased the size of PHW to 65%; this is the same figure that is stipulated in this Bill. The TPD also provides for the elimination of the 'lipstick' packet that the Minister was justifiably outraged by.
- We believe that the Committee should recommend to the Department that they should consider increasing, over a 3 year period, the increase of the minimum age that young persons may legally purchase tobacco products from the existing 18 years to 21 years. This would extend protection against initiation into a cycle of sickness and ill health for those children currently aged 17 and under.

We have outline our objections and request for clarification on a number of aspects of this Bill

- We need to have a clarification of 'tobacco products' as the definition provided in this Bill is at odds with the PHTA 2002 Act.
- We cannot accept that retailers should be penalised on the double in being fined and taken off the register for and unspecified period
- Any implementation of this Bill should ensure full consultation with retailer groupings as well as Revenue to coordinate crediting etc.
- The absence of an offence for purchasing branded product by an individual, provided for in this Bill, is tantamount to facilitating receiving stolen goods.
- Retailers need to be permitted to engage in collective bargaining through their trade associations with suppliers. This would introduce a balance into what is now an uneven and unequal relationship. This is not only permitted but encouraged by the Australian Competition Authority
- Retailers need to be provided with assistance to prepare the ground for a Tobacco-Free society
- CSNA must request that this Bill be deferred until all of the above measures are put in place to protect children, the State, consumers and retailers.

## **Paul Candon, Retail Excellence Ireland – Statement to the Oireachtas Health Committee**

Thank you Mr. Chairman and Committee members for the opportunity to participate here today.

I am here in my capacity as a Retail Excellence Ireland Board member and also as Marketing and Corporate Services Director at Topaz Energy.

Retail Excellence Ireland is Ireland's largest retail industry body. We represent 1,100 retail companies which operate over 11,000 stores in Ireland. A significant cohort of our members responsibly retail tobacco products. Our members employ 110,000 people.

I wish to register my deep concern at the proposal to introduce plain packaging for tobacco products. The implementation of the proposed legislation will have a profoundly negative effect on our members businesses and there is no credible evidence that plain packaging as a policy proposal will lead to a reduction in youth smoking or prevent youth initiation. I believe more consideration must be given to other means of tackling tobacco consumption without severely impacting the responsible sale of tobacco products.

The Australian Government announced that an impact assessment would be conducted as to the effectiveness of the measure in December 2014. We would recommend that it would be prudent to await the results of such an assessment before proceeding further.

Several countries have initiated WTO (World Trade Organisation) dispute settlement proceedings against Australia, claiming that the Australian plain packaging legislation breaches international trade obligations. A final ruling is not expected before December 2014. A number of other countries considering plain packaging as a policy proposal are awaiting the outcome of such proceedings before considering whether to proceed with the measure. We would consider it prudent to await the outcome of these challenges.

The Government estimates that approximately 20% of all tobacco consumed in Ireland is non Irish duty paid. This costs the exchequer in excess of €250 million annually and Irish retailers considerably more. The Government should ensure sufficient resources are provided to the law enforcement agencies charged with tackling the illicit tobacco trade in Ireland.

A significant commercial opportunity will be afforded to criminal operators within the illegal tobacco trade to supply to the market with tobacco products that are in demand in their pre-plain packaging formats. Furthermore the introduction of plain packaging will afford a far greater opportunity to criminals to copy the plain package design.

The introduction of plain packaging will have a disproportionately negative effect on legitimate Irish retail operators. Plain packaging will damage competition, leading to the commoditisation of tobacco products. Commoditisation will reduce margins as well as reducing cash flow. This means that consumers will increasingly focus on price, leading to down trading from premium brands. If 25% of current premium smokers were to down-trade to value tobacco, Irish retailers would lose more than €42.5 million turnover annually. This obviously will put an increased pressure on margins and will result in further job losses. Lower prices might also lead to increased initiation of smoking.

The introduction of plain packaging will also increase the numbers of job losses in the legitimate retail industry. In 2012, loss in turnover to retailers as a result of illicit sales was estimated at around €450 million.

According to Nielsen, the total turnover from the sale of tobacco products in 2012 was €1.35 billion; this demonstrates the importance of these products to a significant cohort of our members. With 80% of this turnover going to government in excise and VAT, it is also a major contributor to the exchequer.

A recent report by KPMG on the impact of the introduction of plain packaging in Australia, for the six months following the introduction of plain packaging shows that there has been no reduction in consumption rates but illicit trade figures have increased by over 13%.

A report recently undertaken by Roland Berger on the potential impact of plain packaging for cigarettes in Ireland estimates that in total 1,900 jobs and €125 million could potentially be lost if the measure is introduced.

I have serious concerns with the measure and I do believe that there are more appropriate ways for the Minister to achieve his objectives of reducing youth smoking in Ireland.

Thank You

## **PRESENTATION – HOUSES OF THE OIREACHTAS**

**Thursday 6<sup>th</sup> February – Dublin**

**Good Morning !!**

**Mr Chairman** - Thank you for inviting me today to address the Joint Committee on Health and Children.

I am a guest in the Dail and I appreciate the opportunity you have afforded to me to represent the views of the packaging industry in the debate about packaging regulation within the tobacco sector.

I was employed in the U.K. packaging manufacturing industry for over 40 years and retired as the Managing Director of my company some 3 years ago. Since that time I have been acting as a spokesman for seven major U.K. packaging companies who are all heavily involved in the design, development, innovation and manufacturing of packaging solutions for a wide range of consumer products including tobacco products .

I fully appreciate that there is not a sizeable packaging manufacturing industry operating within the tobacco sector in Ireland. However the companies that I represent have a serious concern that policy proposals introduced in this jurisdiction may well have detrimental knock on effects on their sustainability into the future and endanger the thousands of jobs they provide across other European countries.



As professionals working with packaging materials, we have first-hand experience and expertise of the complex role packaging plays within the fast moving consumer goods (FMCG) sector and how it protects the consumer and the legitimate industry from the dangers of counterfeiting.

The companies that I represent have commercial interests with the tobacco industry. The industries have traded together for decades producing and using a wide range of products including metal tins, rigid boxes and composite cans, plastic pouches and laminates, printed labels and folding cartons. With this in mind we have the interests of our employees, investments and innovative workplace skills to consider.

### **What is the role of packaging?**

Tobacco packaging is a high precision manufactured 'engineering component or product' manufactured in large volume to exacting standards and subsequently used on high speed packaging lines of hundreds of carton blanks per minute. To print and produce these highly complex products, capital equipment costing many millions of €'s is needed together with an experienced, well-trained and skilled workforce.

## What does packaging do?

**Essentially** 'Packaging acts as a Barrier to Trade in Counterfeit/Illicit Goods'.

### How Does It Do This?

Sophisticated packaging is a defence against counterfeit products as it makes it extremely difficult and costly for criminals to copy them. These fake products are typically sold on the black market. The illicit trade is both a problem in Ireland and the U.K. The figures in Ireland you will be familiar with ...but in the U.K. some £8 million per day is lost to HMRC by illegal activities. (HMRC – Figures).

Packaging introduces variations – not only in colour, designs and graphical content but in enhanced features including embossing, de-bossing, hot-foil stamping, matt/gloss varnish combinations, vignettes.

Not only that but special materials have been developed using techniques developed over periods of time including special raw material board, formulated low retained solvent inks, tear tapes and tipping paper produced by world class manufacturing companies. In addition the construction of the cigarette carton has gone through many changes – **see photo.**

Once simplicity is introduced via a standardised design all complexity is eliminated. This will result in the printing process being 'opened up' and the counterfeiter and copier can move with ease to print with lithographic and digital printing techniques which are readily available.

**Tax Stamps** – It has been stated that tax stamps and other security systems help police the problem of the illicit trade. I am not in a position to comment on the stated position of the Irish law enforcement on this issue but in other jurisdictions with similar illegal tobacco problems there is a belief that tax stamps have little impact. Criminals can also easily copy tax stamps and it is difficult for consumers and retailers and sometimes even law enforcement to tell the difference between a genuine and fake product.

### **External Experiences**

Let us now examine the information from the only country that has introduced standardised packaging – Australia.

According to the a KPMG Report, there has been an increase in the illicit trade; an increase in the existence of 'illicit whites' ; with other retail surveys seeing purchasing of cigarettes becoming a commodity item and a 'price driven' purchase. However most significantly of all – a 'consistent' level of smoking with no apparent reduction has taken place.

Now let us also consider – **'How Branded Packaging in the Legitimate and Controlled Retail Environment Contributes to the Delivery of Tobacco Control Objectives?'**

- It minimises the sale through illegitimate channels such as the black market and on streets.
- Restricts the availability of product to young people.
- Supports duty-paid pricing levels.
- Minimises the market share of counterfeit products and bootleg brands (illicit whites).

**Show photograph of 'Spoonfil' Product – Manchester -- Australia**

- Supports premium pricing with higher prices seen to reduce consumption.

**Assists in the Delivery of Health Regulation**

- Legal product with packaging and ingredients regulations.
- Counterfeit and illicit brands have no control.

**Summary of the Impact of Plain Packaging**

- Removal of technical barriers.
- Huge economies of scale for counterfeit production.
- Ease of deceiving consumers undermines trust in genuine merchandise.
- Collapse in product value due to commoditisation.
- Higher consumption due to cheaper commodity products and affordability.

- Greater availability to young people through the illicit trade.
- Potentially increased harm from unregulated products.

**Finally** - thank you for listening to me! – I am a packaging expert who does not want to see sections of his industry damaged through the introduction of excessive regulation upon which there is no evidence that it works.

The U.K. packaging industry fully supports the regulation of tobacco products but believes that there are far more effective alternatives to plain packaging such as education and information campaigns.

