EXECUTIVE NOTE

THE SMOKING HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005 (VARIATION OF AGE LIMIT FOR SALE OF TOBACCO ETC. AND CONSEQUENTIAL MODIFICATIONS) ORDER 2007

The above instrument is being made in exercise of the powers conferred by sections 9 and 39 of the Smoking Health and Social Care (Scotland) Act 2005 ("the 2005 Act"). The instrument is subject to affirmative resolution procedure.

Policy Objectives

The purpose of the instrument is to raise the age for purchasing tobacco products from 16 to 18 years. It will now be an offence under section 18(1) of the Children and Young Persons (Scotland) Act 1937 (the "1937 Act") to sell a person under the age of eighteen years any tobacco product or cigarette papers. It also amends section 18(2) of the 1937 Act so as to prevent the sale of tobacco products from an automatic vending machine, by raising the age from 16 to 18 at which the power of a court is triggered to order the owner of any automatic vending machine to take certain precautions or to remove the machine, where that machine has been used by any person under the age of 18 years; if the owner fails to comply with the order then it remains the position that an offence will be committed.

As a consequence of implementing the policy to raise the age for the sale of tobacco, it is also necessary to make an ancillary amendment to section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 so that warning statements displayed in retail premises and on vending machines reflect the change in age for tobacco sales from 16 to 18 years. It will now be necessary for the warning notes at premises at which tobacco is sold to display the following statement – "It is illegal to sell tobacco products to anyone under the age of 18" and for automatic machines for the sale of tobacco to exhibit the statement "This machine is for the use of people aged 18 or over".

Consultation

The following bodies have been consulted during the preparation of the draft Order in accordance with the consultation requirement under section 9(2