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**APPENDIX ONE**



## APPENDIX TWO

### Change in Design Variety *B & H Gold Pack Evolution*



### *Government Regulated, Fixed Design*



~~~~~ E N D ~~~~~

Mike Ridgway  
M.R. Business Services  
19 Ghyll Wood  
Ikley LS29 9NR  
West Yorkshire

Monday 3<sup>rd</sup> February 2014



**Oireachtas Committee on Health and Children**

**13 February 2014**

**Remarks by Mr Steven Donaldson**

**General Manager, PJ Carroll and Co. limited**

**Check against delivery**

Chairman and Committee members,

Thank you for inviting us here today as representatives of PJ Carroll to discuss the government's proposal on plain packaging.

My name is Steven Donaldson. I am the General Manager of PJ Carroll and Company Limited. I am joined today by my colleague Mr. Ronald Ridderbeekx, Head of Corporate Affairs for British American Tobacco in the UK and Ireland. Founded in 1824, PJ Carroll's is proud to be one of Ireland's oldest and best known businesses. Now a member of the BAT group, we currently employ 30 people, support the pensions of hundreds of former employees, and indirectly support thousands of jobs across Ireland. At the outset, let me state that we fully accept that smoking causes serious and fatal diseases. Therefore we fully recognise and accept the government's right and interest in regulating smoking and health issues. I also want to state unequivocally that in no way do we target or market our products to children. We fully support government efforts to tackle youth smoking and we work in partnership with others to achieve this. We do not seek to turn non-smokers into smokers. There are 970,000 adult smokers in Ireland, and more than 100,000 of them switch brands each year.

Our business consists of offering quality tobacco products to these well-informed adults who make the choice to smoke. We fully accept that there is a long-term declining trend in the number of smokers, and in the amount that these smokers consume. Mr Chairman, it is our view that the legislation on plain packaging under consideration by your Committee is a disproportionate measure. It will not achieve its stated aims. But it will risk a number of important undesirable consequences. I will address the following four points; Firstly, this proposal will not reduce smoking rates or stop children from taking up smoking. In fact, the evidence from Australia indicates there has been no change in rates of smoking, or in the amount of people that smoke, even though plain packs have been in the market for some 15 months; secondly, this proposal will only benefit the criminal black market, providing a boost to an already thriving illicit trade, thirdly, by depriving PJ Carroll's of our legitimately held trade marks, enshrined in Ireland's constitution and protected by EU and international law, plain packaging will damage Ireland's reputation as a positive environment for business. It will give other industries cause for concern that their trade marks aren't safe in Ireland and finally, there is a better way to achieve the Government's public health objectives. Proven measures such as a stronger focus on education, enforcement of existing laws and a ban on proxy purchasing can and will deliver results.



There is no credible evidence to suggest that plain packaging will reduce smoking rates. Extensive research has been carried out into why people take up smoking. All this research points to parental influence, peer influence, social and cultural norms, price, and access as the key factors and not packaging. Evidence offered by advocates for plain packaging points to a range of studies on attitudes and intentions to support their claims, but fails to point to any real world evidence on the effect on smoking behaviour. Studies referenced by Minister Reilly deal only with how people intend to react to the idea of plain packs, not what they actually do as a result of plain packs in the real world. Studies have shown that uglier packs are less attractive, but they have failed to make the critical connection between uglier packs and the decision to take up smoking. The evidence offered in favour of plain packs is analysed in detail in our submission, which I would encourage committee members to consider if they haven't already. Australia is the only country in the world to introduce plain packaging, in late 2012. The evidence from Australia has demonstrated that the desired outcome of a reduction in smoking prevalence has not been achieved. The evidence that is available from Australia, in reports from independent researchers KPMG and London Economics, shows that smoking rates in Australia have remained on trend, a small annual decline. In fact, the consumption of smoking is declining at a slightly slower rate than in the previous ten years. So, since plain packs were introduced in Australia 15 months ago, there has been absolutely no impact on smoking rates. Now, committee members, I will turn to the issue of smuggling.

Plain packaging will create a big opportunity for criminals; they will only have to produce one pack design ever again if they so choose. And by making it harder for consumers to distinguish between brands, price will become a more important factor. More people will turn to the cheapest available cigarettes. And these will be found on the black market. Estimates of the size, and cost to the exchequer, of the Irish black market in tobacco vary but are substantial. Mr. Chairman, to put this in perspective, criminals already sell twice as many cigarettes in Ireland as PJ Carrolls.

But you won't have any of the criminal gangs behind the tobacco black market appearing before an Oireachtas committee. They don't obey any tobacco control regulations; they don't pay tax, they don't ask for ID, and they don't care what's in the cigarettes that they sell. As Finance Minister Michael Noonan recently told the Dail: "As we continue to use price to discourage people from smoking, I think it will divert more and more of the trade to the illicit trade". Minister Noonan is correct, and this will be compounded by a measure which creates a lack of differentiation between a legal, duty paid pack of 20 for sale at €9.50 versus a smuggled pack at anything from €3.50 – 4.50. We fully acknowledge and support the valuable work of An Garda Síochana and the Revenue Commissioners in their efforts to tackle the black market. While acknowledging their contribution to this committee, it is worth noting that they indicated they have not yet seen any evidence from Australia on the impact of plain packaging on the black market. However, the most recent KPMG report points to a 13% increase in the level of tobacco smuggling in Australia in the first six months after plain packaging was introduced. The market has shifted, with new illegal Plain pack lookalike brands and what are known as 'illicit whites' gaining market share rapidly.

If this trend is replicated in Ireland, we will see large growth in smuggled tobacco. This will undermine the interests of honest retailers, the law-abiding and tax compliant tobacco industry, government excise returns and public health objectives. The black market in cigarettes already costs the state hundreds of millions of Euro, and provides children with access to cigarettes. Plain packaging, while well intentioned, will only make this worse.

Committee members, I'd like to briefly touch on intellectual property issues. Our Trade Marks identify the origin and quality of our products. They tell the consumer that what's on the pack, is in fact what's in the pack.

The removal of the legitimately held intellectual property rights of PJ Carroll and other companies is a disproportionate measure in light of the less trade-restrictive alternatives that are available. We also believe it is in breach of Irish and European law, and international trade law. It will seriously damage Ireland's reputation as a good destination for business, as evidenced by the concerns expressed by many business organisations to this committee. A number of countries are currently challenging Australian plain packaging legislation at the World Trade Organisation. It is one of the biggest disputes ever to appear before the WTO, with 35 parties (including the EU and therefore, Ireland) involved. We would encourage this committee not to consider the introduction of any such legislation until the outcome of this dispute is known. Otherwise, it is possible that plain packaging legislation will need to be repealed.

Let me be absolutely clear; there is a better way. There is no disagreement between PJ Carroll's, the Government or this Committee. We have a shared objective of preventing children from taking up smoking. We support proportionate and evidence-based measures to achieve this objective - measures which won't result in the undesirable consequences that I have already outlined. Firstly, we do not believe that any adult should be able to purchase tobacco for children. We believe that any adult who does so is knowingly breaking the law; there must be effective criminal penalties for these adults.

Secondly, certain education programmes have proven particularly successful at stopping children from starting to smoke. These education programmes focus not just on the awareness of risks of smoking, but also provide young people with the life-skills to resist peer pressure and make their own choices. Germany, Sweden, and some States in America have achieved excellent outcomes by using education to address youth initiation. Education and preventing access are proven ways to stop children from starting smoking. They tackle the real drivers of youth initiation – peer pressure, social and cultural norms, and access. Packaging is not why children or adults start smoking, and plain packaging will not make them stop. Last week this committee discussed with business groups the need to carry out a Regulatory Impact Assessment on this legislation. The following day, the Department of Health told stakeholders that it was finally going to carry out an RIA. The Cabinet Handbook and Taoiseach's guidelines are clear that an RIA should have been carried out before Minister Reilly brought the proposal to Cabinet last November, and this committee should not have been asked by the Minister to hear evidence without having an RIA to assess the costs and benefits.

To conclude, Deputies and Senators, I'd like to thank you for the opportunity to discuss this important issue with you. We would sincerely urge you to gather more evidence before making recommendations on this proposal; This Committee must consider the outcome of a Regulatory Impact Assessment before making any recommendations to the Minister. We would ask that the committee look further at the evidence from Australia. The evidence clearly shows that the Australian plain packaging experiment is failing and we would urge the committee to await the outcome of the major dispute at the WTO.

We believe that this further evidence will show committee members and Government that this legislation will not achieve its aims, but will have serious negative consequences. These include; boosting an already thriving black market which undermines health objectives, costing the taxpayer further millions in lost taxes, costing jobs around the country, Illegally confiscating Intellectual Property and and severely damaging Ireland's reputation.

Thank you for listening this morning, and I look forward to answering your questions.

## **Opening Statement to the Oireachtas Health Committee**

### **Mr. Andrew Meagher, Managing Director, John Player**

My name is Andrew Meagher and I am the Managing Director of John Player. I am joined by my colleague, Dr. Axel Gietz, Director of Group Corporate Affairs at our parent group, Imperial Tobacco. I can assist the Committee with issues regarding the Irish market and Dr. Gietz can answer questions on any broader corporate matter.

John Player has a long and proud history in Ireland and employs 70 people. Imperial Tobacco also operates a tobacco factory in Mullingar which employs 120 people. We are a legitimate company authorized by the Government and Revenue to sell a lawful regulated product to adults.

We fully support the Minister's objective that children should not smoke. Nobody working in our company wants children to smoke - neither ours nor anybody else's.

Chairman, I am grateful for this opportunity to debunk the myth that we use our brands to entice Irish children to smoke. I have worked for 20 years in John Player. Over that time, neither I, nor any of my colleagues have ever once developed or designed a brand or even contemplated such a thing with the purpose of attracting children to smoke.

While sharing the Minister's objective, we hold a different view to him as to what is the most effective way to prevent minors from smoking. The Minister believes that plain packaging would prevent children from starting to smoke because they are influenced by cigarette packaging. But there is no credible evidence to support this contention whatsoever either from Australia or anywhere else. Even the Chief Medical Officer, when he met with you before Christmas, accepted the absence of evidence from Australia and I quote,..we have to await a proper evaluation...". I fully agree.

Ireland has followed a high tax - high regulation approach to tobacco control for many years yet Irish smoking rates remain consistently high. According to EU statistics:

- Ireland's 2012 smoking rate of 29% is the same as it was in 2006
  - 28% of young Irish people start smoking at 15 years and younger compared to the EU average of 17%;

The ban on press advertising, the ban on smoking in pubs, the ban on 10 packs, the ban on display of tobacco in shops, significant excise increases...none of these have had any measureable impact on smoking rates. Ireland's tobacco control model is simply not working.

However, alternative approaches based on education and instruction rather than bans appear to be much more successful. The German tobacco control strategy which is education based has produced striking results. This is a country that permits billboard and cinema advertising

of tobacco. Tobacco products are openly displayed in their shops. Yet youth smoking initiation rates are 17% in Germany compared to 28% in Ireland. In America, the Centre for Disease Control recommends tobacco use prevention education programmes in schools.

Chairman, there are 3 predictable consequences of plain packaging that would negatively affect the entire community:

1. The black market would grow
2. The Irish exchequer, legitimate industry & retailers would lose revenue without any decline in consumption levels as tobacco tourism flourishes
3. Ireland's international business reputation would be undermined

1. First, as we sit here today, criminals are busily selling illicit white cigarettes down in Moore St in complete violation of every single tobacco control measure that this country has ever introduced including selling to children.

The irony is if this bill were to be passed, organised crime gangs would have the Unique Selling Point (USP) of being the only supplier of branded packs in the country and this would lead to increased sales of illicit white brands in Moore St and other street markets throughout the country. While 79% of the retail price of cigarettes goes directly to the Irish Exchequer, there will be no such contribution from the branded packs that will continue to be sold in Moore St or Balbriggan market regardless of this Bill.

2. The 2<sup>nd</sup> consequence is that while the Minister intends that smokers can only buy a pack of John Player Blue in a plain pack in Ireland, Irish holidaymakers or day travellers can buy the same branded pack for literally half the price in Spain and Portugal.

One assumes that this fear of tobacco tourism is the reason that the Dept. of Health stated in an EU submission in 2010 that, and, I quote, "...the introduction of generic or plain packaging must be on the basis of robust evidence. If such a measure is to be introduced, it should be mandatory and there should be a harmonized approach across all Member States". Instead, we now have a solo run by Ireland despite failing to come up with the robust evidence that the Department itself called for in 2010.

3. A third consequence is that the State would send a clear message to the international business community that their valuable Intellectual Property would not be protected. Who would invest in Ireland when without robust evidence and when other less draconian alternatives are available, the State proceeds to seize a company's assets. The fact that a Regulatory Impact Assessment has not even been conducted in advance of this proposal will surely set alarm bells ringing in the HQs of Irish and foreign multinationals.

## **Concluding remarks**

The Minister has correctly lauded the model of universal Health Insurance as applied in the Netherlands because it delivers results.

This same approach should be applied to tobacco control. Learn and adopt from what works and delivers results rather than trying to implement a policy that is as yet unproven, has been abandoned by the EU and brings with it too many negative consequences.

Chairman, while John Player is opposed to plain packaging, we are not in any way opposed to preventing minors from smoking. But I believe this proposed measure must be reconsidered for the reasons already outlined:

1. There is no robust evidence that it would achieve its stated aim
2. There are too many negative consequences
3. There are proven alternative education based solutions from other jurisdictions that deliver reductions in minors smoking

The criteria for introducing new laws should be based on objective fact, real world robust evidence and demonstrable results. There is no evidence, there are no results and no Regulatory Impact Assessment was conducted to justify this Bill.

This does not mean we cannot and should not immediately implement measures to prevent minors from smoking. We can:

- By implementing programmes to give minors the life skills to be able to say no to peer pressure when it comes to tobacco use or indeed other habits
- By preventing minors from accessing tobacco by prosecuting any retailer that sells tobacco to those under age
- By resourcing the enforcement authorities to put the criminals who sell illegal cigarettes out of business

Thank you. I am happy to answer any questions.

Ends



**Presentation from JTI Ireland Ltd to the Joint Oireachtas Committee on Health and Children in respect of the Public Health (Standardised Packaging of Tobacco) Bill 2013**

**John Freda, General Manager and Michiel Reerink, Regulatory Department**

Good morning Chairman and Committee members,

Thank you for inviting JTI Ireland to present to the Health Committee today about the impact of plain packaging.

My name is John Freda and I am General Manager of JTI Ireland Ltd and this is my colleague Michiel Reerink, from JTI's Regulatory department.

Japan Tobacco International acquired Gallaher in 2007. Today, we supply tobacco products to more than 4,000 retailers across the country as well as employing more than 100 people.

Our business is based on a number of core principles:

Tobacco products carry risks to health. Appropriate and proportionate regulation of the tobacco sector is necessary and right. Everyone in Ireland should be reminded about the health risks of smoking.

Most importantly, minors should not smoke. Nor should they be able to access or buy tobacco products.

Chairman and members of the committee, in line with the Regulatory Impact Assessment Guidelines of the Department of the Taoiseach, a Regulatory Impact Assessment must be conducted before a memorandum goes to Government seeking permission to regulate. The memorandum and Heads of Bill must be accompanied by a draft Regulatory Impact Assessment. Despite the far reaching consequences of the plain packaging proposal, we are concerned that no Regulatory Impact Assessment has been completed to date.

Therefore, we believe that the Committee should call for an independent and robust Regulatory Impact Assessment to be completed and reviewed by the Committee and all Government Departments before the plain packaging Bill goes any further.

Chairman and members of the Committee, I am sure that you are well aware that Minister Reilly led discussions at an EU level on the revision of the Tobacco Products Directive during the Irish Presidency.

The outcome of these talks was that both the Member States, and later the European Parliament agreed that plain packaging should not be included in the revised Directive.

However, you should also be aware that the measures proposed within this Directive, if introduced, will change the current landscape of tobacco across Europe.

The Directive includes requirements to increase health warnings to 65% of the pack and a ban on certain pack shapes including the current packaging for slim cigarettes.

Therefore with the changes expected as a result of the Directive, why does the Irish Government need to introduce plain packaging in Ireland?

Let me tell the Committee the three primary reasons why we in JTI are so opposed to plain packaging.

- 1) First, there is no credible evidence that plain packaging will actually achieve public health benefits. In fact we believe that it will make the situation worse.
- 2) Secondly, the proposed legislation will prevent us from communicating with our consumers about our brands, and;
- 3) Thirdly, it will deprive us of our property, removing our ability to differentiate our products from those of our competitors.

If you allow plain packaging to be implemented there is no doubt in our mind that:

- a. It will damage competition,
- b. It will infringe rights and freedoms, including those enshrined in European Law,
- c. It will raise barriers to trade, and;
- d. It will ultimately result in a loss of jobs right across Ireland.



The whole idea of plain packaging is based on outdated notions of smoking behaviour.

Regulators and academics tell us that there are many reasons why children start smoking:

- It can be peer pressure,
- or family and parental influence,
- or access and availability to cheap tobacco products,
- or a combination of all of these factors, but;
- not because of the actual packaging of cigarettes.

Just let me tell you a bit more about the role of packaging.

As with most consumer goods companies, brands are central to our business. We invest and innovate in packaging, design and quality so that we can compete with other products available to adult smokers, who knowing the risks of smoking, want to smoke.

I want to stress at this point that we do not target children.

A key challenge is to make sure that children can't access tobacco products.

The best way to achieve this is to maintain a regulated disciplined market where tobacco can be legally sold and stamp out the selling of untaxed and unregulated tobacco at a fraction of the price to children by organised criminals and illegal traders. These people don't care about the quality of their product or how young the person is they are selling to.

Don't be under any illusion.... one of the serious consequences of plain packaging is that it will lead to the growth of the illegal, unregulated trade in Ireland. The introduction of plain packaging will also increase children's access to tobacco products in this unregulated market because of the price.

Government reports state that when it comes to measuring levels of smoking, the vulnerable and disadvantaged are more at risk; the illicit trade will further exacerbate this.

We firmly believe that there are other evidence-based ways to achieve actual public health benefits that must be introduced:

- Firstly, as I mentioned earlier we need to prevent minors from accessing tobacco products. This can be done
  - by reinforcing the age limit,
  - by devising meaningful policies that make it harder for children to get their hands on tobacco, such as punishing adults who knowingly buy tobacco products for children, and;
  - before doing anything else, Government simply must prioritise and focus on stopping children's access to cheap tobacco products from the unregulated market.
- Secondly, Government should establish targeted, comprehensive programmes in schools to tackle peer pressure which is a key driver of youth smoking.

Ireland has one of the highest youth smoking initiation rates for the under 15's in Europe. Compare Ireland with Germany for a minute. In 2012, youth uptake of smoking (U15) in Germany was 17% compared to Ireland at 28% (despite children in both countries being well aware of the risks of smoking).

According to the German Federal Centre for Health Education, their education programmes have had real success in tackling youth initiation and smoking.

Introducing similar programmes in Ireland from primary school right through to second level could be equally successful and we respectfully ask the Committee to consider this as one of a number of serious alternatives to plain packaging – as you formulate your recommendations for the Minister for Health.

Finally, Chairman, in wrapping up this part of our discussion, I want to conclude that:

- 1) Firstly, there is absolutely no credible evidence that plain packaging has had positive health impacts in Australia or would have them in Ireland. More than 14 months after plain packaging has been introduced in Australia, there is still no official Government assessment to say that plain packaging has made a difference there.

- 2) Secondly, and let me say it again: packaging is not the reason why people start smoking.
- 3) Thirdly, plain packaging would increase children's access to tobacco products - particularly those in the disadvantaged parts of Irish society.
- 4) Fourthly, there are proven ways to reduce further the youth smoking rate and these must be prioritised.

Yes - there are risks associated with tobacco use. We don't dispute that.  
Plain packaging legislation will not help reduce smoking rates in Ireland.

It is for all of these reasons that we strongly oppose plain packaging. We would be happy to discuss them with you or answer any questions that you might have.

Thank you Chairman and members of the Committee.



**OPENING STATEMENT BY FOREST EIREANN TO THE  
JOINT COMMITTEE ON HEALTH AND CHILDREN  
GENERAL SCHEME OF THE PUBLIC HEALTH  
(STANDARDISED PACKAGING OF TOBACCO BILL) 2013  
THURSDAY 13 FEBRUARY 2014**

Mr Chairman,

Thank you for inviting me to attend this hearing of the Joint Committee on Health and Children.

My name is John Mallon and I represent the smokers' group Forest Éireann. Forest stands for Freedom Organisation for the Right to Enjoy Smoking Tobacco.

Forest Éireann was set up in 2010. We are supported by Forest UK which was founded in 1979 to represent adults who choose to smoke tobacco, and non-smoking adults who are tolerant of adults who smoke.

Forest UK is supported by British American Tobacco, Imperial Tobacco Limited and Gallaher Limited, part of the Japan International Group of Companies.

Neither Forest UK nor Forest Éireann represent or speak for the tobacco industry. We do not promote smoking or any tobacco product or brand. We have a completely independent set of goals centred on the right to smoke a legal product without undue harassment or discrimination.

As a smoker myself, I am here to offer the perspective of the consumer who chooses to smoke tobacco in full knowledge of the health risks associated with smoking, which are very well documented. I am also here to offer an insight into why people, including children, start smoking.

With regard to today's hearing, we believe the case for standardised packaging of tobacco is based on the fallacy that children are attracted to smoke because of exposure to so-called "colourful" or "glitzy" packaging, and that without branding far fewer children or young people would be tempted to start.

This argument is based not on hard fact but on speculation and conjecture.

There is no credible evidence that standardised packaging will have any effect on youth smoking rates. In my case I started smoking because a friend offered me a cigarette and it became a daily social habit we engaged in and shared secretly together until we turned 18. Forty-four years later we are still friends.

Speaking personally, plain packaging will make no difference to me. I will simply ask for my regular brand of tobacco. I should add, however, that when I am abroad in an EU country I buy local EU duty paid tobacco. This allows me to legally bring home a year's supply. If Ireland adopts a unilateral approach to plain packaging, I imagine that branded packs, purchased abroad, will be popular with many consumers as a symbol of passive rebellion.

I would also point out that the display of tobacco has been banned in Ireland since 2008. Smokers have to ask for their preferred brand before it is handed to them. Normally they will put it directly into their pocket or handbag. When a cigarette packet does see the light of day it is normally in the company of other smokers, outside. I would suggest, therefore, that cigarette packs are already largely invisible to children.

We believe plain packaging is gesture politics. It won't stop children smoking and there are other more important issues the Department of Health should prioritise in 2014.

According to a recent poll by Red C for Forest Éireann, just nine per cent of people surveyed thought standardised packaging is the policy most likely to reduce youth smoking rates in Ireland. In contrast more than half the people surveyed thought health education in schools would be most effective in reducing smoking rates.

Given a list of four issues the Minister of Health should prioritise in 2014, plain packaging ranked last on just 4 per cent. In contrast, 45 per cent wanted the Minister to prioritise the health budget overspend, 32 per cent childhood obesity, and 18 per cent under-age drinking.

The current Minister of Health has made plain packaging of tobacco a personal crusade but only a very small minority think it's the best way to stop children smoking. Even fewer want it to be his number one priority in 2014.

We are concerned that plain, or standardised, packaging represents another step towards a nanny state in which adult consumers are increasingly infantilised by politicians who don't trust us to make decisions for ourselves.

As consumers, we are also concerned about the slippery slope, the idea that once standardised packaging is introduced for tobacco the policy will be adopted for alcohol, convenience foods and other potentially unhealthy products.

We believe the treatment of smokers over the last ten years is setting a dangerous precedent in a democracy because the same tactics can now be applied to the consumers of other products we freely choose to spend our money on.

How long will it be before public health campaigners call for alcohol, fatty food, sugar or even confectionary to be sold in plain packaging?

To conclude, Mr Chairman, we do not want children to smoke. Smoking should be a choice for informed adults only and we support all reasonable measures that prevent or discourage children from purchasing or consuming tobacco.

The proposal to introduce standardised packaging is neither reasonable nor justified. There is no credible evidence to suggest it will work. If government really wants to protect children from smoking it should seek tougher enforcement of existing laws, and focus on further education in schools.

Most important, perhaps, the 2012 report 'State of the Nation's Children', published by the Department of Children and Youth Affairs, highlights the fact that it is children in more disadvantaged areas who are most likely to smoke. In our view it would be better for the nation's health if government addressed this issue instead of distractions like plain packaging.

Finally, Mr Chairman, I would like to thank you and your Committee for inviting Forest Eireann to attend this hearing today. We are pleased the Committee has recognised that the consumer is a legitimate stakeholder in this debate, and we look forward to continued discussions in future.

Thank you.



# *Law Society of Ireland*

**Blackhall Place, Dublin 7, tel 01 672 4800, fax 01 672 4835**

DX: 79 Dublin E-mail: [general@lawsociety.ie](mailto:general@lawsociety.ie)

Website: [www.lawsociety.ie](http://www.lawsociety.ie)

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## **Joint Oireachtas Committee on Health & Children**

Pre legislative Consultation on the  
Public Health (Standardised Packaging of Tobacco) Bill 2013.

### **Opening remarks of the President of the Law Society Of Ireland, Mr. John P. Shaw.**

Thursday. 13th February 2014

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#### **Introduction**

The Law Society of Ireland is the representative, educational and statutory regulatory body for solicitors in Ireland. I have the honour this year to be the President of the Society, representing some 10,000 members the length and breadth of the country. Practising in some 2,200 legal firms, they also act for the public service bodies, industry and other sectors. Indeed 16% of our members now work in house.

I am here today with the Director General of the Law Society, Mr. Ken Murphy.

The Law Society welcomes the opportunity to come before this Oireachtas Committee to elaborate on its intellectual property law concerns regarding the proposed Bill.

Let me begin by making it perfectly clear: The Society does not represent anybody other than its members. The Society is not here to represent either directly or indirectly the view of the tobacco industry. We have accepted the invitation to attend today to consider exclusively the intellectual property law aspects of the proposed Bill. We do not claim to have any expertise in health policy.

The witnesses before the Committee over the past three sessions, have, as Deputy O'Caolain said in one such session, come at it *'from a variety of experiences and responsibilities in life'*. And so too do the Law Society.

It should come as no surprise that many of the Society's members represent plaintiffs who are in legal action against both tobacco companies and the State in respect of smoking related injury. In addition, many members are working for, and alongside key state agencies that play a central role in the fight against illicit trade including Revenue, Customs and Excise and the Gardai Siochana. Of course some of our members represent those who have been accused of illicit trade. Naturally also some solicitors act as legal advisors to tobacco companies.

Some members of the Society work on a daily basis in Intellectual Property law as it applies to the entire gambit of industry sectors; in particular the food and drinks sector, engineering, information technology and pharmaceutical companies to name but a few.

For the avoidance of doubt, we are not here to defend the tobacco industry and are not, to use the expression "in the pocket" of anyone. We fully accept that tobacco has had a disastrous impact on health.

It is important to us then that the Law Society is not portrayed as representing anybody other than its members and the public interest which the profession serves.

On this point, it should be noted for the record that the Law Society constantly participates in public consultations on a wide range of issues that affect the public and the profession. Our contribution and participation has been extensive, on issues from human rights to conveyancing, probate to criminal justice, and all forms of litigation. In addition to constant interactions with Government departments and agencies, in the past two years alone, the Law Society made a total of 20 formal submissions on issues ranging from complex insolvency law reforms, various criminal justice bills and litigation reforms. Indeed the Director General and I were here in Leinster House yesterday for the conclusion of the Committee Stage of the Legal Services Regulation Bill

Submissions made by the Law Society, represent the commitment of its 10,000 members to contribute to public discourse, bringing with them the benefit of their legal understanding and professional experiences.

We are concerned with the legal implications of the concept of plain packaging as such, and how it might affect the standing of intellectual property rights here in Ireland and abroad. That is to say we have no issue with the policy objectives underpinning the Bill, but do have concerns regarding its impact on the Intellectual Property regime in this country.

## **Context**

I would like to preface our substantive submission with the following brief comments.

- The Office for Harmonisation in the Internal Market in September 2013, stated that along with Germany and Hungary, "Ireland has the highest share – 40.8% - of trade mark-intensive value added in their GDP."<sup>1</sup>
- The above report also states that of all the European States, "the highest share of jobs in IPR-intensive industries generated by companies from outside the EU is to be found in Ireland, at almost 18%"<sup>2</sup>

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<sup>1</sup> OHIM (2013) 'Contribution of IP-intensive industries to the EU Economy', pp 74-75



- Eurostat – the statistical office of the European Union – confirms that there are currently 138,000 people working in knowledge intensive industries and high-end manufacturing in Ireland, such as pharmaceuticals and technology companies whose IP assets are their key asset. This is an increase of 5.3% since 2008.
- We note that no Regulatory Impact Assessment has yet been prepared on this proposed Bill. We look forward to it to the extent that it will consider what impact the proposals will have on rights under intellectual property law in Ireland.
- Clearly it is the proper and important task of the Committee and the Oireachtas to strike that careful balance between protecting and maintaining Intellectual Property law with public health and other relevant public policy considerations.
- Finally, our submissions aim to assist the Committee by outlining key legal concerns and potential ramifications of plain packaging proposals

## **Key Submissions**

In the February 2013, the Society stated and here today wishes to restate:

*“A fully functioning intellectual property system, which operates consistently and transparently across all sectors and provides certainty for intellectual property owners, investors, international partners and traders and members of the public, is vital to the future of both the EU and Irish economies. Reforms which have the effect of undermining that system should be considered very carefully”*

### **1. Constitutional Issues**

Our submission sets out a key consideration:

*“The Irish Constitution requires the State to protect property rights and the Irish Supreme Court has previously struck down legislative provisions as unconstitutional where they involved restrictions on the exercise of property rights or a deprivation of rights all together without compensation for such interference”*

In relation to restrictions on property rights, we do not underestimate the crucial role of the legislature in striking that balance; that ‘principle of proportionality’. Our submission emphasises the challenge for the Oireachtas:

*[The test of proportionality], as developed by the High Court and the Supreme Court, requires firstly that the restriction on use of the trademark must have an objective of sufficient importance to warrant interference with the property right in the mark, secondly that the impairment of this right should be minimal as possible and finally the effects on the Constitutionally protected right should be proportionate to the objectives sought to be attained.*

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<sup>2</sup> Ibid. at p88

Were this matter to come to court, it is likely that the Court would be asked to consider evidence available regarding the effectiveness of plain packaging on smoking habits as against the range of other actions that can be considered to minimise or eradicate smoking. Some of these have been highlighted by other witnesses, such as taxation, educational and cessation initiatives, sanctions and penalties etc.

## **2. World Trade Organisation / Paris Convention.**

Ireland is a signatory to the WTO, and specifically the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights Agreement). Under that Agreement, we have committed to respect a number of key provisions that impact on the nature of trademark rights.

Article 7 provides that the nature of goods 'shall in no case form an obstacle to the registration of the mark'

Article 20 provides that "the use of a trade mark in the course of trade shall not be unjustifiably encumbered by special requirements such as use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings"

Members of the Committee will note from our submission reference to Section 8.1 of TRIPS, on the rights of member states to enact legislation in a way which is necessary to protect public health.

Article 17 provides that limitations to rights conferred – such as those on the grounds of public health - may be acceptable 'provided such exceptions take account of the legitimate interests of the owner of the trade mark'

### *Potential Exposure for the State*

The Law Society is concerned that the extent of interference envisaged by the proposed Bill may give rise to potential actions against the State, and Europe under the provisions of the TRIPS agreement.

## **3. European Law Issues – ECHR**

The Charter of Fundamental Rights of the European Union is binding on Member States under the Lisbon Treaty and Article 17 of the Charter guarantees rights to property, expressly including intellectual property rights. The European Court of Human Rights has held that property for this purpose includes intellectual property and has distinguished between a straightforward deprivation of property and restricting the use of the property in the general interest.

Consequently, the State runs a risk - and it is that, a risk – of going beyond regulation and restricting rights which affect the substance of a trademark, in contravention of our international obligations.

The Law Society submits that restrictions of property rights should be carefully considered, in addition to all other approaches which are less severe but might be likely to have similar consequences. The Court will ask the question, applying an objective test, whether the decision maker – ie the Oireachtas – could reasonably have concluded that the interference was necessary to achieve the legitimate aims recognised by the Convention.

The Society's intention today is to underline the need for careful and robust examination of the options available.

The Law Society submits a further concern in respect of our European obligations. The introduction of plain packaging may give rise to a challenge that it acts as a barrier to the Treaty based freedom of movement of goods. Put simply, products sold in another members state, would not have the same access to Irish markets as a result of the Bill's provisions. Ireland is entitled to rely on a derogation on the grounds of public health, but should anticipate a challenge.

#### **4. Loss of Trademark Rights**

The fundamental purpose of a registered trade mark is to distinguish goods or services of one undertaking from another. If a trademark ceases to be used it cannot continue to operate as a distinguisher of origin, quality etc.

Consequently and as currently framed, the "use it or lose it" rule could result in a reduction in intellectual property value for companies, which may give rise to compensation claims payable by the state.

The Law Society is concerned that 'unintended consequences' could result not only in claims against the state, but could also adversely impact on businesses and employment. The role of the IP in foreign direct investment should not be underestimated, and perhaps should be included in the regulatory impact assessment of the Bill.

#### **Conclusion.**

Tobacco smoking, with its destructive effects on young people – on all people – and the burden it presents for the health sector, is an emotive issue.

The basis of our appearance here today is to draw attention to the potential impact of the Bill to the regard in which Ireland is held internationally in respect of Intellectual Property and to set out generally, some key legal concerns for the Committee to consider. The General Scheme of the Bill gives rise to unavoidable legal concerns of both an Irish and EU character.

We respect the task that the Committee have before them. We are available to assist with any questions you may have.



## **Section 4: Transcripts of Meetings**



# DÁIL ÉIREANN

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## AN COMHCHOISTE UM SHLÁINTE AGUS LEANAÍ

## JOINT COMMITTEE ON HEALTH AND CHILDREN

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*Déardaoin, 23 Eanáir 2014*

*Thursday, 23 January 2014*

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The Joint Committee met at 9.30 a.m.

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### MEMBERS PRESENT:

|                                |                               |
|--------------------------------|-------------------------------|
| Deputy Ciara Conway,           | Senator Colm Burke,           |
| Deputy Regina Doherty,         | Senator John Crown,           |
| Deputy Peter Fitzpatrick,      | Senator Marc MacSharry,       |
| Deputy Seamus Healy,           | Senator Jillian van Turnhout. |
| Deputy Billy Kelleher,         |                               |
| Deputy Sandra McLellan,        |                               |
| Deputy Mary Mitchell O'Connor, |                               |
| Deputy Dan Neville,            |                               |

DEPUTY JERRY BUTTIMER IN THE CHAIR.

*The joint committee met in private session until 10.15 a.m.*

### **Section 39 Organisations: Motion**

**Chairman:** I remind all those present to ensure their mobile phones are switched off for the duration of the meeting, as they interfere with the broadcasting of the proceedings. I apologise for the delay in starting the meeting and thank delegates for their patience.

Before we deal with the main business of the meeting, I have accepted an emergency motion in the name of the Joint Committee on Health and Children. Will a member of the joint committee, please, move it?

**Senator Jillian van Turnhout:** I move:

That the Joint Committee on Health and Children make contact with each of the section 39 organisations to invite them:

(1) to outline the funding model and breakdown of different sources of funding;

(2) to outline the remuneration received by all executive staff and the funding source from which such remuneration is derived in terms of public, private or fund raising sources or the percentage from each;

(3) to outline any demonstrable decline in public support for the efforts of section 39 organisations in terms of fund raising or other supports following revelations about other organisations in recent months; and

that we, as a committee, and I, as chairperson, make a statement to appeal for calm from the public pending ongoing investigations in order to avoid unnecessary and unintended collateral damage and that people continue to support our charitable organisations under section 39.

**Senator Martin Conway:** I second the motion.

Question put and agreed to.

**Chairman:** I ask the clerk to the committee to make contact with the section 39 organisations following the meeting. Is that agreed to? Agreed.

### **Public Health (Standardised Packaging of Tobacco) Bill 2013: Discussion**

**Chairman:** The main item on the agenda is a discussion of the heads of the Bill on the plain packaging of tobacco products in Ireland. As members are aware, the general scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013 was referred to the joint committee shortly before Christmas for its consideration. The Minister for Health, Deputy James Reilly, and the chief medical officer made a presentation to the committee by way of an introduction to this important Bill. This is the first of a series of meetings we will be convening in the coming weeks to consider the heads of the Bill. Today we will be hearing about the potential effects of the legislation on areas such as counterfeiting, smuggling, criminal activity and



enforcement. In this regard, I welcome from An Garda Síochána the assistant commissioner, Mr. Derek Byrne, national support service; Detective Chief Superintendent Eugene Corcoran, chief bureau officer, Criminal Assets Bureau; and Detective Chief Superintendent Patrick Kennedy, National Bureau of Criminal Investigation. I welcome from the Office of the Revenue Commissioners Mr. Gerard Moran, assistant secretary, indirect tax division; Ms Emma Cluttbuck, principal officer, excise branch, indirect tax division; and Mr. Michael Gilligan, principal officer, investigations branch. I welcome from the National Office of Tobacco Control of the Health Service Executive Mr. Gavin Maguire, assistant national director, environmental health and emergency planning; and Ms Laura Garvey, environment officer, National Office of Tobacco Control. I thank everybody for being present. This is very important legislation, on which we will be hearing in the coming weeks from a wide cross-section of those involved.

Witnesses are protected by absolute privilege in respect of their evidence to the committee. If they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person or an entity, by name or in such a way as to make him, her or it identifiable. I remind members of the long-standing rule of the Chair that they should not comment on, criticise or make charges against a person outside the Houses or an official, by name or in such a way as to make him or her identifiable.

I call on the assistant commissioner to make his opening remarks.

**Mr. Derek Byrne:** I thank the Chairman and members of the committee for giving me the opportunity to address them. I have submitted a paper to the secretariat and a submission from An Garda Síochána which I will supplement with some very brief opening comments.

The illegal tobacco industry is a global industry which amasses large amounts of money for organised crime gangs. We look at it in the context of organised crime. From our perspective, it has significant health issues, affects the legitimate labour market, returns to the Exchequer in various countries and legitimate brand holders. It requires a global response involving a multi-agency collaborative approach. I have provided a written submission for the committee, to which I wish to make two amendments, with the Chairman's permission.

**Chairman:** Go ahead.

**Mr. Derek Byrne:** The final sentence of the second paragraph on page 2 reads: "It also reduces the necessity to bribe public officials". I would like to replace the word "necessity" with "opportunity". The first paragraph on page 7 refers to the recovery of 9 million contraband cigarettes, but the actual figure was 10 million.

**Chairman:** I invite Mr. Moran, assistant secretary at the Office of the Revenue Commissioners, to make his opening statement.

**Mr. Gerard Moran:** I thank the Chairman for inviting me to address the joint committee. It will not come as a surprise if my remarks do not differ significantly from those of the assistant commissioner. In deciding between a narrow and broad approach to my presentation I have opted for the broader approach in order to be helpful to the committee.

Tobacco tax is a key policy instrument in reducing tobacco consumption and a significant source of tax revenue. Given that illicit tobacco has a significant impact on these objectives,

tackling it is a key priority for Revenue. As we collect €1.4 billion in tobacco tax and VAT from tobacco consumption annually, any material level of illicit tobacco consumption translates into a significant loss of tax revenue. It is important that developments such as the standardised packaging legislation are scrutinised to assess their impact on the illicit tobacco market. It might be helpful for the committee if I were to outline briefly the scale and character of the illicit tobacco problem and what we are doing to tackle it before dealing with the impact of the proposed legislation.

Every country with high tobacco taxes has an illegal tobacco problem. Ireland which has exceptionally high tobacco taxes and prices has a significant problem. To provide some international context, the World Health Organization estimates that 10% of the global cigarette market is illicit and this figure rises to over 50% in some countries. The European Anti-Fraud Office, OLAF, estimates that illicit cigarettes result in losses of over €10 billion annually in tax revenues in the European Union. This is a global problem which is particularly significant in a number of EU member states, including Ireland, which pursue a policy of high tobacco taxes. In Ireland the best estimate we have of the scale of the problem comes from the IPSOS-MRBI surveys conducted for Revenue and the National Tobacco Control Office. The most recent survey, conducted in late 2012, found that 13% of cigarette consumption was illicit. It also found that a further 6% of consumption was accounted for by cigarettes purchased abroad and brought into Ireland legitimately for personal consumption. The comparable figure for illicit consumption in 2010 and 2011 was 14%. While we have not been able to make dramatic inroads into the problem, it has been contained and some modest progress has been made.

The nominal cost in terms of lost tax revenues is approximately €240 million annually. This is a useful way of flagging and tracking the financial significance of the problem, but it is important to stress that this is a nominal cost, based on the unrealistic assumption that in the absence of cheap illicit cigarettes, smokers would consume the same amount of more expensive taxed cigarettes using money they are not currently spending on taxable cigarette consumption. These caveats aside, the problem is very significant in terms of its impact on the Exchequer and undermining the Government's demand reduction objectives. The tobacco industry produces much higher estimates of the level of illicit consumption and the associated Exchequer costs, but their claims need to be viewed in terms of their interest in minimising tax increases, while imposing significant price increases of their own. All estimation methodologies have their limitations, but we are satisfied that the IPSOS-MRBI surveys provide a reasonable indication of the extent of the problem and, in particular, that the consistency of the methodology allows us to track changes in illicit consumption levels.

As I noted, this a global problem. It is driven by a number of key regions in Asia, the Middle East and eastern Europe where there is large-scale production of cigarettes for illicit distribution to other countries or which serve as distribution centres for illicit product. I have circulated to members a European Commission map which illustrates the main international trafficking routes. Internationally and domestically, the field is dominated by organised crime groups.

Revenue's response to the problem includes a number of key elements. We work closely with our EU partners to tackle source countries and apply the maximum pressure on the governments concerned. We also work closely with EU and other member state law enforcement agencies, particularly OLAF, to get the best possible intelligence on illicit shipments into Ireland. We work closely with An Garda Síochána, the CAB, the PSNI and Revenue and Customs in the United Kingdom in identifying and tackling the illicit trade on an all-island basis. We examine shipping and passenger traffic on the basis of intelligence and risk profiling. In terms

of detection technologies, we use scanning equipment and sniffer dogs at ports and airports. We conduct regular street level exercises to tackle illicit cigarette sales. Our enforcement activities are kept under continuous review by a tobacco executive chaired at commissioner level.

In assessing the adequacy of our response we have had a good deal of success in seizing illicit cigarettes intended for sale here or in the United Kingdom. In 2010 we seized 178 million cigarettes; in 2011 the figure was 109 million; in 2012, 96 million and in 2013, 41 million. These figures show a marked decline, reflecting a shift in the way illicit cigarettes are trafficked. It is believed criminal gangs have been moving away from very large consignments in favour of smaller volumes as a result of the number of large seizures being made throughout the European Union, including Ireland. However, the most important measure for us is the survey data for illicit consumption which indicate containment and some modest progress. Where possible, we prosecute those involved in smuggling, distributing or selling illicit cigarettes. In 2013, 100 people were convicted for smuggling or other illicit cigarette offences. The courts imposed custodial sentences in 38 cases and average fines of over €2,600 in 62 cases.

On the impact of the standardised packaging legislation on the illicit cigarette market, we are satisfied that it will not damage our efforts to tackle the problem. We rely on our tax stamp to identify tax paid tobacco products and the standardised packaging legislation will accommodate the stamp. We expect the new packaging rules to ensure effective security features to make counterfeiting very difficult. The tax stamp will certainly contain all of the features possible to minimise the risk of counterfeiting.

I assure the committee that tackling illicit tobacco is a key priority for Revenue. We are planning on the basis that Ireland will remain a very high tax country for tobacco products and will be undertaking a fundamental review of our tobacco strategy in the next couple of months.

**Chairman:** I ask the assistant commissioner, Mr. Byrne, to read his statement, given the importance of the subject matter.

**Mr. Derek Byrne:** I welcome the opportunity to read my statement. There is no evidence available to An Garda Síochána to indicate that implementation of plain packaging for all tobacco products sold in Ireland would lead to an increase in the trade in illicit tobacco. An Garda Síochána notes that Australia implemented similar provisions in 2013, making it the first country in the world to do so. However, it is not possible at this stage to ascertain from the Australian experience if there has been any impact on the trade in illicit tobacco because of this legislative change. It is also relevant to point out that the markets for illicit tobacco in neighbouring countries differ. Lessons learned from the Australian experience may not necessarily be directly transferable to the Irish context. It has been asserted by certain interested parties that the move to plain packaging may lead to an increase in the trade in illicit tobacco products in Ireland. However, An Garda Síochána has not been presented with evidence which supports this proposition. The quality of counterfeit goods which are readily available across international markets is so good that the identification of the authentic product is often difficult for experts in the field. Those involved in counterfeiting can counterfeit what they need and changes to plain packaging are not going to impact on this.

The growth in international markets of the sale of illicit whites is also relevant. This area is increasingly attractive for those involved in both the manufacture and distribution of these products. Those involved in the manufacture of illicit whites are not in breach of copyright legislation. This means that they do not run the risk of law enforcement action for counterfeiting offences. It also reduces the opportunity to bribe public officials.

Representatives from Her Majesty's Revenue and Customs and OLAF, the European anti-fraud office, have recently given evidence to the House of Lords Select Committee on the European Union on this issue. Both organisations have significant expertise and experience in the illicit trade in tobacco products and stated clearly that there is no evidence to indicate that the introduction of plain packaging will lead to an increase in the illicit trade in tobacco products.

An Garda Síochána is always alert to the possibility that changes in criminal legislation and other regulatory statutes can cause changes in the behaviour of criminal enterprises. The illicit tobacco environment, post-implementation of the proposed legislation, will be monitored closely by An Garda Síochána. Where new challenges are identified, An Garda Síochána, in conjunction with its national and international partners, will respond appropriately to ensure compliance with legislation.

Turning to the Garda strategy for tackling smuggling in this regard, the 2014 policing plan of An Garda Síochána sets out its commitment to proactively target groups and individuals engaged in organised criminal activity, including the illicit trade in tobacco products. To this end, An Garda Síochána is committed to the use of intelligence-led operational tactics, including those of specialist national units. The monitoring of such groups is ongoing and kept under constant review.

The smuggling of tobacco is primarily a revenue offence and as such is enforced by the Revenue Commissioners - Customs. An Garda Síochána continues to commit to working closely with the Revenue Commissioners and other agencies, both national and international, to proactively target groups and individuals involved in organised crime, including counterfeiting, laundering and smuggling goods. An Garda Síochána provides support and assistance for the Revenue Commissioners on an ongoing basis.

An Garda Síochána continues to develop and implement operations and strategies aimed at targeting, dismantling and disrupting criminal networks, utilising advanced analytical and intelligence methodologies. Multidisciplinary approaches are utilised to ensure the activities of individuals and groups involved in criminal enterprise, including those involved in the importation, sale and distribution of illicit tobacco, are effectively targeted, including the use of the proceeds of crimes legislation, money laundering legislation and the powers of the Criminal Assets Bureau. Specifically, the 2014 policing plan outlines the organisation's commitment to improved intelligence gathering and surveillance and analysis capabilities; continuing to build on partnerships to share intelligence with appropriate national bodies and international law enforcement agencies; ensuring proactive policing interventions based on intelligence and analysis; utilising regional multi-agency capabilities to target persons engaged in crime; identifying and targeting organised crime groups; and targeting criminals by maximising the use of the Proceeds of Crime Act 1996, as amended, and asset recovery opportunities at national and regional level.

Owing to the transnational nature of counterfeit products, An Garda Síochána works with other State and private agencies to monitor new innovations in this type of criminal activity. This includes liaising with other policing and customs agencies in neighbouring jurisdictions. Cigarette smuggling has been identified as a low risk high profit enterprise for organised crime groupings within the European Union. An Garda Síochána continue to liaise with other national police forces, Interpol and Europol to keep abreast of developing transnational crime trends. Ireland, like the rest of the European Union, is dealing with three main types of illicit tobacco: first, genuine tobacco which has been smuggled or diverted owing to discrepancies in price between proximal jurisdictions; second, the smuggling of "cheap whites", non-counterfeit

cigarettes that are often produced legitimately and then smuggled, avoiding tax; and, third, counterfeit tobacco which has been manufactured covertly and smuggled into Ireland.

An Garda Síochána approaches the policing of illicit tobacco at both national and local level. On national operations, the intellectual property crime unit at the National Bureau of Criminal Investigation is responsible for the protection of intellectual property rights and ensuring a structured and co-ordinated approach in tackling the problem of counterfeit products and illicit tobacco. It liaises on a national basis with investigating gardaí and assist in all aspects of this criminality. It works closely with other police forces and agencies in the discharge of its functions. Members of the intellectual property crime unit are trained in the area of international intellectual property crime and actively involved in the provision of this training for members of An Garda Síochána in outside districts.

Also working at a national level to tackle the trade in illicit tobacco is the Criminal Assets Bureau which is a member of the Cross Border Tobacco Fraud Enforcement Group, CBTPEG. The group was set up to deal with the issue of cross-border cigarette smuggling. It was convened arising from a workshop recommendation made at the organised crime cross-border conference in Dundalk in 2009 and is operated under the inter-agency law enforcement cross-border initiative. Its meetings are attended by representatives from the PSNI, HMRC, SOCA, Revenue - Customs, An Garda Síochána and the Criminal Assets Bureau. The group is chaired by the Revenue Commissioners - Customs.

Arising from meetings of the group, a number of organised crime groups involved in the sale and distribution of tobacco products operating in both jurisdictions have been identified and targeted. Two organised crime gangs involved in the trading of illicit tobacco products have been successfully targeted to date as a result of this initiative. The Criminal Assets Bureau has been successful in seizing assets and raising revenue assessments against the persons involved in this criminal enterprise. Matters arising from these meetings are the subject of ongoing investigation at national crime units in An Garda Síochána. A recent intelligence-led operation, against an organised crime gang involved in the importation of illicit cigarettes into Ireland, conducted in conjunction with Europol and other international police agencies, is a great example of success in this area of operations. Operation Bonanza culminated on 17 September 2013 in the recovery of approximately 10 million contraband cigarettes, cash and a stolen agricultural vehicle. Four suspects were arrested and a file is being prepared for the Director of Public Prosecutions.

Operation Decipher relates to local, regional and district operations enforced by members of An Garda Síochána. In conjunction with co-operation at national level and high profile intelligence led initiatives, An Garda Síochána continues to target street level offenders and the distribution networks surrounding these criminal activities. Operation Decipher, led by the intellectual property crime unit, was established in 2013 to tackle across Garda divisions the sale of illicit tobacco products. The focus of the operation is directed towards the sale of illicit tobacco products through local markets, fairs, shops and by individuals. A national day of action was held on 12 September 2013 under the auspices of Operation Decipher. A total of 16 searches were carried out, 13 of which resulted in the seizure of illicit tobacco products. There is a nominated Garda inspector in each division to co-ordinate activities and liaise with the national point of contact at the intellectual property crime unit at the National Bureau of Criminal Investigation. The operation is increasing awareness of the illegal trade among operational gardaí. It is hoped that throughout 2014 there will be an increase in seizures of illicit tobacco products and a resulting increase in prosecutions of offenders. At a strategic level, building the

policing of illicit tobacco sales through divisional policing plans will make this issue an ongoing priority for An Garda Síochána.

**Chairman:** I thank Mr. Byrne and invite Mr. Gavin Maguire to make his opening statement.

**Mr. Gavin Maguire:** I thank members of the joint committee for the invitation and the opportunity to address them today. We sent in a submission last week, as well as a short opening statement through which I now will bring members. The HSE strongly supports this Bill as another important step in the de-normalisation of tobacco smoking in Ireland. One in every two smokers dies of smoking-related illnesses in Ireland. These illnesses and deaths are preventable. Improving health and well-being is one of four pillars of reform outlined in Future Health, the government's health reform programme for the Health Service Executive, HSE. The programme involves a shift in policy and practice away from simply treating sick people to keeping people healthy and well. The HSE's actions in respect of tobacco control include tobacco-free campuses, targeted health promotion campaigns, the HSE QUIT campaign, brief intervention training, research and enforcement of the Public Health (Tobacco) Acts and tobacco control legislation.

The elimination of one form of advertising by tobacco companies - the use of attractive, glossy and sometimes cosmetic-like packaging designed to appeal to young people - is a hugely important step. The tobacco industry has invested heavily in pack design to communicate to this specific group. The evidence strongly suggests that standardised packaging will reduce the appeal of packaging and of smoking in general. Research further suggests that standardised packaging will go some way towards reducing consumer misperceptions regarding product harm, particularly the perception that one brand of tobacco is less harmful than another, and will help to make the legally required health warnings more visible. Tobacco companies have introduced extensive cigarette pack innovations in recent years. The introductions of these new types of package have posed serious challenges to the enforcement of current tobacco control legislation for the HSE. The clear stipulation of the pack features in this Bill will make enforcement much easier. The restrictions on the wrappers of tobacco products such as cigarettes and roll-your-owns will remove the current trend of highlighting lower pack price across the top of the product, suggesting to the customer that they are selling them at a reduced price and thus acting as a sales promotion device.

We welcome the inclusion in the Bill of the provision whereby the offence is committed by the manufacturer and the distributor, as well as the retailer. In many incidences, the supplier stocks the machine in the shop or wherever and the retailer may not look at the product packaging until it is requested by the customer. Therefore the onus must be on the retailer, the manufacturer and the supplier to ensure the product complies with the legislation. Fines and penalties must be sufficient to deter the tobacco companies from non-compliance with the law and we therefore welcome the levels of fines and penalties envisaged in the Bill. We also welcome the fact that, upon conviction, the court shall order the person to pay the costs and expenses associated with the inspections and the institution of legal proceedings.

Roll-your-own tobacco products are a growing segment of the industry. The increase in the pouch size to 20g per unit pack is important in the restriction of access to tobacco products by young persons and lower socioeconomic groups. We suggest that an additional requirement for consideration should be standardisation of the pack size. This would make packaging for slims or smaller packs less attractive to the customer. Restrictions on the size of tobacco packaging are currently not captured under this Bill, although they are included in the Australian legislation. It would also prevent tobacco companies from making tobacco packs smaller, thus reduc-

ing the size of the required health warning, or indeed larger with the aim of increasing the size of the brand name or business or company name that appears on the pack. We also suggest that improved powers of enforcement for the environmental health services within the HSE may be necessary for seizing, removing and detaining non-confined products, as well as payment by the offender for destruction.

**Chairman:** I thank Mr. Maguire and now will hand over to members. Incidentally, I should relay the apologies of Deputy Kelleher, who is speaking on the Order of Business. Deputy Ó Caoláin sends his apologies, as do Senator Henry and Deputy Catherine Byrne. Senator MacSharry also was obliged to attend the Order of Business.

**Deputy Sandra McLellan:** I welcome the witnesses. Their presentations have been highly informative and, as this is a thorough way of formulating legislation, it is of great importance to members. I apologise again on behalf of Deputy Ó Caoláin, who unfortunately is unable to attend today. The witnesses might bear with me as I come to the questions, which I will be asking on both his and my own behalf. As outlined in previous meetings, Sinn Féin is supportive of the planned legislation. My colleague at European Parliament level, Martina Anderson, has done similar work in respect of the tobacco directive. All members are clear as to the impact on health of tobacco and barely a family in the country has not suffered because of its horrific consequences. Moreover, there is a definite correlation with regard to socioeconomic groups in that the poorer one is, the more likely one is to have one's life destroyed by these consequences. As for any measures that can be taken to make it less appealing, there obviously must be ongoing monitoring to ascertain how effective they are in the future.

I have a number of questions. I note Mr. Byrne stated there is no evidence available to An Garda Síochána that would indicate that the implementation of plain packaging for all tobacco products sold in Ireland would lead to an increase in the trade in illicit tobacco. However, I have to hand a report from KPMG that appears to contradict these remarks. To run through a couple of points, it states that there has been no reduction in tobacco consumption; that there has been a decrease of 40% in consumption of non-branded tobacco, with increases in consumption of contraband and counterfeit cigarettes of 162% and 71%, respectively; that the illicit market has seen an increase of 13%, while illicit cigarettes have increased by 154%. As this appears to contradict Mr. Byrne's observations here, he may wish to comment on that report or whether he has an idea of who paid for it. I also note the comments by Mr. Byrne on whites and that those involved in the manufacture of illicit whites are not in breach of copyright legislation. Does this mean that in terms of plain packaging, the Garda will have fewer powers to secure prosecutions? Does it mean that certain copyright laws that now apply will no longer do so if this legislation is introduced? In respect of Garda recruitment, will some of the newly recruited staff work in the area of tobacco control - for example, in the intellectual property crime unit? On the individual policing of illicit tobacco sales through divisional policing plans, which play an important and practical role, will this project be prioritised and resourced adequately? Can the Garda indicate whether, on a global basis, the tobacco industry has been implicated in illegal tobacco trading? Will plain packaging reduce illegal trading in tobacco products and what percentage of illegally traded tobacco products are actually detected by the Garda? While these are my questions to the Garda, I have a few more for the Revenue Commissioners.

In 2010, 178 million cigarettes were seized, while in 2011, 2012 and 2013, the figures were 109 million, 96 million and 41 million, respectively, yet the consumption of illegal tobacco has remained fairly stagnant. Does this reflect a failure on the part of Revenue in which the criminals all are one step ahead and now are able to bypass its detection methods? How is

Revenue addressing this negative trend? How are seized cigarettes disposed of? How does Revenue get them out of circulation? I would like to hear the Revenue Commissioners state they fully support the Government's demand reduction objectives because I am conscious that were the measure to be 100% successful it would cost Revenue €1.4 billion. I seek confirmation that everyone is on the same page in this regard. How much does tobacco-related illness cost the public Exchequer each year, and has this sum increased or decreased over the years? How much does the sale of tobacco products raise in taxes for the State and has this increased or decreased over the years? Members are aware of the loss of €240 million from tax revenue; how does this compare with other trades, such as music, food and clothing? What is the impact of the European Union's tobacco products directive? Is an all-Ireland approach needed in this regard and should members be encouraging the Northern Ireland Assembly Minister for Health, Social Services and Public Safety, Edwin Poots, to adopt similar legislation?

One in every two smokers dies of a smoking-related illness in Ireland. Will the witnesses remind the committee of the approximate cost of that to our health services?

On the level of fines, what is the proposed method of increasing the fines? Is it by further legislative amendments?

I ask Mr. Maguire to expand on the last two points made, namely, potential improvements regarding the standardisation of the pack size and increased powers of enforcement. Does he have specific ideas or recommendations in that regard?

**Senator Jillian van Turnhout:** I thank the Garda, the Revenue Commissioners and the HSE representatives for their presentations. The message I will take from the presentation by the Garda representatives is that the Garda, the European Anti-Fraud Office, OLAF, and many others believe there is no evidence to indicate that the introduction of plain packaging will lead to an increase in the illicit trade of tobacco products. That is the clear message that must go from these hearings.

In looking at illicit trade while researching and preparing to deal with this issue, I was startled to see that in 2002, evidence was given before the United Kingdom Public Accounts Committee by ASH UK which clearly showed that exports of tobacco to Andorra, for example, increased from 13 million in 1993 to 1,520 million in 1997. Every Andorran man, woman and child would have to smoke 130 cigarettes a day to make up that amount. That is a real example of the way this illicit trade is taking place. There is an over-supply by tobacco companies to certain countries. Last October, the Right Honourable Margaret Hodge appeared before the UK Public Accounts Committee and stated that the supply of some brands of hand-rolling tobacco to some countries in 2011 exceeded legitimate demand by 240%. The evidence is there for us to see.

Before asking specific questions I note what the HSE representative said about the size of the packets, which we will take into consideration in our deliberations. My questions are for the Revenue Commissioners, and if other witnesses wish to respond I would be happy to hear their comments. With regard to the Revenue Commissioners, has there been a decrease in resources to tackling smuggling? We all know that there have been cuts in some areas in the recession. If so, what has been cut? How much does Ireland spend each year on tackling smuggling? I was surprised when I saw the number of prosecutions. With regard to tracking and tracing, which is one of the key provisions of the World Health Organization illicit trade protocol, which Ireland has signed up to, what is the readiness of the Revenue Commissioners in that regard?



I refer to Codentify, a system developed by a major tobacco company, Philip Morris. The company says it is a unique, secure 12-digit code printed onto the side of packages, but Philip Morris is donating money to organisations and agencies such as Interpol to promote and develop Codentify. I am aware that organisations such as the Irish Cancer Society see that as a major conflict of interest. What is the Revenue Commissioners' view on Codentify? Does a system developed by the tobacco industry not raise concerns about compromise and reliability?

I have a question on forestalling, which is a tax avoidance measure identified in the UK. It is a practice whereby excessive quantities of cigarettes are removed for home use on payment of duty because an increase in the rate of duty is expected. Is there any evidence of forestalling in Ireland? Finally, has the tobacco industry been involved at any point in training or advising the Revenue staff on illicit trade?

**Senator John Crown:** I welcome my Garda colleagues. I am sorry if I am being inappropriate but I would like to express my sympathy to them as it is close to the anniversary of the loss of one of their colleagues in the line of duty last year. I know it is in everybody's mind today.

The situation with respect to tobacco is unprecedented. If this product had been discovered during the 20th century it would never be legal. It is the ultimate example of something that was "grandfathered" into cultural acceptability. If tobacco was a component of refrigerator doors, we would not allow it to be legal now in the manufacturer of refrigerators. If it was a component of the paint used in cars, it would not be allowed - it is that carcinogenic - yet we allow people take it into their bodies. Every fibre of every organisation associated with the public good must realise that those who make it, distribute it and sell it - sometimes good people, sometimes misguided - are involved in something which is evil and must be stopped. We must also understand that a totally legal cigarette is just as likely to give one cancer as an illegally smuggled cigarette. There is no moral distinction in terms of what we are doing here.

People talk about precedents in tobacco control for other areas such as sugar and cholesterol. There are no precedents. If some misguided philanthropist sent containers of Big Macs to refugee camps in Africa where children were starving, the Big Macs would keep them alive. There is nutrition in the most unhealthy of foods. What causes the problem with unhealthy foods in general is having too much of it. Tobacco is in a case of its own. It brings no health benefits. It is an addictive, toxic, cancer-causing substance which has been allowed into our culture.

Spurious arguments are advanced against increasingly draconian measures such as the excellent measures the Minister, Deputy Reilly, is suggesting, and some of the other excellent measures Senators Daly, van Turnhout and I suggested, which for some reason have either been rejected or become terminally glued in the treacle-like bureaucracy of the health administration. However, these are good moves. The arguments often advanced against them is that they will decrease revenue and increase smuggling. The decrease in revenue argument is entirely spurious. If God appeared tomorrow on O'Connell Street and made everybody stop smoking, the Revenue Commissioners would be discombobulated for about a year but they would get used to it. The decrease in spending on health services would take a few years to kick in, but it would kick in and it would be a saving. The crazy argument is advanced that some of this money would disappear. People who had money in their pockets that they were not spending on cigarettes would spend it on their families, their children, heat, education, better food and a number of socially advantageous things. If the entire trade disappeared tomorrow, we would be better off the day after tomorrow. It is that simple.

In terms of the questions that must be asked, I echo those of my colleague, Senator van Turnhout. I will stick my neck out - this is the wonderful thing about Seanad privilege - and say that on a global scale the tobacco companies like smuggling. They encourage it, foster it and make sure it happens because it is in their interest. Smuggling is great for them. Most of the product smuggled is their product. Ultimately, it is bought at their distribution or wholesale price from them. The people who lose out are the Revenue Commissioners and perhaps the shopkeepers in border areas between jurisdictions. The companies do not lose, and therefore I am sceptical when I hear that the companies want to lobby our Government on their concerns about smuggling. Smuggling does something else for the companies. It provides cheap, addictive product to impressionable children. It is easier to get people addicted to something that is cheap than to get them addicted to something that is expensive. All of these arguments trickle away.

With no disrespect to the representatives, when considering the health impacts of plain packaging and increasingly draconian measures, we should not even think about smuggling. It is great that the Revenue Commissioners, the Garda and the National Office of Tobacco Control do a good job interdicting it, but this unintended collateral consequence should not be what drives our public policy. It must be remembered - Senator van Turnhout alluded to this - that the arithmetic is overwhelming in that it suggests there is something extremely fishy about export patterns of tobacco to small countries from whence it mysteriously appears in other larger jurisdictions.

My father sold tobacco products in his little mom-and-pop shop in Brooklyn, New York, after he emigrated from Leitrim - his shop was called Jack's Cigar Store - so I understand the cultural influences that lead people into this line of trade. Everybody who sells these products from the local shop to the wholesaler to the importer to the shipper to the manufacturer is dealing in death and buying into a business which must recruit 50 children per day to make up for the people who die. Those here should remember the business plan of the tobacco industry; it comprises four words - they should write them down as the plan is easy to remember - "addict children to carcinogens". If the industry does not do that, it will be out of business.

**Chairman:** Five other members have indicated I will call them now starting with Deputy Mitchell O'Connor.

**Deputy Mary Mitchell O'Connor:** I thank the delegates for their presentations. I wish to ask about plain packaging and counterfeiting and direct this to whomever feels it is most appropriate to answer on that. Two statements were read out. The Assistant Commissioner said that the quality of counterfeit goods, which are already readily available across international markets is so good that the identification of the authentic product is often difficult for experts in the field. The following is the sentence I want him to address, namely, "Those involved in counterfeiting can counterfeit what they need". Mr. Moran from the Office of the Revenue Commissioners said that he was very confident that we could deal with this and that the tax stamp will certainly contain all the features possible to minimise the risk of counterfeiting. Has he faith in that process? What we are hearing and what we have read in a submission we received from shop owners and retail outlets is that plain packaging will serve to make the process of counterfeiting substantially easier and cheaper while providing a stimulus to the black market. I would like Mr. Moran to comment on that.

I wish to cite what an unnamed senior customs official was reported as saying in the media. He said:

The Minister might be well-meaning, but he is playing right into the hands of the Real IRA and their criminal cronies. They won't have to copy hundreds of different packs any more - because they'll all look the same.

Does Mr. Moran share any of those concerns? Will the Garda and the Revenue need more resources if plain packaging is introduced? If that serves to make the process of counterfeiting easier, do the witnesses believe those resources will be available to them?

Plain packaging has been introduced in Australia. Has Mr. Gerry Maguire engaged with our Australian colleagues since the introduction of standardised packaging and can he report on the trends in Australia during the past 12 months? It has been stated by the HSE and, I believe, by the Minister, Deputy Reilly, that the long-term goal is to reduce smoking prevalence to 5% by 2025. Has he got medium-term targets set between now and 2025? With all the health education and everything that is being done by the HSE, Revenue, the Garda, Deputies, educationalists, the Irish Heart Foundation and all the various groups, why has the prevalence of smoking not decreased?

**Deputy Ciara Conway:** Many of the questions I intended to ask have been asked and I will not reiterate them. I congratulate the Garda on its success in the seizure under Operation Bonanza where 10 million cigarettes and cash were captured. Are there black spots in the country where such activity is more prevalent? I also have been contacted by a number of retailers who are concerned that the plain packaging will make counterfeiting easier, as outlined by my colleague Deputy Mary Mitchell O'Connor. In fairness, the people I met understand the damage cigarettes can cause. I got the impression from them that such activity was worse in some parts of the country than in others. Has the Assistant Commissioner information on that and what is being done to tackle those black spots to ensure that such counterfeiting can be curtailed? It is also a question for Revenue officials in terms of what it is doing to tackle this activity outside the greater urban areas. What level of resources are deployed to areas around ports and cities in close proximity to ports such as Waterford and Wexford to ensure they can capture any illicit trade that is taking place?

In terms of the HSE's programmes, I would agree with Mr. Maguire's point about standardised packaging because it is more difficult for slims and such products, by virtue of the nature of their packaging, to carry the health messages in bold print. That is a valid point and something we should take on board.

Following on from Deputy Mitchell O'Connor's point, why is smoking still so prevalent? It is particularly prevalent among young girls and is often prevalent among lower socio-economic groups in communities. What more can we do to tackle this problem? What types resources will the HSE allocate, particularly in light of what Senator Crown said, namely, that we know that the tobacco industry's *modus operandi* is to try to engage young children to take up smoking? What is the HSE doing to address that? I know of the cessation programmes and smoke-free campuses but that relates to adults. What is being done preventatively to ensure that young people do not taking up smoking?

**Deputy Peter Fitzpatrick:** I welcome Mr. Derek Byrne, assistant Garda commissioner, Mr. Gerard Moran, assistant secretary in the Office of the Revenue Commission, Mr. Gavin Maguire, assistant national director of the National Tobacco Control Office and their staff. Most of the questions I intended to ask have already been asked but I would ask the following ones. Does increasing the price of tobacco products increase the level of smuggling? The Government has increased prices as have the tobacco companies. Will plain packaging, which will carry health warnings and other labels currently on the packets, increase illicit trade?

It was stated that it is estimated that €240 million is lost in tobacco tax in the illicit trade in Ireland, which is broken into three categories: contraband - a genuine tobacco packet imported without paying tax and duty; a counterfeit product that appears genuine but is a fake; and illicit whites, which are cigarette products only for the black market.

In terms of standardising packages of tobacco, the aim is to reduce the appeal of tobacco and tobacco products, increase the effectiveness of the health warning on tobacco products, reduce the ability of the packaging of tobacco and tobacco products to mislead customers about the harmful effect of smoking in the public interest by providing for the standardisation of the labelling and physical features of the retail packaging of tobacco products and the requirement for the appearance of the cigarettes.

I want to outline a few statistics. Scientists have indicated there are approximately 4,000 different chemicals in cigarette tobacco and more than 70 of these cause cancer. Each year at least 5,200 people die in Ireland from tobacco-related disease. This represents almost one in five of all deaths. According to the Department of Health, 90% of lung cancers are caused by smoking and it has stated that it costs approximately €1 billion per year to provide health services for smokers. Smokers lose an average of between ten to 15 years from their life expectancy by smoking. The average cost of admission to treat a smoker in an inpatient setting for tobacco-related illness is €7,700 in Ireland. It is estimated that the workplace smoking ban introduced in 2004 has led to more than 3,500 deaths being avoided as a result of tobacco consumption. I also realise that the tobacco sector in Ireland accounts for approximately 5,500 jobs and is a major driver of the tax revenue, generating approximately €1.4 billion per year.

**Deputy Seamus Healy:** I welcome the delegates from the Garda Síochána, the Office of the Revenue Commissioners, the HSE and their staff to the meeting. One in ever two smokers dies of a smoking-related illness. It is shocking. We are dealing with an industry of death and for it to continue, it is necessary for it every hour of every day to get additional young people addicted to tobacco. I support the legislation promoted by the Minister and supported the targeting of young people to help prevent more of them becoming addicted to tobacco and reduce consumption overall.

I need confirmation from all agencies, including the Revenue Commissioners, the Garda Síochána and the HSE, that the introduction of plain packaging will not damage the campaign against the illicit tobacco trade. I also ask them to comment on the idea that the use of plain packaging will make enforcement easier. I believe it will not damage the campaign against the illicit tobacco trade and that it will make enforcement easier, but I would like the agencies present to respond to these questions. Can any or all of them comment on the involvement of tobacco companies in the illicit trade? There is a suggestion many countries are being oversupplied by the tobacco companies for re-export to other areas on an illicit basis. I seek clarification of the reduction in the number of cigarettes seized from 178 million in 2010 to 41 million in 2013.

I refer to the current penalties and those provided for in the Bill. Are the agencies satisfied that the penalties provided for are adequate and sufficient to deal with the problem?

The Garda Síochána referred to street level offenders, sales at fairs and car boot sales. There is a perception that there is little or no action being taken at this level. I am not sure the perception is the reality, but there is that perception and I would like a comment on it.

**Senator Colm Burke:** All of the questions that need to be asked have been asked. I refer to the drop in the number of cigarettes seized, from 178 million to 41 million. Does this mean

that there is an ongoing trade but at a smaller scale such that the 41 million cigarettes seized is a small figure in real terms? Perhaps the smaller number makes the problem more difficult to identify. Are these figures an accurate reflection?

I speak to people working in medical services who deal with medical clinics on a daily basis. One person told me about someone who was smoking 300 cigarettes a week and said there was no way, on the income that person received, that they could buy cigarettes in shops. I have heard this from a number of medical personnel. Despite medical advice, people continue to smoke heavily and it is clear based on their incomes that they cannot afford to buy cigarettes in shops. Medical service professionals have not seen a drop in the level of consumption by the people with whom they are dealing.

With the growth in international communities in Ireland in the past 20 years, it is that much easier to keep an eye on Irish people involved in illegal activity. What strategies have the Garda Síochána and the Revenue Commissioners taken on board to deal with people from international communities given that they do not have the same inside line that they have with Irish people? What change in strategy needs to be adopted to deal with this issue? I recently raised the issue of recruitment to the Garda Síochána. Do we need to examine the recruitment of people from outside the European Union who are living in Ireland and now Irish citizens? They have inside knowledge of international communities. What strategy has been adopted in dealing with this issue?

**Deputy Dan Neville:** Most of the questions I want to raise have been asked. We campaigned very strongly for people to stop or not to start smoking. Are we doing enough to deal with the addictive nature of cigarettes and on how to help people to kick the habit? Alcoholics Anonymous deals with the problem of alcohol addiction, but I question whether the HSE is doing enough to help people to deal with their addiction. There is a sense that we are abandoning people who are severely addicted because nothing can be done.

As I must be elsewhere at 11.30 a.m., I will read the answers later.

**Mr. Derek Byrne:** I thank members of the committee for raising valid issues. I thank Senator John Crown for his kind comments as we approach the first anniversary of the death of our colleague, Detective Garda Adrian Donohoe, on 25 January.

**Chairman:** On behalf of the committee, I join the assistant commissioner in paying tribute to him and sympathising with his wife and family and other members of the Garda Síochána. It is a tragedy that people are not prepared to assist the Garda Síochána in taking those involved to task. We salute and support the Garda Síochána in its endeavours and thank the family for its courage and bravery.

**Mr. Derek Byrne:** We greatly appreciate the comments of the Chairman and the committee.

The Garda Síochána in no way disputes the medical findings on the effects of tobacco, as outlined by Senator John Crown and other members of the committee. From where we sit, this is a demand-led industry. In my opening comments I mentioned that our response was intelligence-led to tackle the criminality end of the problem. We have challenges, like our colleagues in the Customs service and the Revenue Commissioners, in trying to deal with it.

I was asked how strategies had changed. We have intercepted containers. There is a relatively small outlay for quite a high profit margin and some have taken high risks and lost a lot of money. Separately, we have individuals arriving at air and sea ports throughout the State with

suitcases full of cigarettes. Our colleagues in the Revenue Commissioners have had considerable success in dealing with that part of the problem.

Senator Martin Conway asked me about markets. There are little markets all over the country. We have worked with private investigation companies and Operation Decipher has led to considerable success, with 16 raids in one day and 13 successful seizures around the country at various markets and fairs.

Deputy Sandra McLellan asked me about the Garda recruitment campaign. It is a function of all members of the Garda Síochána to enforce the legislation. We think the current legislation is relatively robust.

Deputy Healy asked whether the new sanctions will prove beneficial. We see them as being in the serious crime category. At this stage it appears that the legislation will be quite sufficient for us to deal with the crime as an indictable offence. That also make it an arrestable offence for us. The indications in the proposed legislation are that it is being treated as a serious crime, which is a welcome development.

Other issues were raised, including counterfeiting. Copyright is not a major prohibition for us. We have several other pieces of legislation to deal with casual trading or trademarks. We have sufficient legislation to deal with the matter. We will be strengthened by the proposed new legislation and the penalties that will be imposed. Earlier I said that we do not know the extent of the problem after the implementation of the legislation. However, we will watch the matter very closely. We must wait and see how enterprising criminal elements adapt to the legislation. It is at that stage that we will be able to give some greater indications of what the situation is likely to look like in terms of what must be done by the Garda Síochána, Revenue and Customs and Excise.

We are very closely aligned with Interpol and Europol for some of the international operations and attend various meetings. We have hosted two conferences on intellectual property crime in Ireland, late last year and four years earlier, and 650 delegates attended from over 50 countries. This illicit trade was very high on the agenda and is very high on our agenda. We are very much linked with Interpol and Europol in terms of enforcement methodologies. Profiling and tracing takes place across jurisdictions to see if we can intercept illegal tobacco products entering the jurisdiction. Of course if we gather information there is a process whereby we will act on it immediately to detect activity, prevent the loss of Exchequer funding within the jurisdiction and prosecute the offenders.

Several other issues have been mentioned. I am not sure if I have missed any but I am more than happy to address them if I have not done so already. I am accompanied by the chief bureau officer from the Criminal Assets Bureau and the Detective Chief Superintendent from the National Bureau of Criminal Investigation. We are more than anxious to answer any further questions if I have not touched on some of the issues raised.

**Chairman:** Do any Members wish to comment or are they happy to defer?

**Deputy Ciara Conway:** I wish to comment.

**Chairman:** I shall allow the Deputy to contribute again later.

**Mr. Eugene Corcoran:** The Criminal Assets Bureau has a very specific statutory function regarding the proceeds of crime and depriving criminals of the proceeds, which includes, in this

instance, people engaged in the illicit tobacco trade. I shall address some of the issues from that perspective. It is difficult to view the illicit tobacco trade in isolation when dealing with organised crime because it presents a considerable opportunity to earn large profits by those engaged in this type of criminal activity, whether they are organised criminals or connected to dissident groups.

With regards the specific issue of plain packaging and its likely impact on people involved in the trade, it is quite difficult for us to address the matter because we have had little or no international experience of doing so, apart from in Australia. The current packaging presents little or no difficulty for illicit traders to carry on trading. Whether plain packaging presents an easier route for them to disguise the packaging is a moot point. They are largely indifferent to packaging in terms of the trade that they engage in and that is all I can say for the moment.

**Mr. Gerard Moran:** I have written down most of the questions and hope that I can read my scrawly writing. I shall try to respond satisfactorily to as many of the questions as possible.

One of the first questions came from Deputy McLellan and related to the drop in numbers that I quoted. It is important to bear in mind that figures for any particular year - particularly going back a few years - are easily distorted by the seizure of a small number of huge consignments. That is why I must stress that the far more important measure for us is the survey results on the incidence of illicit consumption. We need to highlight that fact even though the organisation has tended to highlight the seizures because everybody likes to talk about their successes. The important measure is the survey data on the incidence.

In my statement I said we believed that the reduction in the volumes - particularly in the most recent year - are associated with an evolution in the way organised crime groups are operating and, in particular, supplying the Irish market. Before now, some stuff might have been routed through Ireland for the UK market. Some of the seizures that we made in the past few years were so large that they could not have been destined for the Irish market. Now, instead of being used as a route to other markets, the Irish market may well be served in smaller quantities from the continent or the UK. The business of traffickers is constantly evolving and reflects their experience of the way enforcement authorities get on top of a certain situation and respond. Traffickers keep changing their tactics. I hope I have explained what the numbers mean and how we interpret the data.

A question was asked about how we dispose of seized cigarettes. I can confirm that they are incinerated.

We were asked whether we supported the Government's demand reduction policy. The question was asked as though there were an assumption on the part of some people that the Revenue Commissioners are revenue maximisers. We are not. We simply implement the law and follow Government policy. The job of the Revenue Commissioners is to collect whatever tax is payable and deal with whatever evasion and fraud is associated with tax.

An interesting question was asked about the notional loss of €240 million. I want to stress the term "notional loss" and how it compared with the tax gap or loss in other sectors. Tobacco is probably unique in being the only area that we tend to quote a loss for because it flags for Revenue internally and for the wider public the significance of the problem. We have good solid survey data that allows us to do this work. Generally we do not do tax gap analysis because it is fraught with enormous difficulty. Some tax administrations do so but they always heavily qualify the work by saying that it is usually to be relied on more as an indicator of trends than

as an estimation of the quantum. That latter bit always tends to be forgotten.

A question was asked about whether we needed an all-Ireland or all-island approach. We have already adopted such an approach, and the assistant commissioner gave details. All of the law enforcement agencies North and South meet on a quarterly basis to ensure good co-ordination and sharing of intelligence and information. My information is that the scheme works effectively, and the assistant commissioner mentioned some of the results that have flowed from its work.

A question was asked about the need for supply chain controls and their desirability. That is a key issue. Revenue is really interested in supply chain controls and a track and trace regime that will operate in the global black spots located in the source and transit countries. There is probably not a lot to be gained from a very high-tax country like Ireland investing heavily in a domestic track and trace system if the source and transit countries are not brought on board. A big job of work needs to be done at EU level or through whatever forum. We must seize an opportunity to pursue what we view as problem countries at the G20 or G8 forum in order to put pressure on them.

It is clear from the European Commission's communication on the issue that it speaks about enhanced co-operation with source and transit countries. Members of the committee can decode this for themselves.

There was a question on whether there had been a drop in the level of resources. Revenue has had a significant drop in the level of resources, probably from about 6,700 to 5,800 or 5,700 - I do not have the exact number. In achieving that reduction in recent years we have maintained the number of staff involved in compliance work. That includes the staff available to work on illegal tobacco issues, smuggling and street level activity, with which we have to contend. We have preserved these numbers in the face of a big aggregate reduction and are committed to doing this so far as we possibly can do so.

There was a question about the readiness of Revenue to take on track and trace functions. The policy and shape of the administrative arrangements or regime are settled on for the European Union, but they need to go a little further. From Revenue's perspective, our interest is in the supply chain in source and transit countries rather than in high tax countries. If somebody starts to try to source cigarettes in Ireland to sell them in eastern Europe, he or she will go out of business quickly, unless they are diverted, as we police the area very tightly.

I hope I am not taking too long to respond. If so, the Chairman may interrupt me.

**Chairman:** Mr. Moran is okay.

**Mr. Gerard Moran:** There was a question about our attitude to a tobacco industry sponsored supply chain or a track and trace system. Public policy on this issue needs to be settled by the various public bodies and Departments concerned. We are not particularly interested, therefore, in engaging with tobacco interests on it. There was a question on whether we had been talking to them. I am aware that they have made offers to us, but we are not inclined to nibble.

A key question, repeated by a number of Deputies and Senators, was related to the suggestion there was an increased risk that counterfeiting would be much easier with standardised packaging. To repeat what I said in my opening statement, we rely on the tax stamp. If they can counterfeit the packages already available, they can counterfeit the others. We do not see a dramatic change in the landscape. What is of primary importance for us is that we have a state-



of-the-art tax stamp that is highly resistant to counterfeiting and that the technology include secret features that our scanning devices can identify. That is what we rely on, not whether it is counterfeit. In the future we will also rely on the tax stamp.

I think it was Deputy Mary Mitchell O'Connor who quoted an anonymous Customs and Excise source who said this was playing into the hands of criminals. I do not agree; this follows from the remarks I have just made.

There was a further question about resources. I think I have dealt with that issue. We have sought to maintain the level of resources. I hope I stressed sufficiently in my opening statement that tackling this problem is a serious priority for Revenue. There are two dimensions to it - lost tax revenue which is very significant and the fact that it undermines public policy on smoking in that it results in making product more freely available at a time when pricing is a key instrument in trying to reduce demand.

I thought I was nearly finished, but I still have two pages left. I will go through them quickly.

There was a question on whether there were black spots. The answer is not particularly; that is our take on it. It is a problem across the country. It may be more intense in some places rather than in others, but it is widespread across the country. There might be a socio-economic dimension to the precise availability or degree of saturation in some places compared to others.

There was a question about the spread of resources, whether we were concentrating on the main ports and ignoring the rest of the country. That is definitely not the case. Our compliance staff and enforcement teams that undertake this work are distributed on a regional basis. They are deployed at small ports and airports on a risk assessed basis. All interventions and examinations we conduct are in the first instance on the basis of intelligence or risk profiling. Whenever we have information that suggests some activity is warranted at a particular location, we will do it. We also undertake regular campaigns at street level, some of which are localised and others on a national basis, to target visible activity.

There was a further interesting question from Deputy Peter Fitzpatrick on whether increased prices resulted in increased smuggling. Certainly, they increase the incentives. It means that there is a bigger margin for the traffickers. They can pitch at a price that is well south of the price of legitimate cigarettes and still have a huge margin to make super-normal profits. Undoubtedly, the bigger the price differential, the greater the incentive. It needs to be borne in mind that the price of legitimate cigarettes in some eastern European countries is probably about €2.20 per packet, whereas here the price is €9.50 or €9.60. One can find cheaper cigarettes and the cheapest one will find will be close to €8. The idea would be for prices in these countries to migrate in a northerly direction, but all of these countries tend to face problems with their neighbouring non-EU countries which have even cheaper priced cigarettes. It is, therefore, a difficult problem.

There was a question about plain packaging and the illicit trade and a further question about the figure of €240 million. I answered that question. I am picking up on it again, but it gives me another opportunity to stress that it is a nominal figure. It is useful to flag it, but it is a nominal figure based on unrealistic assumptions. Senator John Crown also covered the issue. People who have money would spend it on something else if they were not spending it on this product.

We were invited to comment on the involvement of tobacco companies in the illicit trade. A number of years ago there was a massive oversupply by the main tobacco companies in

places such as Andorra, but the activities of these companies have been brought under control by co-operation agreements that penalise them if their cigarettes are found available illicitly in countries other than those for which they are produced or distributed. If anyone wants me to come back in on a particular question, I can do that.

**Mr. Gavin Maguire:** Like other contributors, I hope I can pick up on all the questions asked. If the Chairman agrees, I will ask my colleague to deal with one or two questions.

**Chairman:** Sure, and if any members want to come back in, they are more than welcome.

**Mr. Gavin Maguire:** Deputy McLellan asked some specific questions regarding health but before I address those, she also asked a question regarding the correlation between price and illegal trade. A number of international studies dispute the study she quoted in terms of the correlation, although undoubtedly there is a correlation. Most international experts would say that the price of cigarettes is a very important element in regard to discouraging tobacco use. Many international reports say there is some correlation between price and illegal trade, but it is still worth increasing price .

On the specific health issues, the Deputy said the one in every two smokers dying from tobacco-related illness was a shocking figure. It is incredibly shocking. On the cost of tobacco related illness to the HSE, a 2009 European study estimated the cost at over €600 million. However, it is not just an issue of cost, but of the destruction of lives. The Deputy asked a question about increased fines being included in the Bill. The HSE does not have a role in that, but we would encourage the Minister to ensure the fines are at the upper end of the scale. We are involved in enforcement of current legislation on tobacco and we frequently feel that the levels of fines imposed do not act as a sufficient deterrent. Therefore, we would call for them to be increased, particularly in the case of this Bill because we are referring to tobacco companies with very deep pockets.

I will defer now to my colleague, Laura Garvey, on the next question concerning the two recommendations made in our opening statement.

**Ms Laura Garvey:** In regard to the size of cigarette packages, as we know the tobacco industry has invested hugely in package design and in trying to encourage new and young smokers to take up the habit. They have invested heavily in pack innovation. We talk about perfume or cosmetic type packages which are very small and contain the slim cigarettes. When these packages came out on the market originally, they resembled a tobacco product but were thinner. On the face of it, they looked the same as a tobacco product, but then innovation changed them and they are now a very small packet which can be quickly put into a handbag and are obviously geared at the female market. In our research, we looked at the situation in other countries. Australian legislation has restricted the size of a cigarette packet and there is a minimum and maximum length, depth and height. When considering regulations, we should look the physical features of a cigarette packet so we can introduce similar restrictions.

The tobacco industry has moved forward significantly with the roll-your-own products. This product is now in a large box, which includes the pouch, tobacco, the cigarette papers and the cigarette rolling machine or the filters and the tubes. These large boxes currently have significant branding, colour and advertising and the product name is in large print. This legislation should help move away from this final form of advertising. Now that we have moved away from point of sale advertising and from gantry advertising, this final form remains, but hopefully it will be abolished by this Bill and we can move away from branding of tobacco products.

Normalising the size of the tobacco package is also very important.

The other recommendation we made concerns the powers within the Bill. The heads of the Bill describe the powers in section 48 of the Public Health (Tobacco) Act and suggests that the new Bill will permit us to seize products for examination. The new legislation should ensure we can seize, remove, detain and, if necessary, destroy tobacco products. Currently there is a two-pronged approach. If products come into a port and are seized by Revenue, and the duty is paid on them, but they are seen as illegal imports from the point of view of the Public Health (Tobacco) Act, such as niche products or snuff or illegal products such as oral tobacco products, this would be under the remit of the HSE and we would work closely with the Revenue on this. However, stronger powers are needed in this regard. We also need stronger powers to deal with retail shops selling tobacco products that are illegal under the Act, for example, where warnings are not sufficient.

**Mr. Gavin Maguire:** Deputy Mitchell O'Connor asked whether we have engaged with Australia in regard to its experience. We are part of various networks involved in this. Initial research coming from Australia is very encouraging. Australia has seen a decline of approximately 15% in the number of what is described as table displays of cigarettes. This is mostly due to a 23% decline in the percentage of patrons who smoke. What is even more striking is that Australia has noticed that calls to its quit lines soared by 78% for a period shortly after the introduction of the new packaging. Obviously, there is an important relationship between people who make that first contact to a quit line and those who are ultimately successful in quitting tobacco.

The Deputy also mentioned the Department of Health's tobacco free policy document, Tobacco Free Ireland. I was a member of the group that drafted that document and it was our aim to achieve a 5% prevalence of tobacco smoking by 2025. The question was whether we should have an interim staged approach to the implementation of that. The document outlines a broad range of measures designed to get us to that goal and a group is working currently on identifying how the action required should be staged between now and 2025 to get to the 5% prevalence. That work is in progress and is well advanced.

A number of committee members asked why the prevalence of smoking does not seem to be reducing, but we think it is. No single study has monitored this over the years, but the general trends from the various studies commissioned show a downward trend. For example, the 2007 SLÁN study showed a prevalence of 27% or 28%. Our most recent HSE studies, in 2012, show a prevalence of 22%, down from approximately 24% the previous year. Therefore, we see a downward trend.

We see as equally critical the study of health behaviour of school children. A survey in 2010 showed that overall some 27% of children reported they had smoked at some time. This is a decrease of nine percentage points from 2006. In addition, the survey showed that 12% of children reported they were currently smoking, that is monthly or more frequently. This represents a 3% decline from the 2006 figure.

**Chairman:** Could I ask one question on that? I put this question as a former educator and as a non-smoker. We get bombarded with statistics and documentation. I have here in front of me documentation on behalf of a vested interest in the tobacco industry, which makes the point that smoking prevalence is quite high in Ireland, despite Ireland being one of the strictest tobacco regulatory environments. The document cites the example of Germany which has seen youth smoking prevalence decline to 11.7% from 27.5%. In the context of education awareness pro-

grammes and what the National Tobacco Control Office is trying to achieve, is an educational awareness policy going to succeed in itself?

**Mr. Gavin Maguire:** Not in itself, but it is an important part of the overall strategy. I was going to give an overview on that in response to another question. Various strands have been identified in this document and also within the HSE's internal policy in regard to the implementation of actions in regard to tobacco, and perhaps I will come back to those.

**Chairman:** Yes.

**Mr. Gavin Maguire:** In terms of the points made about the general prevalence of smoking, internationally our figures compare quite favourably. I do not have the European figures to hand but have noted that we are at the lower end of the prevalence scale. According to the figures that I quoted there has been a steady decline and we think that we are moving in the right direction. We contend that a strong legislative base in this country - which will be further strengthened by the Bill - is a significant element for the decline.

I shall move on to some other questions. A question was asked about the prevalence of smoking but I have touched on the matter.

I have already answered the question on the penalties contained in the Bill. Deputy Neville asked what we are doing to help people addicted to smoking so I shall go into detail about our broad range of strategies. As I said in my opening statement, we have introduced various strategies to deal with the problem. Everybody is reasonably aware of our quit campaign. It has proven to be effective because there is a direct correlation between the scheme and the number of people seeking smoking cessation services. We provide a significant level of smoking cessation services. We also provide a quit line as a gateway service to the smoking cessation services. We use multiple opportunities to engage with patients and there is patient contact both in hospitals and primary care with regard to getting smokers to avail of smoking cessation services. We rigorously enforce the tobacco legislation through out environment health services. We had 38 prosecutions in 2013 and we will achieve a similar if not a greater amount in 2014.

We have a broad strategy in terms of tobacco reduction and two questions were asked. The first question was what we were doing for people who are already addicted. In terms of our overall strategy, we have the quit line, nicotine replacement products that are available free of charge on a medical card and we have a significant amount of smoking cessation services.

The other question in terms of tobacco reduction was what are we doing to stop children taking up the habit of smoking in the first place. The broad range of our activities are focused on the area. Our health promotion staff engage as far as they can, and within the resources available, by going into schools to alert and explain the dangers of tobacco smoke to children.

A significant element of enforcement is spent ensuring that retailers comply with the restrictions on sales to minors which forms a significant element of our prosecutions. In fact 17 of our prosecutions in 2013 were in this area alone. A range of measures have been designed to reduce the number of people experiencing their first cigarette. I do not think there is anything else to discuss.

**Ms Laura Garvey:** The only other topic for discussion is the nicotine replacement products that are now available on the medical card. Brief intervention training is a huge part of the work carried out by frontline staff in the HSE. We are the first contact that smokers have with the service so we try to encourage them to give up their smoking habit.

**Chairman:** Deputy Conway indicated that she wished to comment again.

**Deputy Ciara Conway:** My question was answered by Revenue when a member of its staff said that there are no blackspots and no place as bad as another. Does the Garda Síochána share that experience? Retailers have approached me and said that on examination of their books for any given week their takings for cigarette sales can be down by as much as €4,000. They can also see that there is a cycle of events. I have encouraged retailers to contact the organisations present in order that their information can be shared with joint policing committees and Revenue. Retailers have examined their books and compared one week's profits against another only to discover that their sales are down. They have also described how the illicit trade takes place. For example, calls are made from telephone boxes and a passing car drops a package at a location. Retailers through their retail experience are under the impression that the illicit trade in tobacco has had a more negative impact on their business than on other sectors.

**Deputy Sandra McLellan:** I have two questions that I wish to return to and one of them was not answered. Has the tobacco industry been implicated in any illegal tobacco trade? I wish to refer again to the KPMG report and the latest evidence from Australia. Earlier I asked for the organisations to comment on the report but I also asked if they knew who paid for the report. Since I asked my question I have received a note stating that it was paid for by a tobacco company called Phillip Morris. That is important information and I wanted to put it on the record. I ask the witnesses to address my two questions.

**Chairman:** I call the assistant commissioner.

**Mr. Derek Byrne:** I thank Deputy Conway for raising her concerns about illicit trade. I am not sure that there is a particular location geographically. It is our experience that it happens throughout the country and is quite widespread.

I shall refer to the issue surrounding telephone boxes. We have issues around small shops operating the trade under the counter. We have issues around door to door deliveries. We also know about telephone calls being made but I cannot say that it is confined to any particular area and to any particular time. We think that the problem is spread nationally and demand driven. We operate on the basis that community gardaí are tasked to stay in touch with their local communities in order to find out what is going on. The Deputy quite rightly mentioned that we have asked for the matter to be included on the agenda for the joint policing committees in order that we can examine the matter and build intelligence. That means that if ten packs are sold at a particular location then we can see if it correlates with another place and decide whether to mount an operation to find the big supplier that will hit at street level. That is the way we would tackle the problem.

In respect of the issue raised by Deputy McLellan, we have engaged with the tobacco industry, as we are required to do so, in terms of our approach to tackling the whole problem. The Garda Síochána has no evidence to suggest that the industry is involved in any illegal activity. In so far as it goes in dealing with the tobacco products themselves, there is nothing to suggest that the industry is doing anything other than legal activity.

**Mr. Gerard Moran:** I wish to add to that statement and perhaps return to the question on blackspots. Revenue's experience is probably similar to that of the Garda. Earlier I attempted to say the following but perhaps I did not make my comments clear enough. We regard the matter as a geographically dispersed problem which fluctuates in different places from time to time depending on the availability of illicit cigarettes and the success, or otherwise, of our efforts to

interrupt and disrupt the supply of tobacco products. As I said earlier, it is plausible to presume that there is a socio-economic dimension. It means that the activity is more intensive in some locations rather than others even within a very tight geographically defined area.

With regards to whether the tobacco industry has been implicated in illegal trade, we are not particularly aware that the major tobacco companies have been involved due to certain measures being put in place. I do not know but investigations may be taking place somewhere that may not have reached such a conclusion. The regime that was put in place some time ago, and to which I referred earlier, had a significant impact on the problem. The real growth area is in illicit and cheap white products where large volumes of meaningless brands are produced in far-off places that dwarf local demand. That is an entirely illegal operation in so far as destination countries are concerned.

We would need to have a track and trace regime and supply chain controls to have an impact in these source and transit countries.

**Chairman:** Does anybody else wish to contribute? Is everybody happy enough?

**Deputy Ciara Conway:** Yes.

**Chairman:** I thank most sincerely all of the delegates for their co-operation and strong testimony. This is the first of a series of meetings and hearings on the issue of plain packaging. I also thank members of the committee for their participation. I remind them that the Select Committee on Health and Children will meet on Tuesday next at 5.15 p.m. to discuss the health Estimate.

The joint committee adjourned at noon until 9.30 a.m. on Thursday, 30 January 2014.

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM SHLÁINTE AGUS LEANAÍ

## JOINT COMMITTEE ON HEALTH AND CHILDREN

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*Déardaoin, 30 Eanáir 2014*

*Thursday, 30 January 2014*

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The Joint Committee met at 9.30 a.m.

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### MEMBERS PRESENT:

|                                |                               |
|--------------------------------|-------------------------------|
| Deputy Catherine Byrne,        | Senator Colm Burke,           |
| Deputy Regina Doherty,         | Senator John Crown,           |
| Deputy Robert Dowds,           | Senator Jillian van Turnhout. |
| Deputy Peter Fitzpatrick,      |                               |
| Deputy Seamus Healy,           |                               |
| Deputy Billy Kelleher,         |                               |
| Deputy Sandra McLellan,        |                               |
| Deputy Mary Mitchell O'Connor, |                               |
| Deputy Dan Neville,            |                               |
| Deputy Robert Troy,            |                               |

In attendance: Deputy Michael Healy-Rae.

DEPUTY JERRY BUTTIMER IN THE CHAIR.

*The joint committee met in private session until 9.45 a.m.*

### **Scrutiny of EU Legislative Proposals**

**Chairman:** I remind members and those in the Visitors Gallery to ensure their mobile phones are switched off or left in flight mode for the duration of the meeting, as they interfere with the broadcasting of the proceedings, even when left in silent mode.

On Schedule A proposals, I will take COM (2013) 538 and COM (2013) 539 together as they are linked. COM (2013) 538 is a proposal for a Council decision on the signing, on behalf of the European Union, of the protocol to eliminate illicit trade in tobacco products to the World Health Organization's Framework Convention on Tobacco Control in so far as the provisions of the protocol which do not fall under Title V of Part III of the Treaty on the Functioning of the European Union are concerned. COM (2013) 539 is a proposal for a Council decision on the signing, on behalf of the European Union, of the protocol to eliminate illicit trade in tobacco products to the World Health Organization's Framework Convention on Tobacco Control in so far as the provisions of the protocol which fall under Title V of Part III of the Treaty on the Functioning of the European Union are concerned. It is proposed that these proposals warrant further scrutiny. It is proposed, therefore, to write to the Department of Health to ask if Ireland will be opting in to the provisions of the protocol which fall under Title V, to outline the details of concerns it has about the proposals and to outline the resource implications for the State associated with the enforcement and implementation of the measures proposed.

It is also proposed that these proposals be sent for information to the Joint Committee on Justice, Defence and Equality. Is that agreed? Agreed.

Regarding COM(2013)894, proposal for a regulation of the European Parliament and of the Council on novel foods, it is proposed that this proposal does not require further scrutiny. Is that agreed? Agreed. I thank Ms Fiona Cashin in particular for her co-operation on the EU matters. I welcome viewers watching the meeting on the UPC Oireachtas channel.

### **Public Health (Standardised Packaging of Tobacco Bill 2013: Discussion (Resumed))**

**Chairman:** As members are aware, the general scheme of the Public Health (Standardised Packaging of Tobacco Bill 2013 was referred to the joint committee for consideration before Christmas. Before the Christmas recess, the Minister, Deputy Reilly, and the Chief Medical Officer made a presentation to the joint committee by way of introduction to this important legislation. Last week, we heard from representatives of the Revenue Commissioners, the Garda Síochána and the Health Service Executive concerning issues surrounding counterfeiting, smuggling and enforcement. Following on from that, today's meeting is the third in our series of meetings that will convene in the coming weeks to consider the heads of the Bill. We will hear today about the potential effects of legislation on public health policy. In that regard we will have before us representatives of a number of non-governmental organisations and also people affected by smoking. I will not name all the witnesses now but I will welcome them



individually when they are invited to speak. I thank them for their participation in this morning's meeting.

Witnesses are protected by absolute privilege in respect of the evidence they give to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person or an entity by name or in such a way as to make him, her or it identifiable. I remind members of the long-standing rule of the Chair that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I should have apologised at the outset for Deputy Ó Caoláin who cannot be here, and also for Senator van Turnhout and Deputies Mary Mitchell O'Connor and Ciara Conway who are attending the launch this morning of the Child Family Support Agency. Deputies Eamonn Maloney and Catherine Byrne and Senator Imelda Henry send apologies also. I call former Senator Kathleen O'Meara who is head of advocacy and communications for the Irish Cancer Society. I ask Ms O'Meara to make her opening statement.

**Ms Kathleen O'Meara:** I thank the Chairman and members of the committee. I am delighted to be here today on behalf of the Irish Cancer Society to present to them the evidence already available, which demonstrates that the plain packaging of cigarettes does, and will, work.

Our vision and ambition in the Irish Cancer Society is nothing less than a future without cancer. That is the why we fight tobacco with everything we have got. Smoking is the single biggest preventable cause of cancer in Ireland. Almost one in five deaths is attributable to smoking. If we tackle smoking, as a country we will have delivered the single biggest blow possible to cancer. We fully support the efforts of the Minister for Health in his ambitious target to make Ireland tobacco free by 2025. It can be done, and the key is the next generation. It is possible to have a generation that does not start smoking. In terms of how we do that, to successfully protect them from the tactics of the tobacco industry, which needs to recruit 50 new smokers a day in Ireland to replace those who quit and those who die, the answer is the plain packaging of cigarettes.

Plain packaging has four impacts. First, and crucially, it reduces the appeal of tobacco to young people; second, it stops smokers believing that some brands are less harmful than others; third, it encourages current smokers to quit; and fourth, it increases negative feelings around tobacco. I want to focus today on that first point, namely, reducing the appeal of tobacco to young people. We wanted to show members a short video – two minutes long – in which the children of Scoil Aonghusa in Tallaght demonstrate their response to branded cigarettes and plain packs. We made the video in the Irish Cancer Society. Unfortunately, it was not possible to show it in this room but yesterday evening we sent members a link to the video. We would ask them to view it because the message in the video is very clear: plain packs significantly reduce the appeal of cigarettes to children.

In terms of young people and teenagers who are also the target of the tobacco industry, 78% of smokers start before they are 18 and even though the rate of those starting to smoke is falling among young people, it is clear we have more to do to protect this particular group. The Irish Cancer Society together with our collaborators, the Irish Heart Foundation, commissioned re-

search into the impact on young people of tobacco branding and standardised packaging. Focus group research was conducted last summer among a group of 15 and 16 year olds, both smokers and non-smokers, who were first shown branded packs. These sleek, expertly designed, coloured packs influenced everything from the teenagers' perception of the quality of the cigarette to the likely users of the brand and, ultimately, their likelihood to try them.

They were then shown examples of standardised packaging. These packs, with their dull colour and graphic health warnings, are immediately rejected by teens. The images showing the health effects of smoking strip away any glamour or fun attributes imbued by branded packs. We can make that report available to the committee.

For those teens who have tried smoking, most reported that the introduction of plain packaging would be enough to prevent them from trying cigarettes again. For those who smoked on a daily basis, plain packaging would encourage them to give up sooner.

The findings of our research mirrors similar research carried out in different parts of the world. Time does not allow me to name them all but I would like to refer to a study published in September 2013 by the Centre for Tobacco Control Research in the University of Stirling, in the United Kingdom, which sets out a comprehensive overview of 17 studies carried out between August 2011 and September 2013 across the UK, New Zealand and Australia. The findings of these 17 studies confirm that the plain packaging of cigarettes would reduce their appeal, enhance the effectiveness of health warnings, and ensure that smokers are not misled about the level of harm done by cigarettes.

Australia was the first country to introduce plain packs just over one year ago. Interestingly, very soon after the introduction of plain packs smokers began to complain about the taste of their cigarettes, convinced that they had changed for the worse but the recipe had not changed. It was the effect on the smokers of the removal of colour and branding, and the impact of stark pictorial warnings that were now enhanced.

A recent study published in the *British Medical Journal* showed that those smoking from standardised packs perceived their cigarettes to be lower in quality; perceived them to be less satisfying than the previous year; were more likely to have thought about quitting at least once a day; rated quitting as a higher priority; and tended to support the policy on standardised packaging. A more recent study published two weeks ago by the Cancer Council of Victoria into the impact of plain packs on the behaviour of smokers in cafés showed that pack display on café tables declined by 15% after the introduction of plain packaging. That was due mostly to a 23% decline in the percentage of patrons who were observed smoking.

All these studies show that the inclusion of a Quitline number on packs in Australia is essential. The *Medical Journal of Australia* recorded a massive 78% jump in the number of calls to the Quitline since plain packaging was introduced. On that basis, the Irish Cancer Society would strongly recommend the inclusion of a Quitline number in the legislation being brought forward by the Government, in other words, that the packs would have the Quitline number on them.

It is still too early to analyse some of the long-term effects on smokers in Australia but these early studies confirm the findings of our own research and the research conducted in the UK.

I am pleased to have had the opportunity to share with the Chairman and the members this evidence demonstrating that plain packs work. No one wants to see their child smoking. As

legislators, the members have the power to ensure that children and young people are protected from the tactics of the tobacco industry, which does target them. We urge them to take this opportunity to protect the lives of the next generation, and to make smoking history in Ireland.

**Chairman:** I thank Ms O’Meara. I call Mr. Chris Macey, head of advocacy, Irish Heart Foundation.

**Mr. Chris Macey:** I thank the Chairman for the opportunity to address the committee on legislation we believe will save the lives and enhance the quality of life of untold numbers of people in Ireland in the years and decades ahead. We commend the Government and the Minister for Health, Deputy Reilly, in particular for standing up against the might of the global tobacco industry to protect the nation, particularly our children, from the lethal effects of tobacco.

The committee has heard the evidence on the need for plain packaging. I will address the bogus arguments used by the tobacco industry and its funded groups to oppose the proposed legislation to protect a business model which, given that 80% of smokers start before they are 18, relies on replacing dead smokers with children and young people. In addressing their claims, it is useful to first look at Big Tobacco’s broader strategy to maintain profit levels by subverting national and international health policy.

Given that the industry has been so discredited, not least by years of lying about the health impact of smoking, it needs others to make arguments on its behalf. For many years it has provided funding to a diverse range of hidden persuaders to achieve its aims, including retailers’ groups, business and trade organisations, fake grass roots organisations, assorted lobbyists and others.

It is virtually certain, in our opinion, that every organisation opposing plain packaging at these hearings will have a funding link, direct or indirect, to the tobacco industry, even if some do have genuine, if misplaced, concerns. While its coffers are empty in terms of credibility, the industry has no shortage of cash to pay for support. The five biggest tobacco companies alone make profits of over \$37 billion a year, making them bigger than Coca Cola, Microsoft and McDonalds combined.

The model of who the industry funds to make its case is strikingly similar from country to country. Likewise, the arguments it makes against policies to protect the public from smoking tend to be recycled for repeated use regardless of the specific policy intervention. For example, on issues ranging from increasing taxation, legislation banning shop displays and now plain packaging, the industry claimed that each would increase smuggling and hit retail jobs without reducing smoking, but these initiatives have spearheaded a decline in smoking rates, from 29% six years ago to 22% last year, a reduction of 200,000 smokers, without any of the industry’s dire predictions coming true.

As regards smuggling, plain packs will still carry current security markings, health warnings and other labels. Consequently, the Garda and Revenue told this committee categorically there was no evidence plain packaging would increase smuggling. Clearly, it is not in their interest to make such a clear assertion if there is room for doubt.

The truth has not deterred the industry. Even since then, tobacco companies, at least one of which has a plain packaging campaign co-ordinator, have visited retailers claiming plain packaging will reduce their sales by 20% due to increased illicit trade.

One constant industry claim is that plain packaging will be a “counterfeiter’s charter”. Any-

one making this argument, particularly in the Irish context, either has no idea what he or she is talking about or is not telling the truth. Research by Revenue and the HSE, which is the only measure of tobacco smuggling not produced for the industry in this country, shows that our smuggling rate is 13% - slightly above the EU average. Of this, 1% is counterfeit and virtually all the rest is the product of the legal industry. Counterfeit tobacco in an Irish context is virtually irrelevant and, therefore, provides no valid argument on plain packaging here.

Even aside from the absence of any difference in the level of difficulty between counterfeit in current or plain packs, the fact is that while the industry has cited concerns about smuggling to prevent budget tax increases and then hiked up its own prices in each of the past ten years, there is growing suspicion that the legal industry is again involved in smuggling. This was echoed in the Dáil in November last when the Finance Minister, Deputy Noonan, said he suspected that the legitimate trade is involved in the production of illicit cigarettes. Stronger concerns have been voiced in the UK Parliament's Committee of Public Accounts and just this week in Europe, MEPs met international experts to discuss smuggling and the role still being played by the big tobacco manufacturers. Consequently, any organisation coming before this committee expressing fears about smuggling that takes tobacco industry funding should be asked if it understands what it is doing.

There is also no evidence the proposed legislation will negatively affect the retail trade. Plain packaging is primarily intended to discourage young people from starting to smoke and is not likely to have as much impact on current smokers. Therefore, sales reductions resulting from the policy will be gradual, giving retailers considerable time to diversify their business.

In addition, tobacco sales only account for a small proportion of small retailers' profits. While tobacco may account for up to one third of a small retailer's turnover, profit is minimal as, according to one representative organisation, retailers receive an average of 8.7% of the price of tobacco products. The size of this income stream is reflected in assertions by retailers' representatives that it will not be worth their members' while selling cigarettes when the licence fee increases to €500.

Another industry claim is that introducing plain packaging is tantamount to the Government appropriating their trademarks. Apart from the grotesque notion that intellectual property rights for tobacco firms are more important than our children's health, this is legally without foundation. The Australian courts ruled plain packaging did not represent an acquisition of property by government from which it could benefit. Here, a legal challenge cannot succeed once the State shows plain packaging is rationally connected to improving public health and is a proportionate response.

Finally, when all else fails, the industry and its supporters complain that tobacco control legislation is an attack on individual freedom and interference from the nanny state. This is their most ludicrous argument of all. Tobacco is quite possibly the greatest usurper of individual freedom in the history of the planet. Not only is it among the most addictive substances known to man, it kills half its regular users. What more conclusive denial of freedom is there than your premature death? Similarly, if we really had a nanny state, would 5,200 people be allowed to die each year from smoking?

By measuring the strong evidence supporting plain packaging against the industry's lists of baseless claims recycled from other lost battles, a simple choice emerges between protecting our children's health or industry profits regardless of the human cost.

**Chairman:** I thank Mr. Macey. The next speaker is Ms Sharon Cosgrove, the CEO of the Asthma Society of Ireland. I also welcome Ms Niamh Kelly and thank her for her assistance to the clerk to the committee over the past couple of weeks.

**Ms Sharon Cosgrove:** I wish the Chairman and members of the committee good morning and thank them for inviting us to this hearing. We representing the hundreds of thousands of people living with asthma in Ireland and we welcome the opportunity to share our views.

As many members will be aware, asthma is the most common chronic disease in the country and affects one-in-ten adults and one-in-five children. Tobacco smoke is one of the most common and dangerous asthma triggers. As others have said, tobacco is a unique product in that it causes the death of half of its users and is more addictive than any other product available legally in this country.

We are members of the Irish Lung Health Alliance, a coalition of 14 organisations working to improve lung health in Ireland. Ireland has one of the highest rates of respiratory illness in Europe, at almost double the EU average. One-in-five deaths in Ireland is from lung disease and smoking is the leading cause of respiratory death. The Irish Lung Health Alliance also fully supports this proposed legislation.

Tobacco not only adversely affects the user but also those around him or her. Passive smoking is particularly problematic for those with chronic respiratory conditions such as asthma. The 2004 workplace smoking ban allowed people with asthma to work, study and socialise without fear of an attack, and yet those with asthma are still exposed to tobacco smoke every day and our members tell us smoking poses a problem day to day, even when going to their hospital appointments. Most worrying is that children with asthma are often exposed to tobacco smoke in the home and in cars.

Breathing tobacco smoke increases the risk of asthma. For every 1% increase in smoking prevalence, asthma admissions rise by 1%. Babies born to mothers who smoke while pregnant are more likely to develop asthma. Tobacco also worsens asthma control and lung function, reduces the effectiveness of medication, and increases the risk of virus and infection. Smoking with asthma greatly increases the chance of developing irreparable life-threatening conditions such as COPD.

One quarter of Asthma Society of Ireland service users, both on our advice line and at our clinics, in 2013 were smokers and despite the risks, those with asthma still smoke.

As to why one should introduce standardised tobacco packaging, it is that branding works. Those with asthma feel the adverse affects that tobacco has on their health the minute they smoke their first cigarette, and yet they smoke. This is because branding works. Parents of children with asthma smoke in their homes and in their cars, despite the risk to their children's health. This is because branding works. The tobacco industry is fighting to defeat this proposed legislation in order to maintain its profits and its power to recruit new smokers. Branding sells products and is so powerful that it can even sell a 50:50 chance of death. Addiction keeps people smoking and branding entices them to start. Countless research studies throughout the globe show that standardised tobacco packaging reduces smoking prevalence by reducing the appeal of smoking and increasing awareness of the health risks. Furthermore, plain tobacco packaging is found to be even more effective on young people than the rest of the population.

The tobacco industry and other interests may argue that this legislation will cost the econo-

my and reduce the approximately €1 billion in State revenue from the sale of tobacco products. Yet the costs of maintaining the *status quo* are much greater. Lost work days due to asthma alone costs the economy €262 million each year. The total cost to the State of respiratory illness is estimated at €1.036 billion, with asthma accounting for €501 million of this. It is estimated that the overall cost of smoking-related illness to the State is in excess of €4 billion.

The example set by Australia is inspiring countries throughout the world to take action against tobacco. Public opinion is also in favour of plain packaging. A recent survey carried out by an alliance of health and children's charities found that the majority of Irish people support this legislation. Ireland was the first European country to introduce a workplace ban on smoking. It is now time for Ireland to again take the lead in protecting the lives and lungs of future generations. We in the Asthma Society of Ireland fully support this legislation and urge its speedy implementation.

**Chairman:** I thank Ms Cosgrove. I now welcome from ASH Ireland, Dr. Ross Morgan, Chairperson and Ms Norma Cronin, board member.

**Dr. Ross Morgan:** I thank the Chairman and members of this committee for affording ASH Ireland the opportunity to make this presentation on what I believe is ground-breaking public health legislation. This legislation will contribute to saving thousands of lives in future decades and protecting further thousands of young people from the scourge of tobacco and related nicotine addiction.

The only agenda of ASH Ireland is health. We are the only single-issue anti-smoking advocacy group in this jurisdiction. We have been deeply involved in supporting this and previous governments in the introduction of anti-smoking legislation which contributes to saving lives and protecting people from the harmful effects of environmental tobacco smoke. My colleague Norma Cronin has worked in smoking cessation and advocacy for tobacco-related legislative change for many decades. She has a deep knowledge of the effects of smoking and the industry which promotes it. I am a respiratory physician by profession and on a daily basis I treat many people who are suffering ill health for one reason only - they smoke. This week, 100 people will die from smoking-related lung disease. We must help these people with every avenue open to us. In my view effective legislation is perhaps the most powerful tool in tackling the smoking dilemma. Almost every one of my patients who smoke wants to quit and virtually all wished they had never started. The vast majority started smoking in their teenage years and continue to smoke because nicotine addiction quickly takes hold. It is specifically in this area that we believe the proposed legislation would have most impact.

This legislation is essentially about restricting a specific industry in marketing a unique product which costs this State well in excess of €1 billion annually in treating a raft of related diseases and which kills 50% of those who use it. New users must be recruited and it is young people who are the primary target of tobacco industry marketing. In this context, I wish to offer the committee a number of quotations from tobacco industry representatives. From RJ Reynolds Tobacco we have the following: "Brands which fail to attract their fair share of younger adult smokers face an uphill battle". The quote continues, "if younger adults turn away from smoking, the industry must decline just as a population which does not give birth will eventually dwindle". I offer the committee another quote from this company dating back to 1974. When talking about young people, RJ Reynolds said, "They represent tomorrow's cigarette business. As this 14-24 age group matures, they will account for a key share of the total cigarette volume for at least the next 25 years". Market research conducted by Philip Morris in 1981 states the following:

It is important to know as much as possible about teenage smoking patterns and attitudes. The smoking patterns of teenagers are particularly important to Philip Morris. The share index is highest in the youngest group for all Marlboro and Virginia Slims packings. At least part of the success of Marlboro Red was because it became the brand of choice among teenagers who then stuck with it as they grew older.

I have another quote from a marketing and design executive representing Lorillard, another large tobacco firm:

We have been asked by our client to come up with a package design, a design that is attractive to kids. While this cigarette is geared to the youth market, no attempt (obvious) can be made to encourage persons under twenty-one to smoke. The package design should be geared to attract the youthful eye, not the ever-watchful eye of the Federal Government.

The committee should note the number of times that brand, marketing and worryingly, young people and teenagers are mentioned by an industry which tries to convince us that it does not market to and target young people. This is untrue. For every smoker that dies, the tobacco industry is determined to replace that smoker with a young person who will quickly become addicted and thereby continue to smoke for the remainder of their lives. When we consider the current challenges facing our health services, both here in Ireland and elsewhere, the committee will find it interesting to note that in 2006 alone, the five largest tobacco manufacturers in the United States spent \$12.49 billion on marketing their products. This marketing is entirely centred and focused on brand promotion and awareness. It goes without saying that if the tobacco industry is spending \$12.5 billion dollars on supporting brand awareness and promotion, it is fully aware of the vital importance of branding in enticing young people to smoke and encouraging brand loyalty and continuance of the practice among smokers.

It is clear that the legislation which is now before the committee is running directly contrary to the highly expensive and focused marketing campaigns of an industry which supplies a product which is highly addictive and which is the leading cause of premature death and disability in our country. I expect that in the later stages of the committee's hearings the Irish tobacco Industry will enter this room and try to convince the committee that it has a right to market its product and will probably try to say that this important legislation will have no impact. In my view, no industry has the right to market in a normal fashion a product that is known to kill 50% of those who use it. Tobacco is a unique product in terms of addiction, which is often referenced as being similar to the addiction to heroin. It is not a food or beverage that can be life sustaining. It is not a product that has a threshold of effect, a safe level of use or a product that can be used safely in moderation. It is unique in regard to related mortality. No other product on sale worldwide costs the health services such massive amounts of money in treating its related diseases.

I have no doubt whatsoever but that the introduction of plain packaging will make it more difficult for the industry to market its products to young and old. The committee has already heard the evidence in favour of plain packaging from the Australian experience, which I will not repeat. I urge the committee to proceed with this legislation. In our written submission we have put forward a number of proposed amendments under heads Nos. 3, 4, and 14, and we ask that the committee looks positively at these proposals.

The workplace smoking ban was introduced ten years ago, despite the resistance of many interests that decried the legislation and predicted it would fail. Nobody could speak now against the success of that legislation. Ireland can once again take the lead in Europe by putting the health of the nation ahead of the profits of any single industry. The leadership of our legisla-

tors is a key element in this. I thank the committee again for the opportunity to address it today.

**Chairman:** I thank Dr. Morgan. I now call on Mr. Damien Peelo, the executive director of COPD Support Ireland to make his opening remarks.

**Mr. Damien Peelo:** Good morning Chairman and members of the committee. I thank the committee for inviting us here today. COPD Support Ireland is a national network of local groups led by people living with COPD. Our focus is to raise awareness of COPD and the profound link between smoking and the development of this disease. COPD is probably not as well known as other illnesses but it is estimated that 440,000 people are living with the disease in Ireland today. Smoking is the lead cause of COPD. There are approximately 1,500 deaths per year from this disease and over 90% of all sufferers are smoking or are ex-smokers. COPD is the collective name for lung conditions that make it hard for sufferers to breathe due to obstruction in the air passages of their lungs.

It is a progressive, disabling disease with a significant extra-pulmonary effect and it has a major impact on the lives of patients, families and carers, in addition to the health care system. COPD cannot be cured. Even when a person quits smoking, the damage to the lungs is not reversible. The consequences of smoking are lifelong. One sufferer has said the condition is such that it is like trying to take a breath with an elephant sitting on one's chest.

There are approximately 11,000 admissions to hospitals each year of COPD patients, representing approximately 120,000 bed days utilised. There are huge costs associated with that. An uncomplicated admission of a COPD patient costs over €4,000, and a complicated admission can cost €7,700. The average length of stay is nine days. Therefore, one can see how the costs build up.

Although smoking is the leading cause of COPD, 77% of Irish people do not know this. This indicates that the health warnings are currently not effective enough in deterring people from taking up smoking. More needs to be done. Smoking is a factor in 90% of cases of COPD. Most of those affected have smoked over 20 cigarettes per day for up to 20 years. Up to 50% of lifelong smokers will develop COPD. An individual who is highly exposed to passive smoking is 48% more likely to present with COPD than an unexposed individual. Given the adverse effects of cigarettes in terms of COPD, the disease can have a lag period of up to 15 to 20 years. These rates have significant health implications for the medium and longer term.

We have heard a little about passive smoking already. What was said applies to those with COPD. While the workplace ban has limited the number of places in which people can smoke, passive smoking has a huge impact on people with COPD. Our members tell us that smoking poses a problem daily as people must walk past smokers on the street or gathered outside public buildings, such as hospitals, pubs or cafés. Even being in a vehicle where smoking has recently occurred can induce a coughing fit and immobilise a person with COPD. It is very important to reduce the number taking up smoking rather than just restrict the number of places where people can smoke.

COPD is adversely associated with socioeconomic status. The effects are reflected in the risk factors for the disease. The smoking rate in Ireland among those in the most deprived social groups is high compared with the national rate. Among homeless men in Dublin, the smoking rate is 78%. These social and economic gradients are reflected not only in the prevalence of smoking but also in the prevalence of COPD and the outcome for those with COPD in terms of morbidity and mortality.



COPD Support Ireland fully supports the Bill to standardise the packaging of tobacco. Smoking is a dominant cause of COPD. Discouraging young people from taking up smoking is a key preventive measure in tackling the disease. On seeing a mock-up version of a potential plainly packaged box of cigarettes, a 50-year-old woman commented: “I wish I had never started smoking. I would not have taken up smoking if those images were on the packs. You would be mortified to take that out”. The statement was made by Paula, who smoked ten cigarettes per day from the age of 16. She is present today in the Visitors Gallery because she is determined to prevent and passionate about preventing others from taking up smoking. She believes plain packaging will have an impact.

COPD has a considerable impact on the quality of life of all patients. It involves long-term medical care and, for many, frequent hospital admissions for the treatment of exasperations, which often result in premature death. As with many chronic conditions, COPD not only affects the patient but also has a significant impact on the family, carers, health services and wider society. Given that 90% of cases are caused by smoking, it is imperative that we act now to minimise the potential of future generations from taking up the addictive habit. The Bill represents an important step towards protecting young people and future generations from addiction to tobacco products. The swift introduction of the legislation will ensure that the health of Irish citizens is prioritised over the efforts of the tobacco industry to weaken and delay a significant public health protection.

**Chairman:** I thank all the delegates for their very informative and sobering presentations. Deputy Kelleher apologised as he has had to leave. He hopes to return.

**Deputy Sandra McLellan:** I welcome the delegates and thank them for their presentations. I apologise on behalf of Deputy Caoimhghín Ó Caoláin as unfortunately he cannot be here today.

Sinn Féin supports the planned legislation. My colleague Martina Anderson has done a lot of work with regard to the tobacco directive at EU level. What do the delegates think about the discussion on the current tobacco products directive at EU level? Should menthol cigarettes be included in the legislation? What is the age profile of those taking up smoking? With regard to the plain packaging in Australia, has the number of people quitting smoking levelled off? Have those who have quit smoking stayed off tobacco?

A comment was made in one of the presentations to the effect that the University of Cambridge estimated in 2013 that two years after the introduction of plain packaging, the number of adult smokers would be reduced by one percentage point, and that the percentage of children experimenting with tobacco would be reduced by three percentage points. How would these statistics translate into figures in this State? What would the long-term effect be on smoking and tobacco addiction?

How could the legislation be improved? It was stated that addiction keeps people smoking and that branding entices them to start. Is it a case of branding or addiction? There is no branding of illegal drugs but people still use them because of socioeconomic factors. Could the same thinking not be applied to cigarettes?

**Deputy Seamus Healy:** I welcome the delegates. We have heard this morning a series of absolutely shocking facts. One in every two smokers will die of a smoking-related illness. The ASH presentation stated 100 people will die this week of smoking-related illnesses. The tobacco industry is an industry of death. While we obviously welcome the reduction in recent

years in the prevalence of smoking, which is now down to 22%, much more needs to be done. Plain packaging is required to prevent 50 people taking up smoking per day, which number is required to maintain the overall number of smokers. It is predominantly young people who take up smoking.

It was suggested that the Australian experience shows that it is not only plain packaging but also the size of the packaging that has an influence. Do the representatives believe the size of packaging should be covered in the legislation? The Australians have reduced the size of packaging in addition to introducing plain packaging. The introduction of a quitline is a helpful suggestion.

I said on the last occasion that what we really need from the representatives appearing before us is a very clear indication that they are absolutely satisfied that plain packaging will reduce the attractiveness of cigarette smoking among younger people. The representatives who were present last week were very clear on that and were happy to make the case. Are the representatives present today fully satisfied that plain packaging will reduce the number of people taking up smoking? There is a suggestion that plain packaging will make it easier for criminal elements to sell cigarettes illegally. I do not believe that myself but I would like confirmation of it. I want to hear the position of the various organisations on that.

**Senator John Crown:** I welcome my various colleagues in the anti-smoking struggle here today. This is a slam dunk and everybody who cares about health will support this Bill. We need to get it shepherded through as quickly as we can. All the arguments about smuggling and illegality are entirely bogus. I believe in my heart, and I believe the evidence is clear, that the tobacco industry directly and indirectly profits from the sale of illegally smuggled cigarettes, which are their own products. They also indirectly profit from the sale of illegally produced counterfeit cigarettes because anything which provides cheap cigarettes to impressionable young people who may have limited financial resources, which hooks them and addicts them to nicotine from tobacco smoking at an early age is in their long-term interests. The industry therefore does not really care about that; all it cares about is selling cigarettes. Anybody from the tobacco industry who espouses any position other than one which honestly says, “We want to increase sales of tobacco products” is lying. It is that simple.

We also need to foster the notion of ethical business. As the committee may know, I have put out an idea that we should pick some future date and say that after that time it will be illegal to do for-profit commerce in carcinogenic tobacco. In the short-term we equally need to think of ways to incentivise individual businesses to get out of the tobacco supply chain. I do not mean to moralise about mom and pop corner shops. As I have pointed out at this committee before, my own father, Lord rest him, used to run a shop called “Jack’s cigar store”. He used to sell tobacco in Brooklyn, New York, many years ago. The culture is different now, however, and people understand that smoking causes cancer.

People in any shop, be it a local retail shop or garage, who are selling cigarettes are part of the problem and they need to understand that. The Government needs to think of clever ways of incentivising people to get out of that business, perhaps by having differential VAT rates on all products for shops that declare themselves to be tobacco-free zones. One would therefore pay a little less VAT if one went to a shop that committed itself to not having tobacco.

What about those nice pictures we have on the tobacco boxes now? Why not have a life-size poster of that mandatorily put up in every shop that sells tobacco, saying: “The proprietor of this shop sells these products”? A nice big picture of somebody with an advanced tumour, a

gangrenous leg or an oxygen mask could be put in every shop. Let people know exactly what they are doing.

I also hope this Bill passes for another reason. Those who heard the news this morning will realise that the House of Lords - that second great upper Chamber of these islands - passed an amendment last night to the Child Welfare Act which would make it illegal to smoke in cars where children are present. That comes two years after that legislation was introduced here. For the past two years, it has been interminably glued up in the bureaucracy, so it needs to pass. As of today, 30 January 2014, this Government has passed one piece of smoking legislation, which is to make it easier to sell cheap cigarettes, although I know that is not the intent of the Minister or the Government. That legislation was forced on them by commercial courts and international precedence, but that is the scorecard as of today. It could be fixed quickly with the rapid passage of several pieces of legislation.

**Chairman:** To be fair to the Minister, he explained the reasoning and rationale behind the delay in the Bill which he co-sponsored. I think the Senator is being unfair to the Minister in that regard. In the interests of balance we should hear from the Minister about that. We are on the same page concerning today's debate.

**Senator John Crown:** It could be fixed with about three hours of legal time.

**Chairman:** Okay. I thank Senator Crown and call on Senator Burke.

**Senator Colm Burke:** I thank all the witnesses for their comprehensive presentations and the work they are doing. I am concerned that it is 50 years since the first major report was published in the United States setting out the real risks of smoking and the health difficulties it was causing. While we have moved on somewhat in 50 years, we have not really got the message across to a large percentage of the population around the world. In most countries, well in excess of 20% of the population are smoking. I hope that whatever progress has been made in the last 50 years, we can at least treble it in the next ten years. Are we doing enough to get the message across even on simple issues? Despite the economic downturn during the past five to six years, it is costing a person who is smoking 20 cigarettes per day well over €3,500 per year in real terms. We have highlighted the health issues but I am not sure we have highlighted the financial costs. Should we not also examine that aspect of campaigns?

The real financial cost of cigarettes should be highlighted as well as the cost healthwise. For instance, if a person decided not to smoke 20 cigarettes a day, they would save €3,500 per year, which is the price of two holidays. We have not been that subtle in the way we are providing such information. It is something we should examine. It is right to highlight the health risks but we should also focus on the financial benefits of giving up smoking. Perhaps the witnesses could give us their own views on that. In addition, how can we fast-track reducing the numbers further? In fairness, all the witnesses are doing their own job in selling that message but I wonder what their plans are for the coming three to four years.

*Deputy Peter Fitzpatrick took the Chair.*

**Deputy Dan Neville:** I also welcome the contributions and thank witnesses for attending the committee. It is almost 20 years since a committee like this one first produced a document on the dangers of tobacco consumption. Deputy Alan Shatter was allocated the task of producing the report. I remember the strong lobbying by the tobacco industry at that time which brought a lot of pressure to bear. In addition, international pressure was put on the committee

at the time to persuade it against the approach that was being taken. The report played a role in what has been done so far as regards banning smoking in the workplace. That was one of the issues raised in the report at that time.

This is a further development and I hope it will be one of a series of such developments to protect public health, including the future health of our children.

*Deputy Jerry Buttimer resumed the Chair.*

**Chairman:** We will return to our witnesses next.

**Ms Kathleen O'Meara:** I thank the Chairman and other members of the committee. Deputy McLellan asked about the Tobacco Products Directive. An incredible amount of lobbying was done around that directive by the tobacco industry. A lot of this took place during the Irish EU Presidency and an Irish civil servant remarked that he had never seen that extent of lobbying and the sheer volume of lobbyists there. Despite that, the Tobacco Products Directive has been passed and will do a number of things, including introducing important regulations concerning e-cigarettes. Menthol cigarettes are also covered by the directive.

A question was also asked about the number of smokers who were quitting in Australia but it is only a year since plain packaging was brought in there. The research I referred to shows, for instance, the high rate of people who are telephoning the quitline, which is a good indicator of intention to quit, although the number who will quit will not be as high. My former colleague, Ms Norma Cronin, who is on the board of ASH, will say it is very important that in the first instance, a person has an intention to quit.

Many members referred to branding. It was one of the issues considered in the report commissioned by the Irish Heart Foundation and the Irish Cancer Society. People who have contact with teenagers know that branding is of significant importance to them. It is part of the sense of belonging to the group. It creates a sense of status and belonging. It is the hook that brings in the young person.

I was asked how the legislation could be improved. Deputy Seamus Healy asked whether the size of the packet had an influence. We have suggested in our submission to the joint committee that standardising the size of the packet of cigarettes is important - this is backed up by evidence from Australia - in other words, that tobacco companies should not be allowed to change the size of the packet, in particular to produce smaller neater packets because size can be relevant. We want the legislation to ensure there is a standardised size of a packet of cigarettes. Much has been done. Senator Colm Burke referred to the US Surgeon General's report of 50 years ago, but as Deputy Dan Neville said, the report of this committee was very relevant in setting the tone for the workplace smoking ban. A great deal has been done, therefore, in a relatively short period. In that time we have succeeded in de-normalising smoking, in other words, smoking is not considered generally to be a normal activity. For many who are addicted, this is too late. We have to ensure, however, that there are sufficient supports in place for those who are heavily addicted to cease smoking.

Senator Colm Burke asked me to outline the Irish Cancer Society's plans. We have a specific programme with a number of women in two disadvantaged communities in Dublin designing a model which will support them specifically in giving up smoking. The normal advertising messages to quit smoking are not sufficient for particular groups in society. Their smoking habit is linked with other factors such as poverty and dependence. We are designing a particular

model and when we have it later this year, we will be very happy to talk about and share it with members of the committee. This is one of a series of developments which, as Dr. Ross Morgan said, represent ground-breaking legislation.

**Mr. Chris Macey:** Let me respond to Deputy Sandra McLellan's questions. Ms Martina Anderson, MEP, has been fantastic and stood up to what Ms O'Meara identified as the massive industry lobbying in the European Union. Her work has had a deep impact, but having said that, the Irish Heart Foundation would have been quite disappointed with the voting on the tobacco products directive. On a positive note, the graphic warnings on plain packets will make them much stronger, but on the issue of slim cigarettes which are aimed at young girls, MEPs from other countries turned. One tobacco company alone had 161 lobbyists working on this issue, whereas it was registered in the EU register of lobbyist as having only seven. It was the fourth largest supplier of cigarettes in this country. Let us think of how many people are working on co-ordinating the anti-plain packaging campaign.

Some 78% of smokers start to smoke before the age of 18 years, which is the reason the tobacco industry knows it must get new customers. Tobacco products kill their customers and the industry must replace them. As somebody mentioned, it needs 50 new smokers a day, most of whom will be children and young people because they account for the majority who start to smoke. It was mentioned in the context of addiction to illegal drugs that they were not branded, but people still use them. We must remember that the main purpose of the legislation is to stop young people from starting to smoke. For people who are already addicted, it is another issue. It has been shown in Australia that there has been a 23% reduction in the numbers smoking outdoors; therefore, the packaging used is having an impact on current smokers. We also know that cigarettes are addictive. There is evidence that the tobacco industry is making them more addictive by increasing the nicotine content to hook people and frustrate tobacco control efforts.

Deputy Seamus Healy asked if the use of plain packaging would reduce smoking rates. As my colleague, Ms O'Meara said, we carried out research with focus groups of young people that showed that in 100% of cases those who had not started to smoke were less likely to start; that those who had started but were not addicted would stop immediately and that those who were addicted were going to try to stop. That was the message across 100% of the people to whom we spoke. When they spoke about the packaging currently used, they talked about how it made them feel more sophisticated, richer, more glamorous and cooler, whereas the plain package would actually turn that concept of peer pressure on its head by making them fear judgment and shame from their peers and saying they would quit immediately. As far as we are concerned, what more conclusive evidence could young people give us?

Let me deal with the question of smuggling and counterfeiting. The tobacco industry and the groups it funds bang away at the argument that plain packets will increase the number of counterfeit cigarettes, but the Garda Síochána and Revenue are absolutely categorical that there is no evidence that plain packaging fuels smuggling in any way. Counterfeiting is not an issue because only a very small amount of illicit tobacco coming into the country is counterfeit, the vast majority comes from the legal industry. Let me give an example. Exports of cigarettes to Andorra increased from 13 million cigarettes in 1993 to 1.52 billion in 1997, the equivalent of 130 cigarettes a day for every Andorran man, woman and child. Most of these cigarettes ended up back in the United Kingdom on the illicit market. As Senator John Crown asked: "Who makes the profit from that?" The legal tobacco industry makes the profit. The Minister for Finance said in November 2013 that he was concerned about the legitimate tobacco industry being involved in illicit trade. There are repeated remarks about this, in particular, in the United

Kingdom. The Chairman of the UK Public Accounts Committee, Margaret Hodge, MP stated:

The Department [HMRC] has failed to challenge properly those UK tobacco manufacturers who turn a blind eye to the avoidance of UK tax by supplying more of their products to European countries than the legitimate market in those countries could possibly require. The tobacco then finds its way back into the UK market without tax being paid.

The supply of brands of hand rolling tobacco to some countries in 2011 exceeded legitimate demand by 240%. That highlights where the fuelling of this illicit trade is taking place. The tobacco companies state the smuggling rate is around the 30% mark at a time when it has been reduced from 16% in 2009 to 13% now. That is not to say we do not have a problem because the average rate of smuggling in EU countries is 11%, whereas it is 13% in Ireland, but it is nothing like what the tobacco industry states it is.

**Ms Niamh Kelly:** I will try not to repeat what has been said. In response to Deputy Sandra McLellan who asked if we were supportive of the tobacco products directive, we are. Banning flavoured cigarettes is a significant measure in terms of stopping young people smoking. They are very appealing to teenagers. We were disappointed that the warning size was reduced to 65%. We would have liked to have seen the maximum warning size adopted.

Mr. Macey has already touched on the age profile. A total of 50% first-time smokers are under 15 years of age and 78% are under 18 so it highlights the fact that this is a child protection measure. Branding has been stopped in public places and advertising has been stopped but a packet of cigarettes at home where there are young people and where their parents smoke is a key branding tool for the industry.

Deputy Healy spoke about the numbers in Australia, which was touched upon earlier in terms of the quitline number being on the packs. We would fully support the quitline being included on the packaging. There has been a 78% increase in calls to the quitline in Australia so it demonstrates that this is a measure that will, hopefully, stop existing smokers smoking.

I will address the questions from Deputy McLellan and Senator Burke regarding the risk of smoking, getting the message across and branding. Branding is aspirational. It sells something that somebody wants to be and it is really important that tobacco packaging demonstrates that the only things you are aspiring to if you use this product are ill health and death. It has to send the message that if you smoke, you have a 50% chance of dying. At the moment, allowing the tobacco industry to use coloured packaging in the same way as every other product says “try me” and “buy me” to young people. It needs to be treated like the individual unique product it is and the packaging needs to be unique.

Senator Burke asked about the financial implications of smoking. The personal financial implications are a strong message to put forward. Ms Cosgrove outlined in our opening statement the cost of smoking. People with asthma miss 12 days of work and ten days of school each year. One can add to that people with other respiratory problems. These are not just smokers. Passive smoking is a huge issue for people with asthma and other respiratory diseases. One of our patient advocates spoke recently about needing emergency care after being at a hurling match where someone was smoking. Even in outdoor areas, someone smoking nearby can stop you going to work, which has an add-on effect for the State. More worryingly, one in five children in the State has asthma and 22% of adults smoke. Therefore, the children of smokers are in the home and in the car with people with smoking. This all adds up to a huge burden on the State in respect of health care so the financial implications are not just personal. There are implications for the State. A recent Philip Morris report stated that the loss in revenue from

standardised packaging would be €125 million. When one compares that with the cost of treating smoking-related illness, which is estimated to be about €4 billion each year, it is minuscule.

Senator Burke also asked about how we can further reduce smoking prevalence. The measures contained in the Tobacco Free Ireland policy document are very ambitious and will go a long way but it is imperative they be implemented as speedily as possible. Measures like banning smoking at bus stops, around schools and in public places can help. Deputy Healy asked us to confirm that we are absolutely satisfied that this Bill will reduce smoking prevalence. I can confirm that the Asthma Society of Ireland fully supports this Bill and believes it will go a long way towards reducing smoking prevalence in this country.

**Chairman:** Does Dr. Morgan or Ms Cronin wish to speak?

**Dr. Ross Morgan:** There is unity here. This legislation is primarily about discouraging young people from starting to smoke cigarettes. It is part of a suite of things that can be done to get the prevalence down further. The success of the last decade has seen smoking rates fall from about 30% to 22% and a reduction of about 50% in 12 to 15 year olds starting to smoke. I thank the members for their questions. I will pass over to Ms Cronin for some specific answers.

**Ms Norma Cronin:** I will respond to Deputy McLellan's question about whether it is addiction or packaging that keeps people smoking and legal drugs not having branding. I have a lot of experience of dealing with people with the addiction and helping smokers to quit. The Deputy is probably right in that the branding and glamorisation of the packs, along with peer influence and whether their parents smoke, start them smoking. However, the addiction takes hold very quickly. We know nicotine reaches the brain in seven seconds. It is a very fast delivery system. Most smokers are not smoking out of choice. We have heard from previous speakers that almost 80% of smokers want to quit. I do not think the branding is crucially important.

We know from other research that people underestimate the health effects of smoking. They might all know about lung cancer but research conducted by the Irish Cancer Society and the HSE has shown that people do not know that it causes age-related macular degeneration - blindness in common language. They know about gangrene but when they see the image, they do not know about its effects on oral health. They do not know about mouth, head and neck cancer or that 30% of all cancers are caused by smoking. It is crucially important that this measure comes into effect.

The other question related to whether we are doing enough to get the message across. Senator Burke is not here but I think that was in respect of----

**Chairman:** Senator Burke had to go to another meeting.

**Ms Norma Cronin:** I might refer to that question because of the sum of €3,500 spent by the smoker. From research and from my experience of running the national smokers' quitline, we know that health is the main reason for people wanting to quit. That is the first thing everybody says. We ask everyone what their reason for quitting is. It is health but the second reason is the cost. It does have an impact which is why it is so important that we continue to advocate for price increases in tobacco. Despite us thinking we have one of the highest prices for cigarettes, we know from the World Health Organization that it is a very effective method.

In respect of whether we are doing enough with regard to the quitline number, Ms O'Meara highlighted in her presentation the fact that having the quitline number on the pack does a number of things. It is crucially important. We know about the increasing calls to the quitline from

the Australian research. We know from our national smokers' quitline that when we have an ad campaign, we get a huge increase in the volume of calls. The quitline number will do two things. It will prompt these smokers to pick up the phone and possibly make their first attempt or get the information about quitting. Second, it is a very cost-effective measure when one considers what we must spend on advertising the quitline number or advertising campaigns so it will do what it says on the pack. It is crucially important that this is included. ASH Ireland fully supports the legislation. I think all the other questions have been dealt with.

**Chairman:** Does Mr. Peelo have any remarks to make?

**Mr. Damien Peelo:** In respect of Deputy McLellan's questions, we support the call for the standardised size of a pack of cigarettes so that it cannot be used as a branding form, for example, slim or long cigarettes, and you cannot distinguish between the different brands. We know that branding works. It will not stop people being addicted but it could be a key shock factor that helps people want to come off cigarettes. Branding works because marketing companies exist and make a lot of money out of branding. Having something in plain packaging will certainly go a long way. Deputy Healy asked us to confirm whether we think it will result in a reduction in the number of those who start smoking. COPD Support Ireland expects that it will be a major step forward in preventing people from taking up smoking but other cross-departmental strategies will also be required to address the link between social deprivation and smoking.

Senator Colm Burke asked about the cost. It is a key strategy for saving money that could be spent in other areas, such as improving health and well being. The savings to the State alone would be considerable through, for example, reducing the cost of hospital stays for COPD patients. For these reasons, we fully support this legislation.

**Deputy Peter Fitzpatrick:** It is important that we listen to the views expressed by the organisations that appear before this committee. A number of serious facts were presented this morning and I learned a lot. The Irish Cancer Society stated that 5,200 people die prematurely per year, that 25% of the Irish population smoke, that one in two long-term smokers will die from smoking related diseases and that smoking is an addiction. Harm from smoking begins immediately and ranges from addiction to serious damage to the heart and lungs. The earlier children become regular smokers, the greater the risk of developing heart or lung disease, or cancer.

ASH Ireland stated that our health services spend more than €1 billion annually on tobacco related diseases, that the evidence indicates standardised packaging is less attractive to young people, that tobacco is directly linked to serious diseases, such as cancer, cardiovascular disease and asthma, and that the tobacco industry now accepts that nicotine is highly addictive.

The Irish Asthma Society stated that tobacco smoke is one of the most common and dangerous triggers of asthma attacks, that 470,000 people in Ireland have asthma, that Ireland has the fourth largest prevalence of asthma worldwide and that 60% of people in Ireland have uncontrolled asthma, which means they are at risk of asthma attacks. One in every ten adults and one in every five children has asthma. The Irish Heart Foundation noted that socialising remains a key driver for smoking and that the biggest barrier to giving up smoking is a night out. Smoking is seen as equating to more fun, a way to fit in and an opportunity to interact with others.

COPD Support Ireland stated that approximately 11,000 admissions to hospitals per year are COPD related and that approximately 120,000 beds are utilised by COPD patients. It costs



€4,086 for an uncomplicated admission and €7,749 for a complicated one. The average length of stay is nine days.

The witnesses agreed that packaging offers tobacco companies a powerful opportunity to recruit new smokers, particularly among young people. They suggested that reducing the appeal of tobacco products can play a vital role in reducing the impact of tobacco on health among Irish adults and children. As a non-smoker, I am especially concerned about the risk of passive smoking to people with chronic respiratory conditions. If this legislation is passed, what level of reduction would the witnesses expect in the number of smokers in Ireland?

**Deputy Catherine Byrne:** I recently learned that politics is to be included on the leaving certificate curriculum. I wonder why health matters are not also being included on the curriculum. Education is central to health awareness, whether that education begins at home, in school or at work. Over Christmas I spent some time in the company of 15 young people, ten of whom were smokers. I asked the smokers their opinion of the packaging of their cigarette packages. Two of them said they would continue to smoke regardless of the packaging but the rest thought the picture on the package looked awful. However, the picture on the package is the size of a postage stamp. If we are to promote good health through standardised packaging, we need to put more thought into the image on the box. In my opinion as a non-smoker, the image is too small. I got the sense that the aforementioned young smokers did not understand the health risks, and this is why education is important. It is time that the Minister for Education and Skills examined the way in which health matters are taught, including drug and alcohol addiction.

I agree with Senator Crown that advertising plays an important role. What are the witnesses' organisations doing to disseminate graphic images of the diseases caused by smoking? A massive poster campaign should be developed to reach hospitals, schools, community centres, sports halls and bus stops. The one thing that lives on in our minds is the image. The way a baby learns that an apple is an apple is by looking at a picture. I spent much of the past week in the respiratory unit of St. James's Hospital because my brother is a patient there. I was shocked that some of the patients with COPD and other respiratory illnesses continued to smoke. We need an organised effort to disseminate the graphic images of the effects of smoking.

Two of the aforementioned young people had close relatives who had died of lung cancer. I was appalled that they continued to smoke despite this impact on their families. Education begins at home and extends into our classrooms. All organisations that campaign against smoking need to examine how it can disseminate the message graphically. I did not see one poster with information on smoking in St. James's Hospital.

**Deputy Regina Doherty:** I thank the witnesses for their presentations. The more I hear about the benefits of plain packaging, the more the proposal becomes a slam dunk. The suggestion that a quitline telephone number should be included on packages is a no-brainer and the committee should recommend to the Department of Health that it be included in the Bill.

I acknowledge that Deputy Crown's passion arises from his professional experience but it is not our role as policy makers to demonise manufacturers and, especially, Irish retailers. I have 20 years of experience in marketing. Companies would not spend money on marketing if it did not work. We should take the opportunity to find positive outcomes because they are equally as important as negative outcomes for those who continue to smoke. Those who want to quit smoking should have a positive image to strive towards. When my mother was giving up smoking she set a goal of spending the money she saved on clothes for me. As a teenager, that was an

attractive goal. Retail Ireland needs to engage with the Department of Health to provide for a positive campaign for a healthy Ireland and healthy alternatives for retailers around the country. We have already discussed this issue. They do not want to sell tobacco. They know full well that they would earn much more profit from selling something else, but at the end of the day they are providing jobs and a living for themselves. It is incumbent on us and the Department to try to provide some alternative for them. Perhaps nicotine replacement therapies should be freely available in all retail outlets, as opposed to customers trying to find a chemist that is open at 6 p.m. on a Sunday. We need to be part of the solution in providing equivalent incomes for retail businesses in Ireland, as well as providing positive messages for people who want to quit smoking. As Senator Colm Burke said, we could provide the image of that holiday for the price of a person's ten or 20 cigarettes a day if they gave up smoking, as well as for the improvements to one's lifestyle and overall health. I congratulate the delegates and urge them to keep going. We are nearly there and they have the full support of the committee.

I have a question for Dr. Morgan. On the website of the manufacturers there is all this wishy-washy stuff about how they are involved in ensuring young people do not start smoking and all this wonderful executive language about giving money to buy scouts' equipment. What is the source of the quotes Dr. Morgan read? Where did he get them? That is the kind of stuff we need to refute and promote in the coming weeks when the industry starts to wag its tail and tell us how good it is at ensuring under 18 year olds do not smoke. I would appreciate that information.

**Chairman:** Some of the quotes were from the 1980s. Do we have any more modern, up-to-date quote or references? It would be important in the context of our debate.

**Ms Norma Cronin:** We will give them to the committee.

**Mr. Damien Peelo:** Particularly on Deputy Catherine Byrne's comments, all organisations are key to part of the education on smoking and the damage it can cause. I agree that we need to look at visual, graphic images to help in that task. Education starts in the home and there has been a cultural change. My parents were smokers. Smoking seemed to be a very normal thing to do and I am not talking about all that long ago. It is still in our psyche that smoking is not going to cause that much damage and that it happens to somebody else, but there is a need to personalise the effects of smoking. We will be trying our best to promote this approach.

Because ours is a national network, people with COPD go into schools and publicise the effects smoking has had on their lives. It is often a very big shock factor for young people to see people with oxygen and learn that this could happen to them as they get older, although with the age gap, people often think it is a lifetime away. Education is key in that regard. On Deputy Fitzpatrick's comments, all those facts are very clear, that COPD is a huge burden on Ireland's health service, both financially and in the personal lives of sufferers and their families. This burden can be reduced by preventing people from getting COPD in the future. One way to do this is through providing for the plain packaging of cigarettes.

**Dr. Ross Morgan:** On Deputy Regina Doherty's point, a very small proportion of the budget is spent on the marketing side on what the industry terms awareness campaigns which we believe do not work. We talked a little about education, while Deputy Catherine Byrne talked about where it started. Education clearly is important, but legislation must support it, too. Senator Colm Burke alluded to Luther Terry, the US surgeon general, when, finally, the evidence was out that smoking caused lung cancer. It is 50 years since that happened and in the first 30 or 40 years after that event the industry put up a smokescreen of doubt, controversy, jobs and all

of the arguments we now hear when we talk about introducing new legislation.

The quotations referenced in the submission are in the public domain and would have got into it during the course of the tobacco master settlement in the United States in 1999. That was the year in which the Marlborough man was retired. He died this week of COPD, the condition suffered by many of the people Mr. Peelo supports. It is a very common and increasing condition of chronic lung disease and disability. He died of that condition. He was a promoter of cigarettes in his early days as an actor. More recent quotations may be available. One would imagine the industry is a little tighter with these quotations now. Some lip-service is paid to awareness campaigns in some countries, for example, the oft-quoted ones in Germany. They have done nothing to impact on childhood smoking.

**Chairman:** The German model is espoused by the pro-tobacco lobby. I am curious to hear Dr. Morgan's remarks on it.

**Dr. Ross Morgan:** That is correct. Some of my colleagues may want to join in on this subject. The German model which is supported by the industry is around awareness, rather than legislation. The approach is: let there be cigarettes, but we will spend some money or time in telling people what they are like. That model does not appear to work or be associated significantly with any impact on smoking. The types of legislation introduced in the past decade have been effective, but we need to go further. The current rate of 12 to 15 year olds smoking or experimenting with tobacco is around 12%. As Deputy Catherine Byrne rightly said, smoking is the biggest cause of health inequality in this country now and will be in the next few decades.

**Ms Norma Cronin:** I spoke at a conference in Germany recently and the German Cancer Research Centre in Heidelberg is looking to Ireland for guidance. Germany still permits advertising and is very much in the hands of the tobacco industry. We can look at WHO figures. Others might be from the tobacco industry or other research conducted, but Germany is not doing as well as we might think and it is looking to Ireland for support and encouragement. Deputy Catherine Byrne talked about having real posters and graphic images. We know that might work for some, but for young people, some of the research shows that perhaps scare tactics alone will not work. We need to have what is in the schools, the social personnel and health education, SPHE, programme further developed. More needs to be done in school programmes. It is a choice for teachers whether to include it. It must start with education. The images and health effects information will have more impact if there is a broader approach to understanding addiction and empowering young people with refusal skills. That is crucially important for young people, in particular.

**Ms Niamh Kelly:** On Deputy Fitzpatrick's question on the reduction in prevalence, initial findings from Australia are positive, but they are still fairly new. However, something that points to a reduction in prevalence is the tobacco industry's assertion of the loss in revenue that standardised packaging will cause. If the industry did not believe this was going to cut the amount of people smoking, the figures would be much lower.

Deputy Catherine Byrne spoke about the size of the picture. In Australia the health warning covers 75% to 90% of the packet. We are in favour of having the health warnings as large as possible, provided it allows for the quit line number to be carried also.

Deputy Catherine Byrne asked what we were doing about the lack of understanding of health risks. Smoking, as Deputy Fitzpatrick mentioned, is the most common and worst trigger for asthma symptoms. Smoking is part of everything. Smoking cessation is mentioned in our

clinic advice. We have clinics to which people go throughout the country and it is included in all of our health information on asthma. Every piece of information we give includes a smoking cessation message. Further to this, smoking cessation is first on the list of priorities in the HSE's national asthma programme as a measure to help people with asthma. Deputy Byrne spoke about educating young people and Ms Cosgrove will speak about this.

**Ms Sharon Cosgrove:** To add to what Ms Kelly stated and to return to Deputy Byrne's question on education and young people, it is something the Asthma Society has been involved over the years. Last year, we developed and piloted a transition year e-learning programme, which was an interactive module with videos. We know young people are attracted by branding and engage in risk-taking behaviour, and those with asthma often do not carry their inhalers or might try cigarettes. We have developed a particular approach which examines education regarding asthma but also, as Ms Kelly stated, includes a component about health and the impact of addiction and smoking on asthma and what to do if smoking or passive smoking triggers an asthma attack. We are very conscious of this. We also provide a service whereby asthma nurse specialists go to schools and meet groups of parents, children and teachers to educate them on asthma. Part of this includes speaking about the impact of smoking on asthma and what to do.

A question was asked as to whether the Asthma Society should use harder hitting campaigns. Over the past year we have tried to use harder hitting campaigns, but we must get the balance right between scaring people and educating or empowering them to quit smoking and control their asthma. We are conscious our messages need to be very clear and need to be harder hitting with regard to the prevalence of deaths and the link with smoking.

Deputy Doherty suggested the use of positive images and this is something we try to do. We are very conscious of it, particularly the use of asthma ambassadors such as young people who are involved in sport and have very healthy lifestyles. We try to ensure we have swimmers and kickboxers in our campaigns because positive images of healthy lifestyles for young people and throughout life are very important and we are building this into our awareness raising and campaign work.

**Mr. Chris Macey:** To answer the Chairman's point, we examined the situation in Germany because it is something the tobacco industry tends to raise. Specifically we examined it after a number of retail organisations whose interest is supposed to be in smuggling raised it on radio programmes. We found Germany does not have a mandatory school-based education programme on smoking. An analysis of the existing school-based programme found it was not effective. Germany has the same smoking rate for 12 to 17 year olds as Ireland does, which is 12%.

To address Deputy Fitzpatrick's point on what reduction we seek, I stress the crucial element of this legislation is to stop young people starting to smoke. The percentage of people who had ever smoked in Ireland in 2002 was 41% and in 2010 it was 27%. This is the figure we seek to reduce. It is almost certain to have reduced further from 27% since 2010, but I do not know the figure. It is a matter of maintaining this reduction. The youth smoking rate had fallen from 21% to 12% in 2010, and we can be reasonably confident it is lower than this now. It is a matter of maintaining the reduction of this figure.

To answer Deputy Byrne, there is no doubt that education is very important. We cannot have enough education and it is vital. We also need to take other steps, one of which is to block attempts by the industry to reel in young people. It has done so successfully for many years. We know it has incredible amounts of money and that it is ruthless and will stop at nothing. It

does not care about our children's health and it is up to us to protect them with all the measures we need to do so.

Deputy Byrne mentioned she was surprised to hear people continue to smoke knowing the risks. A recent survey showed more than 50% of stroke survivors are back smoking within six months. We also know people who have had amputations because of smoking are often back smoking very quickly. This shows the hugely addictive nature of cigarettes. The most important thing we and legislators can do is to stop people starting. Once people have started they must be helped to quit and we do not do enough in this country in this regard. The quit programmes in some places throughout the country are good but in many places they are not. We need to do more. We cannot let down smokers. We have a duty of care to them.

To respond to Deputy Doherty's point, we do not wish to demonise retailers although we have serious issues about some of the representative bodies. We know most retailers are decent hard-working people who are making a living. In our opinion they have been duped for many years by the industry, particularly in terms of the bogus smuggling argument. We would reach out to ordinary retailers throughout the country and do anything to work with them to protect their businesses but also to reduce this element of it. Likewise we are not out to demonise smokers. A total of four out of five smokers want to quit and we want to help them do so. We wish the best of luck to those who decide they want to continue smoking and we hope no harm comes to them, although we know it is very likely to do so. The four out of five smokers who want to quit deserve our help and we should be doing everything we can to give it to them.

**Ms Kathleen O'Meara:** Deputy Fitzpatrick referred to the smoking rate as being 25% but in fact it is 21.7%. I am glad to say it is lower than 25%. With regard to the type of reduction we want, we want a tobacco-free Ireland. The Minister speaks about a smoking rate in Ireland of 4% in 2025. It is a very ambitious target but we have been making considerable progress, particularly in recent years. If we continue to do all we are doing and more and stay focused on the target we think it is possible. Education is the key as Deputy Byrne stated. The committee will hear from a youth group which has taken part in the exhale programme started by the Irish Cancer Society a few years ago, which is about empowering school groups and youth groups to take on a project themselves. It has been very popular.

I wish to quote very briefly from some of the comments from young people we surveyed. A female teenager stated superslim cigarettes looked really cool and would look really classy on the table. When the participants were shown the plain packs they stated they would stop smoking when they came out because they turn them off completely, that the pictures look awful and disgusting and one would be embarrassed to be seen with them in one's hand. This is what we want and expect. We believe it will work.

We also favour mass media campaigns and more investment in cessation programmes and quit programmes. The *quit.ie* programme is very good but we would like to see many more television advertisements. Some of them are very powerful. I thank Deputy Doherty for her major support and for the inclusion of the quit line number. I agree with the point on positive messages. I also agree with my colleague, Mr. Macey, with regard to retailers. We know they are trying to earn a living like everybody else. On behalf of the Irish Cancer Society, I emphasise we fully believe the legislation will reduce smoking prevalence in Ireland, in particular combined with other measures the Government is taking and intergovernmental measures on the illicit side. We need more investment in cessation programmes. We need to ensure that illicit tobacco is tackled and we need more public education programmes. I thank the Chairman for the opportunity to be present today and all the members for their support.

**Chairman:** I thank Ms O'Meara and also Mr. Owen Bradley for his assistance in organising today's meeting. I sincerely thank all witnesses who attended the meeting and for their presentations and very informative participation in the debate. Today's meeting is one of a series of meetings culminating in a report being presented to the Minister on the heads of the Bill. Following the suspension, we will have our second session with the youth group, the Children's Rights Alliance and the ISPPC.

*Sitting suspended at 11.30 a.m. and resumed at 11.45 a.m.*

**Chairman:** I welcome witnesses to our second session this morning on plain packaging for tobacco. We have the Children's Rights Alliance, the Tipperary Regional Youth Service and the ISPPC. They are all very welcome. I am sure the other witnesses do not mind if I welcome in particular the three girls, Cliona, Danielle and Amy. I thank them for being present. I also welcome Mr. Paul Gilligan and Ms Caroline O'Sullivan. It is not the case that they are not welcome but it is nice to have the young people.

**Ms Caroline O'Sullivan:** Of course.

**Chairman:** They travelled from Tipperary. It is a big journey for Tipperary people to come to Dublin because they do not get here too often for all-Ireland's any more. The girls are very welcome. I hope they will enjoy the presentation and their time with the committee this morning.

**Deputy Robert Dowds:** We dissociate ourselves from that sectarian remark.

**Chairman:** Okay. Thank you. Everyone is welcome. We will move to more serious matters. A very important element of our legislative programme is the Public Health (Standardised Packaging of Tobacco) Bill. The Minister for Health has asked us to hold public hearings on it. This morning we heard from the Irish Cancer Society, the Irish Heart Foundation, the Asthma Society of Ireland, COPD Ireland and ASH Ireland. We have also heard from the Minister for Health and the chief medical officer. A series of meetings is being held, including during the month of February, to discuss standardised, plain packaging.

I remind all present that mobile telephones should be turned off or put on airplane mode as they interfere with the broadcasting of the proceedings and they interfere with staff members. By now, people in the Visitors Gallery will have texted their friends to say the girls are now live on UPC channel 207 and on the Oireachtas channel.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. If they are directed by the committee to cease giving evidence in relation to a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not comment on, criticise or make charges against any persons or entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice and ruling of the Chair to the effect that Members should not comment on, criticise or make charges against a person outside the House, or any official by name in such a way as to make him or her identifiable.

I welcome all witnesses and remind people that there is also an Oireachtas app which can be downloaded. We are in committee room No. 2. I welcome everyone who is watching and

listening via media, including social media.

I invite Ms O'Neill, Ms Gayson and Ms Maher to make their presentations, although I am unsure as to who will start.

**Ms Cliona O'Neill:** I will. My name is Cliona O'Neill. With me are Ms Danielle Gayson and Ms Amy Maher. We are from the Tipperary Regional Youth Service. I will provide the committee with some background information on our organisation.

The Tipperary Regional Youth Service, which is affiliated to Youth Work Ireland, is an integrated youth service that works with young people aged between eight and 25 years of age. The mission of the youth service is to provide a range of quality and professional services to young people in a safe and inclusive environment, contributing to a changing society for the benefit of young people. Geographically, there are three regions under the remit of the Tipperary Regional Youth Service, those being, Tipperary south, Tipperary north and east Limerick, with four youth centres in Cashel, Templemore, Thurles and Tipperary. We deliver youth projects and services funded in the main through the Department of Children and Youth Affairs, the HSE and the Departments of Justice and Equality and Social Protection. Our services include working with disadvantaged young people, providing targeted interventions in the areas of justice, substance misuse and family support and supporting volunteer-led clubs and community initiatives.

The Tipperary Regional Youth Service has a voluntary board of directors holding overall responsibility for the organisation, working through the chief executive officer, staff and volunteers. This board is made up of local club and community representatives with an interest in youth participation.

One of our centres is the Cashel neighbourhood youth project, which has been in existence since the mid-1990s and has a high level of youth participation. There are a number of youth-led initiatives that members of the project participate in and this is the project of which we are members.

I will hand over to Ms Gayson, who is going to tell the committee a little bit about what we have been doing to help prevent young people from smoking.

**Chairman:** I thank Ms O'Neill.

**Ms Danielle Gayson:** In 2012, we received funding from the Irish Cancer Society through the X-HALE Youth Awards for a group of 22 young people aged between 14 and 17 years in the Cashel neighbourhood youth project to develop a peer-led anti-smoking programme for sixth class students, entitled "Lungs on the Run". We worked hard throughout the summer of 2012 creating an animation, a programme and a workbook that highlighted the dangers of smoking.

In September of that year, four members of the group went to our local primary school, facilitated our programme, showed the animation and asked the class of 30 students to make a pledge not to smoke. Each student received a workbook and a wrist band to remind him or her of that pledge not to smoke. According to one teacher, the students took on board the information provided because it came from their peers.

In October, we attended a showcase hosted by the Irish Cancer Society to highlight the X-Hale projects and received an award for the creation of our animation. Due to the positive feedback from our work, we have gone on to secure further funding through the X-HALE Youth

Awards to develop our programme further into a training resource pack and to train young people in other projects to roll out an anti-smoking workshop to their peers. Also in 2013 we contributed some of the activities from our workshops to a resource pack that the Irish Cancer Society is developing for schools and youth projects throughout Ireland.

As part of our workshop in the schools, we asked the students what information impacted on them the most and 25 of the 30 young people identified the images they saw and the fact that they did not like being a target of the tobacco industry as having the most effect. We felt as a group that it was important to work from a preventative approach to smoking and that giving young people the right information from people they looked up to as role models would empower them to make positive choices in their future.

One of the main factors that we highlight to primary school students when we run our workshop is that the tobacco industry must attract 50 new smokers per day to replace those who have either died or quit. Given that most smokers start smoking before they are 18 years of age, the majority of these new recruits are young people. Highlighting this to young people has shown to impact on their thinking about smoking.

Ms Maher will now tell the committee why we as a group of young people believe that the introduction of plain packaging is so important.

**Chairman:** I thank Ms Gayson.

**Ms Amy Maher:** As a group that focuses much of its work on prevention, we feel that the introduction of plain packaging is an important step towards preventing young people from ever starting to smoke. By introducing this legislation, we are protecting our future generations by changing young people's attitudes to smoking so that it will no longer be what I may term "the norm".

When we started to consider making a submission, we organised focus group discussions with young people who were both smokers and non-smokers. We wanted to find out what young people felt about the idea of plain packaging, whether it would impact on their decision to smoke and whether they placed much importance on smoking as an image factor. They discussed how "purple skins" or "flavoured skins" were "class" and mentioned a friend who, while not a smoker, had brought home pink-coloured cigarettes from holidays abroad because she wanted to have them at a disco to offer to people. This highlighted to us the importance young people place on how things look and that the appearance of cigarettes plays a huge role in young people smoking.

Young people discussed the health implications for them from smoking. Some experienced difficulties with their teeth and lungs and their ability to engage in physical activities and sports. They expressed that they would not like to see their younger siblings smoking and felt that plain packaging would have a significant impact on preventing young people from ever starting to smoke.

We feel that young people should have a right to be protected from the marketing of a highly addictive and seriously harmful product. Plain packaging is one way we can do this. By making smoking less appealing and health warnings more effective, the misguided opinion young people have that smoking is "cool" or "class" will be changed, stopping them from smoking in future.

We recommend that the public health (standardised packaging of tobacco) Bill be intro-



duced as a matter of urgency; that members of the committee appreciate that plain packaging seeks to stop young people from taking up smoking and that branding cigarettes undermines the work of our group; that the Bill take account of the EU product directive on flavoured and coloured cigarettes; that the legislation seek to de-normalise smoking further and be considered a public health measure; and that the Bill take into account the effect of branding on young people and the desire of young people to be seen with a “cool” product such as cigarettes.

We thank the committee for the opportunity to attend and share our group’s views today. We hope that members take into consideration our recommendations and we welcome whatever questions they have for us.

**Chairman:** I thank Ms Maher. Deputy Healy must attend Leaders’ Questions. Does he wish to make a remark now or wait until after Mr. Gilligan and Ms O’Sullivan have contributed?

**Deputy Seamus Healy:** As the Chairman stated, I am due to take Leaders’ Questions after 12 noon. I welcome the organisations to this meeting, particularly the Tipperary Regional Youth Service and the girls from Cashel community college. I thank them for their work and their presentation. I was especially happy to see young people making that presentation and that they have been involved with the Irish Cancer Society in this project. As they mentioned, the future of the tobacco industry depends on its ability to get 50 additional smokers per day to replace those who have died or quit smoking.

The facts of smoking are shocking. One in every two smokers, some 100 this week alone, will die of a smoking-related illness. This amounts to approximately 5,200 each year. I welcome the fact that the prevalence of smoking has reduced to 21.7-22%. The target is 4% by 2020. That is achievable, with this legislation playing a major role. Much more needs to be done, but the type of work being done by the Tipperary Regional Youth Service and the girls from Cashel indicates that plain packaging will prove a major element in reducing smoking prevalence and ensuring that fewer people are affected by smoking-related illnesses.

This morning and last week, we addressed the question of packaging.

**Chairman:** Just to let the Deputy know, Leaders’ Questions is about to begin.

**Deputy Seamus Healy:** Plain packaging must show the Quitline telephone number. We must also ensure that the packaging’s size be regulated under the legislation. These two elements have been raised.

I thank the Chairman for the opportunity to contribute. I also thank the girls from Cashel and the other speakers. I will try to return if possible.

**Chairman:** I invite Mr. Paul Gilligan of the Children’s Right Alliance to make his opening statement.

**Mr. Paul Gilligan:** The Children’s Rights Alliance welcomes the opportunity to present its views on this issue. The alliance is a network organisation with more than 100 member organisations. We want an Ireland where children are valued and where it is the one of the best places in the world in which to be a child. We have been involved in a number of campaigns down through the years, the most important, perhaps, being the constitutional referendum campaign.

We support the Public Health (Standardised Packaging of Tobacco) Bill 2013 and commend

the Minister on driving it forward. We believe this is a core children's rights issue. Other witnesses have articulated very well the type of on the ground issues confronting young people who do not want to smoke. Article 24 of the United Nations Convention on the Rights of the Child holds that State parties shall recognise the right of the child to the enjoyment of the highest attainable standard of health. This extends beyond the provision of appropriate prevention or treatment and includes the implementation of programmes that address the underlying determinants of health. There is no doubting the research in this area, which states that smoking has a detrimental affect on people's health.

One of the starkest statistics from the recently published Government report, Tobacco Free Ireland, highlights that 78% of smokers commence smoking regularly before the age of 18. The indication is that this statistic is even higher for the UK. This is a children and young person's issue. There may be arguments against this initiative, but the Children's Rights Alliance finds it hard to understand any of them. The concept that packaging is nothing other than marketing or branding cannot be disputed. Cigarette companies would not spend millions on marketing and development of these types of fancy packaging if they did not believe it encouraged people to buy cigarettes. We believe a standard plain package which contains a strong health warning, perhaps similar to the one being introduced in Australia, would be the best way forward.

Research on the effects of plain packaging of cigarettes is still at an early stage. However, research from Australia indicates that this type of packaging would result in a reduction in the number of children who try smoking, a reduction in the number of children who become regular smokers, an increase in the number of adult smokers giving up smoking and an increase in awareness among children of the dangers of smoking. We strongly support this legislation, as we believe this is a core children's rights issue.

**Chairman:** I thank Mr. Gilligan. I invite Ms Caroline O'Sullivan to make her opening statement.

**Ms Caroline O'Sullivan:** The Irish Society for the Prevention of Cruelty to Children, ISPCC, is a child protection and welfare organisation. Our vision is of an Ireland wherein all children are heard and valued. Our mission is to advocate on behalf of all children and to provide a range of independent and unique services that are preventative and empowering in nature. The ISPCC welcomes this opportunity to address this committee on this issue. We welcome the proposed legislation and the developments contained therein.

The ISPCC sees smoking and the targeted marketing of such a fatal product to children and young people as a serious child protection issue. As an organisation dedicated to the protection of children, we believe children should be protected from the preying marketing of tobacco companies. We believe this legislation is a hugely important step in improving the protection and welfare of children and reducing the potential for children to begin smoking. As outlined by Mr. Gilligan and Ms Gayson, 78% of people who smoke began smoking while under the age of 18 years.

In our submission, we referred to head 3 which outlines the purpose of the Bill. The tobacco industry requires the continuous recruitment of new consumers, namely, children, in order to maintain it. New customers are needed to replace those who have quit or died from a tobacco related disease. The ISPCC works directly with children on a daily basis and has approximately 2,000 contacts per day with young people. As such, we can readily attest to what is happening with children every day. We know that children and young people are pressurised by peers to fit in, which is hugely important to them. If a product is targeted as a fun or stylish product or

something that makes a person look and feel better about himself or herself, then clearly it is something in which young people will be interested. Bad as this is if the product is the latest shoes, clothing and so on, a lot worse it is if it is something that can seriously damage a young child's health.

The concept of standardised packaging as a means of reducing the likelihood of smoking or making children more aware of the risks involved in taking up the habit of smoking can only be a positive step forward. Advertising and the normalisation of any form of drug usage can be heavily influential to impressionable young minds. Recently conducted research by Ignite Research involved direct contact with young people and includes direct quotes from them, some of which stood out for me and my colleagues. One such quote is: "It's not even just the cigarettes, it's the packaging. It's all the swirls on the pack, the colours, they look fashionable. You kind of want them sitting on the table to be able to say, 'Yeah they're mine'." This would indicate a level of pride being associated with the fancy box sitting on the table. If that packaging was changed and in future displayed the horrors of what smoking can do to a young person, that level of pride would be taken away and young people would not want it. Some of those surveyed said that if such were displayed on every box, they would stop smoking because they would be too embarrassed to take out the box. This is a clear indication of what can be achieved through this legislation. By changing the branding and packaging, children will not be interested in being seen with this product.

The ISPPC believes that legislation needs to reflect the influential nature of marketing and advertising on children. In this regard, there is a duty of care between the Irish Government and its citizens, and in particular a duty for the protection of children. We believe the legislation should highlight that this is a protection issue. This is not about packaging or cigarettes or a drug. It is about protecting current and future generations of children in Ireland. We believe the legislation should acknowledge this in the context of tobacco products.

**Chairman:** I thank Ms O'Sullivan. Apologies have been received from Deputy Bill Kelleher, who must be in the Dáil today for Leaders' Questions, Deputy Caoimhghín Ó Caoláin and Senator Colm Burke who had to attend another meeting. Another reason for the sparse attendance at today's meeting is the launch today of the Child and Family Agency. I welcome Senator van Turnhout. I call Deputy McLellan.

**Deputy Sandra McLellan:** I welcome all of the witnesses and apologise on behalf of Deputy Ó Caoláin who, unfortunately, cannot be here. I thank all of them for their presentations and congratulate them on the positive work they have been doing. It is important young people are being listened to and that we know where they are coming from.

Sinn Féin supports the proposed legislation. I have a few questions and ask that the witness to whom each is relevant would respond. How are young people affected by passive smoking and are they concerned about it? Why do young people start smoking? Ms O'Sullivan referred to the following quotation: "It's not even just the cigarettes, it's the packaging. It's all the swirls on the pack, the colours, they look fashionable. You kind of want them sitting on the table to be able to say 'Yeah they're mine'." That says an awful lot. Do the witnesses believe we need to target young people with anti-smoking campaigns and do they believe such campaigns are good or relevant? What more can be done? Could the legislation be improved? If so, how?

I refer to the statement made earlier that addiction keeps people smoking and branding entices them to start. Given there is no branding on illegal drugs but people still use them - perhaps for socioeconomic reasons - is the problem one of branding or addiction? Could the same

be applied to cigarettes?

**Senator Jillian van Turnhout:** I join in welcoming the witnesses. I fully support the proposed legislation and we are just working to see how we can strengthen it and ensure the tobacco industry cannot hinder us in our important work. Mr. Gilligan has commented on the UN Convention on the Rights of the Child, which is very important, as this is a children's rights issue and should be framed as such. Ms O'Sullivan mentioned the duty of care of the Government to citizens, which is very important.

My questions are mainly directed at the representatives of the Tipperary Regional Youth Service. They have provided a compelling case and I thank them for that and their work. They noted that peer education is very important and we must learn more from that. There is a difference between me going into a classroom and saying smoking is bad and them going into the same classroom, and that work is excellent. I have no doubt that in a few weeks we will have representatives of the tobacco industry before us saying that they do not market to children as cigarettes are sold behind the counter and they are not allowed to advertise. I have no doubt they will have charts and so on to illustrate this. I will feel like telling them to butt out and leave our kids alone. Is there anything the witnesses would like to ask those people? I may be putting them on the spot but they can follow up with me afterwards if they so wish. What should the committee say or ask?

The delegation spoke about a reality in their submission and they are the experts. I believe people of their age are being targeted but I should not put words in their mouth. It would be useful for the committee to have primary expert evidence when we have these people in front of us. Plain packaging is a very strong step in the right direction for Ireland. Deputy Healy spoke about the size of packages and we must consider having quitline numbers on them. I welcome the views of the witnesses because of their expert opinion.

**Deputy Robert Dowds:** I have a couple of pointed questions which the witnesses may ignore if they so wish. Have any of them smoked and how did they manage to kick the habit if they have given up?

**Chairman:** That is not relevant to the legislation.

**Deputy Robert Dowds:** It is relevant to the issue.

**Chairman:** I am just joking.

**Deputy Robert Dowds:** There is a related point. The witnesses are predominantly girls so where are the fellows? Are they not involved with the issue? Smoking goes across gender lines, although it may be more dangerous for women if they are expecting a baby. Why has the running been left mainly to women?

I very much appreciate the delegations being here and I agree with the comments and questions from the two previous speakers. This legislation will be enacted because it has cross-party support, but will there be a greater temptation for young people in particular to smoke cigarettes that people may bring back from holidays because the packaging will be much more attractive than what will be available in Ireland? Will there be a temptation to use illegal tobacco products and how would we stop that behaviour? I have one or two ideas but perhaps the witnesses can add to them. When people go on holidays they are allowed to import approximately 800 cigarettes per head, but many people bring in numbers way in excess of that, which has a definite impact on the market, in addition to illegal stock. Will the witnesses comment on that? I thank

them for their input in that regard. To what extent does education work in trying to stop people smoking or drinking to excess?

**Deputy Peter Fitzpatrick:** I am a father of three children and I have a grandchild. I am sorry I missed the contributions earlier but I attended the last session. Everybody is saying the tobacco industry is targeting young people, and it has been argued that young people smoke because of reasons like fashion or style. A year ago another group was here telling us that young girls smoke to keep down weight because of pressure. Will plain packaging help young people to stop smoking? Is there anything else we can do to help? I am concerned about the health issue, which is similar to the problem of alcohol consumption. I am concerned about the damage that can be done by smoking. We heard statistics this morning about how many people die because of smoking, so is there anything else we can do to help the young people of Ireland in health matters, including smoking and alcohol consumption?

**Chairman:** Ms Gayson looks like she is poised to respond.

**Ms Danielle Gayson:** Deputy McLellan asked about passive smoking and whether it affects young people. While doing research for the Lungs on the Run project, we came across a statistic indicating that 25% of lung cancer is caused by passive smoking, which is quite a high figure.

**Ms Amy Maher:** Deputy Fitzpatrick asked if the plain packaging will decrease the number of people who smoke. Colourful packaging definitely has an impact on people, and they attract young people to smoking. Changing the packaging would be prevention rather than intervention. The colourful packaging has an effect on young people's decision to smoke because it affects how they perceive their looks. Therefore, plain packaging would not attract as many young people.

**Chairman:** Are young people influenced by advertising or marketing?

**Ms Danielle Gayson:** Many young people are influenced by who they know who already smokes. If somebody pulls out a packet of cigarettes with bright colours, others may perceive it as cool and think they should do the same. The influence comes from many factors but packaging is one.

**Chairman:** I compliment your workbook, which is graphic and visual. It certainly would intimidate somebody against smoking. As a former schoolteacher, I wonder if young people are aware of the damage to health caused by smoking. They may not ever think they will get to 70 but Mr. Peelo this morning spoke of people he knew who felt like they had an elephant on their chest when they tried to breathe. Are young people aware of the profound effect that smoking could have on quality of life and future health? If not, how can we make them aware?

**Ms Danielle Gayson:** Young people have heard the facts and what smoking can do but the information comes from adults, and they would never really believe that this can happen. Peer-led programmes, with young people telling other young people what can happen, could be effective. If people know somebody who is troubled by smoking, there is more potential to believe the facts than if a teacher or somebody older conveys those facts.

**Chairman:** That is why your work is so important.

**Deputy Sandra McLellan:** Young people may think they will never get that old, as it seems so far into the future.

**Chairman:** It is a case of something occurring in the far distance.

**Deputy Sandra McLellan:** Unfortunately, this can come around very quickly.

**Mr. Paul Gilligan:** I will pick up on a couple of points. All the work we know of that takes in drugs, alcohol and smoking indicates that the longer we can delay somebody starting, the better chance that person will never start and will never develop an addiction. That is an important point to make about smoking. The longer we can delay a person having a first cigarette, the better chance we have of ensuring they never do it.

Second, one must remember that children are vulnerable by virtue of their developmental capability. The reason they begin smoking is that they do not fully comprehend the impact. No child or teenager thinks he or she can die. It is not something young people think about when they wake up every morning; that only comes with age. Therefore, some of the arguments about the harm are not fully understood. We must protect people who are vulnerable by virtue of their developmental capabilities.

Finally, if the representatives of the tobacco companies appear before the committee and argue that they are not marketing their product at children, they should stop spending money on marketing because their marketing is failing. A total of 78% of smokers start smoking when they are children. Their marketing, therefore, is skewed and wrong and they are wasting money. The facts are available in respect of any argument to suggest they are not being marketed to children. The tobacco companies know as well as we do that the earlier one can get people to smoke, the greater the chance that they will continue to smoke throughout their lives.

**Ms Caroline O'Sullivan:** I do not have much to add to the wonderful responses already. Why children start to smoke is the biggest issue, and prevention is better than cure. As Paul says, the longer that can be delayed, the better the chance the child or young person will not take up smoking. Anti-smoking campaigns can work, but they are working more for adults. Adults can reach a point where they have been smoking for so long, for example, 15 years, that they think it is time to give up. The campaigns work on that basis, but from our discussions with young people, they look upon lung cancer and other diseases as something that could happen in 30 years. At present, they are more concerned about looking good, having peers, going out with their friends and enjoying themselves. Thirty years in the future is completely irrelevant to a young teenager. The issue is about ensuring they are not attracted to the product in the first place. Education could work alongside that.

**Deputy Robert Dowds:** Deputy Peter Fitzpatrick asked a question about young women, in particular. Are they tempted to smoke to keep their weight down? Is that an element of the culture or not? I am trying to understand the culture. When I was 13 or 14 the smoking culture in my school was down in the bicycle shed and it was fellows who were showing a bit of bravado.

**Ms Cliona O'Neill:** I believe guys do not start to keep down their weight, but they do not want to give up because they think they will put on weight.

**Deputy Robert Dowds:** Yes, that is a good point.

**Deputy Sandra McLellan:** It is definitely about the weight.

**Chairman:** Is there anything we should be communicating to young people about smoking that we are not already doing? It might be something you have not mentioned this morning or something you wish to emphasise. Are we on the same wavelength as you or, because we are

wearing shirts, ties and suits, does it appear that we are different? You said you do not take notice of adults but if you see somebody, such as a surgeon general or a doctor, making the comment, is that more effective than one of us? How do we get young people to become ambassadors to prevent smoking? How do we encourage the Tipperary Regional Youth Service, multiplied across Ireland, to be the ambassador to prevent smoking?

**Ms Amy Maher:** If the plain packaging decreases the number of young people who start to smoke and if a young person does not see their peers smoking around them, over time that will decrease it even further. If the plain packaging is introduced, I believe the number of young people who start to smoke will definitely decrease. It is more to do with peer pressure. One sees more young people starting to smoke rather than adults because there is more peer pressure among young people than among adults.

**Deputy Robert Dowds:** Tell them they have a better chance of beating Cork if they do not smoke.

**Deputy Catherine Byrne:** I am sorry I could not be present earlier but I was listening to the proceedings while I was at the other meeting. I have one question, but I do not know if it has been asked already. It is about the education system in school and the civil, social and political education, CSPE, course. How do the witnesses think that impacted on how they think about their health, alcohol, addiction and so forth when they were in school or if they are still in school? Has the programme being taught in school at present made any impression?

**Senator Jillian van Turnhout:** I have a question about young people's access to cigarettes. Are the witnesses reaffirming to the committee that access to cigarettes is not a difficulty for a young person going into a shop? Are they going directly to the shop or are adults buying the cigarettes for them, in the witnesses' experience?

**Deputy Peter Fitzpatrick:** I am feeling my way with this, because I never drank or smoke so I do not know how alcohol or smoking tastes. However, I know how chocolate tastes and I am very fond of chocolate. If I do or taste something I do not like, I will not do it again. I am trying to understand how people feel when they take a few puffs of a cigarette. I am sure it cannot be nice on the first few occasions. The same would apply to alcohol. I have heard people say that when they start drinking it takes a while to acquire the taste. Will the plain packaging help? Would increasing the price of a packet of cigarettes to €20 help? The problem is that if one starts a price war on tobacco, the smuggling will cause hassle. What can we do to stop young people smoking? As I said, it takes a while to get addicted to cigarettes, so what keeps the process going with cigarettes and alcohol?

**Ms Cliona O'Neill:** It is the image of holding the box and smoking in front of one's friends. It is down to image at the start. The more they smoke, the more they get to like it and it goes from there.

**Chairman:** Good answer.

**Ms Danielle Gayson:** Deputy Byrne asked about the education in school in subjects such as social, personal and health education, SPHE, and whether it affects us. I am only in third year at present and we have been doing different modules in SPHE for the past three years. In first year it was smoking but we did not really do much about it. It did not give us any information about how much it can affect us or what it can do to us. It did not influence people in the class in their decisions on whether to smoke. In second year we did alcohol. We had to do a project for that.

It was a little poster about the different things alcohol can influence and the effects it can have. That did have an influence. We had a different teacher so it was taught to us slightly differently from how the first year module was taught. It affected many people in the class. They all had their own opinions on it and they made their decisions based on them. It is not really the course that has an influence, but the teacher's means of teaching the course.

**Deputy Catherine Byrne:** The witness is right.

**Ms Amy Maher:** It is not the SPHE class that is influencing us as to whether we should or should not smoke. It is more the people around us. Young people feel that if they smoke, they will fit in with their peers, because everyone else is doing it. If they do it once and it is okay, they will continue. Over time they will get addicted. I believe the plain packaging will definitely stop them from starting to smoke.

**Ms Cliona O'Neill:** We learned a lot more on the youth project than we learned in school about smoking and drugs.

**Chairman:** Why is that?

**Ms Amy Maher:** We were with young people and there was a range of ages. There were people who had experience with smoking and alcohol already to offer their points of view to other young people. As there is a younger group starting and we are older than them, we can tell them. It is better than adults telling them because they probably listen more to younger people than adults, so it is good to be in a youth project like that.

**Mr. Paul Gilligan:** Addictions are probably determined by three key factors - availability, attractiveness and vulnerability. We must tackle tobacco at all those levels. In the case of attractiveness, price is obviously important but it is not the only factor. If something is attractive enough, people will pay the price for it. We know that from many other things. With regard to vulnerability, young people with mental health problems are more susceptible to develop tobacco addictions because they are particularly vulnerable. We need to examine that issue. Obviously availability is a key issue.

The last point I want to make is that the new health strategy should be supported by everybody. It is vital that we promote health in schools as much as we promote other stuff and environmental education is a good example. It is important that emphasis is placed on young people having healthy lives because it will stand to them throughout their lives, in all aspects.

**Ms Caroline O'Sullivan:** All of the points have been well covered. The strategy is about preventing young people from taking up smoking. If one prevents them from doing so then they will not smoke in the future. Children take up smoking because it is the thing to do. It is like standing on the corner with their mates chatting, it is what they do. If it is considered to be unattractive or not the right thing to do then they will not do it and the packaging will help in that regard.

**Chairman:** I thank Ms O'Sullivan. I finally thank Ms Cliona O'Neill, Ms Danielle Gayson and Ms Amy Maher, along with Mr. Paul Gilligan and Ms Caroline O'Sullivan. I also thank Ms Catherine Doyle and her colleagues from the Tipperary Regional Youth Service for their assistance today and for accompanying the girls here on their journey from Cashel. We hope that they have enjoyed the experience and hope that they will come back here again in the future. It is important that we engage with and hear the viewpoint of youth groups as Leinster House is also their house. Young people will vote in a few years time and will have a say in who comes



in and out of this place.

The Clerk of the Committee has asked me to inform the witnesses that he will organise for a DVD of their visit and presentation today to be forwarded to them as an expression of our thanks and a memento of their visit to Leinster House. I also thank Mr. Paul Gilligan and Ms Caroline O'Sullivan for the tremendous work that they do on behalf of young people. Does Senator Crown wish to comment? He was late joining the meeting due to having to attend another meeting. The Senator can speak if he wishes.

**Senator John Crown:** I have no comment to make at the moment.

**Chairman:** Deputy Healy has just returned and I advise him that we are just finishing up. Does he wish to make a final remark?

**Deputy Seamus Healy:** No, thank you.

**Chairman:** I thank everybody for attending. The debate is part of our scrutiny of legislation and the insight and input by the delegations have proven very valuable and I thank them all most sincerely. I thank members of the committee and remind them of the good news that we will not meet next Tuesday but will adjourn until this day week at 9.30 a.m.

The joint committee adjourned at 12.35 p.m. until 9.30 a.m. on Thursday, 6 February 2014.

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM SHLÁINTE AGUS LEANAÍ

## JOINT COMMITTEE ON HEALTH AND CHILDREN

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*Déardaoin, 06 Feabhra 2014*

*Thursday, 06 February 2014*

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The Joint Committee met at 9.30 a.m.

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### MEMBERS PRESENT:

|                                |                               |
|--------------------------------|-------------------------------|
| Deputy Catherine Byrne,        | Senator Colm Burke,           |
| Deputy Ciara Conway,           | Senator Jillian van Turnhout. |
| Deputy Regina Doherty,         |                               |
| Deputy Robert Dowds,           |                               |
| Deputy Peter Fitzpatrick,      |                               |
| Deputy Seamus Healy,           |                               |
| Deputy Billy Kelleher,         |                               |
| Deputy Sandra McLellan,        |                               |
| Deputy Eamonn Maloney,         |                               |
| Deputy Mary Mitchell O'Connor, |                               |
| Deputy Dan Neville,            |                               |
| Deputy Caoimhghín Ó Caoláin,   |                               |

In attendance: Deputies John Browne and Michael Healy-Rae.

DEPUTY JERRY BUTTIMER IN THE CHAIR.

*The joint committee met in private session until 9.50 a.m.*

### **Public Health (Standardised Packaging of Tobacco) Bill 2013: Discussion (Resumed)**

**Chairman:** I thank everybody for attending this morning. As we are in public session I remind members, witnesses and those in the Gallery that mobile phones should be turned off or be in flight mode for the duration of the meeting as they interfere with the broadcasting equipment. As members are aware, the general scheme of the public health (standardised packaging of tobacco) Bill was referred to the joint committee for consideration before Christmas. Before the Christmas recess, the Minister, Deputy Reilly, and the Chief Medical Officer made a presentation to the joint committee by way of introduction to this important legislation. Last week, we heard from a wide variety of groups, as well as the Revenue Commissioners, An Garda Síochána and the HSE. This morning, we are continuing with a fourth meeting in the series that will convene over the next couple of weeks, culminating next week in considering the heads of the Bill. Today we will hear of the potential effects of legislation from a public health policy viewpoint. I welcome all our witnesses this morning from the Irish Medical Organisation, the Irish Thoracic Society, the Institute of Public Health in Ireland, the Royal College of Physicians of Ireland, the TobaccoFree Research Institute of Ireland and St. James's Hospital. I will introduce the witnesses individually as we speak to them.

Witnesses are protected by absolute privilege in respect of the evidence they give to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person or an entity by name or in such a way as to make him, her or it identifiable. I remind members of the long-standing ruling and parliamentary practice that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I welcome Dr. Matthew Sadlier, president of the Irish Medical Organisation, and Ms Vanessa Hetherington, who is in the Gallery. I thank her for her co-operation for the meeting.

**Dr. Matthew Sadlier:** I thank the Chairman and members of the committee for the opportunity to address them on the issue. Ireland has been a global leader in the fight against tobacco since implementing a ban on smoking in the workplace in 2004. As such, it is crucial that Ireland continues to lead the way by legislating for cigarette packaging that is plain and contains appropriate health warnings.

Tobacco is unlike any other product on the market. It is the only legal consumer product that kills when used as intended by the manufacturer. Half of all smokers will die from a tobacco-related disease and not only are 90% of lung cancers caused by tobacco but it is also a contributory factor in 30% of all cancers. A quarter of deaths from coronary heart disease and 11% of all stroke deaths are attributable to smoking, and smokers are two to three times more likely to suffer a heart attack compared to non-smokers. It is also a risk factor for asthma in children. Tobacco is one of the leading preventable risk factors for non-communicable diseases such as cardiovascular disease, cancer, lung disease and diabetes.

The overall prevalence of smoking is declining but in 2012, some 22% of the population still smoked. Smoking is an addiction that begins in adolescence and according to a survey commissioned by the office of tobacco control, 78% of smokers started smoking before they reached the age of 18, and 53% started before they reached the age of 15. In 2010, some 7.9% of children aged ten to 17 reported smoking cigarettes every week. However, the percentage of children in that age group who report never smoking has increased from 50.8% in 1998 to 73.5% in 2010.

This new Bill provides the opportunity to capitalise on these developments further by reducing the attractiveness and appeal of tobacco products to children. The Irish Medical Organisation has long championed efforts to reduce the number of smokers in Ireland, and at our last annual general meeting we passed a motion supporting the Minister for Health's planned introduction of standardised packaging for tobacco products. As such, the IMO welcomes the tobacco-free Ireland policy and the proposed Bill.

However, the Public Health (Standardised Packaging of Tobacco) Bill only calls for 65% of the package to be covered with a health warning, which is the minimum required by the forthcoming EU tobacco products directive. The IMO believes this does not go far enough and advocates for 75% coverage by health warnings in order to protect the well-being of Irish citizens. There is a growing body of evidence on the effectiveness of graphic warnings. For example, a Canadian research paper, which surveyed individuals over a ten-year period, found that graphic warnings had a statistically significant effect on smoking prevalence and quit attempts. In particular, the warnings decreased the odds of being a smoker and increased the odds of somebody making an attempt to quit being a smoker. Cancer Research UK reports that all quantitative studies found standard packs less attractive than branded equivalents to both adults and children. Furthermore, a major piece of research by Cancer Research UK and the University of Stirling indicates:

...branded packaging presented positive user imagery and functional and emotional benefits to young people. Conversely, plain cigarette packaging was perceived as unattractive, reduced emotional attachment to the packaging and enforced negative smoking attitudes among young people.

Evidence is already available that plain packaging works. In Australia, the introduction of plain packaging for cigarettes spurred a 78% increase in calls to the quitting helpline, according to a new study by the Cancer Institute of New South Wales. Smokers are more likely to consider giving up and they are also more likely to think the quality of their cigarettes has diminished with plain packaging. Research also shows that when young people look at plain cigarette packs, they believe the product is used by people who are less stylish and sociable, and not as attractive to mimic as alternative packaging.

An often cited point by big tobacco companies is that plain packaging will increase illicit trade but a report conducted by Cancer Research UK in 2012 on smuggling and the tobacco industry found that there was no evidence that plain packs increase smuggling or illegal trade in cigarettes. On the smuggling issue, the IMO congratulates the Government on signing the protocol to eliminate illicit trade in tobacco products, and this treaty will, we hope, help mitigate the illicit trade of tobacco products globally. These companies try to influence policy for the sole purpose of increasing their profits to the detriment of public health. The IMO is also calling on the Government to place a "polluter pays" type of levy on tobacco manufacturers so they can make a contribution to the health care costs of tobacco use.

The IMO believes that Ireland needs to continue to be a front runner in the fight against to-

bacco. As such, introducing plain packaging with appropriately sized graphic health warnings would be a crucial investment in the long-term health of the country.

**Chairman:** Dr. Anthony O'Regan, the chief executive of the Irish Thoracic Society, may now give his opening address. He is very welcome.

**Dr. Anthony O'Regan:** I thank the committee for inviting us here today to share our views on the public health (standardised packaging of tobacco) Bill. Over 5,200 people die in Ireland each year from tobacco-related disease. The Irish Thoracic Society represents respiratory health care professionals throughout Ireland and our members include physicians, thoracic surgeons, clinical nurse specialists, scientists and physiotherapists. Every day of our working lives our members meet patients who are seriously ill and dying because of tobacco, and this includes smokers and ex-smokers, as well as non-smokers who have been exposed to high levels of tobacco smoke in their home or work environment. Lung conditions such as chronic obstructive pulmonary disease, COPD, and lung cancer are painful, debilitating and often fatal. They are also preventable, and the most powerful form of prevention is ensuring that young people never light up their first cigarette. That is why this legislation is so important, as it represents a major step towards the Government's vision of a tobacco-free Ireland by 2025, builds on previous initiatives and will put Ireland to the forefront of global health protection

One area of focus is tobacco's relationship to lung disease in Ireland. This legislation is vital for respiratory health in Ireland, as we have high rates of lung disease compared to the European average. In Ireland lung disease accounts for 20% of all deaths, it is the third most common reason for acute hospital admission, and is the most common reason to visit a GP.

Smoking is the major preventable cause of respiratory illness. Lung disease accounts for over 60% of the 5,200 deaths from smoking annually in this country. Specifically each year in Ireland 1,500 people die from chronic obstructive pulmonary disease, COPD, giving us one of the highest death rates for the disease in Europe, and 1,700 people die from lung cancer. Smoking causes over 85% of these diseases. Smoking has also been shown to exacerbate many other lung diseases including asthma, pulmonary fibrosis, cystic fibrosis and even tuberculosis. Taken with its role in non-respiratory diseases, such as cardiovascular disease, other cancers, and osteoporosis, tobacco kills one out of every two smokers.

Tobacco use is among the biggest causes of health inequalities. Smoking rates are higher in disadvantaged groups and communities and this is where the burden of tobacco related disease is highest. Tobacco accounts for up to half the difference in life expectancy between the richest and the poorest groups in our society. Not surprisingly these differences are strikingly reflected in the prevalence and outcomes of respiratory disease. For instance, the mortality rates for lung cancer and COPD are over two-fold higher in the lower socio-economic classes.

Another significant trend is the increasing prevalence of smoking related lung disease in women. It is apparent from the 1970s onwards that the tobacco industry targeted advertising at women. The fallout from increased smoking in women is now apparent. In COPD there is a convergence of deaths and hospital inpatient discharges for men and women that mirrors the trends in female smoking rates. In lung cancer there is a 0.5% increase in female mortality each year and lung cancer is now the main cause of cancer death in women outnumbering breast cancer deaths by 6%. Lung cancer incidence and mortality in Irish women is amongst the highest in Europe.

Smoking causes damage to the lungs long before it results in clinically symptomatic dis-

ease. Although the majority of people diagnosed with smoking-related lung conditions are of middle or older age, most will have started smoking in adolescence or early adulthood. In fact, 80% of smokers start and become addicted before the age of 18. This illustrates the importance of early interventions to reduce smoking rates among our teenagers and young adults to ensure healthier life expectancy for our population into the future.

We know that legislation works. Over the past decade Ireland has made great strides in the denormalisation of smoking thanks to the workplace ban, the ban on advertising and on point of sale display. The success of these initiatives is best illustrated by the reduction in smoking in both children - from 21% in 1998 down to 12% in 2010 - and in adults - from 31% in 1998 down to 24% in 2010. We must continue on this path and indeed accelerate our efforts to ensure that today's generation of children and teenagers do not become tomorrow's COPD and lung cancer patients. The introduction of standardised packaging together with graphic images represents a significant step in achieving this goal.

It is clear that marketing works. It has worked on behalf of the tobacco industry to the detriment of the lives of hundreds of thousands of Irish men and women throughout the 20th century and into the 21st century. We now have an opportunity to remove the last vestige of marketing power that the tobacco industry holds and we must grab it with both hands.

Australia introduced standardised packaging one year ago. While it will take time to fully measure the effects of the policy, preliminary evidence shows that compared with smokers who are still using branded packs, the plain pack smokers are over 66% more likely to think their cigarettes are of poorer quality and less satisfying, and 81% more likely to think about quitting on a daily basis. Plain packaging has also been shown to reduce pack and product appeal; increase the impact of health warnings; and to reduce confusion about product harm that can result from branded packs. Most importantly, research indicates that standardised packaging will reduce the appeal of tobacco products to young people who are the primary target for tobacco industry marketing. The campaign in Australia waged by the tobacco industry challenging this policy is clear evidence of the perceived impact of branding on target populations by these companies.

The Irish Thoracic Society would like to commend the Government on its commitment to the introduction of standardised packaging and to all parties for their support of the policy. This again places Ireland as a leader in the global battle to protect public health from the effects of tobacco. In particular, it puts Ireland to the forefront in the implementation of our legal obligations under the UN treaty – the World Health Organization's Framework Convention on Tobacco Control. By setting an example to other European countries the benefits of the legislation will not be confined to our shores alone. In order to ensure that this and future generations of Irish children, particularly those from underprivileged areas, can look forward to long healthy lives free of tobacco-related illness, we urge the speedy adoption of this legislation by the Houses of the Oireachtas.

**Chairman:** I thank Dr. O'Regan. The next speaker is from the Institute of Public Health in Ireland and I welcome Mr. Owen Metcalfe, chief executive, and Dr. Helen McAvoy, director of policy. Dr. McAvoy shall speak and she is very welcome.

**Dr. Helen McAvoy:** I thank the Chairman and committee members for the invitation to address the meeting today. The Institute of Public Health in Ireland is an all-island body established to achieve greater co-operation for public health on the island. Tackling health inequalities, a situation where the poorest people experience the poorest health and better off people

experience better health, is a core theme in all of our work. Higher smoking prevalence and tobacco-related harm among the most disadvantaged in society means the Bill is of particular importance to us. The IPH was pleased to forward a written response in advance and our oral presentation will present key issues from the wider paper.

The IPH strongly supports the introduction of standardised packaging under the Public Health (Standardised Packaging of Tobacco) Bill 2013. We have carried out extensive work on tobacco and our latest publication, along with the Tobacco Free Research Institute, is entitled *A Tobacco-Free Future – an all island report on tobacco, inequalities and childhood 2013* clearly laid out the data on tobacco and childhood, including the legacy of smoking and pregnancy.

The introduction of the Bill is necessary to support Ireland's goal of being tobacco free by 2025. It is an important stepping stone for our children on the road to a tobacco-free future. Smoking is a major public health issue with around 1 million people in Ireland smoking at present resulting in a cost of between 6% to 15% of the total health budget being spent on tobacco-related disease.

The institute's key message is that tobacco control works. A trend of lower uptake of smoking among young people in Ireland is consistent from 1998 to 2010. It is the direct result of a stepwise introduction of tobacco control measures that have succeeded in reducing the appeal and accessibility of smoking to young people. These measures have included the banning of advertising, removal of point of sale display and the introduction of smoke-free environments in workplaces and public spaces that "denormalises" smoking for all in society. International evidence shows that the more comprehensive the basket of tobacco control measures adopted the better the results. Therefore, standardised packaging is a logical progression for policy in Ireland.

Our next key message is that standardised packaging works. Systematic reviews, that covered 37 studies screened from 4,518 citations addressing the evidence on standardised packaging, concluded that there are strong grounds for believing that current packaging glamorises smoking and that tobacco products packaged in a standardised colour, typeface and form will improve the effectiveness and salience of health warnings, reduce the misconception of relative harmfulness of various brands, be they lights or natural, and will reduce the overall appeal of smoking.

This week a study, published in the *Medical Journal of Australia*, again reported a 78% increase in calls to a quitline that was associated with the introduction of standardised packs. The effect of this has been very sustained. We believe that reducing the appeal of tobacco to young people is essential and studies have found that plain packaging was considered a deterrent, particularly by younger respondents. It projects a less desirable smoker identity and further "denormalises" tobacco as a regular consumer product.

We view the development as an evidence-based, logical, cost-effective and necessary response to the tobacco epidemic in Ireland. The World Health Organization has estimated that 20% of all mortality among males and 16% of all mortality among females in Ireland is attributable to tobacco. The current burden of tobacco-related disease, disability and death on this island is unacceptable. There is no age group, social group and family in the State that has been untouched by the loss of a loved one or friend through tobacco-related disease.

Over the past decade Ireland has been successful in improving life expectancy. Many more people can now look forward to living into their 80s and beyond. However, the gift comes with

a responsibility to ensure that those extra years are spent in good health and as free of disability as possible. Successful tobacco control is an imperative if the health system is to meet the challenge of rising chronic disease and disability into the future. Reducing smoking is necessary as a means to end human suffering firstly. It is also necessary to contribute directly to a better population health - a cornerstone of human capital and a driver of economic prosperity and growth.

To be really successful in the most cost-effective way possible, tobacco control must extend beyond the use of health education and smoking cessation approaches. It must include evidence-based approaches to reduce the appeal and accessibility of tobacco products to young people and to “denormalise” smoking in society.

The development of the Bill is in line with our current tobacco control policy and Ireland’s commitments as a signatory to the Framework Convention on Tobacco Control. The move towards standardised packaging of tobacco is now beginning to gain momentum across Europe and globally. In the UK in 2012 a consultation on standardised packaging showed consistent and strong support for standardised packaging by all parties with a declared interest in health. As an all-island body, we welcome a harmonised, evidence-based approach to tobacco on this island. In this regard, we note the passing of a legislative consent motion in Northern Ireland this week, whereby the Northern Ireland Assembly agreed that Northern Ireland could be included in amendments to the UK Children and Families Bill, which includes standardised packaging. This is a step in the right direction.

Committee members’ support for this Bill, which represents a significant and necessary step forward for tobacco control nationally and internationally, will help to retain Ireland’s reputation as a world leader in tobacco control. The measure will contribute to the goals of the public health policy, Healthy Ireland- A Framework for Improved Health and Wellbeing, to increase the proportion of people who are healthy at all stages of their life, to reduce health inequalities and to protect the public from threats to health and well-being. I thank the committee for its attention.

**Chairman:** I welcome Dr. Patrick Doorley, the faculty of public health medicine spokesperson on tobacco from the Royal College of Physicians of Ireland.

**Dr. Patrick Doorley:** Tobacco is a lethal, addictive drug. It is the most deadly consumer product ever marketed and it kills when it is used exactly as it is supposed to be used. One out of every two people who smoke long-term will die from tobacco. Tobacco kills 5,200 people in the country.

About three quarters of people who end up smoking have started as children. About the same proportion wish they had never started smoking. About the same proportion would like to quit smoking even if they feel they cannot do so right now. We need proportionate measures to tackle the scourge. It is one of the strong policy measures the faculty of public health medicine feels is badly needed.

Smoking prevalence in this country has declined from 29% in 2003 to 21% in 2012. Children’s smoking rates have declined from 22% in 1998 to about 12%. The decline can be attributed to three strong policy measures. One is the tobacco taxation policy, which affects children disproportionately, the second is the ban on sales of tobacco in packets of less than 20, and the third is the removal of advertising at the point of sale. The point of it is that strong policy measures work. Government policy measures are among the strongest interventions we have



to tackle tobacco addiction. In terms of the economics of tobacco, one of my former colleagues in the HSE has calculated that it costs hospital services alone €300 million per year. The cost to the entire health service is approximately €500 million. This has a huge impact on hospital beds. Government policy aims to reduce smoking prevalence from its current rate, 22%, to 5% by 2025. That is an extremely ambitious target that the faculty supports. It will require a rate of progress much more rapid than we have been achieving to date.

I refer to two systematic reviews of the evidence on plain packaging. I am talking about groups of experts who looked at high quality work. There is a lot of work that is not of a sufficiently high standard to be included in the review. The first review is mentioned by Dr. McAvoy and includes 37 studies conducted in different countries, including Australia, Canada, New Zealand and the UK, among men, women and children. The thrust of the studies goes in the same direction. The findings are that there is strong evidence to support the proposition relating to the role of plain packaging in helping to reduce smoking rates, that is, that plain packaging would reduce the attractiveness and appeal of tobacco products, would increase the noticeability and effectiveness of health warnings and messages, which is important because they are effective, and would reduce the use of design techniques that may mislead consumers about the harmfulness of tobacco products. In addition, the studies in the review show that plain packaging is perceived by both smokers and non-smokers to reduce initiation among smokers. One year later, the experts looked at the literature again and picked up another 17 studies that had been published after the initial review. The results were exactly the same.

That is the thrust of peer-reviewed research on plain packaging and its impact. It has a greater impact on children than adults in respect of initiation among children. That is very important. That is why the faculty of public health medicine strongly supports the measure. We have a few specific comments on the Bill. The packaging policy should take into account the possibility that variant descriptors, such as menthol and light, can mislead smokers into making inappropriate product attributions. The colour of the brand text, business or company name or variant name is not specified in the Bill and this is to be prescribed in the regulations. We recommend that the findings detailed in the reviews I mentioned relating to colour and perception should inform these regulations.. The size and the dimensions of the packs should be specified in the Bill. Members may be aware that some packs are shaped like lipstick containers and these are attractive to young females and probably also to young children. The faculty of public health medicine welcomes the measure and, coming as it does in the context of recent policies in recent years, it brings us one step closer to the day when children in this country can grow up tobacco free.

**Chairman:** Our next speaker is Dr. Finbarr O’Connell, consultant respiratory physician at St. James’s Hospital.

**Dr. Finbarr O’Connell:** I thank the Chairman and the members for the invitation to speak to the committee. I work in St James’s Hospital and I run a large lung cancer practice so I see the real patients who suffer from the worst disease that smoking causes. Dr. O’Regan has outlined some of these points. Dr. Sadlier said that 90% of lung cancer is caused by smoking. In this country, it is 95% and that is not a big difference but it means that practically all lung cancer in this country is caused by it. We re-audit the figure year on year and in our lung cancer practice it is 95% of people. We have very few incidences of non-smoking lung cancer. Lung cancer could essentially disappear as a disease if long-term we were tobacco free as a country. That must be the goal.

Smoking also causes or contributes to many other cancers. Dr Sadlier said that 30% of

all cancers are caused by smoking. That is approximately right, and the others include upper airway cancer of the nose, lips, throat, mouth and larynx, oesophageal cancer, stomach cancer, pancreatic cancer, kidney cancer, bladder cancer, cervical cancer and bone marrow and blood cancers. All these, which are most cancers, have a contribution from smoking. Smoking probably directly causes 30% of all cancers. Dr O'Regan referred to other chronic obstructive pulmonary diseases, COPD. Given that fewer than one in five people smoke, somewhere between one in four and one in five of those people will develop a COPD. That means that one in 20 people can develop a severe chronic disabling respiratory disease, ultimately ending up on long-term oxygen treatment and unable to breathe, at huge expense to the health sector and at a cost of terrible disability to themselves. It is a dreadful disease that is sometimes in the background but should be to the fore in this discussion. The other diseases caused by smoking are ischaemic heart disease, coronary artery disease, angina, heart attacks, cerebro-vascular disease or stroke, peripheral vascular disease, adverse effects in pregnancy and childbirth such as increased rates of pre-term delivery, increased rates of stillbirth and low birth weights. It will also lead to reduced potency and fertility in men, osteoporosis or thinning of the bones, dental and gum disease, cataracts and poor control of diabetes. These are not rare diseases but are diseases that people get, suffer and die from. Tobacco plays a role in most of these diseases. It plays a large role in those I mentioned first.

Quitting smoking reduces all the risks of the above diseases. That has been shown. Previous speakers referred to the long-term aim being the denormalisation of smoking. It is the greatest single preventable cause of death and illness in Ireland and worldwide. Perhaps 6 million deaths per year worldwide, or 7,000 Irish deaths per year, are directly caused by smoking. These are shocking numbers when we reflect on them. Any legislation or measures which assist in de-normalising smoking must be supported. It is about a change in culture. Undoubtedly there has been a tangible change in culture in this country with regard to smoking. It is very real, it has momentum and this legislation will support that further.

I am not an expert on packaging but my understanding is that attractive packaging encourages young people to take up smoking. Preventing younger people from starting to smoke is essential and will allow the medium-term aim of Ireland becoming a tobacco-free country to be realised. The Irish body politic has shown global leadership in the area of anti-smoking legislation and must be congratulated for that. This Bill represents an important further step on the road.

**Chairman:** Thank you Dr. O'Connell. I welcome Professor Luke Clancy and Dr. Kate Babineau from the Tobacco-Free Research Institute and invite them to make their opening statement.

**Professor Luke Clancy:** I thank the Chairman and committee members for the invitation to address them on this important public health issue. I represent the Tobacco-Free Research Institute, whose aim is to investigate and support the development of a tobacco-free society by engaging in research on all aspects of tobacco from a public health perspective. The institute was set up by the Department of Health and Children in 2002. At present, I am the director general of the institute and am also a respiratory physician. Like my colleagues, I have spent most of my clinical life treating patients with smoking-induced lung diseases. I am almost exclusively involved in research at present so most of my presentation will be about the research aspects of tobacco control.

The institute has been seminaly involved in the evaluation of the smoke-free laws that were passed earlier and is also involved in a number of EU-funded projects examining price and

taxation. I have prepared some data on the ill-effects of smoking but the committee has already heard much of it from previous speakers so I will not rehearse it in great detail. However, I feel it is justified to restate that tobacco causes heart disease, cancers, stroke and numerous respiratory diseases, including asthma, COPD, lung cancer and respiratory infections, including tuberculosis. Smoking has an effect on children in the womb and in childhood. It is responsible for many of the complications of pregnancy and remarkably, sudden infant death syndrome. In young children, it causes ear and other infections and neuro-biological retardation. We all know the damaging health effects of tobacco and it is difficult to understand how we tolerate them.

In terms of our research, I particularly want to mention the issue of illicit trade. The committee may hear from the tobacco industry that this legislation will increase illicit trade in tobacco. If the industry is really against illicit trade, it should sign up to the WHO protocol on illicit trade. That would show the industry's real intent. We have examined in great detail the illicit trade in tobacco in Ireland and all over Europe and our results are very different to the data put forward by the industry. In our study, for example, we found that 4% of packs were identified as illicit and roughly 10% as non-domestic duty-paid, giving a total of 14.9%, but the figure in the KPMG report for the industry is 20%. I would caution the committee that when it is presented with figures on illicit trade, it is important to check that the methodology used to estimate those figures is given. For obvious reasons, it is very difficult to measure illicit trade accurately but there are validated methods and we have used these. We have also declared our methods but the methodology is redacted from the aforementioned KPMG report. I would urge the committee not to accept figures on illicit trade which do not include full details on the methodology used and which are not peer-reviewed. It is no good just bandying about figures on something which is so hard to accurately measure.

In the context of this law, we must ask what else works in terms of tobacco control. We have heard from many of the previous speakers regarding price, banning advertising of tobacco and restricting its sale to children all work. Smoke-free registration also works, as does regulating the packaging and labelling of tobacco products. The use of mass media to promote a life free from tobacco and smoking cessation services are also effective. All of these are both effective and cost-effective and they need the support of this committee. It has also been found that what works for adults also works for children. This is probably because children want to be adults. Schemes focused directly on children are not always very effective.

However, in international studies, price is the most important measure in tobacco control. We have studied the role of different strategies in Ireland, using what is called the SimSmoke model, and have shown that in Ireland too, price has been the most successful tool in reducing the prevalence of smoking from 34% in 1998 to 26% in 2010, representing a 22% relative reduction. However, the committee should note that the same rate of progress, which was very good, will not get us to 5% in 2025. Better and more interventions are necessary in that regard.

Regarding the evidence for plain packaging, it has been rehearsed already and I will not go into the detail again. However, I will reiterate the point that plainly packaged tobacco products are perceived as less attractive, of poorer quality and taste and, more importantly from the perspective of children, less cool and sophisticated. Plain packages increase one's ability to recall health warnings, the type, size and positioning of which are important. We have been mocking up the type of packs that may result from this legislation, as derived from the heads of the Bill and the EC directive and they are very different from what is currently available.

The committee has heard that a public opinion poll conducted here showed that the introduction of plain packaging would be popular. A huge majority is in favour of this approach. We

also found this to be the case with smoke-free legislation. We also found that after the legislation was introduced, it became even more popular. The committee need not be worried that the people will not support this legislation.

The committee may have noticed that many people are not sure how this is going to work in practice. This highlights the need for planned implementation of the legislation and focused, independent monitoring of the resulting effects of the law. Therefore we strongly recommend that the committee ensures that this legislation is not only introduced, but also that resources are provided to ensure that appropriate research is conducted to measure its effectiveness and to meet the predictable challenges of a malevolent industry which will claim to have negative data.

In conclusion, I commend the Oireachtas for its commitment to the introduction of standardised packaging and for securing all-party support for this policy. In particular, I would like to congratulate the Minister for Health, Deputy Reilly, who has restored momentum to the legislative approach to tobacco control in Ireland and made a major contribution to EC tobacco control, where his work on the tobacco product directives has greatly enhanced Ireland's EC standing. As the committee will know, during Deputy Martin's time as Minister for Health and Children, Ireland's standing was at its highest, with the introduction of smoke-free legislation and the setting up of the Office of Tobacco Control and our own research institute. During the tenure of Ms Mary Harney, that momentum was lost, to the amazement of our international colleagues, who are now once again looking to the Oireachtas for leadership in the battle to protect our citizens from chronic disease and premature death. I have every confidence that the Oireachtas will give this leadership and that our children and future generations of Irish men and women will live longer and healthier lives, free from the profit-driven scourge of tobacco-related diseases. This can be done by ensuring speedy implementation of the legislation, by making sure that Ireland persists in using all other tobacco control interventions that scientific research has shown clearly to be effective and by supporting the continued monitoring of the health and social effects of these interventions through independent, scientific research.

**Deputy Billy Kelleher:** I welcome the witnesses. We welcome the fact that they have come to give a presentation on the subject before us. They have reinforced the views that are widely held by everyone, in particular in terms of the clinical outcomes of smoking and the impact it has on people's lives and health. We are probably all in agreement that we must do everything we possibly can to reduce smoking. Based on the clinical experience of the witnesses, the prevailing view seems to be that when a person starts smoking they will, in effect, be smoking for life. That is what the tobacco companies hope, and if a person dies then they have to recruit someone else at a young age to take up smoking and keep the momentum going in terms of sales and marketing.

It was said that we must ensure standardised packaging is introduced in terms of size and shape so that one will not have packaging that looks like lipstick or other attractive designs aimed at young people. What specific issue within the confines of the Bill on standardised packaging of tobacco should we include to ensure that we keep a genuine focus on reducing the consumption of tobacco?

Several speakers outlined why 22% of the population smoke. It will become more difficult to reduce the number of smokers in the future. We have extremely well-resourced forces against us. International tobacco companies are hugely resourced and well organised and there is massive support in terms of other professional bodies that support them because they are funded by them. We are a small player in a powerful fight. We all know that if tobacco was dis-

covered tomorrow and brought to our shores it would be an illegal substance and would not be allowed in. We are where we are and we must try to row back on the situation. I am interested to hear whether there is something else we should include to strengthen the legislation or that we could recommend to Government for future legislation if it is not possible to incorporate it in the Bill under discussion.

I do not know what would prompt Professor Clancy to suggest that politicians would even look at polls to make suggestions or that we would define a policy in order to be popular. That would not enter our minds at all. I smoke from time to time. I have tried to stay off cigarettes for most of my life. I am shattered when I see young children smoking. Given what we know now based on clinical and empirical evidence across the world there is no logical or good reason to smoke. When we were growing up the advertising campaigns were starting to say that smoking was bad but I can remember the Marlborough man advertisement. Are there other ways in which we could target smoking? Given the resources available to the State in terms of legislation or taxation and focusing on advertising and education what steps could be taken to discourage young people in particular from taking up smoking? The role models for young boys in many cases are health conscious sports people, for example, soccer players, rugby players and hurlers among others. We have a cohort of young girls in particular whose role models are not necessarily positive in terms of why they are famous. One sees the message given by waif-thin models and the association there is with smoking. All those things are being portrayed in a covert way by powerful forces. We must examine that area as well. Standardised packaging of tobacco will help but I am keen to hear whether there is anything else we can or should do either in the Bill under discussion or in another public health policy area to focus on young people in particular, especially young girls, because the statistics suggest that they are vulnerable in terms of the implications on their health and in the longer term on the health of the nation.

**Deputy Caoimhghín Ó Caoláin:** I very much welcome the panel of experts who have addressed us and attended the meeting this morning. The exercise is unchallenging because every member of the committee here present shares the view and outlook of the witnesses. They have no project to peddle to convince us. I do not know if anyone will take up the role of devil's advocate and try to argue the contrary position. I will not, but I will try to tease out some of Dr. Sadlier's comments. He should please understand that I support the legislation. There is no question of our shared position on this matter.

Dr. Sadlier referred to evidence that is already available. I did ask in a number of earlier engagements on the matter for witnesses to show the evidence that this is a worthwhile step and that it is not just to give the impression of doing something. I really want this to be meaningful and that it will do as it says, dare I say, on the pack. Dr. Sadlier said evidence is already available that plain packaging works. He went on to make the point that plain packaging spurred a 78% increase in calls to the quit line. I am taking an awkward position; that could mean that four people had previously decided to quit and three more joined them. It really does not tell us an awful lot. Can we seriously argue, as the New South Wales study suggests, that there was a 78% increase in the number of people contacting the quit line because of the introduction of plain packaging? I would love to think that were the case but I am sceptical. It is important that we have strong arguments to convince more and more people that this is a meaningful and worthwhile exercise.

Dr. Sadlier mentioned that when young people look at plain cigarette packs they are considered less stylish and not as attractive. The experience today is that one cannot see cigarettes on

sale in a retail outlet because they are shielded from view. An earlier comment was made to the committee – it might have been by the Minister – that in social settings young people can see cigarette packs sitting on a table in a bar, lounge or other social setting. Dr. Sadlier was correct to give credit where it is due. Deputy Micheál Martin, when Minister, championed the end of smoking in the workplace and social settings. That recognition is deserved. Nevertheless, from my personal observation of the situation, on social occasions one finds that men have cigarettes in their pocket. They are no longer on the table in front of them beside their pint. There is no ashtray as there is no smoking. Women invariably keep cigarettes in their handbags. They do not take them out until they are outside the door or in a smoking environment. Consequently, they now are less a tool of promotion than when they were something on a table before other young people.

As for the idea of it not being as attractive to mimic, I noted that in the introduction to Dr. O’Connell’s submission, he spoke of how attractive packaging plays an important role in enticing young people to take up smoking and then advocated plain packaging with graphic health warnings. However, the current packaging has such graphic health warnings, which rightly are absolutely horrendous. Consequently, I am unsure whether there is a cohort of young people who would think the current packaging is any less horrific than if it were plain with the same photographic depictions. As I do not know, I am just teasing this out because the witnesses could go through this exercise, after which they will go away and members will go away until the next session, which might be a wee bit more interesting. This is not take away from the importance of this engagement but we must tease this out a little and I asked witnesses to accept my contribution in that spirit.

I have just two further points to make. I wish to record my thanks to Dr. O’Connell’s colleagues, as I recently have been a guest of his fine hospital.

**Dr. Finbarr O’Connell:** I am sorry to hear that.

**Deputy Caoimhghín Ó Caoláin:** No, I simply wish to record my sincere personal thanks to the coronary care unit in St James’s Hospital. However, I note that Dr. O’Connell’s sentence, “this Bill represents an important further step on the road” did not complete the sentence with “to a tobacco-free Ireland”. I emphasise that is something to which we all are agreed. I have one minor point in respect of Professor Clancy’s statement “to realise that longer and healthier and more prosperous lives are possible without tobacco”. I would change “possible” to “guaranteed”. While that is where I am coming from, I would like to tease out the point the joint committee is not going through this exercise just for the sake of doing something. Members need to grapple with this and I wish to be a part of creating a tobacco-free Ireland.

**Senator Jillian van Turnhout:** I thank all the witnesses. I do not have a specific question because they have provided compelling evidence to the joint committee today. I use the word “evidence” because while members have heard evidence in other submissions, I discount it if it is being funded by the tobacco industry. However, the witnesses have provided members with highly compelling evidence. Dr. Finbar O’Connell stated that 95% of lung cancer patients in Ireland are directly linked with tobacco and everyone can think of someone he or she knows who had or has lung cancer. Consequently, that was quite a startling figure for me in respect of the realisation that so much is within our grasp to improve people’s health. Last week, representatives of some children’s groups appeared before the joint committee and gave members compelling evidence about marketing and the attractiveness of the product. I refer to the different sized boxes to which the witnesses referred and the bright sparkly colours that are used and which are attractive in nature. Obviously, the witnesses also have given members the health

warnings, particularly for children, and I had not heard of the prenatal factors in such a compelling way. This is very important for the joint committee as it proceeds with these hearings. I think the opening sentence Dr. Matthew Sadlier used was that it is the only product that, if used as intended, kills. That is the basic fact about it. As for the fact that 78% of people will start before the age of 18, either the tobacco industry's marketing campaigns are marketing to the wrong people or they are targeting children and I believe it clearly is the latter, because if that is the rate of take-up, it is well past any margins of error.

I thank the witnesses. Their evidence has been very useful. I hope the evidence that has emerged this morning will be publicised. Unfortunately, it is not what always makes the headlines but I believe the public must be informed of the effects of smoking right across the health spectrum, both directly and indirectly.

**Chairman:** I will now call on three members who have indicated their desire to contribute, namely Senator Colm Burke and Deputies Mitchell O'Connor and Fitzpatrick.

**Senator Colm Burke:** I welcome the witnesses and thank them for all the work they have done and are doing in this area. It is very valuable and they are making a huge contribution in this regard. One point on which I wish to touch is the high level of smoking within the poorest socioeconomic areas. How do the witnesses think this issue can be tackled? While legislators can make all the changes in legislation that are required, I have spoken to a number of people working in clinics in public hospitals who note the level of smoking is quite high. I even spoke to someone who was running a high-risk pregnancy clinic who advised me of a patient who presented recently and who was smoking 300 cigarettes per week. The person worked out that the cost of those cigarettes was greater than the amount of the social welfare payments she was receiving. Therefore, this indicates there must be a very high level of sales of illicit cigarettes in some of those areas. How should one deal with such areas in respect of the education process, because we do not appear to be making as big an impact in some of these areas as is the case elsewhere? From the witnesses' own experience, how should this problem be approached? One must approach it at the outset from the perspective of younger people but one must also approach parents. The witnesses may have some ideas in this regard, as I believe much work remains to be done in that area and it is important that it be tackled. I again thank all the witnesses for their contributions this morning.

**Deputy Mary Mitchell O'Connor:** I thank the witnesses, for whom I have great respect. They are doctors who deal with people and who know about those who have suffered from tobacco-related diseases. Dr. O'Connell should again name all those diseases for the benefit of those who may be watching in on proceedings or for those who are present in the room. I ask him to repeat that list for the benefit of the public, in order that people might realise all the different cancers and diseases he mentioned. I should add that I used to smoke in the past and found it really hard to give up cigarettes. One reason for this was that the brand in question, which I will not name, had a purple and white box and if I saw it anywhere in the pub, I would approach strangers and ask them for a cigarette. I am ashamed to say that but advertising does work. This is the reason there is an advertising industry. If one visits any shops on Grafton Street, they live and die by advertising.

I will start my questions with Professor Clancy. It will be an easy question for him because he is an expert in the field. Members have been told that 50 young people must be recruited each day to make up for the number of people who die from cancer. Why do Irish children take up smoking? They appear to take it up much earlier than children in other countries. Can Professor Clancy specifically define the reason for this? As legislators, can members do more

in this regard? Perhaps the advertisement Professor Clancy circulated to members could be displayed on the committee room's video cameras, as it shows how awful are the diseases that smoking causes. Had I seen such pictures of rotten teeth and horrible decayed-looking lungs when I was younger, that would have stopped me from smoking.

My next question is directed towards Dr. O'Regan. In the past, I was a school principal and I am aware that some students smoke because they believe it helps them to lose or keep off weight. Perhaps Dr. O'Regan could comment on this. Is that a realistic viewpoint as young girls in particular are smoking for dietary reasons? The representatives from the Institute of Public Health in Ireland might tell me what can be done on the island of Ireland to make sure that smoking rates are brought down to the levels of those in, for example, California, Canada and Australia. Certain groups of doctors who are present this morning have mentioned that people from the lower socioeconomic groups, and girls in particular, are taking up smoking and continue to smoke even in spite of all the medical health messages being sent out.

**Deputy Peter Fitzpatrick:** I thank the witnesses for coming here. Over the past number of weeks I have learned a lot about smoking. There is not a day passes that I do not comment that your health is your wealth, and smoking can seriously damage your health.

As was stated over the past number of weeks, over 5,200 people die in Ireland each year from tobacco-related disease. I did not realise that it was the third most common reason for acute hospital admission. They are keeping the doctors in business. It is the most common reason to visit a GP, which speaks for itself.

Half of all smokers will die from tobacco-related diseases. If that does not put people off, I do not know what would. My father died of lung cancer at the early age of 74. Some 90% of lung cancers and 30% of all cancers are caused by smoking. One quarter of all deaths from coronary heart disease and 11% of all stroke deaths are attributed to smoking and smokers are two to three times more likely to suffer from a heart attack compared with a non-smoker.

According to a survey commissioned by the Office of Tobacco Control which really shocked me, 78% of smokers start before they reach the age of 18, and 53% before the age of 15. As a parent of three - two girls and a boy - it is just the two girls who smoked. I am convinced the reason they started to smoke was peer pressure. There were a couple of girls in here last week who stated that, in a school yard or in a corner, the most popular thing for a girl was to have a cigarette in one hand and a coloured-labelled package in the other. That is alarming. In 2010, 7.9% of children aged ten to 14 reported smoking cigarettes every week. That is most alarming. That is something we will have to push against. The good news was that the percentage of children aged ten to 17 who reported never smoking has increased, from 50.8% in 1998 to 73.5% in 2010.

Professor Clancy stated that, in international studies, price is the most important measure in tobacco control and has been the most successful tool in reducing the prevalence of smoking, from 34% in 1998 to 26% in 2010, representing a 22% relative reduction. With the laundering of illegal tobacco, it all merges together. I wonder can he elaborate. If we keep hiking the price up, will that stop people smoking or will it help the market in smuggled cigarettes? As I stated, your health is your wealth. It is important that we discourage young people from smoking.

**Chairman:** I will hand back to the witnesses, starting with Dr. Sadlier.

**Dr. Matthew Sadlier:** I will address the points raised in order. First, what the IMO would



call for in the proposed legislation is that Ireland would not necessarily merely opt for the minimum percentage of the package mentioned in the European directive and that we would increase, to 75% rather than 65%, the percentage of the package containing the health warning. That would be one change to the proposed legislation, to answer Deputy Kelleher's question, that we see as a positive move.

In response to Deputy Ó Caoláin's questions, there is strong evidence. If the packaging was a medication, it would probably be licensed to treat the conditions given the beneficial effect it would have. There is also evidence from the psychological literature to show that human beings will respond more emotively and viscerally to visual images than to words. Human beings seem to be primed towards biologically directed images. It is quite easy to understand how. Images of diseased organs, etc., will cause a stronger visceral response and a reaction of disgust in more people than will clinical words. Where packaging contains warnings that smoking contains all these fancy chemical names, to a large number of the population that could be a vitamin or something toxic. At that level, people do not necessarily know.

This is a fight that will have to be fought on a number of different fronts. The packaging is certainly an important element of it. My organisation has called in the past for a ban on smoking in the vicinity of playgrounds. It would be sensible if there were restrictions or guidelines on the representation of smoking in the media. If a celebrity is seen coming out of a nightclub in a particular dress, the shop that sells it will have a run on its products. The thrust of policies should involve a restriction on displaying celebrities or persons of prominence smoking in newspapers.

**Dr. Anthony O'Regan:** As a clinician and someone representing the clinicians who look after those with lung disease, I will try to focus on those issues. Deputy Kelleher asked about packaging. I suppose we have concentrated in this discussion on primary prevention but a big impact also is secondary prevention to try to get those who come into our clinics to stop smoking and address those issues.

If one stops smoking at 30, 40, 50 or 60 years of age, one gains years of life and productivity in life. One measure would be to get access to smoking cessation services. If one comes in and is already addicted to smoking, how do we improve that? There has been some suggestion it would be better if we could put a short line on the cigarette package so that the 81% who think they may quit on a daily basis would have better access to smoking cessation services, and an important knock-on effect may be investing more in those smoking cessation services.

We spoke about young people and smoking. As the committee will be aware, in the United States the next step along the line is Tobacco 21. Dr. O'Connell spoke about this. It is illegal to buy cigarettes, if one is under the age of 21, in New York and in certain cities in Massachusetts. Needham, in the middle of Boston, is one. Where other cities less than a mile away do not have this legislation, it still impacted on young people smoking. We could bring in legislation like that.

Following on from the issue with young women who do smoke more than young men now, Deputy Mitchell O'Connor is correct that there may be an issue relating to body image and weight loss. That is a problem. We have difficulty addressing it because of the peer pressures in this group. However, I would look at it a different way. The amount of sport uptake and professionalism in sport among women has expanded. There was a great image, that created a furore last week because the Super Bowl was on, of the quarterback smoking in the 1967 Super Bowl. Everyone thought it was extraordinary that sportspeople smoked in those days. Of course, it

does not happen now. With more promotion and investment in the professionalism of sport among women, and all this positive energy that has come from sporting women, hopefully, we can move that idealistic issue of smoking to loose weight, which has impacted on men over the years as well, into the sporting arena.

There is another point that the committee should be aware of. A woman who smokes, per cigarette, is more likely to get lung cancer and other lung diseases than a man who smokes. Women are more susceptible to the effects of cigarette smoke. We are looking down the line at the impact the increased smoking in women over the past 20 years will have on the next 20 years. That is a scary vista because of the age of onset of this disease.

On the basis of this list of diseases that people get, Dr. O'Connell mentioned all the cancers but we have mentioned chronic obstructive lung disease and lung cancer. Asthma affects 7% to 15% of the population and smoking plays a major role in the exacerbation and possible cause of asthma. There is a disease called idiopathic pulmonary fibrosis that, if we were to list it as a cancer, would be the eighth commonest cause of cancer mortality in this country. Some 60% to 70% of it is caused by smoking.

On infections, we know that in tuberculosis, TB, the outcomes are worse in smokers. Whereas people think TB is not that common, it is still common. Other infection outcomes are probably also worse in those who smoke. The list goes on and on in terms of the lung diseases that we see.

My last comment relates to this issue of whether there is evidence that this will make a difference. All I would say is we do not yet have the evidence because this is new. In Australia, they are prospectively evaluating this and, hopefully, more evidence will come forth. It is pretty clear that if people find cigarettes less satisfying, if they perceive that they are of not as high a quality, which is what is coming out of Australia, they are less likely to smoke. Although we are not yet there with the facts and figures, because we are leading the way, hopefully, in two to five years time the evidence will be more compelling for this.

**Dr. Helen McAvoy:** I welcome the positive remarks and the clear commitment from the committee members on this issue. They were very heartening.

On the comments on the specifics of the Bill, it is worth considering the point on the 75% warning and considering further the issue of pack size and wrappers for roll-your-own cigarettes. This was mentioned by Mr. Gavin Maguire last week.

Deputy Kelleher mentioned the Marlboro Man. Sadly, I understand that the fourth Marlboro Man passed away in recent months from a tobacco-related disease. It is important to mark that as a story about the real legacy of tobacco advertising.

On the impact in Australia and the quit-line raised by Deputy Ó Caoláin, I have the details of the relevant study to hand. If members permit me, I will detail how it was conducted. It was a whole-of-population interrupted time-series analysis in New South Wales that examined the number of calls that occurred in the months before the introduction of graphic warnings in 2006 and thereafter. It also examined the increase in calls that occurred on and after the introduction of plain packaging. It reported a 78% increase in the number of calls with the introduction of plain packaging, from 363 per week to 651 per week. That is statistically significant. The peak occurred four weeks after the initial appearance of plain packaging and it has been prolonged. With the introduction of graphic health warnings in 2006, there was the same relative increase

but the effect was not as prolonged as that observed with the introduction of plain packaging. Some 40 weeks or so after the introduction of plain packaging, there was still a sustained increase in the number of calls to the quit-line. This is significant. We do not have the data yet to indicate what is happening regarding smoking prevalence but the statistics we have are good enough for me at this stage.

**Chairman:** The decline in the number smoking was mentioned in the presentations. We constantly receive messages regarding the German model of education. Why do we need the legislation if the number of smokers is decreasing?

**Senator Jillian van Turnhout:** It has nothing to do with education; it has to do with taxes.

**Chairman:** I understand that.

**Dr. Helen McAvoy:** The number of people smoking is decreasing, but not fast enough. It is still at an epidemic level.

**Chairman:** Will what is proposed assist?

**Dr. Helen McAvoy:** This will assist.

The tobacco industry referred to packages as mobile billboards in terms of their utility as a means of instilling brand identity and ideas about their products. New studies from the United Kingdom conducted by Professor John Britten show that product placement and indirect advertising of tobacco products in movies and television programmes watched by young people are on the increase substantially. Product placement is a great way to get one's mobile billboard on the screen. One may not have it on one's table in the café or in schools but we need to be very careful about this. What I describe is the new strategy for advertising. Data are available from the United Kingdom to indicate product placement of tobacco in the films and media young people are watching is on the increase. This is very difficult to handle because we live in a multimedia world. Children have content on their telephones by way of social media and they see movies, but the tobacco industry would not be quite so keen to show standardised packaging in a movie.

Points were made on progress on the island by Deputy Mary Mitchell O'Connor. Minister Poots indicated very recently that the legislative consent motion is due to be debated through the UK Children and Families Bill but at least the North is in the fray in that the amendments could apply to it. Minister Poots has indicated his commitment to addressing tobacco-related harm in any way he can. We are moving towards having a united view on that across the island.

Reference was made to the programmes in California, Canada and Australia. The point reinforces the fact that the more comprehensive the programme, the better the results. I will be very interested in seeing the outcome regarding the proposal to have a minimum age of 21 and I will keep every close eye on its effectiveness as a measure.

**Chairman:** One cannot buy alcohol before a certain time in off-licences. Teenagers and young adults can enter a shop and buy cigarettes at any time of the day or night if they can produce identification. Should this be a factor in our approach?

**Dr. Helen McAvoy:** We could examine it. I am not sure what the evidence is on restricting the hours of sale, if that is what the Chairman is referring to. We should examine the minimum age first. It is being trialled in other areas. There could be further developments on this as

progress is made.

I wish to address inequality and the approaches that need to be taken in this regard. We need a broad social-determinants-of-health approach that seeks to improve the circumstances of those who are most likely to take up smoking. A particular issue arises with regard to the role of women, including mothers, in modelling smoking behaviour for their children. A conclusion we reached in our report was that there is a need to better integrate smoking cessation strategies into child and family services and early-years services that are now being located in certain areas, particularly disadvantaged areas. It is important to promote the welfare of families in which the parents are not modelling appropriate behaviour for their children and to protect children from the harmful effects of tobacco smoke in the womb – second-hand smoke – and reduce the risk of their taking up smoking. We need to improve the integration and referral pathways to smoking cessation, particularly in respect of family and maternity services. This would be a tangible improvement in addressing inequalities.

**Dr. Patrick Doorley:** With regard to plain packaging, I do not want to repeat what other witnesses have said; suffice it to say that owing to the Clinton settlement with the tobacco industry in the 1990s, many previously secret documents had to be published by the industry. Tobacco executives are on record as saying a package is an advertising medium. They believe this very strongly.

The two systematic reviews I mentioned cover over 50 studies. We cannot get into these now but I find their evidence very compelling. We will just have to evaluate the arrangement when we put it in place.

There is a point in the effort to improve public health at which one must make a decision based on the level of evidence. We are past that point now. The proposal will remove the last vestiges of advertising, apart from Internet advertising, of tobacco in the State. That is good.

Regarding the other steps we need to take, this Bill will be very powerful. One Bill can achieve only so much, however. Where tackling the smoking problem overall is concerned, there is no intervention that will be successful on its own; there is no magic bullet. What we need is a suite of interventions and strong policy measures coupled with other measures. The World Health Organization has listed what it considers to be the five or six most effective measures. Examples include the monitoring of tobacco use, the monitoring of the tobacco companies and prevalence, and offering help to those who want to quit. The latter is extremely important and we need to offer more help. People sometimes need to make six or seven attempts before they quit, and they need to be supported in that. Many people can quit without support but the health service needs to support those who need help.

**Chairman:** At a recent meeting we discussed that issue. On the subject of providing assistance to those who wish to stop smoking, do the delegates, as medics, have a view on whether products such as Champix or nicotine patches should be allowed to be sold over the counter in retail stores as opposed to pharmacies?

**Dr. Patrick Doorley:** Some of the products are sold in retail stores. They double one's chances of quitting. We should encourage the prescription of those drugs, where appropriate. It is obviously a clinical decision. There is a need for much more support to help people to quit.

Let me refer to the denormalisation of tobacco. Smoke-free campuses in hospitals, health centres, administration centres, local authority campuses and playgrounds should be encour-

aged. We should encourage private employers to have smoke-free campuses. That sends a message to society, and to children in particular, that smoking is not normal behaviour. The more we can disseminate that message through legislation or encouragement, the better.

Tobacco taxation is the single most effective measure for cutting smoking rates. Smuggling is an important problem but its extent has been exaggerated. To the extent that it is a problem, inter-departmental action should be taken to address it. The tobacco industry is only too happy for what it regards as high prices to be undermined by smuggling. It should be noted that in years when tax rates were not increased the industry imposed its own price increases despite screaming about the impact of high prices.

People can be wary about public campaigns because of questions about their value for money but a strong body of evidence has been amassed on how to target messages at, for example, lower socio-economic groups, how to engage people and how new media such as Facebook and Twitter can be used to reach younger people. New media make it possible for people to support each other online.

There is no single solution, however. We need to intensify everything we are doing at present. If we are to achieve the goal of 5% prevalence by 2025, our rate of progress needs to be much better than is currently the case.

**Dr. Finbarr O’Connell:** The Chairman asked why we need this legislation. It will help to maintain momentum in reducing smoking further, with the long-term aim of making us tobacco free. God forbid this legislation would not be enacted because that would result in a decrease in the momentum.

In regard to Deputy O’Connor’s question, I will not rehearse all of the diseases. Suffice it to say they include all of the diseases from which Irish people suffer and die. Lung cancer is the biggest cancer killer, causing one in five deaths from lung cancer. Smoking is the cause of 95% of Irish lung cancers and it contributes to most of the other cancers. One third of all cancers are directly attributable to smoking. The claim in television advertisements that one in two long-term smokers dies from smoking is based on evidence. It is a flip of a coin whether a long-term smoker will live or die. Approximately 16 years are lost on average, which is a considerable number. In my clinic the figure is much worse than that. I regularly sit down with people in their 40s or early 50s - people with young children - to tell them they have incurable lung cancer. That is unfortunately an all too common scenario these days. As several members have said, we all know the evidence about smoking and health.

It is heartening to hear positive feedback from the committee and Deputy Ó Caoláin’s comment that there is no issue with the legislation either in this room or the Oireachtas in general.

**Professor Luke Clancy:** Deputy Kelleher asked what specific actions could be taken. I agree with my colleagues in regard to the size of our ambition. The European Commission directive sets a target of 65% but 75% is not unreasonable and would further deprive the industry of advertising space. The models I described earlier indicate that the two main responses required in Ireland are consistent and persistent mass media campaigns and improvements in smoking cessation services. Dr. McAvoy spoke about inequalities of health due to smoking. The people most in need of our services are those who are still smoking but they are not receiving them. The people who stop smoking are well-off by and large. Poor people are not stopping and they are not getting the services they require. This Bill represents a small intervention and if we are to get the most out of it we will have to increase the other elements to which I referred.

It will do no good to clap ourselves on the back once the Bill is passed. We must reinforce everything around it that can make a huge difference.

Deputy Ó Caoláin is correct in regard to the evidence for the Bill. We will be the first country in the northern hemisphere to require plain packaging. The best estimates suggest it will reduce the prevalence of smoking by 1% among adults and 3% among children after two years. Even though the percentage figures are small, they represent substantial reductions in the context of the huge numbers affected. However, more will have to be achieved through reinforcing the other interventions that we know can work if we are to reach the targets set by the Government. The Deputy is also correct that there is less advertising of tobacco products in general but why should there be any advertising of cigarette packs?

Deputy Fitzpatrick raised the big question of illicit trade and its impact on prices. We have studied this issue extensively all over the world and the scientific evidence indicates that while price is an initiating factor in making people think about smuggling, it is fallacious to assert that a price increase from €8 to €9 will change the dynamic. The level of fines imposed and other consequences of being caught are more important than price as factors in illicit trade. The penalty for tobacco transgressions is chicken feed. It is much lighter than is the case for other drugs. The strength of the legislation is also important. However, the primary factor is the existence or otherwise of distribution networks. I do not refer to somebody who buys a few packs of cigarettes in Europe. Illicit tobacco is now being transported in containers. It is not possible to profit from illicit trade unless a distribution network exists. Essentially, it is a law and order issue rather than a health issue. Even with the existence of illicit trade, price is the one factor that is bound to work. When we examine inequalities in health as part of the study to which Dr. McAvoy mentioned, the main factors that reduced inequalities were price and, to a lesser extent, smoking cessation services. If we care about the poor, these are the measures that really matter.

Deputy O'Connor asked what we can do to prevent children from smoking. The measures that work for adults also work for children. Price is a strong deterrent for children because they have less disposable income in general.

Another major issue for them is mass media and the messages they receive. Moreover, there are no smoking cessation services for young adults or children in Ireland. While a person might say he or she has only just started and could stop if he or she so wished, he or she cannot. However, it is not the case that the level of smoking is rising among children; it is declining. Our surveys have shown consistently in the past 15 years that the level of smoking among children is declining, among both sexes. Relatively far fewer girls took up smoking than boys in the past ten years. I think it is because they are probably more clever and watching what is going on. Furthermore, the awareness of smoking has increased so much that sensible children who, by and large, are girls have taken up smoking a lot less and I believe this will not be the ongoing problem.

As for the Chairman's question on whether there should be opening hours for the sale of tobacco, I do not know, but he is quite right to raise it because if we simply do what we are already doing, the practice of smoking will still be strong in 2025 and I can guarantee the joint committee that the rate will be nothing like 5%.

On questioning the need for new measures because the rate is declining, new measures are needed because of the diseases about which members have just heard and the reality that at least 6,000 people per year die from this disease. That is an important word I have not used in this context before the joint committee previously, that smoking and tobacco and nicotine addiction

is a disease. I wish members would regard it as a disease and get the smoking cessation treatments. As the joint committee may be aware, I am the only respiratory physician in the country who runs a smoking cessation clinic. I must ask, if this is a disease, why is that so? Why is smoking cessation treatment not supported? Perhaps that might help us also.

**Deputy Eamonn Maloney:** I thank the delegates for their strong contributions. While I have one question, I must, first, state that although I have never met Professor Clancy before, I have been around long enough to remember his convincing broadcasts with Pat Kenny during the years. Speaking as a former smoker, I used to switch him off or change the dial when he went on air. He used to broadcast twice a year or something like that and I always got the impression that Pat Kenny was like-minded and had serious questions about nicotine. Professor Clancy eventually got to me; I went cold turkey and, as Martin Luther King would have said, I am free at last. Some people may have alluded to my question, but I have never seen evidence or substantial research on the reason the practice of smoking is so strong in working-class communities, as distinct from middle or upper-class communities, where people hardly smoke at all. Is such evidence available?

**Deputy Catherine Byrne:** I apologise for my lateness, as I was obliged to attend something else.

While I did not hear the delegates' presentations, I have read some of them and, based on Professor Clancy's comments, I have a brief question. A few weeks ago I raised the issue of women smoking during pregnancy with the Minister for Health, Deputy James Reilly. In England a patch is supplied under medical supervision to women who are pregnant but who still are finding it hard to stop smoking while pregnant. Do the delegates have an opinion on whether a patch could be used in such circumstances and whether it would be safe enough? I have been unable to get a simple, straightforward answer from a wide range of individuals in this regard. I do not mean giving out such patches willy-nilly but doing so under medical supervision, as is done in both England and Scotland. While the Minister has indicated he will look into this possibility, I seek the delegates' opinion in this regard.

**Professor Luke Clancy:** To turn to the last question first, while I do not speak for the generality, my understanding is the Deputy is correct and that smoking during pregnancy is a serious problem in Ireland. It is much worse than in other countries. For instance, we have compared the position in Ireland with that in Boston, Massachusetts, which is approximately the same size and found that the prevalence of smoking during pregnancy here is three times higher. Moreover, there are no proper services for people who smoke. The Deputy is asking for the provision of patches, which are a crutch, as it were. My point is that it is a disgrace that there is not a smoking cessation service available for every pregnant woman in the country. As for patches, the question is whether they are safe. There is a terrible worry about using anything during pregnancy. My off-the-cuff answer is that if one compares it with smoking, there is no comparison. As to whether it is absolutely safe, possibly not, but it is at least 100 times safer than smoking. The Deputy should remember there are other ways to stop smoking and if these women were given these services, they would benefit.

**Chairman:** Deputy Eamonn Maloney also asked a question on the socioeconomic demographic of smoking.

**Professor Luke Clancy:** Yes, this is very important, which is why I am delighted to return to it. Smoking is the biggest cause of inequality in health. In this context, poor people are now the main smokers. This is an historical thing because that is not how it started. If one consid-

ers tobacco as an epidemic, it has changed dramatically. What happened first was that well-off and educated people had tobacco. The trouble now is the information which is put out, as well as the manner in which it is put out, to get to people who are literate, interested and have a big motivation. We have not been reaching poorer people or targeting them deliberately. As I have stated, the only measures in tobacco interventions that really are effective and reduce inequalities are price and smoking cessation services. That is part of it and I believe it is because we are not focusing on them. Historically, that is the way it has gone. For instance, in new states and developing countries it is the rich who smoke, but as time evolves and the epidemic wanes, people with information and access to services, that is, people who have smoking as a disease and are well-off, access services, while poor people and pregnant women do not. The services and our interventions are not targeted and sometimes one must ask whether we really care.

**Chairman:** I sincerely thank all of the delegates for making the time to attend and assist the joint committee in its consultation on the heads of the Bill.

*Sitting suspended at 11.40 a.m. and resumed at 11.50 a.m.*

**Chairman:** We will resume in public session. We are in session two. In terms of the format for the meeting today, in some sessions there are two persons per delegation and in some there are one, depending on the size of the delegations and the issue being discussed. I hope people understand that we are fair and equitable in this committee and our staff treat all with respect and courtesy, and I hope that everybody will behave similarly with members of the committee and the secretariat who do much good work. The staff of the committee secretariat work diligently on behalf of the members in a non-partisan impartial manner. It is not that we do not want to hear voices. We bring in the umbrella bodies of organisations, as we have done this morning. I hope our discussion will be respectful and tolerant.

I welcome all of the witnesses to the committee and thank them for being here. This is important proposed legislation, the general scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013. As members and witnesses will be aware, the committee has had a series of meetings dealing with the issue, the pre-legislative scrutiny being asked of us by the Department of Health. It is important that we hear all viewpoints. We have asked for written submissions and today is part of the oral presentation.

I remind members, witnesses and those in the Gallery that mobile phones should be put in the “off” or flight mode position as they interfere with the broadcasting equipment.

I welcome the witnesses from the retail and commercial sector. Their views on the proposed legislation are eagerly awaited and, in this regard, I hope that we will have a frank and positive discussion. I thank them most sincerely for being here and for taking time to make a presentation to us. I will go through all of them individually when I call them to speak rather than doing so now. We are appreciative of Mr. Mike Ridgway coming from the United Kingdom. I thank him for being here this morning and for assisting us.

In regard to privilege, witnesses are protected by absolute privilege in respect of the evidence they give to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person or an entity by name or in such a way as to make him, her or it identifiable. I



remind members of the long-standing ruling and parliamentary practice that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

We received a number of apologies. Deputy Kelleher is having to take the Order of Business in the Dáil and Deputy Catherine Byrne will be late. We also received apologies from Senators MacSharry, Henry and Crown.

I welcome Ms Tara Buckley, director general of the Retail Grocery Dairy and Allied Trades Association, better known as RGDATA, and ask her to make her opening remarks.

**Ms Tara Buckley:** RGDATA is the representative body for the independent retail grocery sector in Ireland. We represent the owners of 4,000 family-owned shops, convenience stores, forecourt stores and supermarkets, many of whom are licensed to sell tobacco products to members of the public in the normal course of their business.

RGDATA has no funding initiatives in place with the tobacco sector. However, we publish a magazine once a year for which we accept trade advertising from all suppliers, including tobacco companies.

RGDATA has adopted a clear position on the subject of tobacco control measures introduced by the State in the interests of public health. For as long as tobacco is a lawful product for retail sale in the State, RGDATA members who are licensed to sell such products are committed to operating subject to the controls, regulations or restrictions that may be imposed by the State.

We do not wish to make any substantive challenge to the policy objectives underpinning the proposed Bill. However, we have been requested to present to this committee on the impact of the proposed Bill from a retailer's perspective and there are three points in relation to the heads of the Bill which we wish to bring to committee's attention.

Our first point is a general observation about the need for enforcement regarding the illegal trade in tobacco in Ireland. RGDATA members are compliant and respect the legal obligations imposed on them for the sale of tobacco products. It remains a matter of concern that, notwithstanding their compliance, there is a substantial level of illegal sales of tobacco products in Ireland through the black market. If new tobacco control measures are to have an impact and have credibility, it is important that they are accompanied by a renewed commitment to stamp out the illegal sale of tobacco products. There is nothing more disheartening and disillusioning for a compliant retailer than to see another party flout the law through the sale of contraband, with apparent impunity. Strong enforcement action against black market and contraband sales remains a key factor in proper levels of tobacco control.

Head 4 of the Bill provides that the new measures will only apply to tobacco products which are put on the market for retail sale in Ireland. Presumably this means that those purchasing tobacco products outside the jurisdiction and bringing them into the State, in particular those buying duty-free cigarettes, will not be subject to this new law. Given the policy objectives which the proposed Bill is seeking to address, why does the legislation not go further and prohibit the importation into the State of cigarettes which do not comply with the packaging restrictions contained in the Bill above a certain volume level per person? If the object of the legislation is to render the sale of tobacco products as less attractive, surely this principle should apply regardless of where the Irish-based smoker acquires the tobacco products for consumption in the State?

Our third point comes under head 5. This is a practical concern which has been raised by retailers in relation to the measures contained in the Bill and concerns the risks associated with staff stocking different brands of cigarettes in the gantries for retail sale. As the committee will be aware, we operate a closed-container system. Many staff, when they open up these containers and fill them up, use the colour to ensure they have got the correct cigarettes in the correct order. At present, a retailer or the staff can clearly distinguish between the different brands of cigarettes when stocking the packages in the gantry. With plain packaging, this will be difficult and there will be a real risk that in a busy shop environment, the wrong brand could be stocked in the wrong holder or container given the absence of clear distinguishing marks. This could mean that a customer is supplied the incorrect brand by accident, given that the packet of cigarettes is usually automatically retrieved from a closed gantry container with the brand sight unseen by the retailer or the customer. To address this concern, RGDATA respectfully suggests that consideration be given to some small distinguishing mark being applied to the bottom surfaces of the pack. This could be a simple and discreet colour code to distinguish one brand from another. We want this to be done in a way that would not be obvious to the consumer, nor make the packaging more attractive or appealing. From a retailers' perspective, it would reduce the risk of consumers being misled to purchase a brand of tobacco that they did not choose. We would ask the committee to consider as part of what can be put on the packaging that perhaps a discreet mark be put on the bottom of the pack so that when they are put into the gantries, one would be able to see this coloured mark and the staff member would know that he or she had put the correct brand into the correct container.

These are RGDATA's observations on the proposed Bill. I thank the committee for the opportunity to present today.

**Chairman:** I thank Ms Buckley. I now welcome, Ms Sharon Higgins, head of sectors, IBEC.

**Ms Sharon Higgins:** On behalf of the membership of IBEC, I thank the committee for the opportunity to present today. Plain packaging of tobacco is a sensitive subject. The committee will hear many views on the topic. I am here today to explain the view of Irish business. As the committee may be aware, IBEC represents Irish business, the indigenous and foreign-owned, multinational, big and small, spanning every sector of the economy, and includes tobacco companies amongst our membership.

At the outset, we wish to make it clear that IBEC supports the objective of the Minister, and this committee, to protect public health. We have consistently stated that measures to improve public health can bring with them economic benefits. To this end, for example, we supported the introduction of the workplace smoking ban in 2004. However, it is incumbent upon Government, especially at times of extreme economic difficulty, to ensure that the measures it takes are balanced and do not bring with them unintended consequences that adversely impact upon business and employment. We believe that the plain packaging proposals would have such consequences. We believe the Bill as outlined will have substantial negative consequences well beyond the sector directly concerned and affect owners of intellectual property. As such, the proposal could affect the business community in general and not just the tobacco sector.

Of particular concern are proposals for standardised packaging of tobacco products which will remove all forms of branding trademarks, logos, colours and graphics. The brand name would be presented in a uniform typeface for all brands and the packs would all be in one plain neutral colour.

As stated in our submission, we are very concerned with the effect these proposals could have on branding rights by the removal of all forms of branding. Branding is a central part of how business communicates with its customers. It provides consumers with information on everything from product characteristics to heritage, allowing them to make informed purchasing decisions. It also allows product differentiation, which drives competition and innovation. Wide-ranging restraints on the use of branding, including colours, distinctive pack and products sizes and shapes, would set a dangerous precedent.

These proposals have the potential to affect significantly the value and purpose of a company's intellectual property. They would cast doubt on Ireland's continued commitment to the protection of property, in particular intellectual property and member state obligations under the Paris Convention for the Protection of Industrial Property. Companies that invest in Ireland do so based on various assumptions, including on the standard of protection afforded to property, in particular intellectual property. These measures, if adopted, would send an immediate signal to foreign countries and investors about the standard of intellectual property protection in Ireland and about Ireland's continued commitment to the protection of property. The signal that it would send is that intellectual property protections are not nearly as solid as previously thought.

It should be noted that the regulatory impact assessment guidelines published by the Department of the Taoiseach stipulate that regulatory impact assessments should be conducted at an early stage and before a decision to regulate has been taken and that, ideally, a regulatory impact assessment should be used as the basis for consultation. It is very concerning that a regulatory impact assessment has not been published prior to a memorandum on the standardised packaging for tobacco products being brought to the Cabinet and that the preparation of this legislation so far has not been in accordance with the regulatory impact assessment guidelines. Proposals for plain packaging legislation need to be evidence based, proportionate and respectful of intellectual property rights, and they should and take into account the growth and job-creation prospects of the wider economy. The absence of a regulatory impact assessment in this regard is stark.

I thank the members for listening and I look forward to questions.

**Chairman:** I welcome Mr. Joe Sweeney, district president of the National Federation of Retail Newsagents in Ireland.

**Mr. Joe Sweeney:** I thank the committee for the invitation to address it on the Public Health (Standardised Packaging of Tobacco) Bill 2013.

I am president of the National Federation of Retail Newsagents, NFRN, in Ireland. Founded in 1919, it is one of Europe's largest retail trade associations, and it has 16,000 members throughout the United Kingdom and Ireland. The Irish branch of the federation is a membership-driven organisation that represents 1,000 retailers across the island of Ireland, including 500 stores in the Republic.

We support any initiative to safeguard the health of the people of the country. In this statement, I will draw attention to some of our members' views and concerns. I will address briefly remarks made at the committee's hearing last week by a representative of the Irish Heart Foundation, who casually dismissed the concerns of retailers on the likely impact of this legislation as being of no merit. Retailers are an aid to the Department of Health as they are the people who enforce the Government's policies. I was heartened to hear Deputy Regina Doherty remark that retailers provide both employment for themselves and others, and this should be recognised by

the committee. Equally important was Deputy Byrne's comment that it is all about education. This is a sentiment with which I completely agree. I have four adult sons and neither they nor I nor my wife smokes despite our having access every day to our stock of tobacco. When my children were teenagers and at the most likely age to start smoking, it was still legal to smoke in the workplace and the cigarette gannies displayed the tobacco brand. Despite this and my sons' ease of access, they did not start, simply because they were made aware of and educated on the dangers of smoking. They chose not to smoke as opposed to having the choice made for them and rebelling against it.

NFRN Ireland and I are not in any way in favour of smoking. Our members are at the front line of legal, heavily regulated tobacco retailing. It is offensive to me and other retailers that there is an incorrect and arrogant assumption that our questioning of this Bill is somehow a defence of the tobacco industry. We are trying to protect our own business interests and while the product remains legal we expect to be recognised as responsible retailers who are competing with a criminal underworld. We ask the Government to support and protect our businesses and the jobs they represent and acknowledge that criminals will sell an illegal product to children; the product is often sold by children to children. As supporters of Government policies, we ask for support in return.

NFRN Ireland contests and disputes the sentiment that plain packaging would reduce the appeal of tobacco and tobacco products as they are not on display here in the first instance due to the display ban. It is difficult to understand how the appeal of a brand can attract a smoker when the product is not visible to him or her and the impulse purchase that might have been prompted by the sight of a product does not occur.

There is no hard evidence to suggest that oversized health warnings or plain packaging will reduce the number of people currently smoking or those who start to smoke. The only supposed evidence from Australia, given to this committee during the hearings to date, has been the tenuous argument that increased calls to a quit-line mean people will actually stop smoking. What the people who mentioned this study failed to point out was that it was undertaken during December and January, a time of year when calls to quit-lines would be expected to increase in any case as smokers make their new year's resolutions.

Some organisations the members have heard from dismiss our contention that plain packaging will lead to increased illicit trade. If that is so, how do they explain the surge in illicit tobacco sales in Australia in the year since plain packaging was introduced there? Furthermore, the tobacco products directive agreement reached at EU level will give the Department of Health all of the powers needed to tackle cigarette packaging. It will bring in measures such as the devotion of 65% of cigarette packets to health warnings and the outlawing of packaging that the Minister for Health, Deputy James Reilly, has said is aimed at attracting young people, such as what he described as lipstick-shaped packs.

I want to summarise the key recommendations that NFRN Ireland would like this committee to consider. The first is that the Government should promote and endorse the use of electronic cigarettes as a weaning tool for those who wish to give up smoking. It is essential that these products remain on general sale and are never restricted to pharmacies. In order to increase the likelihood of a smoker choosing an alternative, an alternative must be readily available. The long opening hours of our members' stores support this.

Second, education is the key. Through education, young people can make informed choices and avoid taking up a dangerous habit. NFRN Ireland urges the committee to examine the ex-

ample of California and introduce a programme similar to tobacco use prevention education, TUPE, which resulted in a dramatic decrease in the number of teenagers who started to smoke. The emphasis should be on stopping people from starting to smoke.

Third, NFRN Ireland has on many occasions highlighted the serious level of illicit trade in Ireland. We have put forward a number of potential solutions to various Oireachtas committees, Deputies, Senators and councillors. We submitted a proposal to the Minister of State responsible for small business, Deputy John Perry, on developing a smartphone app, based on the Codentify software, that will allow consumers to verify that their tobacco products are legitimate. The Garda representatives who were present here two weeks ago spoke positively about this. Where there is a suspicion that tobacco products are counterfeit or smuggled, such an app would provide law-enforcement officials with a simple and effective tool for determining immediately whether this is the case. NFRN Ireland would be willing to pay for the introduction of this app to the Irish market.

Fourth, the sale of tobacco products at a market or fair should be banned outright. To this end, the penalties available under the Casual Trading Act should be made as strict as those which apply under the Finance Acts. Equally, landlords of properties where illicit products are sold should be held accountable for the activity on their sites in the same way as retailers are held accountable.

Fifth, as Ireland is an island, ports offer an easy means of bringing illicit tobacco into the country. In Ireland there are eight ports but in only two are there mobile scanners, meaning that the majority of ports remain unmanned. In all ports there should be a permanent scanner and such an investment would not only be self-financing but also profitable for the Exchequer.

These are all measures which NFRN Ireland believes the joint committee should consider carefully as part of an integrated approach to tackling the issue of tobacco control across a range of fronts, rather than pursuing one single, unproven, high profile step such as plain packaging.

**Chairman:** I welcome Mr. Vincent Jennings, chief executive officer of the Convenience Stores and Newsagents Association.

**Mr. Vincent Jennings:** The Convenience Stores and Newsagents Association welcomes the opportunity accorded to it to present its views to the joint committee on the heads of the Bill. The World Health Organization has published advice to governments that they enlist the support of civil society organisations and, specifically, retail organisations when seeking to enact and enforce bans on tobacco advertising, promotion and sponsorship activities. We make reference to this advice as it is our opinion that the authors of *Tobacco-Free Ireland*, the tobacco policy review group, elected not to consult any representative of the 13,000 registered tobacco retailers during their deliberations. There is a reference within the report to consultation with stakeholders and the CSNA would like to state this consultation was incomplete and contrary to the advice of the World Health Organization. As the review group made a number of recommendations for legislative change, we believe that, in line with Cabinet guidelines, a regulatory impact assessment, RIA, should have been conducted by the policy review group and provided alongside the report which was adopted as Government policy one month after its publication. Neither the committee nor any of the interested parties invited to make submissions on the Bill has had the benefit of an RIA to accompany the heads of the Bill. We consider this to be a significant deficiency in the consultative process.

This Bill, in style and purpose, owes much to the Australian Bill. We need to remind the

committee that a comprehensive suite of measures was introduced alongside that Bill to provide for the desired outcome: increases in the already significant reduction in smoking initiation and prevalence. These measures included: an annual increase in each of the following four years of 25% in excise; the reduction of duty-free allowances from 250 cigarettes to 50; pictorial warnings, in existence since 2006, which were revised and enlarged; some A\$85 million for social media messaging, of which A\$28 million was for high-risk and disadvantaged groups; 100,000 prescriptions for nicotine patches; an exemption from sales tax for NRT in non-pharmacy outlets; additional subsidies for lower strength NRT; new penalties specifically for tobacco smugglers; while legislation was enacted to restrict Internet advertising of tobacco products. We remind the joint committee that the level of smuggling of tobacco products in Australia was 4% in 2011. The Australian Government has committed to review the first 12 months since the introduction of these measures and the head of the preventive health task force, Professor Daube, has been quoted as saying: "I don't think anybody reputable would make claims about adult prevalence until we have the next national government-run survey."

The CSNA requested sales data from our counterparts in Australia. This data - provided by retailers, not tobacco industry sources - showed that in the first six months of 2013, when compared with the figures for 2012, overall tobacco sales volumes had increased in the stores surveyed by 4.5% in units, from 9.616 million units to 10.047 million units sold and from A\$124.3 million to A\$134.6 million, an increase of 8.2% in value. The worrying aspect of these figures, for the Exchequer and retailers, was that there had been a dramatic increase in the value and sub-value categories which had increased by 57% collectively in terms of volume and a significant additional 22% of sales in the roll-your-own, RYO, category. This coincided with decreases in the premium and mainstream ranges which had decreased by 9.1%. Cigars, both wet and dry, had declined by 90% and 32% in quantity. Were these down-trading figures to be replicated in Ireland following the introduction of plain packaging, the effect would be significantly disadvantageous for our members, but it would have little or no measurable financial impact on the multinational tobacco companies from which we source our tobacco products. This is owing to the unique position the State has provided for these companies, courtesy of the Finance Act.

It is an offence for retailers to sell cigarettes above the recommended retail price, RRP, which is determined by the companies. Regardless of whether we purchase from the companies or are supplied by distributors or cash and carry outlets, at higher wholesale prices, we must sell at the RRP. The companies have subsidised and manipulated the RRP within the value sector. They have stimulated demand through a variety of activities, including holding the RRP subsequent to budget increases, and are perfectly positioned to meet the expected additional demand for the value sector range if plain packaging is introduced. Retailers will find that the wholesale prices will increase for this range, yet owing to the unique position the Government has provided for these companies, they will be able to fix the RRP at existing levels.

We ask the joint committee to consider a number of other matters that we have identified as weaknesses in achieving the dual purposes of reducing harm to children and preventing the continuation of the deception of existing smokers. There is an urgent need, not provided for in the *Tobacco-Free Ireland* report, to outlaw proxy purchasing, that is, the purchase of tobacco by an adult on behalf of minors. This is part of the French criminal code. We believe society can register its disapproval of smoking by minors by mirroring our own laws on the attempted purchase and possession in a public place of alcohol and introduce similar prohibitions for tobacco products.

If the joint committee accepts the proposition that the usage by tobacco companies of various colours on their packaging is a subliminal attempt to deceive consumers into believing one colour is lighter or safer, it is illogical to continue to permit these colours to be continued to be referred to on each occasion the consumer requests such a product using that exact colour as the description for his or her purchase.

We are also most concerned that there is no attempt in the Bill to dilute the effect that duty paid products in another jurisdiction will have on the public health policy of the State. Figures provided by Revenue indicate that 330 million cigarettes and an unrecorded amount of RYO products were imported legitimately last year into the State. The presence of this significant number of branded packs is in sharp contrast to the determination of the Australian Government to give its Bill the maximum level of effectiveness. The CSNA urges the joint committee to recommend to the Government that it take appropriate action to reduce the personal allowance for travellers entering the country, similar to the actions taken by Finland to defend its public health policies.

We remind the joint committee that the new EUTPD, not this Bill, has increased the size of public health warnings to 65%. This is the same figure that is stipulated in the Bill. The TPD also provides for the elimination of the lipstick packet by which the Minister was justifiably outraged.

We believe the joint committee should recommend that the Department consider increasing, over a three year period, the minimum age at which young persons may legally purchase tobacco products from 18 years to 21. This would extend protection against initiation into a cycle of sickness and ill-health for those children currently aged 17 years and under.

We have outlined our objections and request for clarification on a number of aspects of the Bill. We need to have clarification of the meaning of “tobacco products”, as the definition provided in the Bill is at odds with the definition in the Public Health Tobacco Act 2002 which includes filter-tips and the like. We cannot accept that retailers should be penalised on the double in being fined and taken off the register for an unspecified period. Any implementation of this Bill should ensure full consultation with retailer groupings, as well as Revenue, to co-ordinate crediting. The absence of an offence for purchasing branded product by an individual, provided for in this Bill, is tantamount to facilitating receiving stolen goods. Retailers need to be permitted to engage in collective bargaining through their trade associations with suppliers. This would introduce a balance into what is now an uneven and unequal relationship. This is not only permitted but encouraged by the Australian Competition and Consumer Commission. Retailers need to be provided with assistance to prepare the ground for a tobacco-free society. The Convenience Stores and Newsagents Association, CSNA, requests this Bill is deferred until all of the above measures are put in place to protect children, the State, consumers and retailers.

Late last night I uncovered that the National Pensions Reserve Fund holds €21 million worth of equities and bonds in tobacco companies. I have provided to the committee the full listings of these shares. In these straitened times and requiring a stimulus for properly costed and well thought through tobacco control measures, I suggest the committee requests the direction of this €21 million, which is tainted money, to be directed towards tobacco control immediately. What is particularly of note is the fact that one of the shareholdings is in Swedish Match which is the manufacturer of Snus, a banned product across the European Union.

**Chairman:** I thank Mr. Jennings. The Bill has not been published yet, so we are just discussing the heads of the Bill. This is the consultative pre-legislative scrutiny session and we are

not really discussing the National Pensions Reserve Fund.

I call on Mr. Paul Candon, Retail Excellence Ireland, to make his opening statement.

**Mr. Paul Candon:** I thank the Chairman and committee members for the opportunity to participate here today. I am here in my capacity as a Retail Excellence Ireland board member and also as marketing and corporate services director at Topaz Energy.

Retail Excellence Ireland is Ireland's largest retail industry body. We represent 1,100 retail companies which operate over 11,000 stores in Ireland. A significant cohort of our members responsibly retail tobacco products. Our members employ 110,000 people.

We wish to register our deep concern at the proposal to introduce plain packaging for tobacco products. The implementation of the proposed legislation will have a profoundly negative effect on our members' businesses. There is no credible evidence that plain packaging as a policy proposal will lead to a reduction in youth smoking or prevent youth initiation. More consideration must be given to other means of tackling tobacco consumption without severely impacting the responsible sale of tobacco products.

The Australian Government announced that an impact assessment would be conducted as to the effectiveness of the measure in December 2014. We would recommend that it would be prudent to await the results of such an assessment before proceeding further. Several countries have initiated World Trade Organization dispute settlement proceedings against Australia, claiming the Australian plain packaging legislation breaches international trade obligations. A final ruling is not expected before December 2014. Several other countries considering plain packaging as a policy proposal are awaiting the outcome of such proceedings before deciding whether to proceed with the measure. We would consider it prudent to await the outcome of these challenges.

The Government estimates that approximately 20% of all tobacco consumed in Ireland is non-Irish duty paid. This costs the Exchequer in excess of €250 million annually and Irish retailers considerably more. The Government should ensure sufficient resources are provided to the law enforcement agencies charged with tackling the illicit tobacco trade in Ireland. A significant commercial opportunity will be afforded to criminal operators in the illegal tobacco trade to supply to the market with tobacco products that are in demand in their pre-plain packaging formats. The introduction of plain packaging will afford a far greater opportunity to criminals to copy the plain package design. The introduction of plain packaging will have a disproportionately negative effect on legitimate Irish retail operators. Plain packaging will damage competition, leading to the commoditisation of tobacco products. Commoditisation will reduce margins, as well as reducing cash flow. This means that consumers will increasingly focus on price, leading to trading down from premium brands. If 25% of current premium smokers were to down-trade to value tobacco, retailers would lose more than €42.5 million turnover annually. This obviously will put an increased pressure on margins, resulting in further job losses. Lower prices might also lead to increased initiation of smoking.

The introduction of plain packaging will also increase the number of job losses in the legitimate retail industry. In 2012, loss in turnover to retailers as a result of illicit sales was estimated at around €450 million. According to AC Nielsen, the total turnover from the sale of tobacco products in 2012 was €1.35 billion. This demonstrates the importance of these products to a significant cohort of our members. With 80% of this turnover going to the Government in excise and VAT, it is also a major contributor to the Exchequer.



A recent report by KPMG on the impact of the introduction of plain packaging in Australia for the six months following the introduction of plain packaging showed there has been no reduction in consumption rates but illicit trade figures have increased by over 13%. A report recently undertaken by Roland Berger on the potential impact of plain packaging for cigarettes in Ireland estimates that in total 1,900 jobs and €125 million could potentially be lost if the measure is introduced. We have serious concerns with the measure and believe there are more appropriate ways for the Minister to achieve his objectives of reducing smoking in Ireland.

**Chairman:** I call on Mr. Mike Ridgway, a spokesperson for several UK packaging manufacturers and a former managing director of Weidenhammer UK Limited.

**Mr. Mike Ridgway:** I thank the committee for inviting me to address it today. I am a guest in the Oireachtas and appreciate the opportunity afforded to me to represent the views of the packaging industry in the debate about packaging regulation in the tobacco sector. I reside in the UK but I do have some Irish credentials. My grandfather came from County Clare and my grandmother came from Belfast, so I have an affinity for Ireland. I was employed in the UK packaging manufacturing industry for over 40 years and retired as the managing director of my company some three years ago. Since that time, I have been acting as a spokesman for seven major UK packaging companies which are all heavily involved in the design, development, innovation and manufacturing of packaging solutions for a wide range of consumer products, including tobacco products.

I fully appreciate there is not a sizeable packaging manufacturing industry operating in the tobacco sector in Ireland. We feel, however, we can contribute to the important debate taking place here, in the UK and in Brussels with the tobacco products directive. The companies that I represent have a serious concern that policy proposals introduced in this jurisdiction may well have detrimental knock-on effects on their sustainability, endangering the thousands of jobs they provide across other European countries. As professionals working with packaging materials, we have first-hand experience and expertise of the complex role packaging plays within the fast-moving consumer goods sector, and how it protects the consumer and the legitimate industry from the dangers of counterfeiting.

The companies I represent have commercial interests with the tobacco industry. The industries have traded together for decades, producing and using a wide range of products including metal tins, rigid boxes and composite cans, plastic pouches and laminates, printed labels and folding cartons. With this in mind we have the interests of our employees, investments and innovative workplace skills to consider.

I will expand on the role of packaging. Tobacco packaging is a high-precision manufactured engineering component produced in large volume to exacting standards and subsequently used on high-speed packaging machines. To print and produce these highly complex products, capital equipment costing many millions of euro is needed, together with an experienced, well-trained and largely apprentice-trained workforce.

Essentially packaging acts as a barrier to trade in counterfeit and illicit goods. Sophisticated packaging is a defence against counterfeit products as it makes it extremely difficult and costly for criminals to copy. These fake products are typically sold on the black market. The illicit trade is a problem both in Ireland and the UK. Members will be familiar with the figures in Ireland, but I will explain the UK's problem. We lose some £8 million, €9.5 million, in tax revenue every day. How many hospitals and schools could be built with that money? Nearly £3 billion is lost to the British Treasury annually based on figures supplied by HMRC in London.

Packaging introduces variations, not only in colour, design and graphical content but also in enhanced features including embossing, de-bossing, hot-foil stamping, matt-gloss varnish combinations and vignettes. I could continue talking about the technical side for quite some time. In addition, special materials have been developed using techniques developed over periods of time including special raw materials, formulated low-retained solvent inks, tear tapes and tipping paper produced by world-class manufacturing companies. The construction of the cigarette carton has also gone through many changes which are not just graphical, but also of construction. Appendix 2 to my submission illustrates a product well known in the market and how its design has changed over five or six years from a rectangular standard carton, through to having little embellishments, such as blocking features, logo changes and shape changes. I ask members to compare that with the photographs underneath of what a standard plain pack would be. It would be much simpler to produce involving a different printing method, moving from gravure printing to lithographic printing and even digital printing. Such packs can be knocked out very simply and easily.

Once simplicity is introduced via a standardised design all complexity is eliminated. This will result in the printing process being opened up and the counterfeiter and copier can move with ease to print these standard packs.

We also need to consider the issue of tax stamps. It has been stated that tax stamps and other security systems help police address the problem of the illicit trade. I am not in a position to comment on the stated position of the law enforcement agencies in Ireland on this issue but in other jurisdictions with similar illegal tobacco problems, there is a belief that tax stamps have little impact. Criminals can also copy tax stamps. It is difficult for consumers and retailers to tell the difference between a genuine and fake product. The point is that tax stamps are irrelevant because somebody buying cigarettes in a back street or in a car-boot sale is only interested in the product. By the time the product is in the illicit distribution system a tax stamp, whether good or bad, is totally irrelevant.

Let us consider external experiences. Australia introduced plain packaging just over a year ago. According to the KPMG report, which was mentioned earlier, there has been an increase in the illicit trade. Significantly there has also been an increase in what are called the “illicit whites”. I will explain that in greater detail later. Other retail surveys have shown the purchasing of cigarettes becoming a commodity item and a price-driven purchase. However, most significantly of all, the studies, including those by KPMG and the London School of Economics, all indicate that the level of smoking has remained consistent.

Let us also consider how branded packaging in the legitimate and controlled retail environment contributes to the delivery of tobacco-control objectives. It minimises the sale through illegitimate channels such as the black market. It significantly restricts the availability of product to young people. It supports duty-paid pricing levels. It minimises the market share of counterfeit products, such as “illicit whites”. Appendix 1 shows what standardised plain packaging looks like. The one in the middle is called the “Spoonbill” a spoof product that appeared on the market in Australia with just a name - it did not mean anything. To the consumer it looks like a legitimate plain-pack product. However, it was made by counterfeiters, we believe in Vietnam and supplied into the Australian market. Sophisticated criminals will soon get their heads around that sort of thing.

We assist in the delivery of health regulation by having a legal product with packaging and ingredients regulations. Counterfeit and illicit brands have no control.

I will summarise the impact of plain packaging. It removes technical barriers. It provides huge economies of scale for counterfeit production. It facilitates deceiving consumers and undermines trust in genuine merchandise. It would lead to a collapse in product value due to commoditisation. There would be higher consumption due to cheaper commodity products and affordability. There would be greater availability to young people through the illicit trade. It would also potentially lead to increased harm from unregulated products.

I thank members for listening to me. I have been employed in the packaging industry for many years. I do not want to see sections of my industry damaged through the introduction of excessive regulation for which there is no evidence that it works. The UK packaging industry fully supports the regulation of tobacco products but believes there are far more effective alternatives to plain packaging such as education, information and cultural awareness.

**Chairman:** I thank Mr. Ridgway.

**Deputy Caoimhghín Ó Caoláin:** I welcome the witnesses. I am encouraged that there is not outright opposition to the purpose of the legislation. Even though people are coming to the issue from a variety of experiences and responsibilities in life, I believe there is a shared acceptance that we have to work towards the best situation possible, not only for the current generations but also for the future of humankind.

Having listened to the presentations and read the submissions carefully, I note that we share the same opinion. I apologise that I will not have enough time to deal with both presentations. I welcome Ms Buckley's presentation on behalf of RGDATA and thank her for her practical points. This is the health committee and our natural position and disposition is to seek whatever measures will help to improve public health. I know there are other considerations from each of the delegations' perspectives which have to be noted, respected and addressed. The contributions will help us in whatever engagement we will have with the Minister and the Government when dealing with legislation. I concur that there is a need for strong enforcement action against the black market and contraband sales; this position is shared by all members of the committee. Any legislative measure should apply in equal measure in dealing with the importation of tobacco products. This is also reflected in the positions articulated by Mr. Joe Sweeney and Mr. Vincent Jennings who represent the respective bodies, the National Federation of Retail Newsagents Ireland and the Convenience Stores and Newsagents Association. There has to be an acceptance that, in tandem with this address, there is a need for a reduction in the travel personal allowance in bringing tobacco products into the country. I note that both Mr. Sweeney and Mr. Jennings have made this point.

Ms Buckley has highlighted the risks associated with staff stocking different brands of cigarettes in the gantries for retail sale. Others may blow me out of the water, but I welcome the highlighting of practical issues that will facilitate workers in the retail sector in managing the sale of tobacco. I wish there were fewer consumers of tobacco products, but for the time being, whomever they may be, at least they would be sure of being sold the brand for which they were paying.

I agree with Mr. Sweeney that tobacco products should be confined to legitimate retail outlets and that the sale of tobacco products at illicit or locations of questionable status such as markets and fairs should cease and needs to be addressed in legislation. Landowners or landlords who provide facilities for the sale of illicit products must be held accountable for their hosting of such activities. I expect all this product is imported illegally. I concur with the view that there is inadequate provision of scanners to address the problem at ports and I speak from

the perspective of the island of Ireland. We must ensure scanners are permanently located at the ports rather than depend on the use of mobile scanners which catch people one day but not the next.

I agree that the personal travel allowance for tobacco products should be significantly reduced. It is interesting that Mr. Jennings made the point about retailers being able to collectively bargain with suppliers. I am at one on that point. He has said retailers need to be provided with assistance to prepare the ground for a tobacco-free Ireland. I do not know if I will live to see it, but it is an aspiration of mine that I would like to see more people ceasing to smoke. That is the real objective. Retailers in the legitimate retail business should have their position taken into account by the Government when progressing this objective, an objective which I support completely. I thank the delegates very much and I am sorry that the bell has rung as I must conclude.

**Senator Jillian van Turnhout:** I welcome the delegates and ask them to be clear on whom their organisations represent.

**Chairman:** What is the Senator's specific query?

**Senator Jillian van Turnhout:** I ask specifically about links with tobacco companies, whether a parent or subsidiary company, an event or a publication. They are all links and I want to have clarity on the matter. Ms Buckley was very open in that regard.

**Chairman:** I ask all delegates to clarify that point when replying to the Senator.

**Senator Jillian van Turnhout:** Deputy Caoimhghín Ó Caoláin referred to retailers. Should we consider a change in the locations and times for selling tobacco, as in the case of alcohol?

I refer to a KPMG study commissioned by Philip Morris. The Roland Berger report was commissioned by Philip Morris and I studied that report very carefully and the statistics for job losses. The figures are based on estimates rather than evidence. The Australian data come from the trade and are not official figures. We, therefore, need to be very cautious. The words "smuggling" and "counterfeit" are frequently thrown around at these hearings. The only independent research on smuggling rates in Ireland has been carried out by Revenue and the HSE's National Tobacco Control Office. It shows a smuggling rate of 13% in Ireland, of which just 1% involves counterfeit product. The rest is imported legally by the industry.

I refer to the case of Andorra which will be well known to the delegates. The oversupply of cigarettes to Andorra means that it has so many cigarettes that every man, woman and child in the country would have to smoke 130 cigarettes a day. Last week's committee meeting was attended by the Garda Síochána, the Revenue Commissioners and the Customs service. They told us that there was no evidence that the use of plain packaging would lead to an increase in the rate of smuggling. I ask that these views not be misrepresented because I have read statements that misrepresent what the Garda Síochána and customs officers said to us.

I have serious concerns about the Codentify software which has been developed by Philip Morris and which has serious technical limitations. All four major companies which endorse it - Philip Morris, BAT, JTI and Imperial Tobacco - have been accused of smuggling, yet the delegates are asking me to vest my confidence in that software. I have concerns about it.

The committee has been told that education is the answer. Mr. Joe Sweeney cited California. I will do my research about California. In preparation for today's meeting we were given

evidence about Germany and I looked at it. The reality is that Germany has the same smoking rate for 12 to 17 year-olds as Ireland. The evidence has shown that it is not education that has changed its figures but the effective reduction in youth smoking rates has been brought about by increased taxation and smoking bans.

The earlier session on medical evidence was compelling when it was stated that 95% of lung cancer is due to tobacco. We had medical testimonies one after the other and doctors who have dealt with people directly. We have had the children's groups coming in telling us about the marketing and how children are attracted to the product. One can say that is not the aim of the marketing or what is intended but then I have to question it given that 78% of smokers start before the age of 18. Either the companies are mispitching the marketing or it is very intentional.

**Chairman:** Go raibh maith agat.

**Senator Jillian van Turnhout:** I will finish on one more point. As was said to us this morning by one of the medical representatives, this is the only product that, if used as intended, kills. I am struggling. I read the submissions and went through them yesterday. When I see some of the representative bodies before the committee who do not just have those interests but a wide range of public health interests, I ask why are they doing the dirty work for the tobacco industry.

**Chairman:** I call the members who have indicated in the following order: Deputy Mary Mitchell O'Connor, Deputy Robert Dowds, Senator Colm Burke and Deputy Ciara Conway.

**Deputy Mary Mitchell O'Connor:** It is very difficult. We had the medical people appear before us for the morning session and now we have the submissions from the witnesses. Today I feel like Solomon - which is right? Is it jobs, is it death? That was the message that came across at the earlier session. Perhaps I can quote from some of what was stated earlier. It was stated that one in two smokers will die from tobacco related illnesses. The doctors compared it, saying it was like the flip of a coin, one has a 50% chance of dying. Dr. Luke Clancy said that we respond emotionally to packaging. Perhaps Mr. Mike Ridgway would comment on that. The point I made earlier this morning is that there is a whole industry around marketing, sales and packaging which is so important. Yet when we hear the witnesses speak it is as if they are coming from the other end because there will be plain packaging and it will be difficult to recognise counterfeit or illicit cigarettes. I asked the assistant commissioner here about two weeks ago if it would make a difference and if it would increase smuggling and he assured me it would not. I also concur with Senator Jillian van Turnhout that Revenue considered it had a very strong label to recognise if cigarettes were counterfeit. I can acknowledge that those in the retail trade make a profit, I read somewhere that they make a profit of about 3%. Is that correct?

Last week my colleague, Deputy Regina Doherty, stated that she too recognised there are difficulties. For example, would electronic cigarettes or nicotine replacement therapies be a viable product to sell rather than cigarettes? I understand the delegates are worried about jobs and so on. As I said at the outset we are worried about deaths. As Deputy Caoimhghín Ó Caoláin said, this is health committee and that is our main concern.

Ms Sharon Higgins mentioned intellectual property. In regard to the High Court of Australia that ruled on 15 August 2012 by a six to one majority that the Government's plain tobacco packaging legislation was constitutionally valid, Ms Higgins said today that in terms of intellectual property Ireland would suffer because the case is not as solid. Is that disingenuous or can she give me some evidence in comparison to the ruling found in Australia?

Ms Tara Buckley made some very good points on the issues on which we need to strengthen. We heard others from the doctors today who said that we should not sell cigarettes to anyone under the age of 21, also that we should ban smoking from play-yards and open areas and that all of this must be key in to the whole debate. The doctors were emphatic that this is only one part of what needs to be done to improve public health. There are many more areas to be tackled.

I want to hear about the flip-side of it. None of the witnesses has said that packaging promotes smoking. Again, the doctors told us they had evidence to show that it was cool for young people to smoke certain types of cigarettes and that women, in particular, like the packaging. Will the witnesses comment on women using smoking for slimming purposes? That appears to be the cool attitude and that is where we have a worry. I understand how the witnesses are worried but we are worried about health.

**Deputy Robert Dowds:** I thank the Chair and welcome our guests. I thank Mr. Vincent Jennings for pointing out the blot on the part of the State in terms of tobacco. That is a matter I will pursue. Perhaps he would e-mail me his presentation as there are one or two questions I would like to tease out

**Chairman:** We have them.

**Deputy Robert Dowds:** Sorry, it has not just to do with that but if Mr. Jennings can e-mail me his contribution I would appreciate it. I ask Ms Sharon Higgins from IBEC to outline its relationship with the tobacco industry. May I have that question answered now?

**Chairman:** In fairness to all, I will bring Deputy Dowds in again.

**Deputy Robert Dowds:** I am very concerned as to IBEC's ability to be objective in this whole issue. There are serious concerns here. Mr. Mike Ridgway has been very upfront about his connections with the tobacco industry but IBEC needs to come clear. As Mr. Vincent Jennings is aware, I met him and various other people with the Minister of State, Deputy Brian Hayes, on some of the problems about illegal tobacco. I then raised the issue in the House with the Minister for Finance, Deputy Michael Noonan. It is an issue I intend to pursue again because I am open to the idea that we should try to have a Finnish style regime where people can import very few cigarettes. We should try to push the boat out on that issue because it would be a useful way of trying to reduce the imports of tobacco on which tax is not paid in this country.

If any of the witnesses have any further ideas as to how to tackle the illicit trade I would be interested to hear them because it is a serious problem and is undermining certain retailers. I have a concern that if tobacco is being sold - I wish it was not - it should be sold in such a way that the State gets the maximum amount of tax from it because, after all, it is needed to pay for the hospitals which are required to tackle the problems caused by tobacco, among other things.

On the issue of plain packaging if, as Mr. Vincent Jennings said, there is not a decline in tobacco sales in Australia why the big deal about opposing it? It is well worth a try.

**Senator Colm Burke:** I thank all the contributors for taking the time and effort in preparing their contributions. Some constructive proposals have been made this morning. As we sit here today, 14 people per day in real terms will die either at home or in hospital as a direct result of smoking and smoking-related illnesses. That is a conservative estimate and that is where we are coming from as a health committee.

I certainly support the idea of banning the sale of cigarettes in markets and fairs and believe the legislation on this should be changed. It would not be a huge problem to do so. I think that is an extremely constructive proposal. Another issue raised concerned smartphone apps and the proposal from the Minister of State with responsibility for small business, Deputy Perry. Where are we with that? Has any progress been made on it? What can this committee do to make sure this is followed through on because it is an important point and something that can be implemented? We should give assistance to anything that can be helpful to people who are running businesses.

Obviously, there is concern about the illicit trade. Based on the submissions this morning, it is running at around 20%. All of the witnesses are involved in the business trade. Where do they see the deficiencies in dealing with the illicit trade? They have already identified the ports issue, which needs to be followed up on. Where else do they see deficiencies relating to the illicit trade? If we want to deal with this issue, we also need to deal with the illicit trade, which is an important issue. Can the witnesses talk about other proactive things that can be done either by the gardaí, customs or Revenue? What things could be implemented overnight? Again, I thank the witnesses for their contributions.

**Deputy Ciara Conway:** I apologise for not being here for all of the presentations. I had a competing meeting. A lot of my questions have already been asked but I have some particular ones for the three organisations representing the retailers - the National Federation of Retail Newsagents Ireland, the Convenience Stores and Newsagents Association and Retail Excellence Ireland. We had a series of hearings with the assistant commissioner, the Criminal Assets Bureau, Revenue and customs who told us they are assured that the tax stamp referred to by Deputy Mitchell O'Connor will be enough to ensure that we will be steadfast and damp down the illicit trade. What do the people represented by Retail Newsagents Ireland, the Convenience Stores and Newsagents Association and Retail Excellence Ireland do in terms of informing the gardaí or passing on information? In the run up to these hearings, I and other colleagues were lobbied by members of the aforementioned organisations in respect of their concerns about demand going down. They were able to identify months in a calendar year where their trade was down. That is invaluable information that should be passed on to the gardaí because if there is a month where the sales of cigarettes are down in a particular shop, that information should be shared with the gardaí because, obviously, the supply is coming from somewhere else. Could representatives of the Retail Newsagents Ireland, the Convenience Stores and Newsagents Association and Retail Excellence Ireland tell me what engagement they have with the gardaí in respect of the illicit trade, whether they are involved with the joint policing committees and the steps they will take to play their part in combating the illicit trade? We are looking at this from the perspective of a health committee. I understand these organisations' concerns but our number one concern is health and we know that cigarette smoking kills.

**Chairman:** Just to clarify, the Criminal Assets Bureau did not appear before the committee. An Garda Síochána, Revenue and the National Office of Tobacco Control appeared before the committee.

**Deputy Ciara Conway:** My apologies.

**Chairman:** I just wanted to clarify that in case we got the record wrong.

**Deputy Catherine Byrne:** I know we are talking about consuming but consuming all the information from everybody this morning means I have lost track of where I have been in the past hour or so. I agreed with some of the questions in respect of the import of cigarettes. I

think customs officers in airports and ports are doing a very good job trying to curtail the amount of illegal tobacco coming into the country. In the past, this committee was told that there has been a significant improvement in preventing illegal cigarettes entering the country. I missed most of this morning's presentation because, as one would say, I was present in the flesh in my constituency for a different reason. Somebody said there was a €42 million turnover in tobacco products in the retail industry. Do the witnesses have any statistics about the profit made in retail in poorer areas? We heard from people in the medical profession this morning that the level of smoking in poorer areas is higher than in areas where people are better educated and live in a different social environment.

Does each witness believe the medical evidence that has been given, not only this morning but across the board, that smoking kills? Do they believe that as individuals because it is very important for me to understand where the retail industry is coming from? I am concerned that many of the presentations this morning argued that the legislation would be the bad guy because people will lose their jobs. Somebody over there made a flippant comment about how the money taken in through Revenue helps build hospitals and schools. I find that very offensive because smoking is the reason people are dying and hospitals are inundated. I spent the last week and a half in St. James's Hospital with a family member with chronic obstructive pulmonary disease. He knows that the reason he has the condition is because he smoked. Three years ago, I buried my sister-in-law who had lung cancer because she smoked. That is the reality of smoking. It affects everybody in every walk of life. Do the witnesses believe smoking kills?

**Ms Tara Buckley:** As an individual, I believe absolutely that smoking kills. I came here today to answer the question-----

**Chairman:** Could Ms Buckley begin with a declaration with regard to Senator van Turnhout's questions?

**Ms Tara Buckley:** As I said in my presentation, RGDATA receives no funding from and does not do the dirty work of tobacco companies. Our members who are licensed to sell tobacco sell it under the control and regulations of the State and are happy to follow whatever controls and regulations the State sees fit to apply to them. The only thing we do is produce one publication per year where we take advertisements from any suppliers, including tobacco companies. We would also take advertisements from the Office of Tobacco Control or any other body that would like to give us the opposing view. I am not sure there are any other questions directed at me.

We were asked about deficiencies regarding the illicit trade. RGDATA is involved with many groups that liaise with the gardaí and Revenue to tackle the illicit trade and provide information. Quite often, the information, unfortunately, may be a bit anecdotal. It can be reports of taxi drivers in the town providing cigarettes or white vans delivering cigarettes to housing estates but my member would not have the actual registration number of the car, which would be more useful for the gardaí. However, we try to assist the gardaí and Revenue. We canvass our members before going to meetings about any activity of which they are aware so we can bring it to the meeting. Certainly, we are very happy to supply any of that information.

**Ms Sharon Higgins:** Again, as I indicated in my presentation, tobacco companies are members of IBEC. Equally, I made clear that we support the Minister's and committee's objective of protecting public health. The key point we wanted to make is that our concerns are around the intellectual property, IP, rights of all companies in Ireland. This is an important part of how we portray Ireland and how our reputation internationally is seen. We ranked tenth best in the



world for IP rights on the IMD 2013 competitiveness scorecard. That is an important part of how we attract industry, business, investment and innovation to Ireland. The purpose of our attendance is to request respectfully that a full regulatory impact assessment, RIA, be performed in order for us to be able to look at the evidence.

With regards to the Australian question, the evidence is mixed. We would like that to be included as part of the RIA. Our members have concerns around activity that relates to the current IP situation in Ireland, which is positive from an industrial growth perspective. We would like to see the evidence and we would be happy to look at it at that point.

**Deputy Robert Dowds:** What is IBEC's view on plain packaging?

**Ms Sharon Higgins:** Plain packaging is an activity that will interact with the intellectual property of a company. It is part of the intellectual property-----

**Deputy Robert Dowds:** IBEC, therefore, opposes it.

**Ms Sharon Higgins:** We would like to see the evidence. We would like to see an RIA performed.

**Senator Jillian van Turnhout:** I would like to reassure IBEC on IP rights that the measures proposed will lead to restrictions, as is happening currently with health warnings. They will not in any way extinguish these rights and that should allay the fears of Ms Higgins's members.

**Mr. Joe Sweeney:** Senator van Turnhout asked about the transparency of tobacco companies. Our organisation receives support from a number of organisations that are jointly interested in supporting independent retailers. This extends beyond tobacco companies and where we have common interest, we are always happy to work with industry stakeholders. We never, however, compromise on our principle of being focused on our members' interests.

Codentify is a wonderful piece of technology. It is a track and trace method. A packet of cigarettes can be traced back to the machine that packed it. This also relates to the question about contraband cigarettes and illicit whites. While the contraband cannot be brought legally into the country under the badge of personal consumption, the proxy sale of the product is illegal. By using Codentify technology alongside the tax stamp, an app can determine immediately whether the product is duty paid or non-duty paid. We liken it to the road safety campaign. We are noted for having reduced road deaths in Ireland from 600 deaths a year to just over 100 deaths a year. This is a tool. We gave the tools to the Garda to implement road safety measures such as speed guns, breathalysers. We did not go the route of making it unattractive to drive. We did not debrand cars or make them all one colour.

**Chairman:** We changed the criteria governing the age at which people can drive in the context of provisional licensing and so on. We addressed the number of hours someone can be on the road. Is Mr. Sweeney saying plain packaging will not lead to a change in behaviour and is not a tool or a method that will lead to the cessation of smoking?

**Mr. Joe Sweeney:** No, I do not think it will. It will contribute to an increase in the illegal trade. Legitimate shopkeepers are not responsible for young people smoking. They are not coming to shops to buy cigarettes; they are buying them on the street.

**Chairman:** Senator van Turnhout asked about trading hours similar to those provided for the sale of alcohol. Should that be considered in the regulation of the sale of cigarettes? For ex-

ample, I could have walked into the shops owned by Mr. Sweeney or Mr. Jennings at 8 o'clock this morning to buy cigarettes but I could not have bought alcohol. I ask the question in the context of the overall approach.

**Mr. Joe Sweeney:** The fact that smoking is an adult choice-----

**Chairman:** So is drinking alcohol. Mr. Sweeney and I do not smoke. Many young people do not smoke but they can buy cigarettes if they have counterfeit ID or pretend they are over 18.

**Mr. Joe Sweeney:** I understand what the Chairman is saying but it is up to the shopkeeper to police that.

**Chairman:** There are licensing hours for alcohol sales. I cannot walk into my local shop at 8 a.m. to buy a bottle of wine but I can buy a pack of cigarettes. Should we consider something similar as part of the overall approach to assist people to give up cigarettes?

**Mr. Joe Sweeney:** I do not know. That is for people in government to decide. If the Government decides to that, retailers will implement that regulation. Our members do not do the dirty work of the cigarette companies. It is a terrible statement to make but we do the work of government. We implement regulation on behalf of the Government and we do a good job. That is what we have done and will continue to do. We fully support the Government in its initiatives and will continue to do so. Retailers are not responsible for the content of the product but we ensure the regulation governing it is implemented, particularly in the context of under age purchases.

Reference was made to packaging colours and so on. It is just cool to smoke for young people. They are not that influenced by the colour of packets and so on.

I was asked whether I believe smoking kills. I do and the evidence is there. A question was also asked about the profits made in poorer areas. I would say massive profits are made in these areas by illegal sellers. There is no question that they target the poorer areas and they make enormous profits. They are criminal, subversive elements and they are the evil element in the sale of cigarettes, not independent shopkeepers.

**Chairman:** Has the CSNA a good relationship with the Garda and Revenue? Deputy Conway referred to this earlier.

**Mr. Joe Sweeney:** Absolutely, we have a continuous relationship with the Garda, Revenue, Customs and Excise and we report instances to them but the answer we get from them is they are under-resourced. They are not coping with everything that needs to be implemented.

**Deputy Ciara Conway:** Is that Revenue or the Garda?

**Mr. Joe Sweeney:** I was in the office of the revenue enforcement agency and that was stated clearly to me.

**Deputy Ciara Conway:** They stated on the record last week before the committee that that was not the case and they had sufficient resources.

**Mr. Joe Sweeney:** That is what I was told.

**Deputy Ciara Conway:** We were told the opposite. We might make further inquiries on that.

**Mr. Joe Sweeney:** Mr. Jennings might have something to say about that.

I believe that if the laws that are in place were fully implemented, it would be a help but there is not enough enforcement at the moment. I refer to ridiculous fines and the sentencing of people who are caught trading in illegal tobacco, which are laughable sometimes.

**Chairman:** Mr. Sweeney made a very good point to the effect that the sale of tobacco products at markets and fairs should be banned.

**Mr. Joe Sweeney:** Yes.

**Chairman:** How prevalent is the sale of these products at markets and fairs?

**Mr. Joe Sweeney:** They are being sold at markets and fairs throughout the country. There are a number of obvious locations in this regard and they are raided regularly. Those who sell the products are usually tipped off when gardaí are on their way and put them away. When the officers leave, they take them back out again. Some of the lands on which these markets and fairs are held are owned by local councils. The councils and the owners of the other lands or properties where these events take place should be held responsible. If I become involved in any illegal activity in my shop, I will be called upon to pay the price.

**Chairman:** That is a fair point and I would not disagree with Mr. Sweeney on it.

**Senator Colm Burke:** It would be easy to amend the proposed legislation in order that we deal with that issue. We should take a proactive approach to it.

**Chairman:** The committee might consider that matter later.

**Senator Colm Burke:** I inquired earlier as to whether any progress had been made on the issue relating to smartphone apps.

**Mr. Joe Sweeney:** I have discussed this matter with a number of politicians, including the Minister of State at the Department of Jobs, Enterprise and Innovation, Deputy John Perry. They like the idea and are supportive of it. However, we need someone in government to take ownership of and progress it.

**Deputy Caoimhghín Ó Caoláin:** I also raised that matter and I am enthusiastic about it. Unfortunately, I must leave because I am due to attend another meeting. I apologise for this.

**Chairman:** That is fine. I was aware that the Deputy would be obliged to leave.

**Deputy Caoimhghín Ó Caoláin:** I do not believe it would be appropriate, honest or helpful if what emerged from these proceedings was a “them and us” view. I reiterate what I said, namely, that we have a great deal in common. There will be those who will report on these proceedings and it would be completely dishonest if it were to suggest people in the retail sector and members, as the elected representatives of their communities, were in some way at loggerheads on this issue. That is not the case. The clock has beaten me and I must withdraw.

**Chairman:** I was just going to make the same point.

**Deputy Caoimhghín Ó Caoláin:** I have no doubt that Mr. Sweeney will be in agreement with me on it.

**Chairman:** When making my summation, I am going to state there is much more that binds

us together than separates us. I am conscious that the Deputy is obliged to leave in order to attend the meeting of the Joint Committee on the Implementation of the Good Friday Agreement. Perhaps Mr. Sweeney might conclude his comments on this matter.

**Mr. Joe Sweeney:** I wholeheartedly agree with what Deputy Caoimhghín Ó Caoláin said. I have made presentations to a number of Oireachtas committees and met many politicians on my travels throughout the country. I must state I have never received anything other than co-operation from politicians. They are always interested in, take on board and, on occasion, respond to the matters we bring forward.

**Mr. Vincent Jennings:** In response to Deputy Catherine Byrne, we do not even need the harrowing evidence of the past number of weeks for any reasonable person - be he or she a representative of retailers or Members of this House - to realise that smoking kills and that tobacco helps people to die prematurely. It is as simple as that. Smoking has no value of a societal nature whatsoever. That said, we must all be realists. We represent retailers who, unfortunately, are as welded to the product at this point in time as are the poor people who are either buying legitimately from them or being taken to the cleaners by paramilitaries and major criminals. The scourge needs to stop and we need to begin our efforts in that regard now. I honestly believe the work which has been done by the National Tobacco Control Office and its staff is having an effect. However, there is a need for haste. The figure relating to prevalence has variously been estimated to be 22%, 24% or - as the Department of Health informed the committee this time last year - 29%. Whatever the figure is, it is too high and must be reduced. We wholeheartedly support the aspiration of the Minister - there is a need for more than aspirations - to work towards a figure for prevalence of 5%. If we could reduce the figure to match that which obtains in Australia - between 14% and 15% - we would state it was a job well done. We must prevent young people from initiating the habit.

**Chairman:** Is that not what the Minister is trying to achieve in the Bill?

**Mr. Vincent Jennings:** It is not enough. I remind the committee that it is not an offence for an adult to purchase tobacco for a youngster or start him or her on the road to developing a smoking habit. Retailers and legislators must show that they do not, under any circumstances, approve of young people smoking. That is the key. There are two things which the proposed legislation is designed to achieve, the first of which is to shut off the possibility of children having access to tobacco products. That is brilliant. How will this be done? The answer is by not providing with them with packets of a certain type. However, that is not enough and more must be done. This is the time to do it.

**Chairman:** Is the Minister not saying that?

**Mr. Vincent Jennings:** The Minister is saying nothing of the sort.

**Chairman:** I disagree profoundly with Mr. Jennings. As Chairman, I am impartial and respect his right to have an opinion. However, the Minister and his Ministers of State have introduced a suite of measures to ensure Ireland will be a tobacco-free society by a certain date. I do not think it is fair to say the Minister has not been working towards that goal.

**Mr. Vincent Jennings:** Working towards it is one thing; what we are concerned about is the pace at which we are working towards it. I am stating the pace must be increased. I am not being mealy-mouthed. The CSNA has no links whatsoever, nor should politicians or the State have such links.

**Senator Jillian van Turnhout:** Yes.

**Chairman:** To what links is Mr. Jennings referring?

**Mr. Vincent Jennings:** I am saying it is extraordinary that €21 million from the National Pensions Reserve Fund has been invested in tobacco companies. Norway has stipulated 60 different companies, a number of which are tobacco firms, in which it will not invest money from its oil industry. It is about time the Department of Finance was contacted and informed that we do not want our money invested in tobacco companies. There is a need for ethical investment. All of this is part of the denormalisation process. The difficulty with denormalisation is that we are correctly and, it might be stated, slavishly using the template provided under the framework convention. We are ticking all of the boxes but not seeking to do anything outside of this. The framework suggests there must be a minimum age. We have, correctly, taken steps in that regard and introduced an age limit of 18 years. As a result of the fact that the framework does not state we should prevent people from providing tobacco for youngsters, we have done nothing in this regard. Nobody thinks, in the context of the policy review, that banning this type of behaviour would be a good idea. The policy review group's report provides a very good and well considered model. However, the group did nothing outside of this and did not consider ethical investment, proxy purchasing or the fact that the market for this product in Ireland is so unique. The latter is the case because the Finance Acts introduced by those in government have made people in the retail trade slaves to the tobacco industry.

**Chairman:** I do not think Mr. Jennings can say that.

**Mr. Vincent Jennings:** I can say it because it is true.

**Chairman:** I do not think Mr. Jennings can say it with accuracy. What we are involved in is pre-legislative scrutiny. It is important to highlight the fact that this is a discussion on the proposed legislation. If we could stick to this, I would welcome it. We invite people to come before us in order that we might hear their views. We will be reporting back to the Department on the matter. I would like our guests to answer some of the questions asked.

**Mr. Vincent Jennings:** The difficulty is that we are discussing something which is now Government policy.

**Chairman:** No, it is not Government policy.

*(Interruptions).*

**Mr. Vincent Jennings:** The establishment of a tobacco-free Ireland is Government policy.

**Chairman:** It has always been Government policy.

**Mr. Vincent Jennings:** I am sorry, but the report was only adopted as Government policy in November. It is a pity we were not invited to feed into the tobacco policy review group and allow tobacco policy be as full as we would like because it is easier to adopt-----

**Chairman:** All I can do as Chairman of the committee-----

**Mr. Vincent Jennings:** Going back to the questions I was asked-----

**Chairman:** We invited Mr. Jennings before the committee as part of our scrutiny and he has been facilitated and made feel part of it.

**Mr. Vincent Jennings:** I thank the committee for it.

The tax stamps are brilliant and nobody could criticise the customs service for the tax stamp. It is incredible, impeccable and, at this point in time, it is the leader in its class. We have no difficulty with it. With regard to co-operation with the customs service and the Garda, the Convenience Stores and Newsagents Association is in a unique position as our offices overlook a market in Kildare. I know I am stating this publicly-----

**Chairman:** I ask Mr. Jennings to be careful for his own sake.

**Mr. Vincent Jennings:** We give much assistance to the customs service and the Garda from our offices in more sense than one. In our weekly newsletter and monthly reminders to people we provide the free phone numbers for the customs service. We meet the customs service regularly. We are served incredibly well by the brave people in the customs service. They do work we could not do and which many of us would prefer not to do. Somebody has to do it and they are brave souls.

Our biggest difficulty as a society is the fact we are unable to do what is most obvious, which is raise the price of the product. This would be the easiest way to move towards tobacco cessation for many people. The difficulty which the Minister, Deputy Michael Noonan, correctly pointed out in November is ordinary decent citizens buy illicit products. I represent ordinary decent citizens who are retailers and we have a difficulty with this.

**Mr. Paul Candon:** Retail Excellence Ireland is not involved in the tobacco industry other than representing our members who are licensed to sell the product. We do not receive any funding from the tobacco industry in any way. Members buy tobacco from major wholesalers and retailers under licence in a difficult market.

We absolutely agree tobacco and smoking are major health issues and a huge problem for Ireland. We do not believe the introduction of plain packaging will stop the problem. If this is introduced and passed two years from now legitimate retailers who sell the product will see a significant decrease in premium brands. This will move consumers to lower-priced value packs, making them more affordable and perhaps more accessible to younger people. There will be an increase in the illicit trade from the estimated 20% at present. What if this increases to 30%? Young people would have far more access to the product because of plain packaging and we could end up with this decision resulting in an increase in tobacco consumption in Ireland. I ask the committee to ponder this.

**Senator Jillian van Turnhout:** From where are the statistics for the jump from 20% to 30% coming?

**Mr. Paul Candon:** These are Government statistics. The Government estimates approximately 20% of all tobacco consumed in Ireland is non-Irish duty paid.

**Chairman:** Is that from Revenue or the Department of Finance?

**Mr. Paul Candon:** It is Revenue.

**Deputy Mary Mitchell O'Connor:** It states 13% in this documentation.

**Senator Jillian van Turnhout:** This includes people who have brought home tobacco from holidays so using the term illicit is-----

**Mr. Paul Candon:** I could leave here now and within ten minutes I could bring back tobacco which has been imported illegally and sold to minors with no control. Retail Excellence Ireland members absolutely adhere to the legislation. Garda stings are put in place and significant training is given. I work with Topaz Energy which has 321 forecourt outlets in Ireland and all of them sell tobacco. Tobacco makes up 30% of the shops' total turnover. The impact of a reduction of this to the stores will bring about closures and job losses and there is no doubt about this.

**Chairman:** There has been a consistent message from various groups regarding this. To mitigate this, if it is as likely an outcome as Mr. Candon states and it may not be, could the stores not take up trade in smoking cessation services?

**Mr. Paul Candon:** They are in different channels such as pharmaceuticals. We could examine taking up products which help tobacco cessation but it will not bridge the gap to the income lost for the retailers. This is the reality.

In the forecourt sector 80% of the retail is independent and we will see a big impact. Our retailers are absolutely terrified of this initiative. They know the impact. Coupled with this I have spoken to some of the significant research and development companies, such as RED C which has conducted focus groups in many parts of Ireland on the purchasing of illicit tobacco. It is a ginormous problem which the general public does not see as a significant criminal act. They see it as getting good value.

**Senator Jillian van Turnhout:** We are on camera. Should we be flashing around packets of cigarettes?

**Mr. Paul Candon:** I will put them away. With plain packaging there will be a greater opportunity to replicate the product, introduce it to the market and increase its sale which will not be controlled. It is happening throughout Ireland now, in towns, pubs, shops and back streets. It is widely available and not controlled. Those involved do not care whether they sell it to 13 year old children or adults, it is not a problem for them. We do care. We are responsible retailers.

On Monday last across the road from here in Buswells Hotel I was part of the launch of Retailers Against Smuggling, which has a website aimed at getting information to the general public on this problem and allowing them feed into the website where they have issues with people selling illicit product so we can inform the appropriate authorities. The retailers have come together to fund this and work with the Garda and the customs service, and will continue to fund and support the initiative as well as taking time to explain the problem we have in Ireland. We certainly do not want to come here and beat a drum that it is all about profit. We recognise the problems with tobacco but we want to act responsibly. We do not believe this initiative is the right one. We absolutely believe there are other initiatives which will give better bang for their buck to reduce smoking in Ireland.

**Chairman:** We all join with Mr. Candon in wanting to combat smuggling. We recognise and accept the members of his organisation are responsible traders.

**Mr. Mike Ridgway:** I agree 100% with Deputy Byrne that smoking is a killer, which is why I am a non-smoker and have not smoked a cigarette for 50 years.

Deputy Mary Mitchell O'Connor made a point on the appeal of branding and packaging to the consumer. I was deeply involved in a long discussion on the tobacco products directive in

Brussels. We supported the elimination of the lipstick pack because the Deputy is right that that product was sending the wrong message to the wrong section of the market.

An issue that did arise - I hope the Deputy will take this as a positive point - was how we defined appeal and attractiveness. That issue has been debated long and hard, yet it is inconclusive because it is so subjective. It is an aspect that has led to the tobacco products directive which Ireland has followed and which will be finalised in the coming weeks to take the steps of increasing the size of health warnings, deal with the other regulatory aspects of lipstick-type packs and so on.

Let me give a United Kingdom perspective on profitability from the illicit trade. It is calculated that one container coming into the United Kingdom from eastern Europe will generate a profit of £1 million. It is that level of profit generation that leads to the spin-off criminal activities in the form of people smuggling, fuelling the drugs trade, prostitution and so on. It is the loss of this revenue and the profits that can be gained by others that result in the law enforcement agencies having bigger problems than they already have. I cannot comment on the Irish view, but from the UK police perspective, it has been very vocal in its concerns about what the introduction of plain packaging would do to assist the criminal fraternity and it has written letters to *The Times* newspaper and issued other publications on this point.

Regarding Senator Jillian van Turnhout's point - I ask her to take this as a positive contribution - when I was in full-time employment, my company was a German firm. I spent a good deal of time in Germany and was very impressed by the methods of communicating the problems of tobacco to young people there. There were extensive programmes which involved taking schoolchildren into hospitals for two or three days and showing them graphic illustrations of what smoking did to the body. I believe, in addition to what the Senator said, that having an improved education system for children of that age group would be a very beneficial policy to follow, rather than what we are talking about today, namely, the introduction of excessive regulation when there is no evidence that it will work.

**Chairman:** I thank Mr. Ridgway most sincerely for making the effort to be here today at his own expense.

**Senator Jillian van Turnhout:** I will make two very brief points as I understand there are time constraints.

On the education aspect, I take on board what Mr. Ridgway said. We heard from the children's groups we met last week about the importance of peer education, but in anything we are talking about - many delegates have made this point - it is not a case of one measure; we see this as a package of measures. I co-sponsored two Bills in the Seanad on this issue and other areas we need to tackle.

Regarding the illicit trade, I gave the figures for Andorra. Last October the chairman of the UK Parliament's public affairs committee, the Right Honourable Margaret Hodge, stated:

The Department has also failed to challenge properly those UK tobacco manufacturers who turn a blind eye to the avoidance of UK tax by supplying more of their products to European countries than a legitimate market in those countries could possibly require. The tobacco then finds its way back into the UK market without tax being paid. The supply of some brands of hand-rolling tobacco to some countries in 2011 exceeded legitimate demand by 240%.



In the Dáil last November the Minister for Finance, Deputy Michael Noonan, stated: “I have a suspicion that the legitimate trade is involved in the production of illicit cigarettes...” We throw around the word “illicit”, but I strongly believe the tobacco companies are fuelling the market.

**Deputy Mary Mitchell O’Connor:** I want to repeat what Senator Jillian van Turnhout has just said and, in particular, what the Minister, Deputy Michael Noonan, stated. The Senator quoted some of the Minister’s comments, but the important point he wanted to make was that the legitimate trade was involved in the production of illicit cigarettes. Unfortunately, Senator John Crown is not here today, but two or three weeks ago he made a passionate plea on this issue. He has held that the legitimate tobacco companies are flooding the market with illicit, not counterfeit, cigarettes. That was something I learned of which I had not been aware.

I will make one other point.

**Chairman:** The Deputy and Senator Jillian van Turnhout will be able to make these points to the representatives of the tobacco companies next week.

**Deputy Mary Mitchell O’Connor:** The last point I want to make - I am delighted to hear that retailers are responsible for stopping under-age children from smoking and that they try to uphold the law - concerns an article in *The Sunday Times* on 4 August 2013 on a study of 100 Irish shops which found that almost half of those shops had sold cigarettes to a 15 year old during a two week period in August. The study was carried out in Dublin and Wicklow. We must make sure people are responsible. I realise there will always be the weaker person who may not be the owner selling cigarettes in the shop, but they have a responsibility in this regard.

**Mr. Vincent Jennings:** On that point, we took the article so seriously that we visited *The Sunday Times*. We obtained permission from the editor to ask the journalist to provide us with the names of the people involved. We looked through the list of shops and saw the three shops which were members of ours. We visited them and demanded that they stop. Our members have received 5,000 visits, paid for by themselves, by a young test purchaser. We are very committed to doing this. It was appalling that it had happened; it should not happen and we are doing our bit to stop it.

**Mr. Joe Sweeney:** Similar to what Mr. Jennings said, we identified some of our members who were involved and spoke to them also. From 2009 to September 2012, 56,600 inspections took place and the compliance rate was 98%. The conviction rate was less than 1%. Regarding sales to minors, in the same period, 2009 to September 2012, there were 1,452 inspections and 14 convictions, giving an 84% compliance rate. It should be 100%, but 98% compliance is super. A compliance rate of 84% is very good and an indication that retailers are being responsible.

Let me give one other statistic for the same period on the display ban. There were 22,400 inspections and an 85% compliance rate.

**Chairman:** The claim that the tobacco companies are flooding the market-----

**Mr. Joe Sweeney:** On that point, the tobacco companies will be before the committee next week and that will be a question for them, but that is neither here nor there to us. We are fighting criminal-----

**Mr. Vincent Jennings:** As Senator John Crown said, if it starts initiation, it is one very good reason to stop it.

JOINT COMMITTEE ON HEALTH AND CHILDREN

**Chairman:** I thank Ms Buckley, Ms Higgins, Mr. Sweeney, Mr. Jennings, Mr. Candon and Mr. Ridgway for attending, giving of their time and, more importantly, their considered and informed views. I recognise the roles they play and the responsible way in which they do their business. As Deputy Caoimhghín Ó Caoláin stated - I intended to make this point at the end of my contribution - there is much more that binds us together than separates us.

It is important that the witnesses recognise it as part of our report. Indeed, some of the recommendations suggested by them today may be contained in a report to go to Government regarding issues about which we have spoken. For that, I thank them most sincerely. I also thank the committee members. It has been a long morning as we have sitting since 9.30 a.m.

The joint committee adjourned at 1.51 p.m. until 5.15 p.m. on Tuesday, 11 February 2014.

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM SHLÁINTE AGUS LEANAÍ

## JOINT COMMITTEE ON HEALTH AND CHILDREN

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*Déardaoin, 13 Feabhra 2014*

*Thursday, 13 February 2014*

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The Joint Committee met at 11.00 a.m.

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### MEMBERS PRESENT:

Deputy Catherine Byrne,  
Deputy Ciara Conway,  
Deputy Regina Doherty,  
Deputy Robert Dowds,  
Deputy Peter Fitzpatrick,  
Deputy Billy Kelleher,  
Deputy Sandra McLellan,  
Deputy Eamonn Maloney,  
Deputy Mary Mitchell O'Connor,  
Deputy Dan Neville,  
Deputy Caoimhghín Ó Caoláin,

Senator Colm Burke,  
Senator Jillian van Turnhout.

In attendance: Deputy Ann Phelan..

DEPUTY JERRY BUTTIMER IN THE CHAIR.

*The joint committee met in private session until 11.05 a.m.*

### **Public Health (Standardised Packaging of Tobacco) Bill 2013: Discussion (Resumed)**

**Chairman:** Apologies have been received from Deputy Seamus Healy and Senators John Crown, Imelda Henry and Marc MacSharry. Deputy Kelleher will be late arriving as he must attend another meeting after being in the Dáil. I thank members for facilitating the postponement of today's start time until 11 a.m. given that there was a clash with questions on health in the Dáil.

Before we begin our deliberations on the heads of the tobacco plain packaging Bill, I remind people to switch off their mobile telephones or put them in flight mode. That applies to members of the committee, witnesses and people in the Public Gallery. I apologise in advance because I may have leave to speak in the Dáil at some stage.

As members and witnesses will be aware, this morning we will conclude our deliberations on the general scheme of the Public Health (Standardised Packaging of Tobacco) Bill, which was referred to the committee for consideration before Christmas. We have had a very thorough and good examination of the heads of the Bill. This morning we will hear from members of the industry. It is important that we, as a committee, take time to deliberate on the matter.

I welcome the delegations from P.J. Carroll and Company Limited, John Player & Sons Limited, JTI Ireland Limited and Forest Éireann. I will name witnesses as we go along and they give their presentations. They are all very welcome and I thank them for being here this morning. I also thank them for allowing us to change the start time for the meeting which may have inconvenienced them.

Witnesses are protected by absolute privilege in respect of the evidence they give to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not comment on, criticise or make charges against a person or an entity by name or in such a way as to make him, her or it identifiable. I remind members of the long-standing parliamentary practice and ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I remind members that we will conduct private business on Tuesday afternoon as part of our meeting then.

I invite Mr. Steven Donaldson, general manager, P.J. Carroll and Company Limited, to address the meeting and he is very welcome.

**Mr. Steven Donaldson:** I thank the Chairman and committee members for inviting us here this morning as representatives of P.J. Carroll to discuss the Government's proposal on plain packaging. My name is Steven Donaldson and I am the general manager of P.J. Carroll and Company Limited. I am joined by my colleague, Mr. Ronald Ridderbeekx, head of corporate affairs for British American Tobacco in the UK and Ireland.

Founded in 1824, P.J. Carroll is proud to be one of Ireland's oldest and best known businesses. Now a member of the BAT group, we currently employ 30 people, support the pensions of hundreds of former employees and indirectly support thousands of jobs across Ireland.

At the outset, let me say that we fully accept that smoking causes serious and fatal diseases. Therefore, we fully recognise and accept the Government's right and interest in regulating on smoking and health issues. I also want to state unequivocally that in no way do we market our products to children. We fully support Government efforts to tackle youth smoking and we work in partnership with others to achieve this. We do not seek to turn non-smokers into smokers. There are 970,000 adult smokers in Ireland and more than 100,000 of them switch brands each year. Our business consists of offering quality tobacco products to these well-informed adults who make the choice to smoke. We fully accept that there is a long-term declining trend in the number of smokers and in the amount that these smokers consume.

It is our view that the legislation on plain packaging, under consideration by the committee, is a disproportionate measure. It will not achieve its stated aims but will risk a number of important undesirable consequences. I will address the following four points. First, the proposal will not reduce smoking rates or stop children from taking up smoking. In fact, evidence from Australia indicates there has been no change in rates of smoking even though plain packs have been on the market for 15 months. Second, the proposal will only benefit the criminal black market by providing a boost to an already thriving illicit trade in Ireland. Third, by depriving P.J. Carroll of our legitimately held trademarks - enshrined in Ireland's Constitution and protected by EU and international law - plain packaging will damage Ireland's reputation as a positive environment for business. It will give other industries cause for concern that their trademarks are not safe in Ireland. Finally, and crucially, there is a better way to achieve the Government's public health objectives. Proven measures such as a stronger focus on education, enforcement of existing laws and a ban on proxy purchasing can and will deliver results. There is no credible evidence to suggest that plain packaging will reduce smoking rates. Extensive research has been carried out into why people take up smoking. All of the research points to parental influence, peer influence, social and cultural norms, price and access as the key factors, not packaging. Evidence offered by lobbyists for plain packaging points to a range of studies on attitudes and intentions to support their claims but fails to point to any real world evidence on the effect on smoking behaviour. Studies referenced by the Minister for Health, Deputy Reilly, deal only with how people intend to react to the idea of plain packs, not what they actually do as a result of plain packs in the real world. Studies have shown that uglier packs are less attractive but they have failed to make the critical connection between uglier packs and the decision to take up smoking. The evidence offered in favour of plain packs is analysed in detail in our submission, which I encourage committee members to consider if they have not already done so.

Australia is the only country in the world to introduce plain packaging, in late 2012. The evidence from Australia has demonstrated that the desired outcome of a reduction in smoking prevalence has not been achieved. The evidence available from Australia, in reports from independent researchers KPMG and London Economics, shows that smoking rates in Australia have remained on trend, a small annual decline. In fact, the consumption of smoking is declining at a slightly slower rate than in the previous ten years, which is not what was predicted. Since plain packs were introduced in Australia 15 months ago, there has been absolutely no impact on smoking rates.

I will turn to the issue of smuggling. Plain packaging will create a big opportunity for crimi-

nals; they will only have to produce one pack design ever again if they so choose. By making it harder for consumers to distinguish between brands, price will become a more important factor in Ireland. More people will turn to the cheapest available cigarettes and these will be found on the black market. Estimates of the size, and cost to the Exchequer, of the Irish black market in tobacco vary but are between €240 million and double that amount. Either way, it is substantial. To put this in perspective, criminals already sell twice as many cigarettes in Ireland as P.J. Carroll but none of the criminal gangs behind the tobacco black market will appear before an Oireachtas committee. They do not obey any tobacco control regulations, they do not pay tax, they do not ask for ID and they do not care what is in the cigarettes they sell. The Minister for Finance, Deputy Michael Noonan, recently told the Dáil: “As we continue to use price to discourage people from smoking, I think we will divert more and more of the trade to the illicit trade.” The Minister is correct, and it will be compounded by a measure that creates a lack of differentiation between a legal, duty paid pack of 20 for sale at €9.50 and a smuggled pack at half the price.

We fully acknowledge and support the valuable work of An Garda Síochána and the Revenue Commissioners in their efforts to tackle the black market. While acknowledging their contribution to the committee, it is worth noting that they indicated they have not yet seen any evidence from Australia on the impact of plain packaging on the black market. However, the most recent KPMG report points to a 13% increase in the level of tobacco smuggling in Australia in the first six months after it was introduced. The market has shifted, with new illegal plain pack lookalike brands and what are known as illicit whites gaining market share rapidly. If the trend is replicated in Ireland, we will see large growth in smuggled tobacco. This will undermine the interests of honest retailers, the law-abiding and tax compliant tobacco industry, Government excise returns and public health objectives. The black market in cigarettes already costs the state hundreds of millions of euro and provides children with access to cigarettes. Plain packaging, while well intentioned, will only make this worse.

I would like to briefly touch on intellectual property issues. Our trademarks identify the origin and quality of our products. They tell the consumer that what is on the pack is what is in the pack. The removal of the legitimately held intellectual property rights of P.J. Carroll and other companies is a disproportionate measure in light of the less trade restrictive alternatives available. We also believe it is in breach of Irish and European law and international trade law. It will seriously damage Ireland’s reputation as a good destination for business, as evidenced by the concerns expressed by many business organisations to this committee. A number of countries are currently challenging Australian plain packaging legislation at the World Trade Organization. It is one of the biggest disputes ever to appear before the WTO, with 35 parties, including the EU and therefore Ireland, involved. We encourage this committee not to consider the introduction of any such legislation until the outcome of this dispute is known. Otherwise, it is possible that plain packaging legislation will need to be repealed.

Let me be clear that there is a better way. There is no disagreement between P.J. Carroll, the Government or the committee. We have a shared objective of preventing children from taking up smoking. We support proportionate and evidence-based measures to achieve this objective - measures which will not result in the undesirable consequences I have already outlined. First, we do not believe that any adult should be able to purchase tobacco for children. We believe that any adult who does so is knowingly breaking the law and there must be effective criminal penalties for these adults. Second, certain education programmes have proven particularly successful at stopping children from starting to smoke. These education programmes focus not just on the awareness of risks of smoking, but also provide young people with the life skills to resist

peer pressure and make their own choices. Germany, Sweden, and some states in America have achieved excellent outcomes by using education to address youth initiation. In Germany, smoking among children 12 to 17 years has seen a significant decline over the past ten years, from 27.5% to 11.7%. Germany does not ban advertisement or display of products. Instead, it focuses on education programmes such as Class2000, ClearSight and “Be smart-don’t start”. Education and preventing access are proven ways to stop children from starting smoking. They tackle the real drivers of youth initiation – peer pressure, social and cultural norms and access. Packaging is not why children or adults start smoking and plain packaging will not make them stop.

Last week, this committee discussed with business groups the need to carry out a regulatory impact assessment, RIA, on the legislation. The following day, the Department of Health told stakeholders that it was finally going to carry out an RIA. The Cabinet handbook and Taoiseach’s guidelines are clear that an RIA should have been carried out before the Minister brought the proposal to legislate to Cabinet last November. This committee should not have been asked by the Minister to hear evidence without having an RIA to assess the costs and benefits.

I thank Deputies and Senators for the opportunity to discuss this important issue. We sincerely urge members to gather more evidence before making recommendations on the proposal. The committee must consider the outcome of an RIA before making any recommendations to the Minister. We ask that the committee look further at the evidence from Australia. The evidence clearly shows that the Australian plain packaging experiment is failing. We urge the committee to await the outcome of the major dispute at the WTO.

We believe this further evidence will show committee members and Government that this legislation will not achieve its aims but will have serious negative consequences. These include boosting an already thriving black market that undermines health objectives, costing the taxpayer further millions in lost taxes, costing jobs around the country, Illegally confiscating intellectual property and severely damaging Ireland’s reputation as a result. I thank members for listening this morning and I look forward to answering questions.

**Chairman:** I welcome Mr. Andrew Meagher, managing director of John Player & Sons Limited, and I invite him to make his presentation.

**Mr. Andrew Meagher:** My name is Andrew Meagher and I am the managing director of John Player & Sons Limited. I am joined by my colleague, Dr. Axel Gietz, director of group corporate affairs at Imperial Tobacco. I can assist the committee with issues regarding the Irish market and Dr. Gietz can answer questions on any broader corporate matters.

John Player & Sons Limited has a long and proud history in Ireland and employs 70 people. Imperial Tobacco also operates a tobacco factory in Mullingar, which employs 120 people. We are a legitimate company authorised by the Government and Revenue to sell a lawful regulated product to adults. We fully support the Minister’s objective that children should not smoke. Nobody working in our company wants children to smoke - neither ours nor anybody else’s. I am grateful for this opportunity to debunk the myth that we use our brands to entice Irish children to smoke. I have worked for 20 years in John Player & Sons Limited. Over that time, neither I, nor any of my colleagues, has ever once developed or designed a brand or even contemplated such a thing with the purpose of attracting children to smoke.

While sharing the Minister’s objective, we hold a different view from him as to what is the most effective way to prevent minors from smoking. The Minister believes plain packag-

ing would prevent children from starting to smoke because they are influenced by cigarette packaging but there is no credible evidence to support this contention, either from Australia or anywhere else. Even the Chief Medical Officer, when he met the committee before Christmas, accepted the absence of evidence from Australia. He said, “We have to await a proper evaluation”, and I fully agree.

Ireland has followed a high tax, high regulation approach to tobacco control for many years and yet Irish smoking rates remain consistently high. According to EU statistics, Ireland’s 2012 smoking rate of 29% is the same as it was in 2006. Some 28% of young Irish people start smoking at 15 years and younger compared with the EU average of 17%. The ban on press advertising, the ban on smoking in pubs, the ban on ten packs, the ban on display of tobacco in shops and significant excise increases have not had any measurable impact on smoking rates. Ireland’s tobacco control model is simply not working. However, alternative approaches based on education and instruction rather than bans appear to be much more successful.

The German tobacco control strategy, which is education based, has produced striking results. It permits billboard and cinema advertising of tobacco. Tobacco products are openly displayed in German shops and yet youth smoking initiation rates are 17% in Germany compared with 28% in Ireland. In America, the Centre for Disease Control recommends tobacco use prevention education programmes in schools.

There are three predictable consequences of plain packaging that would negatively affect the entire community. The black market would grow, the Exchequer, legitimate industry and retailers would lose revenue without any decline in consumption levels as tobacco tourism flourishes, and Ireland’s international business reputation would be undermined. As we sit here today, criminals are busily selling illicit white cigarettes on Moore Street in complete violation of every single tobacco control measure that this country has ever introduced, including selling to children. The irony is that if this Bill were to be passed, organised crime gangs would have the unique selling point of being the only supplier of branded packs in the country and this could lead to increased sales of illicit white brands on Moore Street and other street markets throughout the country. While 79% of the retail price of cigarettes goes directly to the Exchequer, there will be no such contribution from the branded packs that will continue to be sold on Moore Street or at Balbriggan market, regardless of this Bill.

A second consequence is that while the Minister intends that smokers can only buy a pack of John Player Blue in a plain pack in Ireland, Irish holidaymakers or day travellers can buy the same branded pack for literally half the price in Spain and Portugal. One assumes that this fear of tobacco tourism is the reason that the Department of Health stated in an EU submission in 2010 that “the introduction of generic or plain packaging must be on the basis of robust evidence. If such a measure is to be introduced, it should be mandatory and there should be a harmonized approach across all Member States.” Instead, we now have a solo run by Ireland despite failing to come up with the robust evidence that the Department itself called for in 2010.

A third consequence is that the State would send a clear message to the international business community that their valuable intellectual property would not be protected. Who would invest in Ireland when, without robust evidence and when other less draconian alternatives are available, the State proceeds to seize a company’s assets? The fact that a regulatory impact assessment has not even been conducted in advance of this proposal will surely set alarm bells ringing in the headquarters of Irish and foreign multinationals.

The Minister has correctly lauded the model of universal health insurance as applied in



the Netherlands because it delivers results. This same approach should be applied to tobacco control - learn and adopt from what works and delivers results rather than trying to implement a policy that is as yet unproven, has been abandoned by the EU and brings with it too many negative consequences.

While John Player is opposed to plain packaging, we are not in any way opposed to preventing minors from smoking. However, this proposed measure must be reconsidered for the reasons already outlined. There is no robust evidence that it would achieve its stated aim, there are too many negative consequences and there are proven alternative education-based solutions from other jurisdictions that deliver reductions in minors smoking. The criteria for introducing new laws should be based on objective fact, real world robust evidence and demonstrable results. There is no evidence, there are no results and no regulatory impact assessment was conducted to justify this Bill.

This does not mean we cannot and should not immediately implement measures to prevent minors from smoking. We can do so by implementing programmes to give minors the life skills to be able to say “No” to peer pressure when it comes to tobacco use or indeed other habits, by preventing minors from accessing tobacco by prosecuting any retailer that sells tobacco to those under age and by resourcing the enforcement authorities to put the criminals who sell illegal cigarettes out of business. I thank the committee. Dr. Gietz and I are happy to answer any questions.

**Chairman:** I thank Mr. Meagher for his presentation. I welcome Mr. John Freda, general manager, JTI Ireland, and call on him to make his opening remarks.

**Mr. John Freda:** I thank the Chairman and members for inviting JTI to present to the Joint Committee on Health and Children on plain packaging. I am joined by Mr. Michiel Reerink from our regulatory department.

Japan Tobacco International acquired Gallaher in 2007. Today, we supply tobacco products to more than 4,000 retailers across the country as well as employing more than 100 people. Our business is based on a number of core principles. Tobacco products carry risk to health and, therefore, appropriate and proportionate regulation of the tobacco sector is necessary and right. Everyone in Ireland should be reminded about the health risks of smoking. Most importantly, minors should not smoke nor should they be able to access or buy tobacco products.

In line with the regulatory impact assessment guidelines of the Department of the Taoiseach, a regulatory impact assessment must be conducted before a memorandum goes to Government seeking permission to regulate. The memorandum and heads of a Bill must be accompanied by a draft regulatory impact assessment. Despite the far-reaching consequences of the plain packaging proposal, we are concerned that no regulatory impact assessment has been completed to date. Therefore, we believe that the committee should call for an independent and robust regulatory impact assessment to be completed and reviewed by the committee and all Government Departments before the plain packaging Bill goes any further.

I am sure the committee is well aware that the Minister, Deputy Reilly, led discussions at an EU level on the revision of the tobacco products directive during the Irish Presidency. The outcome of these talks was that the member states and later the European Parliament agreed that plain packaging should not be included in the revised directive. However, the committee should also be aware that measures proposed within this directive will change the current landscape of tobacco across Europe.

The directive includes requirements to increase health warnings to 65% of the pack and a ban on certain pack shapes, including the current packaging for slim cigarettes. Therefore, with the changes expected as a result of the directive, why does the Irish Government need to introduce plain packaging in Ireland?

Let me tell the committee the three primary reasons JTI is so opposed to plain packaging. First, there is no credible evidence that plain packaging will actually achieve public health benefits. We believe it will make the situation worse. Second, the proposed legislation will prevent us from communicating with our consumers about our brands and their right to receive this from us. Third, it will deprive us of our property, by removing our ability to differentiate our products from those of our competitors. If the proposals on plain packaging are implemented, there is no doubt in our mind that it will damage competition, will infringe rights and freedoms, including those enshrined in European law, will raise barriers to trade and will ultimately result in a loss of jobs across Ireland.

The concept of plain packaging is based on an outdated notion of smoking behaviour. Regulators and academics tell us that children start smoking for many reasons. It is a combination of factors such as peer pressure, which plays a major role, and family and parental influence, which is also an important factor. The real key enabler is access to and availability of cheap tobacco products. It is not, however, the packaging of cigarettes.

Let me tell members more about the role of packaging. As with most consumer goods companies, brands are central to our business. We invest and innovate in packaging, design and quality so that we can compete with other products available to adult smokers, who, knowing the risks of smoking, want to smoke. Let me stress that we do not target children. A key challenge is to ensure that children cannot access tobacco products.

The best way to achieve this is to maintain a regulated and highly disciplined market where tobacco can be sold legally and stamp out the selling of untaxed and unregulated tobacco at a fraction of the price to children by organised criminals and illegal traders. These people do not care about the quality of the product or about the age of the child to whom they sell it. Let nobody be under any illusion - one of the serious consequences of plain packaging is that it will lead to a further growth in this highly lucrative illegal and unregulated trade in Ireland. The introduction of plain packaging will also increase children's access to tobacco in the unregulated market as prices are at least 50% cheaper than those of our disciplined retailers.

The Government's own reports state that when measuring levels of smoking, the vulnerable and disadvantaged are more at risk. The inevitable growth of the illicit trade, which is already too high, will only serve to further exacerbate this problem. We firmly believe that methods that are evidence based must be introduced to achieve public health benefits. As I mentioned earlier, we must prevent minors from accessing tobacco products. This can be done by reinforcing the age limit, by devising meaningful policies that make it harder for children to get their hands on tobacco, and punishing adults who knowingly buy tobacco products for children and-----

**Chairman:** There is a vote in the Dáil. I propose that Mr. Freda finishes his presentation and then we will adjourn for the vote.

**Mr. John Freda:** Before doing anything else, the Government must prioritise and focus on stopping children accessing cheap tobacco in the unregulated market.

The Government should establish a targeted and comprehensive programme in schools to

tackle peer pressure, which is a recognised key driver of youth smoking. Ireland has one of the highest youth smoking rates for the under 15 years age cohort in Europe. When we compare the uptake of smoking by youths in Ireland and Germany, the Eurobarometer data in 2012 shows the uptake among the under 15 years age cohort in Germany was 17% compared with the 28% uptake in Ireland, when a decade ago the levels were similar. We believe an education programme for primary and secondary level school pupils could be successful here in Ireland. We respectfully ask the committee members to consider this as one of a number of serious alternatives to the plain packaging proposal as they formulate their recommendations to the Minister for Health.

There is absolutely no credible evidence that plain packaging has had a positive health impact in Australia or that it would have such an impact in Ireland. More than 14 months after its implementation in Australia, there is still no official government assessment that plain packaging has worked. In fact, the absolute lack of evidence reaffirms the point that packaging is not the reason that people start or even stop smoking. The introduction of plain packaging would increase children's access to tobacco and in particular to children in disadvantaged parts. There are proven ways to reduce further the youth smoking rate in Ireland and these should be prioritised. We do not dispute the risks associated with tobacco use. Plain packaging legislation will not help reduce smoking rates in Ireland and it is for these reasons we strongly oppose plain packaging. We would be happy to discuss them with the chairman and members.

I thank the Chairman and members of the committee for their time.

**Chairman:** I thank Mr. Freda for his presentation. I propose we suspend now. I apologise to witnesses and the members in the Gallery for this interruption.

*Sitting suspended at 11.36 a.m. and resumed at 11.51 a.m.*

**Chairman:** We will resume in public session. I apologise to everyone. As I said, parliamentary democracy waits for no one. The suspension of committee meetings is one of the joys of being in Parliament when it is sitting. I suppose it makes the case for a committee week, but we will park that debate for another day. I ask Mr. John Mallon of Forest Éireann to make some opening remarks. He is very welcome. I thank him for being here.

**Mr. John Mallon:** I thank the Chairman and the members of the joint committee for inviting me to attend this hearing. I represent the smokers' group Forest Éireann. "Forest" stands for Freedom Organisation for the Right to Enjoy Smoking Tobacco. Forest Éireann was set up in 2010. We are supported by Forest UK, which was founded in 1979 to represent adults who choose to smoke tobacco and non-smoking adults who are tolerant of adults who smoke. Forest UK is supported by British American Tobacco, Imperial Tobacco Limited and Gallaher Limited, which is part of the Japan Tobacco International group of companies. Neither Forest UK nor Forest Éireann represents or speaks for the tobacco industry. We do not promote smoking or any tobacco product or brand. We have a completely independent set of goals, centred on the right to smoke a legal product without undue harassment or discrimination. As a smoker, I am here to offer the perspective of the consumer who chooses to smoke tobacco in full knowledge of the health risks associated with smoking, which are very well documented. I am also here to offer an insight into why people, including children, start smoking.

With regard to today's hearing, we believe the case for standardised packaging of tobacco is based on the fallacy that children are attracted to smoking because of exposure to colourful or glitzy packaging and that without branding far fewer children or young people would be

tempted to start smoking. This argument is based on speculation and conjecture, rather than on hard fact. There is no credible evidence that standardised packaging will have any effect on youth smoking rates. I started smoking because a friend offered me a cigarette and it became a daily social habit we engaged in and shared secretly together until we turned 18. Some 44 years later, we are still friends. Speaking personally, plain packaging will make no difference to me. I will simply ask for my regular brand of tobacco. I should add that when I am abroad in an EU country, if I choose to do so I can legally bring home a year's supply of local EU-duty paid tobacco. If Ireland adopts a unilateral approach to plain packaging, I expect that branded packs purchased abroad will be popular with many consumers as a symbol of passive rebellion.

The display of tobacco has been banned in Ireland since 2008. Smokers have to ask for their preferred brand before it is handed to them. Normally, they put it directly into their pocket or handbag. When a cigarette packet sees the light of day, it is normally in the company of other smokers outside the door. I suggest, therefore, that cigarette packets are already largely invisible to children. We believe the introduction of plain packaging is gesture politics. It will not stop children smoking. There are other more important issues the Department of Health should prioritise in 2014. In a recent poll by Red C for Forest Éireann, just 9% of those surveyed said they believe standardised packaging is the policy most likely to reduce youth smoking rates in Ireland. In contrast, more than half of those surveyed thought health education in schools would be the most effective way of reducing smoking rates. Plain packaging ranked fourth of four suggested priority issues for the Minister for Health in 2014, with just 4% of respondents thinking it should be prioritised. In contrast, 45% of those polled wanted the Minister to prioritise the health budget overspend. It is interesting that 32% were worried about childhood obesity. Some 18% were worried about under age drinking, which is quite topical at the moment.

The current Minister for Health has made plain packaging of tobacco a personal crusade even though a very small minority of people think it is the best way to stop children smoking. Even fewer want it to be his main priority. We are concerned that plain or standardised packaging represents another step towards a nanny state in which adult consumers are increasingly infantilised by politicians who do not trust us to make decisions for ourselves. As consumers, we are also concerned about the slippery slope - the idea that once standardised packaging is introduced for tobacco, the policy will be adopted for alcohol, convenience foods and other potentially unhealthy products. We believe the treatment of smokers over the last ten years is setting a dangerous precedent in a democracy because the same tactics can now be applied to the consumers of other products we freely choose to spend our money on. How long will it be before public health campaigners call for alcohol, fatty food, sugar or even confectionary to be sold in plain packaging?

We do not want children to smoke. Smoking should be a choice for informed adults only. We support all reasonable measures that prevent or discourage children from purchasing or consuming tobacco. The proposal to introduce standardised packaging is neither reasonable nor justified. There is no credible evidence to suggest it will work. If the Government really wants to protect children from smoking, it should seek tougher enforcement of existing laws and focus on further education, primarily in schools but also in the home. Most important, perhaps, the State of the Nation's Children report, which was published by the Department of Children and Youth Affairs in 2012, highlights the fact that children in more disadvantaged areas are most likely to smoke. In our view, it would be better for the nation's health if the Government were to address this issue rather than focusing on distractions like plain packaging.

I thank the Chairman and the members of the committee for inviting Forest Éireann to at-

tend today's hearing today. We are pleased the committee has recognised that the consumer is a legal stakeholder in this debate. We look forward to continued discussions in the future.

**Chairman:** I thank Mr. Mallon.

**Deputy Billy Kelleher:** I welcome the witnesses and thank them for their presentations. If one were to listen to what they had to say, one would be convinced that the tobacco industry is a benign industry that is well aware of its social obligations and its obligations to consumers. When one looks at the international evidence, however, one finds that is clearly not the case. There is a strong body of evidence to show that the tobacco industry internationally is quite an insidious invasive industry. It targets younger people. It takes an aggressive targeting approach in Latin America, Africa, the Caribbean and Asia. Some of the tobacco companies to which I refer are represented here. The witnesses have acknowledged that smoking has some health implications. It was accepted in the opening presentation that smoking causes cancer and other illnesses. That is well documented. It is much more than that, however - it is a killer habit which has a devastating impact on people's lives. I think any state is entitled to make reasonable policy decisions, and support them with legislation, to try to reduce the level of smoking in that country. The purpose of plain packaging would be to discourage people from smoking. In addition to discouraging young people from starting to smoke, it would also discourage older people from smoking. The same thing applies to the introduction of graphic design. Anything that makes smoking less attractive is a positive, in my view, as it will not encourage-----

*(Interruptions).*

**Deputy Billy Kelleher:** There is a telephone going off somewhere.

**Chairman:** There is. Perhaps it is an iPad.

**Deputy Billy Kelleher:** I do not think iPads interfere with the sound system in the same way. As a State, we have an obligation to try to protect all our citizens. I remind Mr. Mallon that this includes adults as well as children. Adults who are ill also generate additional costs as it costs the State money to treat people who have acquired illnesses or diseases through smoking. There are many reasons the State should take aggressive action to discourage people from starting smoking and encourage smokers to stop.

The key issue is that tobacco is an addictive substance and one cannot, therefore, speak of smoking being a rational decision. Heroin addicts do not want to stand on O'Connell Bridge in the wind and rain. They do so because they are addicts. I smoke from time to time and struggle with the addiction. It is better if one does not start to smoke. It is possible that Mr. Mallon's childhood friendship would last even longer if he had not chosen to smoke for the past 44 years.

**Mr. John Mallon:** That is a possibility, not a guarantee.

**Deputy Billy Kelleher:** I am bringing the argument to a human level.

While I do not suggest that any of the companies represented target children in this country, the bottom line is that the tobacco industry, like every other industry, needs customers. Its customers die and it needs new customers. There is no point in recruiting a customer who is 75 years of age. The tobacco industry wants to recruit them at 12, 13, 14 and 15 years because the longer a person smokes, the more addicted he or she becomes and the more tobacco products he or she will buy. We live in a commercial world and we know what the tobacco industry is

about. I am not arguing that the tobacco industry aggressively targets children here but it does so elsewhere in the world.

I read some of the transcripts of the hearings in the US Congress and Senate. The tobacco industry did not do itself any favours at the hearings. For years, it denied that smoking had health implications or that the industry took an aggressive approach to making tobacco as addictive as possible in order that people would continue to smoke. The credibility of the industry has been shattered internationally. For this reason, the State has an obligation to try to protect its citizens from a deeply damaging product. That tobacco is legally promoted around the world with the permission of governments and revenue authorities should not prevent us from doing everything possible to discourage as many people as we can from starting to smoke and encouraging those who smoke to stop.

If it is the witnesses' contention that there is no evidence to support the view that plain packaging will persuade people to stop smoking and prevent young people from starting smoking, why are they concerned about the proposal? Japan Tobacco International took the Australian Government to court to prevent the implementation of plain packaging for cigarettes. It is farcical to suggest that evidence should be available to show plain packaging works within 14 months of its implementation. Tobacco is an addictive substance and I would expect the witnesses to appreciate that one would need more than 14 months to produce evidence to show whether plain packaging works or otherwise.

I hope plain packaging will be introduced here and I hope it works. In the meantime, we should do everything possible to encourage people to give up smoking. Mr. Mallon may argue that smokers take a rational decision based on free will to continue to smoke. Smokers continue to do so, by and large because they are addicted to tobacco.

**Deputy Caoimhghín Ó Caoláin:** The tobacco industry has had to accept the huge damage to public health that its products have caused. I note the following statement from the representative of P.J. Carroll, Mr. Donaldson: "Let me say that we fully accept that smoking causes serious and fatal diseases." In fairness to him, he did not state that this applies only to children and young people, but across the board. It is extremely important that we recognise that smoking tobacco causes serious and fatal diseases for all smokers, irrespective of when they start smoking. What the industry does not accept are the consequences of accepting that this is the case. It has, using the substantial resources available to it, resisted all efforts by the State to properly engage with people who smoke, with a view to combating the smoking habit and attraction of smoking. At every turn, the tobacco industry has sought to challenge the State in its efforts to reduce smoking and it continues to do so. The presence of the witnesses indicates that this pattern continues and its outlook remains the same.

While the tobacco industry is on the wane in developed countries, sadly its product is acquiring a new future in developing regions. I have no doubt that significant and new public health issues will present in many countries across the globe because more and more people are being encouraged to take up tobacco smoking. I regret that very much.

The bald fact is that the witnesses are representatives of an illness industry. I have no other way of phrasing that statement given the cost that tobacco has imposed on the lives of ordinary citizens over many decades not only in terms of the health of many individuals, but also in terms of the cost to each person who provides for health care services. With all respect, it is time for payback. We have been burdened with an inordinate additional financial responsibility and others have had to bear the consequences of having their lives shortened or experiencing

serious illness through the use of the products the tobacco industry manufactures.

Many of the witnesses referred to the black market and I agree it must be stamped out. Who is producing the cigarettes that feed the black market trade? From where do these products come? Are any of the companies represented here involved in the provision of products that enable black market profiteers to carry out their illicit trade? Do the witnesses know who is producing these goods? These are serious matters which need to be brought to the attention of the authorities not only on the basis that they cost the Exchequer, but because they have legal implications. This issue cannot be addressed independently of whatever knowledge the witnesses may have in this regard.

Mr. Meagher from John Player stated he fully agreed with the Chief Medical Officer in respect of the evidence from Australia. He then stated: "The ban on press advertising, the ban on smoking in pubs, the ban on ten packs, the ban on display of tobacco in shops and significant excise increases have not had any measurable impact on smoking rates." I disagree fundamentally. All of the measures cited by Mr. Meagher have had a positive impact. Statistics are often abused and misused. I know many people who may have been enticed to take up smoking but have not done so. Collectively, the measures to which Mr. Meagher referred have made a contribution in this regard. It is impossible to measure the potential of the introduction of the plain packaging measure. He is right to say that the evidence is not phenomenal in terms of the Australian experience but it is part of a package of measures and is part of what has been described here and I accept the view on momentum.

It is an inevitable momentum that the industry should face up to and its collective minds and skills and talents would be better employed addressing an alternative sustainable future for its employees that would make a very positive contribution not only to the industry but to the lives of the broader mankind. My only question to each of the witnesses, except John, who, in fairness, has been upfront and I know exactly where he is coming from and I have many friends who are on the same page with him. I say, well done, I have heard everything he has had to say and respect it. I would like to ask the tobacco industry representatives, each in turn, if the Chair will ask them on my account, if they smoke tobacco.

**Senator Jillian van Turnhout:** I will begin by congratulating the New Zealand Parliament which, on Tuesday evening, had its first vote on the tobacco plain packaging amendment Bill and voted 118:1. Therefore, we are not alone in this discussion and it is not just Australia. At the hearings at these meetings, which no doubt the industry has been following, we have had some really compelling evidence so I find it difficult when I am being told there is no evidence. We have had compelling evidence from medical specialists and children's groups. The evidence from the children's groups, for me as a children's rights activist, is that while the industry hears what is being said it does not target children. The reality is that in Ireland, we know that 78% of those who will start smoking today will be under 18 years of age. Either the companies' marketing campaigns are seriously misdirected or there is a targeting of children. We heard from children themselves at this committee about how the packaging is attractive to them. In Ireland we need 50 new smokers per day, that means 39 will be under 18 every day, and we know that the industry's business model will collapse if it does not get them. That is the position I am coming from on this issue and the reason I fully support plain packaging.

The witnesses cited the experience in Germany about education and the use of education. I am sure other colleagues will come in on this issue. Germany has the same smoking rate for 12 to 17 year olds as Ireland which is 12%. Germany's evidence on youth smoking rates is clear from increased taxation and its smoking bans. In regard to marketing, the industry is quick to

say that marketing is not attracting children. Can the industry give us access to its marketing data for “lipstick packs”, for example, if it is so assured of its evidence?

With regard also to the marketing of children I saw a BBC documentary in 2008 which clearly showed the marketing to children in Africa, selling cigarettes in singles. The witnesses presented some figures today but the figures I trust are those from the HSE national tobacco control office which states that the rate is not 970,000 but 750,000 smokers in Ireland, which is 22%. We have heard this morning that there was no evidence from Australia. The Australian TV channel, ABC News fact check team, actually investigated that claim and refutes the claim put forward by the industry that there is no evidence. Perhaps the witnesses would watch it themselves.

We have been told this morning that plain packaging will create a big opportunity for criminals. I suggest the witnesses read the recently published European Parliament’s budgetary committee report which states: “The single most important factor that will influence the size of the illicit cigarette market in Europe is the business strategy of the cigarette manufacturers”. We have also heard that we will not have any criminal gangs behind the tobacco smuggling before this joint committee and the Minister for Finance, Deputy Michael Noonan, was cited. Perhaps the witness can explain why that same Minister for Finance said in the House that he suspected the legal tobacco industry of involvement of production in illicit cigarettes. Every year, the tobacco industry claims to us that high prices will increase smuggling, but it increases its own prices. It is not just taxation that increases prices. The witness speak about illicit white brands on Moore Street. The only reliable research we have is from the HSE national tobacco control office which shows a smuggling rate of 13% in Ireland but of that 13% it states that 1% is counterfeit and virtually all of the rest comes from legal industry. In other words, counterfeit tobacco in an Irish context is virtually irrelevant and I do not think it provides any valid argument. The witnesses cited the KPMG report which I could go through. However, there is one quote I like to take from it on page 25 which states that the KPMG’s project star data cannot be used to estimate the illicit cigarette market in the EU because the report was commissioned to meet specific terms of reference which are only known to Philip Morris International and KPMG. Therefore, the witnesses should not use it and cite it as a credible report.

May I ask a question of Forest Éireann because it was originally set up by the industry trade body. I take what Mr. John Mallon has said.

**Chairman:** I will bring in Mr. John Mallon again.

**Senator Jillian van Turnhout:** We know that four in five smokers want to quit. He cited a Red C poll. The Irish Heart Foundation wrote to Red C about the misleading presentation of this research. Red C replied that Forest Éireann did not follow its advice and stated that “as a result we will seriously consider refusing to work with this client in the future”.

**Chairman:** Go raibh maith agat.

**Senator Jillian van Turnhout:** We need to be very careful. The witness is telling us there is no evidence and yet he is telling me about the devastating impact it will have. Which is it?

**Chairman:** As seven other speakers have indicated I would appreciate if they would make brief contributions to the point.

**Deputy Mary Mitchell O’Connor:** I thank the gentlemen for appearing before the committee. I would appreciate a “Yes” or “No” answer to the following question. Do the witness



agree that their products kill half their intended users? I ask each company how much it spends annually in Ireland promoting its products to retailers? Is not tobacco an enormously profitable global business which preys on the misery and illness it causes? How much profit did each company make globally last year? What profits did each company make in Ireland? All the companies have mentioned education and the fact that the Government provides information on the dangers of cigarette smoking in school. I ask specifically how much each company has contributed to schools or to health to ensure the public is educated to the dangers of cigarettes? The tobacco industry has threatened to sue the Irish Government if it implements plain packaging. The Minister for Health has rightly said that he will not be intimidated by this sort of bullying approach.

**Chairman:** Could we stick to the heads of the Bill?

**Deputy Mary Mitchell O'Connor:** I am coming to the Bill. I ask each company here if it intends to take legal action against the Government when plain packaging becomes law and the basis for this and the indicative damages it is likely to seek? I understand the companies made a profit of €227 million in 2011.

**Chairman:** That is not relevant to the heads of the Bill.

**Deputy Mary Mitchell O'Connor:** Do these figures explain why the tobacco industry is so desperate to keep peddling death in Ireland and to keep recruiting young people to this filthy habit? The industry's business model, as mentioned by some of my colleagues, will not survive unless it gets children smoking. The Minister has called the tobacco industry an evil industry. Do the companies think anyone would believe they do not want children and young people to start smoking? Why is it that the Minister for Finance told the House in November that he suspects the legal tobacco industry is involved in the production of illicit cigarettes? Does each company accept that the legal tobacco industry has a long history of complicity in tobacco smuggling?

I have just one question for each of the witnesses present. In his submission to this committee, Mr. Donaldson stated that smoking is a cause of various serious and fatal diseases, including lung cancer, emphysema, chronic bronchitis and cardiovascular diseases. I want to ask him two questions. First, how can he face family members, parents and children, knowing that he is a purveyor of death?

**Chairman:** Thank you, Deputy.

**Deputy Mary Mitchell O'Connor:** Hold on, I have two more questions.

**Chairman:** You do not because your time is up.

**Deputy Mary Mitchell O'Connor:** Is Mr. Donaldson seriously telling this committee that these cigarettes called Vogue are not designed to attract young girls? He has produced that brand in a fancy box aimed at young women and girls.

Mr. Meagher stated-----

**Chairman:** The Deputy's time is up. She has had four minutes.

**Deputy Mary Mitchell O'Connor:** No, come on now. I have prepared for this not thinking there would be other people here. Let me continue please. I am on a roll here.

Does Mr. Meagher believe that his industry has a problem because one in two smokers will die from a smoking habit? His industry has to find a replacement for every person who dies. He gave three predictable consequences if we introduce plain packaging. I had crocodile tears welling up in my eyes listening to him. The consequence of people smoking cigarettes is that half of them will die from smoke-related disease.

I found Mr. Freda's presentation to be very slick. He talked about changing the landscape but the landscape is that 50% of smokers are dying. I do not care what he says but that is what is happening.

**Chairman:** Go raibh maith agat.

**Deputy Mary Mitchell O'Connor:** Mr. Freda talked about children.

**Chairman:** The Deputy is not being fair to other members of the committee.

**Deputy Mary Mitchell O'Connor:** Just give me one second.

**Chairman:** The Deputy has had ample time.

**Deputy Mary Mitchell O'Connor:** Mr. Freda mentioned slim cigarettes. His company produces the Silk Cut Super Slims brand.

**Chairman:** Go raibh maith agat.

**Deputy Mary Mitchell O'Connor:** He comes in here and says one thing, but he does another.

**Chairman:** Thank you.

**Deputy Mary Mitchell O'Connor:** If I can just say one thing to the last witness. In his submission, he said he represents smokers in Ireland. He also said he was fed up with people being treated like children. However, we are worried about children smoking and the whole tobacco industry. He described plain packaging as dull and grotesque. I agree with him but that is the way it should be. Maybe he does not remember that but it was in his submission. He said that historically it was a form of State-sponsored bullying. Does he not think that the State should protect its citizens?

**Chairman:** Could I ask the Deputy to withdraw her remark to Mr. Donaldson in the context of being a purveyor of death? That is inappropriate.

**Deputy Mary Mitchell O'Connor:** Okay, I will withdraw that. I suppose what I meant was that one in two smokers will die.

**Chairman:** Thank you, Deputy. I call Deputy Fitzpatrick. I will be strict on people now. We are dealing with the heads of the Bill and members cannot give Second Stage speeches.

**Deputy Peter Fitzpatrick:** I will not be long but, in fairness, I have attended every session so far.

**Chairman:** That is irrelevant to today's discussion.

**Deputy Peter Fitzpatrick:** I want to welcome all the witnesses. I keep asking myself why some people smoke. I have never smoked, so I do not know what a cigarette tastes like. My

father used to smoke 40 cigarettes a day and he died of lung cancer at the age of 74. In fairness to my father, however, he never smoked in the house which was a good thing.

Some 5,200 Irish people die every year from smoking related diseases. Smoking is responsible for almost one in five of all deaths. To maintain smoking rates at their current level, the tobacco industry needs to recruit 50 new smokers every day. It is targeting our young children to achieve that. Irish smokers start smoking at the youngest age in Europe, just 16 years of age. Smoking is the number one cause of preventable deaths in Ireland. It costs the health service €650 million.

Cigarette packaging is a key method of marketing a message to our children. They are thin, slender and pink cigarette packets are aimed at young girls. The tobacco control policy of successive Irish governments has followed World Health Organization best practice. As far as I am concerned, it has worked. In 1998, 33% of the population smoked, while today the figure is 22%.

I wish to ask Mr. Donaldson a few questions. Where do the ingredients of cigarettes come from and should they be regulated? Are e-cigarettes affecting the sale of normal cigarettes? How many jobs are directly or indirectly supported by the tobacco industry in Ireland? What control does the industry have over retail stores to keep tobacco products out of public view?

**Deputy Eamonn Maloney:** I will be brief. I have read the submissions by the tobacco industry and listened carefully, as others have done this morning, to their presentations. I will limit myself to three points. The message coming from the tobacco industry is an attempt to get some high ground on the issue by saying that it is not targeting children. That message has been repeated here, using different language. The industry representatives say that is not where the new consumers are and that they are not enticing children to smoke.

Someone said it was not a good thing for children to smoke. Does that imply that it is a good thing for adults to smoke? I do not think so. As a former nicotine addict for too many years, I can say that it is not an easy addiction to shift. It is widely recognised internationally - except within the tobacco industry - that nicotine is more addictive than hash, heroin or cocaine. It is in a place of its own. As adults we have to stand up to this problem. Other speakers have mentioned the health costs involved.

The industry representatives have invested a lot of time in their submissions citing the Australian model to say that plain packaging is impotent and will have no significant effect on discouraging people from smoking. If that is the case, why are they here?

They are pulling this trick out of the book to say that there is some relationship between intellectual property rights and the 1937 Constitution. If they went down to the Law Library the most junior of barristers would tell them that there would be no hope of them being able to sue the State over plain packaging. That is because, assuming that this plain packaging goes ahead, the State will not materially benefit from it. The witnesses know that. I know why they are lobbying me and other Members about this constitutional question that the State might be sued. It is to have some effect and to get enough Deputies to wobble and stand up to the prospect of the Minister introducing the measure. The industry's argument does not stand up legally. Apart from that, the industry representatives are having the opposite effect by trying to zone in on 84 Deputies to get them to oppose the proposal by the Minister for Health.

*Deputy Ciara Conway took the Chair at 12.28 p.m.*

**Deputy Regina Doherty:** I thank the witnesses for coming here. I do not want to be smart but I thank each of them for the employee representatives, who happen to live in my constituency, that they sent to my constituency offices to lobby me in recent weeks on the basis that they are losing their jobs. It was a cute move.

I would respect the industry representatives if they said the packaging measures we are introducing will have a serious impact on their bottom line and that would cause their business a problem. I would respect that and we could have a conversation accordingly. They have come in here, however, and said that they do not target children. They said there was no conclusive evidence arising from the Australian initiative. They claim that there is conclusive evidence that contraband, supplied by their own industry, will go through the roof in this country, in spite of all the contrary evidence provided by the Department and especially the Revenue Commissioners. If the witnesses came in and sincerely engaged with us, they would get a different reaction. I do not believe there is a single person in this room who does not believe that tobacco companies specifically target children in order to get new customers. On that basis, I have no respect for the witnesses. I have four small children at home. They are not getting their hands on them.

The regulatory impact assessment is not about asking Mr. Meagher's opinion. The decision has been made by the Government that this policy will be enacted. It was about providing the industry with the opportunity to make submissions. If one were to entertain the notion that the industry was only engaging with its own consumers, where do the witnesses propose to get the extra 50 customers per day? Who are they targeting with the hundreds of thousands of euro spent on marketing in this country every year? To whom are they actually speaking?

**Senator Colm Burke:** I thank the witnesses for making their contributions this morning. It is good to hear both sides of the argument.

Back in 1964, Luther Terry, the then US Surgeon General, identified that smoking was a cause of death. The average number of people who die in this country as a direct result of smoking is 5,000 per annum, so a 250,000 people have died in the 50 years since 1964. That is greater than the number of people killed in conflicts that are reported on our news bulletins every night.

The witnesses identified this whole issue in respect of property rights. In particular, they referred to articles in the Constitution about property rights. How are those rights established? How can the witnesses maintain that the State has an obligation to them to protect those rights, when the State also has a legal obligation to protect the health of its citizens? All the evidence shows that 5,000 people per annum are dying as a result of smoking. If a pharmaceutical product was being sold in our pharmacies and was identified as causing death, the Government would be obliged immediately to remove that product off the market, yet the witnesses want us to leave everything as is in respect of dealing with something that is causing death.

To go back to the property rights issue, if I am the owner of land, the ESB is entitled to put electric wires over my land and I am not entitled to compensation. People might not be aware of it, but that is the position, because the provision of electricity is for the benefit of the citizens. Likewise, the work being carried out by the Minister for Health on trying to reduce the number of smokers is for the benefit of all the citizens. We can use all the arguments that it will not help, but every step that we take is there with the intention of trying to reduce the number of people smoking. The submission from John Player & Sons refers to fundamental human rights guaranteed by the Charter of Fundamental Rights of the EU. Perhaps Mr. Meagher might identify

what particular article he is talking about in the charter, because there is also an obligation on the State to protect the health of its citizens. If we do not take on this problem, then the State is failing in its duty to its citizens. Do the witnesses not accept that under the Constitution, the State is also obliged to protect of its citizens, and that people's health takes precedence over property rights?

**Deputy Catherine Byrne:** I am a mother of five children, two of whom smoke and with whom I have a constant battle to give up cigarettes. My role as a member of this committee is to listen and learn, and to be educated about medical and well being issues that affect the people we represent. After that, my role is to respond to observations and give my own life's opinion, because that is why I am here. I could repeat many of the questions that have already been asked, but I will just ask one or two more instead. As to the argument whether there are 970,000 or 750,000 smokers here, everybody in this room has said that over 5,000 people die every year through illnesses related to smoking. That is a very important figure for the witnesses to keep in their heads. Have any of them ever visited the respiratory unit of any hospital across the country? Have any of them ever walked in and saw the effect, not only on the patient in the bed, but the effect on the families and friends around the patient? It is unreal.

The witnesses claim that they do not target children. They said that smoking is an adult thing to do. What about the 21% of adults - young women - who smoke during their pregnancies? Does that not target the unborn child? I believe that it does, and 50% of those children end up seriously ill in respiratory units in perinatal clinics. A great number of stillbirths result from that as well.

If any of the witnesses have children, would they hand an 18 year old a packet of cigarettes and tell them to smoke them because they will not do them any harm? Looking at my 31 year old and my 21 year old at home, and having buried family members who smoked through their lives, I am not convinced at all that anything said today is marketable. I would not like to be in their job. Being a politician is a very difficult job, but I would not like to be in any of the witnesses' shoes, because they are marketing people out there to kill themselves. As for Mr. Mallon, I hope he brings some of his members into the accident and emergency in St. James's Hospital, particularly into the respiratory unit. I guarantee that he will give up smoking the next day.

**Mr. Steven Donaldson:** Quite a lot questions were asked, and I thank the committee members for asking them. Tobacco is an emotive topic, so it has generated a heated response. In response to Deputy Ó Caoláin's question about who is bringing in the black market and some of the accusations made about industry involvement, I have the seizure rates from the Revenue Commissioners for 2012. If we go through the companies, we find that 87% of what is coming in is what is known as "illicit whites". These are brands such as Raquel Master, which are coming from Vietnam and the United Arab Emirates. They have nothing to do with the legitimate companies here. We also find that 11% of what is coming in is counterfeit. I can assure members that my company is not involved in smuggling into Ireland. We want to eradicate smuggling globally. We have a strong presence in terms of what we are trying to do on smuggling, which my colleague will talk about later. We actively work with the Revenue Commissioners and with the Customs and Excise here, and with the Garda, to try to tackle smuggling in Ireland. We supplied hundreds of leads which have led to successful criminal prosecutions. The largest seizure in the history of the State - 120 million cigarettes were found in Greenore in 2009 - happened after intelligence was supplied by tobacco companies. We are absolutely committed to reducing smuggling here. Smuggling deprives the Exchequer of money and funds

criminality in society, but also it critically undermines health objectives, because we believe that these products are being sold to children at half the price. Therefore, we should all work together because if we can all agree on one thing, it is that if we are going to allow adult citizens in Ireland to smoke, then it should be supplied by a legal supplier.

I spoke to David Crow, who is my counterpart in Australia, about the black market. We know from Australia is that the long-term consumption trend was -3% of people who smoke cigarettes in that country. That has stayed pretty stable. It has dropped to -2% in the year since plain packaging has come in. What we can see as well is that the amount of illicit trade has grown rapidly in the first six months. Another KPMG report is due out in the coming weeks which will show what will happen for the next six months.

**Vice Chairman:** Who commissioned the report?

**Mr. Steven Donaldson:** The KPMG report was commissioned by the three main tobacco players in Australia. To be clear - David Crow said this to me - we were looking for an independent body. The company currently works for the Australian Government, the Irish Government and the Department of Health. A person in my shoes has to decide how to evaluate what is a difficult problem to estimate. I decided to choose a legitimate global consultancy company to put in place the best methodology. In Europe, the methodology used to evaluate the illicit trade is endorsed by the European Anti-Fraud Office, OLAF. It is a reputable company and I am asking the committee members to consider its submission on these grounds and to invite the company in if necessary. That is what is going on in Australia.

What we see in Australia at the moment is that there is a major growth in illicit whites available here. This surprised us a little because we had expected there to be more growth in the counterfeit trade. Counterfeit product is growing but the trade in illicit whites is growing faster. These include brands like Manchester which, the report states, has gone from a 0.3% share before plain packaging came in to a 1.3% share and up as high as 3.8% in Sydney. These are being smuggled in by triads and biker gangs throughout the country. The largest ever seizures in Australia took place last October. We know for certain that the black market has been thriving since plain packaging has come in. That is why I raise it as a problem for Ireland because Ireland has the largest rate of non-Irish duty paid products in the country in all of western Europe. It is a serious problem and I believe it is undermining health objectives. My colleague might talk about the international context of smuggling as well.

**Vice Chairman:** Please be brief.

**Mr. Ronald Ridderbeekx:** Thank you, I realise we are pressed for time. I will outline the international context around smuggling. It is a global problem. I will discuss the problem mainly in respect of Europe. A large number of people in our company are dedicated to helping law enforcement officials throughout the world to combat smuggling. In Europe we signed a voluntary agreement in 2010 with the European Anti-Fraud Agency, OLAF. The agreement runs for 20 years and is worth €200 million. I say as much to signify that we make a significant commitment to combat smuggling. That is to support our view that we want smuggling eradicated if possible, in the same way as we have an objective that we share with the committee to eradicate children's take-up of smoking.

I wish to emphasise why we are here. It is to talk about the plain packaging proposal, a proposal to remove branding from packs of cigarettes and other tobacco products. I contend that this is not the right mechanism to use to achieve the objectives of reducing smoking rates

or to stop children from smoking.

We have seen the evidence from Australia. I agree that it is early days but the evidence from there does not lie. Smoking rates in Australia have not dropped and smuggling is on the rise. We must continue to monitor that situation but it supports the view that plain packaging is not the right way of achieving those objectives. All it will do is remove legitimately and legally registered trademarks which have value not only to companies but also to consumers, since it gives them reassurance around the origin and quality of the product they buy. Moreover, we believe plain packaging will encourage smuggling further. It appears to be doing so in Australia and we would be frightful that it would do the same in Ireland.

**Vice Chairman:** A number of round-robin questions were asked by several contributors. Will you respond to those before we move on to the next witnesses please?

**Mr. Steven Donaldson:** There was a question about profitability.

**Deputy Mary Mitchell O'Connor:** I asked that, along with several other questions.

**Mr. Steven Donaldson:** I wish to be very open about our profits in Ireland. We make approximately €7.9 million in Ireland. Some 87.4% of our total revenue goes to the Government in taxes and excise. We have pension contributions of approximately €3 million to consider. I am unsure where the figure of €227 million comes from but we have a 17% share of the market and that figure seems greatly overstated.

Do I smoke or not? Someone asked that question. I do not smoke regularly. I smoke only when I am out with some friends. I am not a regular smoker. Would I like my children to smoke? No, I know what the serious risks of smoking are so I would not like my children to smoke. I will educate them and I hope that some of the proposals that we have suggested relating to education in different countries can be introduced to ensure that children who grow up in Ireland are fully aware and are not suspect to any peer pressure to smoke. Clearly, at the moment, the education systems we have in place are not working as effectively as they could, because we have got a youth initiation rate. I commend some of the initiatives that have taken place, like the Exhale Session from the Irish Cancer Society which is exactly the type of peer pressure or peer influence programme that can work in Ireland. We have seen similar models work in Sweden, where they have a duo programme which I call on the committee members to consider. They have a big buddy system where a senior person works with a junior person or teenager and makes a commitment not to smoke for three years. They get loyalty cards and incentives and go to events off the back of them. These are the types of initiatives that I call on the committee to consider.

Questions were asked about branding overall and Vogue specifically. The Minister for Health, Deputy Reilly, has raised the Vogue pink pack on several occasions as a matter of concern. That brand was researched among 20 to 35 year old female adult smokers who smoke a competitor brand - I do not intend to go into the branding. The brand is aimed at that group solely. There should be no access to any consumers under it. We have no research to indicate anyone other than adults females between the ages of 20 and 40 years are smoking that brand, to be clear. In the year and a half since its introduction the pink pack has not worked or generated any sales and has since been de-listed from the market.

Furthermore, under the tobacco products directive, TPD, that is coming forward 65% of the top of a pack will be a health warning. What we are effectively talking about is whether the

bottom strip of 35% of the pack can carry legal trademarks. That format is also-----

**Vice Chairman:** I am sorry. We have to move on. We are under considerable pressure.

**Deputy Mary Mitchell O'Connor:** I asked a "Yes" or "No" question.

**Vice Chairman:** Since we are stuck for time, will the witnesses please be brief and respond to the questions asked by the members? Could you answer those questions, please?

**Senator Colm Burke:** I asked a question on the Charter of Fundamental Rights. I referred to specific sections of the charter.

**Deputy Mary Mitchell O'Connor:** I asked a "Yes" or "No" question. Do the member of the deputation agree that their products will kill have of their intended users?

**Vice Chairman:** I am asking them to respond.

**Deputy Peter Fitzpatrick:** I have asked Mr. Donaldson four direct questions but I have not got any answers yet.

**Mr. Steven Donaldson:** To be clear, we provide our ingredients list. Tobacco causes serious and fatal diseases.

**Deputy Mary Mitchell O'Connor:** They kill one in every two. Does Mr. Donaldson agree?

**Mr. Steven Donaldson:** I trust the public health authorities on that figure. I do not have any figure different to that one and I would not challenge it.

There was a direct question on the number of retail stores. There are approximately 110,000 jobs in the country involved in the sale of tobacco. Typically, 25% to 30% of a store's sales are in tobacco and ancillary purchases. That figure includes jobs in the industry itself.

E-cigarettes are very much a new thing in Ireland. Our company is investing approximately €200 million in research and development per year to try to come up with other products that will be alternatives to tobacco and to try to reduce the overall harm of tobacco. Several products are coming at the moment. I have been over to our research and develop facility in Southampton. More than 1,000 scientists are working there. In terms of e-cigarettes, many eminent medical professors have said this could be an opportunity for the future. I fully support the Minister of Health's intention at the moment that it should not be aimed at those under 18 years. I completely agree and I have written to him recently to support that.

**Deputy Mary Mitchell O'Connor:** Will the tobacco companies sue the State?

**Vice Chairman:** Thank you, Deputy. I am trying to chair the meeting. We have to move on.

**Deputy Mary Mitchell O'Connor:** I want to know. Will they sue the State?

**Vice Chairman:** Deputy Mitchell O'Connor, please, let me move on.

**Senator Colm Burke:** I asked a specific question on the charter. It is quoted in the submission that-----

**Vice Chairman:** Perhaps Mr. Meagher from John Player will come to your question. Thank



you, Senator. Mr. Meagher, I remind you to be brief and only to respond to the questions that have been asked by members.

**Deputy Caoimhghín Ó Caoláin:** Since we are not going back to the previous speakers, will Mr. Ridderbeekx indicate whether he is a smoker? I would like an answer from each of the panel.

**Mr. Ronald Ridderbeekx:** I can quickly address a number of round-robin questions.

**Vice Chairman:** Could you simply answer that question please, Mr. Ridderbeekx?

**Mr. Ronald Ridderbeekx:** Yes, I am currently a smoker.

**Vice Chairman:** Would Mr. Meagher respond to the questions?

**Mr. Andrew Meagher:** I am not a smoker. I would not want my children to smoke. Smoking is for adults. I am very clear about that.

I want to be sure that I answer all the questions. In response to the question about profit, on a turnover of €420 million, €345 million goes to the Government in duty. We have a net profit of €19 million, of which we pay over €13 million to our pension fund. There are over 500 pensioners in the fund. We support that to the tune of over €1 million a month.

In response to some of the specific questions directed to me, Deputy Kelleher spoke about the need for the State to protect adults. I agree with that point too. I acknowledge he is not suggesting that we target children but the State must act. We fully agree the State must act but it must do so on the basis of real evidence but the evidence to date shows that its action has not been effective. That brings me to Deputy Ó Caoláin's point. He noted that in my submission I said the current tobacco control approach is not working and he disagreed with me. In the past ten years smoking in public places, the sale of packets of ten and display have been banned. There have also been significant increases. Since then, incidence rates have remained stable, according to Eurobarometer. The price and regulation have gone and the illicit sales have gone up.

All the measurements of whether it is working are going north except the one that is the essence of the action, incidence. As defined by Eurobarometer, the European Commission's way of measuring incidence, it stands at 29%. People talked about 22% but that is the office of tobacco control, OTC, measurement. The committee would expect us to quote independent sources. According to Eurobarometer 29% of adults were smoking in 2012, and 29% smoked in 2006. All those measures have not achieved any reduction in incidence. That is why we are very clear today that if we continue to think that banning is the way to go we will get the same result. We have to consider something other than ban after ban because they are not working. These are not our numbers. They are the European Commission's numbers. We have to consider education and a different way. Banning it does not stop it. One can ban lots of things but this will not go away. It is necessary to educate-----

**Vice Chairman:** Can I interject and ask Mr. Meagher is he refuting the point that his company does not target children?

**Mr. Andrew Meagher:** I said at the outset and say very clearly again: we do not target children. Senator van Turnhout asked-----

**Vice Chairman:** Does Mr. Meagher dispute the Department of Health figure, that there has

been a 10% reduction in smoking?

**Mr. Andrew Meagher:** I am quoting legitimate third party-----

**Vice Chairman:** I am asking a question.

**Mr. Andrew Meagher:** I do not know the details of the OTC-----

**Vice Chairman:** It was 33% in 1998 and it is now 22%.

**Mr. Andrew Meagher:** Just to be clear-----

**Vice Chairman:** All of those changes happened in that period.

**Mr. Andrew Meagher:** We can get into the detail of the methodology. It is a telephone survey. It is not as accurate as a face-to-face survey, which is what the European Commission did. I am quoting like for like. That is all I am saying. They are third party figures.

Senator van Turnhout asked-----

**Vice Chairman:** Can Mr. Meagher answer Senator Burke's question too about-----

**Senator Jillian van Turnhout:** Will Mr. Meagher answer mine?

**Mr. Andrew Meagher:** I would like to answer Senator van Turnhout because she asked could we give her access to marketing data. Yes. That access is available today. Under current legislation, the office of tobacco control can walk into my office and go through my files. That is available today and has been for several years. We have nothing to hide. Let me be very clear, this is available today. It could be happening right now, while we sit here - the OTC could be in our office. We have nothing to hide.

**Senator Jillian van Turnhout:** Thank you.

**Vice Chairman:** Will Mr. Meagher answer Senator Burke's question?

**Mr. Andrew Meagher:** That was the question about the intellectual property, IP, rights. I am not a lawyer. It is part of our submission. If it is not in the submission I will find the section under our Constitution but I am not a lawyer so I do not have that number.

**Senator Colm Burke:** There is a quote about the Charter of Fundamental Rights. What specific aspect of that charter is Mr. Meagher saying we will infringe if we go ahead with this legislation?

**Mr. Andrew Meagher:** I am not a lawyer and will not try to give the Senator a version of it. We will follow up later with the Senator. I would be happier to do that.

**Senator Colm Burke:** Thank you.

**Vice Chairman:** There was another question about suing the State or the potential to do so.

**Mr. Andrew Meagher:** Our property rights are enshrined in the Constitution. IP rights are property rights. The Government is looking to take those property rights away. There has to be an impact. There has to be some form or method of compensation. That is our view. It is clear that is not the view of some other people, and maybe not of some committee members. We do have property rights enshrined in the Constitution. If they are to be taken away there has to be

some recognition of the loss of property rights.

**Deputy Mary Mitchell O'Connor:** The industry will sue the State.

**Mr. Andrew Meagher:** We are here today to engage on the plain packages. We are looking to-----

**Vice Chairman:** We are trying to stick to the heads of the Bill.

**Senator Colm Burke:** Is there not an argument that the State also has an obligation to protect the health of citizens, which takes priority over property rights?

**Mr. Andrew Meagher:** It certainly does.

**Vice Chairman:** The Senator has made his point.

**Mr. Andrew Meagher:** We are talking about evidence-based and proportionate legislation. We fully support the Government's view that it must protect children and smokers. It should do so on the basis of evidence and with a proportionate response. We are not saying there should be no legislation but where is the evidence that plain packages will work? We do not believe it is there. We are not saying it will not come from Australia. It is not there yet. Committee members and the industry agree that it is not there yet so why the rush?

**Senator Colm Burke:** One cannot have property rights if the product one distributes causes deaths. No property rights attach in that situation.

**Vice Chairman:** Thank you, Senator.

**Mr. Andrew Meagher:** Maybe Dr. Gietz would like to answer.

**Vice Chairman:** Dr. Gietz, are you a medical doctor?

**Dr. Axel Gietz:** No I am an historian.

**Vice Chairman:** Thank you. You are an historian.

**Dr. Axel Gietz:** Yes, an historian. I do not think the intellectual property rights are up for grabs as a matter of principle because property rights are property rights. Companies like ours in the fast-moving consumer goods industry have three kinds of asset. These are, in no particular order, our people, our facilities and factories and our brands. We have invested a lot of money over a long time in each of these three. If one owns anything and somebody says, for whatever reason, it is a good idea to take it away from one, it is not an irrational or inappropriate reaction on our part to say we do not agree. Intellectual property rights are an important asset for us, as for any other industry in the fast-moving consumer goods sector.

As far as unintended consequences go, it has been pointed out that foreign investment in Ireland hinges on, among other things, the security of continuing to enjoy property rights, including the intellectual ones. I suggest this would send a very disturbing signal to many foreign direct investors into this country, including and foremost, those in the United States, which are the leading direct investors in this country. According to the American Chamber of Commerce in Ireland, 26% of Irish gross domestic product is based on American foreign direct investment.

Four American Congressmen sent a letter to this committee at the outset of these hearings indicating that property rights should be protected. In an article in *The Irish Times* it was said

that these Congressmen would be invited to discuss this. Today is the last day of these hearings. Ours is the penultimate session. To my knowledge these men are not sitting outside. Not all aspects of unintended consequences and signals being sent-----

**Vice Chairman:** On a point of information-----

**Dr. Axel Gietz:** -----intellectual property.

**Vice Chairman:** Excuse me, on a point of information. The committee decides who comes in, not *The Irish Times* or anybody else.

**Dr. Axel Gietz:** That is perfectly fine.

**Vice Chairman:** On another point of information, in respect of other American companies, one in two users of Facebook do not die so I do not think we are comparing like with like.

**Dr. Axel Gietz:** I do not think the Vice Chairman's analogy carries.

**Vice Chairman:** Dr. Gietz is the one making the point, with all due respect.

**Dr. Axel Gietz:** I will continue if I may. I am quite happy to answer the questions of the Deputies who have left the room. I do not smoke. I do not want my children to smoke. I do not want anybody's children to smoke, including Deputy Byrne's children. I want to make that quite clear. We can bandy about numbers for Germany. The safest source to use is the German Government. I have the documentation here. It indicates that over the past ten years the under-age smoking rate has gone down from 27.5% to 11.7%. They must have done something right in an environment where point of sale advertising and billboard advertising is still permitted, where there are only text health warnings on 30% or 40% on the side of the pack, where cinema advertising is still permitted. Something else must have worked to-----

**Senator Jillian van Turnhout:** Taxation measures.

**Dr. Axel Gietz:** Actually, taxes on tobacco products are lower in Germany than here-----

**Senator Jillian van Turnhout:** They have worked; I read the report.

**Dr. Axel Gietz:** They are lower-----

**Senator Jillian van Turnhout:** The levels have increased.

**Dr. Axel Gietz:** I think we should stick to the facts. The United States has been mentioned and the Centres for Disease Control is quite clear about the type of education. The young ladies from Tipperary who were here last week confirmed that it will work. It is not about spreading fear nor about informing that smoking is bad for one's health because everyone knows that. It is about addressing the triggers that get young people in a situation where they will accept their first cigarette. It is a case of making them resist these triggers such as peer pressure, family example, insecurity, low self-esteem, which are the elements of intelligent education that work, rather than fear-mongering when everyone knows that smoking is obviously not good for you.

Our involvement or alleged involvement in illicit trade is an international question I would like to knock on the head. When the Senator speaks of tobacco companies supplying the illicit market it is not the companies who are sitting here. It is the companies who are producing the product category that is called illicit whites. These are legitimate companies in the countries where they make these cigarettes, be it in Russia, in the Middle East, in other places. They are

produced solely for the purpose of export-smuggling into high tax excise countries such as the UK and Ireland. The fact that they are locally legitimate companies does not mean that the trade is legitimate. To make my point clear, the illicit whites do not come from the companies who are here.

I wish to make a final comment. I firmly believe equating nicotine with heroin and cocaine flies in the face of common sense.

**Mr. John Freda:** I will answer some of the questions about profits. In 2012, we had a turnover of €670 million and we handed the Government €570 million in excise. Our net profits after all of our activities was €14.9 million. We are a market leader with 50% share of the market. I am not quite sure where this figure of €150 million is derived from because it is certainly not what I saw from the sum of the numbers that were being discussed here.

I was asked whether I smoke and I do not smoke. I was asked if I have children. Yes, I have children. One of my sons is flirting with smoking. He is 18 years. On the question of whether he started smoking before that age, yes, he did. On the question whether I want him to smoke, no, I do not. We have a conversation around his smoking and like any other family dealing with that subject, he is an 18 year old adult and he needs to be treated as such. He will make his choices based on that. He understands the risks, as I do, but I am not imposing my will on him. It is a risk he is managing himself.

On the question about the Silk Cut pack, as Mr. Steven Donaldson highlighted with regard to the Vogue pack, we have that product available as a slims pack which is targeted at adult females who understand the risks and who choose to smoke.

In reply to the question about ingredients, similar to what Mr. Donaldson said, our ingredients are totally visible for anyone who wishes to see what is contained in our products. We are very transparent in that way. We share the concern about the illicit trade and that concern is fuelled by the evidence. We see the evidence of that trade growing in Australia as a result of plain packaging and it is a concern. We have to recognise that Ireland is a country with the highest levels of illicit trade. We cannot ignore that fact, put it to one side and say that it is not relevant in this conversation.

Senator van Turnhout highlighted price as one of the key measures. One of the key impacts and opportunities for illicit trade and the reason criminals are involved is to undermine all of the health initiatives by leveraging price. Their price is under €4 for a packet of cigarettes sold on the black market. They prey on the underprivileged parts of our society which are the most vulnerable. The committee's reports highlight that these are the people most at risk and among whom the prevalence of smoking is highest. I do not think the illicit trade can be dismissed, be put it to one side and say it is not relevant in this conversation. We genuinely believe that plain packaging will make the situation worse. It will not address the public health objectives. The committee will have heard all of us refer to other incidences in other countries which fundamentally address youth smoking rates and deal with the key issues at the core which are peer pressure and availability. We are not dealing with the issues that are a problem in Ireland. I refer to access, for example. Children here can get hold of cigarettes far too easily. We need to establish a culture where a child cannot get his or her hands on cigarettes. However, that is not what is being achieved with plain packaging which is to put a plaster on the situation. We accept that we are regulated.

A point was made about how we are replacing our smokers. We accept that we are operating

in a declining market. We operate in the legal side of this market. We accept that the market declines in line with the measures which are implemented - and rightly so - and we said so in our statement, such as the measures to educate smokers and to encourage smokers to stop smoking. We accept the market decline and we compete for what is left in the legal market which is the only thing that interests us. We were asked why are we opposed to plain packaging. We are opposed to plain packaging because it stops us from competing. We have nothing else left. We have no marketing tools and the pack is the only thing that allows the consumer to make an informed choice about what product they buy. That consumer is an adult smoker who understands the risks.

**Vice Chairman:** By Mr. Freda's own admission the slim packs, the menthol cigarettes, are targeted at women.

**Mr. John Freda:** At adult smokers, yes.

**Vice Chairman:** Women are half the population. What is the reason for targeting women? Women are often the main educators of young children in the home. Young children are inquisitive and will often root in handbags. Is there a particular reason why this product is targeted at women?

**Mr. John Freda:** I think the Vice Chairman does a discredit to women. Women have the right to choose and have an opportunity to select

**Vice Chairman:** I certainly believe that.

**Mr. John Freda:** We may develop the product and they may reject it. It actually is not a big seller in Ireland, at less than 1% share of this market. I understand the point but ultimately it is not a big seller in this market. There are female adult smokers who while understanding the risk choose to smoke a slim cigarette. They understand the risks and they are entitled to make that choice.

**Vice Chairman:** Is the only motivation for targeting women smokers to give them a choice?

**Mr. John Freda:** The motivation for us is to compete for the legitimate market, the legitimate Irish market and we want to compete fairly in that environment. We are only interested in adult female and male smokers who understand the risks. Both of those groups are entitled to choose.

**Vice Chairman:** In Mr. Freda's earlier testimony he spoke about the importance of education by families, communities and in schools.

**Mr. John Freda:** Absolutely.

**Vice Chairman:** Why, therefore, target the people who are the main educators of children? Mr. Freda referred to the greater influence of family habits compared to packaging. Why are women targeted?

**Mr. John Freda:** I think the Vice Chairman is implying that we indirectly target children through women. Is that what is being implied?

**Vice Chairman:** No. I did not say that.

**Mr. John Freda:** We are certainly not. A woman has a right to choose. It is a product that

she can reject. The reality is that the majority of Irish women who smoke, and who understand the risks thereof, do not smoke that product. They are not interested in it.

**Mr. Michiel Reerink:** The only question left for me to answer is whether or not I smoke. It is an easy question to answer - I quit smoking almost two years ago on the recommendation of some of my children.

**Deputy Caoimhghín Ó Caoláin:** We say well done to Mr. Reerink.

**Mr. Michiel Reerink:** Thank you very much, Deputy. To sum up our position today, I hope we have succeeded in explaining why we are concerned about a measure which will not impact on smoking rates and will not prevent children from starting smoking but will have unintended consequences in terms of fuelling the illicit trade in tobacco. The proposed measure will not affect smoking rates, but it will affect our ability to compete. Our objective is to maintain and grow our market shares, but this measure takes away our last branding opportunity. I remind members that the European directive will double the size of the health warning on the front of packets and increase the warning on the back by 50%. In other words, two thirds of both the front and back of packets will be given over to the warning, in large letters, that "Smoking kills". The remaining 35% of the pack is the only space available to us to indicate to consumers what brand they are choosing. That is what we are about here. We are not opposed to the measure because we are worried it will have an effect on smoking rates. On the contrary, we are sure it will not have an effect on rates and will not prevent children from starting to smoke. There are much better and proportionate ways of achieving that objective, as we have outlined today. We ask the committee to give serious consideration to those suggestions instead of introducing plain packaging in the belief that it will deter children from smoking.

**Mr. John Mallon:** As usual, smokers are being passed over in this debate, even though we are the ones affected by the proposal. The conversation is going on over my head, so to speak. Like Deputy Catherine Byrne, I am a father - in my case, to two children. I have taken the view with my children that I would treat them as I was treated growing up. I did not see the point in banning them from smoking or forbidding them to drink alcohol once they turned 18. At that point I gave them a free choice in the matter. I had alcohol and cigarettes at home and I allowed them to make up their own minds, but not before their mother and I talked to them about the dangers of both. Having no first-hand experience of the illicit drug trade, including the drugs like heroin, cocaine and so on to which reference was made during the meeting, I was unable to advise my children in that regard except to say that from everything I could see, they were mood-altering, mind-altering and immediately dangerous substances.

On the other hand, smoking takes quite a long time to have an effect. There will be people jumping around and saying even one cigarette is deadly, but the reality is that they take years to impact on health. Tobacco is not a mind-altering or mood-altering substance. Unlike alcohol, people who use tobacco will not miss days of work because they cannot get out bed.

**Senator Colm Burke:** That is not true.

**Mr. John Mallon:** Let me continue. I am merely giving members the benefit of my experience and of the hundreds of discussions I have had with smokers. Reference was made earlier to the need to engage with smokers. The problem, as I see it, is that all of the restrictions, bans, penalties and impositions that smokers have endured, including high pricing and so on, do not amount to an engagement with smokers. It is always about talking at rather than to smokers. There is a huge chasm between the official line, as reflected in this committee, and the views

of the many smokers I have met throughout the country. A member observed today that it is difficult to be a politician. Perhaps there is a general cynicism about the place but I certainly do not get the impression that smokers feel engaged with by Government. In my view, this lack of engagement is part of the reason that the numbers of smokers are not falling as quickly as members would like.

From a personal perspective, plain packaging makes no difference to me one way or the other. I smoke rolled tobacco, which I keep in a tin. However, this particular proposal is another aspect of the attempt to denormalise smokers, to make an ordinary citizen like me somehow abnormal for doing something which, for all my life, it has been quite normal to do. I had the right to decide to take up smoking and I have the right to quit. I have the freedom to make those decisions, as I do in regard to alcohol and all other lifestyle issues. There is far too much hysteria and drama around this topic. A bit of common sense is required and an emphasis on education for children. As it turned out, the education my wife and I gave our children was sufficient for both of them to decide against drinking and smoking. Moreover, I have seen no evidence, although I probably would not recognise it if I did, that either of them takes drugs. Applying some degree of common sense and intelligence to the discussion, rather than hysteria and name calling, would be far more beneficial. That is the view from the smokers' side.

**Vice Chairman:** I thank all the witnesses for giving their time to the committee. Their contributions will be very useful to us in our deliberations. I apologise for running significantly over time. We are obliged to suspend for 15 minutes for technical reasons, after which we will bring in the next set of witnesses.

*Sitting suspended at 1.16 p.m. and resumed at 1.33 p.m.*

**Vice Chairman:** I remind members and those in the Visitors Gallery to ensure that their mobile telephones are switched for the duration of this meeting as they interfere with the broadcasting equipment even when on silent mode. I apologise, particularly to the witnesses, for the late start.

We are considering the heads of the Bill dealing with tobacco plain packaging. As members are aware, the general scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013 was referred to the joint committee for consideration shortly before Christmas. We will now hear from witnesses from the Law Society of Ireland regarding their views on the proposed legislation in this regard. I welcome Mr. Ken Murphy, director general, and Mr. John P. Shaw, president of the Law Society of Ireland. They are very welcome to the meeting.

Before we commence I wish to remind them of the position regarding privilege. Witnesses are protected by absolute privilege in respect of the evidence they give to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not comment on, criticise or make charges against a person or an entity by name or in such a way as to make him, her or it identifiable. I remind members of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I invite Mr. Shaw to make his opening statement.



**Mr. John P. Shaw:** I hope I will not find myself in need of privilege but I can come back to that. The Law Society of Ireland is the representative, educational and statutory regulatory body for solicitors in Ireland. I have the honour this year to be the president of the society, representing some 10,000 members the length and breadth of the country. They are practising in some 2,200 legal firms and they also act for the public service bodies, industry and other sectors. Indeed, 16% of our members now work in-house.

I am here today with perhaps the better known face of the Law Society, the director general, Mr. Ken Murphy. The Law Society welcomes the opportunity to come before this Oireachtas committee to elaborate on its intellectual property law concerns regarding the proposed Bill. Let me begin by making it perfectly clear that this society does not represent anybody other than its members. The society is not here to represent either directly or indirectly the view of the tobacco industry. We have accepted the invitation to attend today to consider exclusively the intellectual property law aspects of the proposed Bill. We do not claim to have any expertise in health policy.

The witnesses who appeared before the committee over the past three sessions, have, as Deputy Ó Caoláin said on one such occasion, come at it “from a variety of experiences and responsibilities in life”, and so too does the Law Society. It should come as no surprise that many of the society’s members represent plaintiffs who are in legal action against both tobacco companies and the State in respect of smoking related injury. In addition, many members are working for, and alongside key State agencies that play a central role in the fight against illicit trade, including Revenue, Customs and Excise and the Garda Síochána. Some of our members represent those who have been accused of illicit trade. Naturally also some solicitors act as legal advisers to tobacco companies. Some members of the society work on a daily basis in intellectual property law as it applies to the entire gambit of industry sectors, in particular the food and drinks sector, engineering, information technology and pharmaceutical companies to name but a few.

For the avoidance of doubt, we are not here to defend the tobacco industry and are not, to use the expression, “in the pocket” of anyone. We fully accept that tobacco has had a disastrous impact on health. It is important to us then that the Law Society is not portrayed as representing anybody other than its members and the public interest which the profession serves. On this point, it should be noted, for the record, that the Law Society constantly participates in public consultations on a wide range of issues that affect the public and the profession. Our contribution and participation has been extensive, on issues from human rights to conveyancing, probate to criminal justice, and all forms of litigation. In addition to constant interactions with Government Departments and agencies, in the past two years alone, the Law Society has made a total of 20 formal submissions on issues ranging from complex insolvency law reforms, various criminal justice Bills and litigation reforms. The director general and I were in Leinster House yesterday for the conclusion of the Committee Stage of the Legal Services Regulation Bill in which of course we would be a stakeholder. Submissions made by the Law Society, represent the commitment of its 10,000 members to contribute to public discourse, bringing with them the benefit of their legal understanding and professional experiences.

We are concerned with the legal implications of the concept of plain packaging as such, and how it might affect the standing of intellectual property rights here in Ireland and abroad. That is to say, we have no issue with the policy objectives underpinning the Bill but we do have concerns regarding its impact on the intellectual property regime in this country. To put this in context, I would like to preface our substantive submission with the following brief comments.

These are statistics we have put together to show our concern. The Office for Harmonisation in the Internal Market in September 2013, stated that along with Germany and Hungary, “Ireland has the highest share – 40.8% - of trade mark-intensive value added in their GDP”. The above report also states that of all the European states, “the highest share of jobs in IPR-intensive industries generated by companies from outside the EU is to be found in Ireland, at almost 18%”. EUROSTAT, the statistical office of the European Union, confirms that there are currently 138,000 people working in knowledge intensive industries and high-end manufacturing in Ireland, such as pharmaceuticals and technology companies where IP assets are their key asset. This is an increase of 5.3% since 2008.

We note that no regulatory impact assessment has yet been prepared on the proposed Bill. We look forward to it to the extent that it will consider what impact the proposals will have on rights under intellectual property law in Ireland. Clearly it is the proper and important task of the committee and the Oireachtas to strike that careful balance between protecting and maintaining intellectual property law with public health and other relevant public policy considerations. Our submissions aim to assist the committee by outlining key legal concerns and potential ramifications of plain packaging proposals.

In February 2013, the society stated and here today again states that:

A fully functioning intellectual property system, which operates consistently and transparently across all sectors and provides certainty for intellectual property owners, investors, international partners and traders and members of the public, is vital to the future of both the EU and Irish economies. Reforms which have the effect of undermining that system should be considered very carefully.

We then go on consider the constitutional issues and our submission sets out a key consideration.

The Irish Constitution requires the State to protect property rights and the Irish Supreme Court has previously struck down legislative provisions as unconstitutional where they involved restrictions on the exercise of property rights or a deprivation of rights all together without compensation for such interference.

In relation to restrictions on property rights, we do not underestimate the crucial role of the legislature in striking that balance, that principle of proportionality. Our submission emphasises the challenge for the Oireachtas. The test of proportionality, as developed by the High Court and the Supreme Court, requires, first, that the restriction on use of the trademark must have an objective of sufficient importance to warrant interference with the property right in the mark; second, that the impairment of this right should be minimal as possible; and, finally, the effects on the constitutionally protected right should be proportionate to the objectives sought to be attained.

Were this matter to come to court, it is likely that the court would be asked to consider evidence available regarding the effectiveness of plain packaging on smoking habits as against the range of other actions that can be considered to minimise or eradicate smoking. Some of these have been highlighted by other witnesses, such as taxation, educational and cessation initiatives, sanctions and penalties, etc.

Ireland is a signatory to the World Trade Organization, WTO, and specifically the TRIPS, Trade-Related Aspects of Intellectual Property Rights, agreement. Under that agreement, we have committed to respect a number of key provisions that impact on the nature of trademark

rights. We have outlined four of them but for the sake of brevity I do not intend to read through them, save to say that there is a provision that the Government can use the health consideration in order to impact on property rights but it must have regard to the ownership of those property rights. We then go on to consider the potential exposure for the State. The Law Society is concerned that the extent of interference envisaged by the proposed Bill may give rise to potential actions against the State, and Europe under the provisions of the TRIPS agreement.

The Charter of Fundamental Rights of the European Union is binding on member states under the Lisbon Treaty and Article 17 of the charter guarantees rights to property, expressly including intellectual property rights. The European Court of Human Rights has held that property for this purpose includes intellectual property and has distinguished between a straightforward deprivation of property and restricting the use of the property in the general interest. Consequently, the State runs a risk - and it is that, a risk - of going beyond regulation and restricting rights which affect the substance of a trademark, in contravention of our international obligations.

The Law Society submits that restrictions of property rights should be carefully considered, in addition to all other approaches which are less severe but might be likely to have similar consequences. The court will ask the question, applying an objective test, whether the decision maker - that is, the Oireachtas - could reasonably have concluded that the interference was necessary to achieve the legitimate aims recognised by the convention. The society's intention today is to underline the need for careful and robust examination of the options available.

The Law Society submits a further concern in respect of our European obligations, namely, that the introduction of plain packaging may give rise to a challenge that it acts as a barrier to the treaty-based freedom of movement of goods. Put simply, products sold in another members state, would not have the same access to Irish markets as a result of the Bill's provisions. Ireland is entitled to rely on a derogation on the grounds of public health, but should anticipate a challenge on that ground.

In terms of the loss of trademark rights, the fundamental purpose of a registered trademark is to distinguish goods or services of one undertaking from another. If a trademark ceases to be used, it cannot continue to operate as a distinguisher of origin, quality, etc. Consequently, and as currently framed, the "use it or lose it" rule could result in a reduction in intellectual property value for companies, which may give rise to compensation claims payable by the State. The Law Society is concerned that unintended consequences could result not only in claims against the State, but could also adversely impact on businesses and employment. The role of the intellectual property, IP, in foreign direct investment should not be underestimated, and perhaps should be included in the regulatory impact assessment of the Bill.

Tobacco smoking, with its destructive effects on young people - on all people - and the burden it presents for the health sector, is an emotive issue. The basis of our appearance here today is to draw attention to the potential impact of the Bill to the regard in which Ireland is held internationally in respect of intellectual property and to set out generally some key legal concerns for the committee to consider. The general scheme of the Bill gives rise to unavoidable legal concerns of both an Irish and EU character. We respect the task that the committee has before it. We are available to assist with any questions in any way we can.

**Deputy Sandra McLellan:** I thank the witnesses for their presentations. I read the submissions which will be very useful going forward. I convey the apologies of Deputy Ó Caoláin as he had business elsewhere in the House.

**Senator Jillian van Turnhout:** I hope I can benefit from the time allowed. Mr. Shaw and Mr. Murphy are very welcome. I will start first with the submission. It was clearly outlined that it had come from a committee within the Law Society. I looked up the membership of the committee and the links. I then contacted the committee to confirm the declaration of interests we received because among the submissions we requested, point 5 clearly outlined what we expected from a declaration of interests. We had to request the declaration of interests, which we received for the intellectual property law committee and that is all I can talk about now. I am surprised because as a Member of the Seanad I must declare any interests I have. When I speak in the Seanad, I declare I am chair of Early Childhood Ireland. I get zero payment for that but I still declare it. The most polite description of the declaration of interests we received is that it is opaque. It does not show the clear links that exist. If someone can clearly outline when they have a conflict, I expect that legal people will argue for different sides. I do not expect that members of the Law Society have no links but I am surprised at how loosely worded the declaration is. Yet, if anyone takes any time to look at the membership of the committee we can see clear links, not just from the companies, that the individual solicitors are clearly working. It is accepted that solicitors can take business but I take issue with the fact that they cannot declare it.

In the declaration it says that one member of the committee was previously employed by P.J. Carroll and Company but he was not a member of the committee while so employed. My question is whether the Law Society has a concern about his previous role in connection with the submission that was made on behalf of the Law Society and how he became a member. What expertise did he bring forward to qualify him to be a member of the committee? What I have seen throughout the hearings we have held is that the tentacles of the tobacco industry are everywhere. We are seeing the same sentences again and again when we receive certain submissions. I want to be assured of the true impartiality that is being put forward. The reason I asked the question about the declaration of interests is because of the reference in the submission to smuggling and counterfeit products. I would have thought that was outside the remit of expertise of the committee on intellectual property law. That is what sparked my question on declarations of interest.

The High Court in Australia held that there was no acquisition of intellectual property rights, as the state did not receive any benefit. If we look at cases in the Irish example, the reality is that they have all been to do with land. The cases all related to land and involved compulsory purchase orders. The State has already limited intellectual property rights on advertising and putting health warnings on cigarette packets. It is a justified and proportionate restriction on the use of trademarks. The State is not proposing to extinguish any rights. Is that the understanding of the Law Society? Will the State extinguish the right or is it about the State restricting and limiting? The State has a responsibility for the common good and also to ensure the public health. The State will receive no financial benefit from doing that. I wonder what the merits of a case would be.

**Senator Colm Burke:** First, I had better declare my interest in that I am a member of the Law Society. I wish to raise the issue of property rights in terms of where the State is taking action that involves public health. Submissions the committee received over the past number of weeks clearly indicate that 5,000 people are dying per annum as a direct result of smoking. I stated this morning that since the Surgeon General in the United States published his report in 1964, some 250,000 have died in this country as a direct result of smoking. Does the State have an obligation to take every possible action to protect the health of its citizens that takes precedence over property rights?

I raised this second issue already this morning. The legislation dealing with the ESB that was introduced involved rights to go over land and even though I might be a landowner, I cannot restrict the ESB from going over my land because it was established that there was a need to get electricity supply to every household in the country. In that case, the landowner's property rights are being infringed upon. In this case, not only in this decision by the Department of Health but in a number of its decisions to reduce the numbers smoking, we are constitutionally obliged to do everything possible to protect people's health. I do not understand how property rights could take precedence over the rights of people to live and the right to ensure that we can do everything possible to remove the risks. Will the Law Society representatives deal with that issue?

The other matter I am a little concerned about is that there is no submission from the Law Society setting out the obligations of the State to reduce the health risks attached to smoking. The Law Society has told the committee about intellectual property rights, but what about people's right to live and to ensure that their lives are not at risk in any way? If a drug was being sold in a pharmacy in the morning and it was identified that this would cause death, the State would be obliged to take immediate action to have that drug withdrawn. The Law Society has not dealt with that in its submission. I am talking about bringing balance to the submission. Why not make a submission to us on the obligations of the State to do something in that area?

**Deputy Mary Mitchell O'Connor:** I thank the Law Society delegation for their presentation. I ask their professional opinion on whether the tobacco companies have a credible argument based on the extinguishing of IP rights. I heard them speak of a risk and I want to know if there would be reasonable grounds for suing the State over this issue. If so, how much would be involved and are there comparable cases of which they are aware?

I listened to my colleagues and I have read the presentations. It seems that the constitutional cases that have been taken have been to do with land but Articles 40.3.2° and 43 of the Constitution recognise that in a civil society property rights have to be regulated by principles of social justice and in accordance with the common good. The common good will be to protect the health of the Irish people. I am not quite sure how that can apply and I ask for their professional opinion.

I also want their professional opinion on how Ireland's name and trademark is recognised in America. A number of American committees and business organisations have written to the Chairman to set out their concerns. Are their views credible that there is a risk of litigation attached to the proposed legislation? Is that risk of litigation real?

**Deputy Regina Doherty:** I thank the delegation for attending. I do not have a legal background and I apologise if the question appears stupid. I gather from their proposal that everybody has a constitutional right to their property and if the matter ever gets to court, the State would have to prove that the objective hoped to be achieved will be achieved and also that it is more achievable in this way rather than using the string of other measures that are already available to us, and that in doing so it would have to be sufficiently important to warrant the interference with somebody's intellectual property rights. The objective of this is to save people's lives and to stop children from starting smoking, which seems to be the main objective of the tobacco industry. That is sufficiently important to warrant the interference. The measure of the Supreme Court case judgment would be the evidence. If plain packages are introduced on 1 January next, one cannot take a case on 3 January next because the evidence will not have been allowed to develop and flourish. How long would it be before the Supreme Court would state that it needed to give this six months, a year or five years so as to test and prove the case? No

doubt a case is coming. What would be the timescale for the Supreme Court to state it needed a certain amount of time to see whether the intended actions materialise?

**Vice Chairman:** Does Deputy Kelleher want to come in here?

**Deputy Billy Kelleher:** I do not want to be repetitive. I read the Law Society's submission with interest and the submissions of the various other stakeholders in this pre-legislative consultation.

I assume the representatives are here because they are advocates not of the tobacco industry, but of the protection of intellectual property rights. I assume that is their focus. However, in their submission they strayed into areas such as smuggling. I am not aware of their expertise on smuggling, but I assume it is not to the fore of their expertise and we will stick with the law as it is. While they are entitled to have a view on smuggling, I would suggest that there are some inaccuracies in it. The committee will be aware, for example, that the tobacco companies are part and parcel of smuggling in the sense that most tobacco smuggled into this country is made legitimately by these tobacco companies in other jurisdictions where they flood the market with cheap cigarettes, making it financially viable for smugglers to bring them into this country. That is what is happening. It is not that there are factories all over the world making illegal cigarettes. They are being made legally by these companies, dumped into Third World markets where they flood the market and are then smuggled into here. That is the illicit trade and that is the way it works. It is not that cigarettes are being made in bamboo huts in far-flung parts of the world. They are being made in sophisticated factories throughout the First World. They should be conscious of that when making their views known.

On IP itself, from the Law Society's perspective, the only court from which we can take precedents on this issue is the Australian High Court. The Australian Government's legislative programme was challenged by the tobacco companies and it eventually ended up in the High Court in Australia which, I suppose, would be equivalent to our Supreme Court. The court found in favour of the Australian Government. I am trying to tease this out. Could Mr. Shaw explain what the court found in favour of? Did it find that the Australian Government had a right possibly to usurp or even undermine the intellectual property rights of individual companies for the greater good? Was it, in the context of the greater good being the real issue here, that the state was entitled in certain circumstances to protect its citizens by usurping or overriding the intellectual property rights? I am trying to get a flavour of Mr. Murphy's and Mr. Shaw's interpretation of that issue, bearing in mind they could act for companies that may take this State to court as well. I would like to know what would be their defence or argument.

**Vice Chairman:** Following on from Deputy Kelleher's question, if the tobacco industry was to take a case against the State, am I correct in thinking that some of the Law Society's members would represent the tobacco industry?

By his own admission in his testimony before us, Mr. Shaw stated that the Law Society has no expertise in health policy. I would like to know more about why the society has decided to make a submission on this issue considering that when this committee dealt with other constitutional matters, including the Protection of Life During Pregnancy Bill, it decided not to make a contribution. I would be interested in hearing the society's motivation for appearing now and not then.

**Mr. John P. Shaw:** I will start with the questions on the integrity of the society and its committee. I assure the members that I am absolutely satisfied there is no interference nor is there

any connection whatsoever with anybody in the tobacco industry regarding the manner in which this is being prepared. Our committee is appointed annually by the incoming president after consultation with the outgoing chairman. Approximately three pages of questions are raised. It is asked whether new people are required and what is needed. It is organised on the basis of the speciality of the committee. I was involved in the appointment process in September of last year and I had no regard whatsoever to the tobacco industry or the make-up of the committee as it related to that industry. What I wanted to know was whether the people on the committee had expertise in intellectual property law and that they would do work that was valuable to the society. Those are the criteria used.

I do not want to get too legalistic about the declaration but I read through it in detail. The declaration we made was intended to be of help by way of pointing out that there were people whom members might think are connected to the tobacco industry to some degree, be it remotely or otherwise. If it is considered loose, I accept the committee's description. However, the intention is as I have described. I reviewed it because I wanted to see exactly what it stated. If I were considering it again, I might just say the Law Society, as it stands, did not have to make any declaration. That is being overly legalistic in regard to the matter and I would not even go there. It is not worth doing so as we would be wasting time. I genuinely believe we made an honest attempt to disclose fully any interest of any person connected with the making of the submission to the committee.

With regard to the counterfeiting issue, I take Deputy Kelleher's point on smuggling. Counterfeiting and smuggling are, perhaps, two different issues in terms of the way we examine intellectual property law. Intellectual property lawyers have an interest in protecting their clients' interest in combating counterfeiting. I accept that when the submission was made, we were not aware of the evidence that this committee has since learned. The committee heard evidence this morning from the tobacco industry on the matter. We were not aware of that. The committee has heard evidence from the Garda Síochána and Customs and Excise that they do not anticipate any significant difference. We accept that evidence and we have no reason to go against it. However, the reason people would have examined the counterfeiting issue in respect of intellectual property law was because it came under that umbrella, but it was not by any means their main point.

Let me move on to property rights and Senator Burke's point, particularly in respect of the ESB. Neither Mr. Murphy nor I have expertise in intellectual property and we would not advise people who are looking for advice thereon. We have general legal qualifications. I, in particular, have dealt with cases involving claims against the ESB for the loss of property rights consequent to its having put pylons over property. The pertinent distinction concerned whether the property's use was affected. It was deemed that if there was an existing use, such as farm use, it was not adversely affected, but that if there was planning permission and development potential, it was compensated. It was the deprivation of use that attracted compensation, not the taking away of the property. I am jumping a little in that regard because I believe asking us to deal with the question on the Australian case is a little unfair because we do not know enough about it. We are not experts in Australian law. We are advised that the Australian provision in regard to the constitution concerns the acquisition by the state of the property. There would be no such requirement here before one would be entitled to receive compensation of some degree.

The nuanced position we would make on the case that might be bought is not so much that it would be a question of rights being taken away. As I understand it, the heading of the Bill provides that the non-use would be considered to be a proper purpose. The non-use of

the trademark would be considered to be a proper purpose to keep the trademark alive and on the register. However, the way it would work out with the courts here is that a case would be brought contending legislation was introduced that did not provide properly for the payment of compensation for the deprivation of the right, with the risk that the court might say it is unconstitutional. If I were asked to have an angle on it – I am not an intellectual property lawyer – that would be the one I would tackle in this jurisdiction. However, there are other courts the industry can go to.

On the question as to whether it is likely that proceedings will be brought, the Minister for Health himself said he would be absolutely astounded if the tobacco companies did not bring a case challenging this legislation in this jurisdiction. I would certainly support that view. They will not let this happen without doing anything about it. It would be relatively cheap for them to take on a case here as opposed to the United States or areas with other larger population bases where profits may be significantly higher. The damages and costs here could be significantly lower. These are just factors that are running through my head as I think about this. I am not in a position to advise. I am not sure what other questions arose.

**Mr. Ken Murphy:** All rights in the Constitution are subject to the common good. Some testing of proportionality is fundamental. A test of proportionality is imported into Irish law from other jurisdictions, particularly European ones and Canada, and the European Court of Human Rights.

There is a very good statement in a decision of a former president of the High Court, Mr. Justice Costello, in *Heaney v. Ireland*, 1994. It looks to the European Court of Human Rights and Canadian jurisprudence. Mr. Justice Costello said in the course of this judgment that the means chosen must pass the proportionality test, in respect of which he identified three elements. The means must be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations; impair the right as little as possible; and be such that their effects on rights are proportional to the objective. The key issue is that while a forum like this looks to evidence, it is naturally a political forum where opinion has currency also. Opinion would not have currency in court. A court would make a decision based on evidence. Mere assertion would not be sufficient and evidence would have to be required. It is a question of determining the exact evidence. If the Australian experience were being cited in justification for or support of the legislation, the evidence from Australia would have to be capable of being given in such a manner that it could be tested, cross-examined and accepted one way or the other.

Deputy Doherty asked how long it would take for that to occur. I cannot say. It would ultimately be a matter for advice. Neither the current Law Society members nor I are predicting the outcome of any legal challenge. We are not seeking to do so. Clearly, it would be a matter of the evidence and legal arguments made at the time. As the Minister for Health has indicated, he believes there is little doubt there will be a legal challenge. Such a measure, being introduced for the first time in the northern hemisphere, namely, in the European Union, and the consequences if it were to be taken as a precedent elsewhere, would mean the stakes would be very high. We could anticipate a legal challenge. The concern of the Law Society has had is that intellectual property rights and their significance in this debate should not be lost or passed over on the basis of the understandable and overwhelming concern of members of a health committee for health issues. It is natural that this should be the case but it should not submerge the proper consideration of the intellectual property rights issues that would form part of an assessment by a court. As the president said in his opening statement, we in the Law Society were quite concerned that, somehow or other, we were being lumped together with, seen as



apologists or Trojan horses for, or regarded as representative of the tobacco industry or tobacco interests. That is not the case. We are simply here because we believe intellectual property law is important, including for Ireland Inc. The Law Society's submission would be pretty similar if the proposal were on foodstuffs, alcohol or some other measure. It is not specific to tobacco. I may not have answered all of the questions that were asked. I will be happy to come in again.

**Senator Colm Burke:** I want to come back to the question of clear evidence. If there is clear evidence that a product is causing death, how can the manufacturers of that product acquire a right? That question needs to be dealt with from a legal point of view. I do not understand how such a company can acquire a right. All the evidence confirms that this product is causing death.

**Senator Jillian van Turnhout:** I thank the witnesses for clarifying that the members of the committee are appointed on an annual basis. I asked a specific question about a member of the committee who has worked for P.J. Carroll and Company Limited. Can the witnesses tell me how he became a member of the committee? Does his previous role concern them? They suggested in their submission that Ireland is proposing to extinguish intellectual property rights. I have put it to them that I feel we are proposing to limit or restrict such rights in the same way we did when we prohibited billboard advertising and introduced health warnings. I do not believe we are trying to extinguish those rights. I agree with the witnesses that we should look at intellectual property rights. As a committee, we have a role in examining every aspect and angle of this issue. It is great to have the witnesses here. However, I do not agree with the contention that this measure would extinguish intellectual property rights. What aspects of this measure constitute the extinguishing of these rights, when previous initiatives have merely limited or restricted them?

**Deputy Mary Mitchell O'Connor:** I hear what the Law Society is saying about the need to protect intellectual property rights. Can the witnesses help this committee by telling us where they would defend from if they were on the other side? Would they defend from the Constitution or from what has happened in Australia? I would like to hear that advice.

**Deputy Billy Kelleher:** This goes to show that when politicians, barristers, lawyers and solicitors are in the same room, there are several outcomes. I emphasise at the outset that intellectual property and trademark rights are critical to this economy. Of course it is of huge significance for such rights to be defended and vindicated. International software companies have made huge investments in this country. This area is of importance both in terms of inward investment and export. The protection of intellectual property rights is a given.

Would the witnesses not agree that there is an obligation on the State to vindicate the rights of its citizens by protecting their lives? We have constitutional law and we have commercial law. I suppose that is where we have the conflict. Our obligation is to try to ensure we protect the health of our citizens. As responsible politicians, we certainly do not want to usurp or undermine trademarks and intellectual property rights, which are critical components of the commercial life of this country. We must act in a manner that protects the lives of our citizens. The first obligation of every state is to protect the lives of its citizens. Clearly, we have a dichotomy or a debate in that regard. I am quite definite that if we invited the witnesses into another room, or invited them in under another guise, they would have a different view. Let us be honest - that is why they are professionally involved in this business. I am not dismissing that. I am pointing out the reality. I would like the witnesses to provide a little context by referring to this committee's obligation to try to vindicate the health and life of citizens. That is primarily what this legislation is about - no more and no less. It is certainly not about trying to attack or undermine

intellectual property rights.

**Vice Chairman:** Two of the questions I asked were not answered. I will refresh the witnesses' memories. Why has the Law Society tried to come in on this constitutional right rather than the constitutional right we discussed last year in the context of the Protection of Life During Pregnancy Bill? If these companies bring an action against the State, will members of the Law Society represent them?

I would like to set out some of the context to this debate from the perspective of the Joint Committee on Health and Children. Dr. Gietz of John Player & Sons Limited had a great deal to say earlier about intellectual property. He referred to what a ruling like this could do to our reputation abroad in the context of the significant role foreign direct investment plays in Ireland. We are not talking during this session about a benign industry. We are talking about where one in two users die. I may have been somewhat flippant when I said that one in two users of Facebook do not die, but I think it illustrates the point I am making. I am trying to put this debate in context by emphasising that the primary objective of this committee is to protect the health of the Irish public. Perhaps the witnesses can respond to those points.

**Mr. Ken Murphy:** I will make a point for illustration purposes. I would not like it to be misinterpreted as something I am proposing. The most severe measure the Oireachtas could take with regard to tobacco would be to ban it completely. The reality is that this is a legal product, even if it does have terrible health consequences. Balances are struck by the Oireachtas in terms of what is possible. Of course it has to be subject to what is legally possible. Ireland has very strong property rights in the Constitution. They have not been tested in the context of a measure like that proposed in this instance. I am not seeking to predict the outcome of it when I say it is certainly a concern. I was taken by Deputy Kelleher's strong support for the maintenance of intellectual property rights. I assure the committee that I am being jocose when I say that purely from the self-interest of the legal profession, we would be encouraging the Oireachtas to enact this legislation. The amount of litigation work that would be made in courts everywhere would be enormous.

I would like to return to the Chairman's question about the invitation that was made to the society with regard to the Protection of Life During Pregnancy Bill. As we said in our original submission, the Law Society has made approximately 20 submissions on legislation over recent years. We do this all the time across a huge range of areas. In addition, we get individual requests from Government Departments and we make submissions to them. We get letters from Ministers looking for our views. Generally speaking, our views are welcome and largely uncontroversial. It is pretty unique for views expressed by a Law Society committee to be as controversial as these views have been. They were not intended to be controversial. Last year's Protection of Life During Pregnancy Bill related to an area that is notoriously controversial and very divisive. The society took the view that it could not take a public position on the matter in the absence of an internal debate within the profession, which would probably have been extremely divisive. We had no mandate to take a position one way or another on the underlying issues in that legislation, which are deeply polarising. That was unique, in my experience, because it was the first time the society declined to make a submission when invited to do so. As far as I can recall, it was the only time this happened. It is a unique issue, in many respects. One might not agree with the view we took on the matter at the time.

**Deputy Mary Mitchell O'Connor:** I asked about how would a case might be defended.

**Mr. Ken Murphy:** We could not say that without knowing what evidence would be ad-

duced. I think the actual evidence from Australia, as opposed to the opinion from Australia, would be critical.

**Mr. John P. Shaw:** It would be a question of timing and of when the case would be brought. Someone asked how long the Supreme Court would take and how long it would take for evidence to be adduced from Australia. That would beg the question from the Supreme Court about how a decision was made in the absence of evidence. That is the flaw in the argument from that point of view. I am not making that argument. If the Supreme Court looks at this, it will not ask how much time one wants to find the evidence, but will ask how one arrived at this decision and with what evidence.

**Mr. Ken Murphy:** Ultimately, the motivation of the Oireachtas would not be in question. It would be assumed the Oireachtas was motivated by the common good. The real question would relate to whether there is evidence to suggest this measure will actually have the effect claimed for it. That would be balanced against the entitlement to property rights. Those who would bring a case would attempt to show this entitlement had been seriously affected.

**Deputy Billy Kelleher:** Does Mr. Murphy think it should be referred directly to the Supreme Court?

**Mr. Ken Murphy:** The question of whether an Article 26 reference is wise always arises. In the case of an Article 26 reference, one tends to get an abstract and slightly academic result. As legal practitioners, we tend to use the word “academic” pejoratively. It is not intended to offend anyone here. One gets a debate like that found in a student debating chamber, as distinct from something that is based on real evidence. The other issue relating to an Article 26 reference is that a measure which is challenged and upheld by the Supreme Court is immune to subsequent challenge. A judgment call always has to be made when deciding whether to make an Article 26 reference.

**Deputy Billy Kelleher:** If Mr. Murphy was advising this committee, what would he do?

**Mr. Ken Murphy:** The first thing I would do is review its evidence.

**Senator Colm Burke:** How can someone acquire a right if that product causes death?

**Mr. John P. Shaw:** Senator Burke compared it to a drug that causes death and argues that it should be taken off the market. If one took it clear off the market, we would probably not be here on an intellectual property law basis. If one said that people are not allowed to smoke and to introduce cigarettes, we would probably be here talking about it with a human rights committee but we would not be talking about intellectual property law. It is the incremental change that requires balancing between the two rights. I have no issue with the contention that the health of the nation takes priority over intellectual property rights but I think the law says that one cannot just railroad over them but must have some balancing exercise between them.

**Senator Colm Burke:** My argument concerns whether one can acquire a right when the product one is selling causes death.

**Mr. Ken Murphy:** They have the right to market and sell this product. They are allowed to do so by the Oireachtas and governments and states everywhere. It is a legal product.

**Vice Chairman:** It is done in a very curtailed way because billboards and advertising in shops are banned. It is very restricted. Deputy Catherine Byrne indicated that she would like

to speak. I will then go to Senator van Turnhout.

**Deputy Catherine Byrne:** I said this morning that every time I come here, I listen and learn. Sitting on this committee is an education. Reading about copyright, one can see that it is all about the design, package, graphics and colour. We are not talking about a designer hand-bag, pair of runners or tracksuit. I will read a piece from a survey carried out by the Irish Cancer Society because it sums up why we should bring in plain packaging. We are all singing off the same hymn sheet. It is not just the cigarette. It is the packaging. It is the whirls on the package and the colour. They look fabulous and one wants to have them sitting on the table to say that one owns them. That sums it all up for me. This is not about whether people should have the right to market certain things that lead to people's deaths. That is what it is about for me.

**Senator Jillian van Turnhout:** I asked about the membership of the committee. I could go through several members of the committee where I have questions and where I feel there should have been a clearer declaration but I am really concerned about one specific member. Do the speakers have a similar concern? How did he become a member of the committee?

In its submission, the society said that Ireland is proposing to extinguish intellectual property rights. I said to the speakers that we have banned billboard advertising and increased our health warnings so what Ireland is proposing to do is to restrict or limit these rights. I do not agree with the use of the word "extinguish". How did the speakers come to that conclusion?

**Mr. John P. Shaw:** I thought I had answered the question about the appointment of the individual member of the committee. I was the president under whose watch he was appointed. I explained the process we went through. I was not aware of his connection with the tobacco industry and I have to say that had I been aware back in September, it would not have stopped me from appointing him to that committee. There is no question regarding his integrity or anything relating to that issue. I would not want that to be an issue here. That committee has 17 members. There are 27 committees in the Law Society so the degree of oversight is a question of whether they have the expertise, are they known to other members and are they considered to be of good standing.

In respect of the second question, I take the Senator's point regarding the use of the word "extinguish" and the point in respect of what is left relating to the trademark. As I understand it, all that is left of the trademark is this bit that will now be removed from the packaging. If one takes it that this is the case, effectively, the trademark for useful purposes is extinguished. I do not want to get caught up in the word but if one takes away 65% of the package, and they have been stopped from advertising elsewhere under other regulations, and this is all that remains to them, the trademark is effectively redundant. I know it is not legally redundant. I do not know why they have not challenged it previously. It was incremental and perhaps they thought they could live with what was there. The Minister is saying he would be astonished if they did not challenge this one but it does seem that the trademark is effectively gone. There is nothing there to distinguish one from the other.

**Senator Jillian van Turnhout:** I believe it is limiting.

**Mr. John P. Shaw:** I would not disagree with the Senator's view. It is only a question of degree.

**Vice Chairman:** If the tobacco companies bring a challenge against the State, will members of the Law Society represent the tobacco industry?

JOINT COMMITTEE ON HEALTH AND CHILDREN

**Mr. John P. Shaw:** Members of the Law Society represent everybody in every single case, including people accused of murder and rape.

**Deputy Mary Mitchell O'Connor:** Even though the World Health Organization believes in plain packaging?

**Mr. Ken Murphy:** As a matter of law, the decision will be made by the courts, not by the World Health Organization.

**Vice Chairman:** I thank our witnesses for their very informative presentations and for giving up their time to come in here today. It will be very useful as we conclude our deliberations over the coming weeks.

The joint committee adjourned at 2.25 p.m. until 2.30 p.m. on Tuesday, 18 February 2014.



## SECTION 5: TERMS OF REFERENCE

### **a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]**

- (1) The Select Committee shall consider and report to the Dáil on—
  - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
  - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
  - (a) Bills,
  - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
  - (c) Estimates for Public Services, and
  - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
  - (e) Annual Output Statements, and
  - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
  - (a) matters of policy for which the Minister is officially responsible,
  - (b) public affairs administered by the Department,
  - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
  - (d) Government policy in respect of bodies under the aegis of the Department,

- (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
  - (f) the general scheme or draft heads of any Bill published by the Minister,
  - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
  - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
  - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
  - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
  - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
  - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
  - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
  - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.



- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
  - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
  - (c) at the invitation of the Committee, other Members of the European Parliament.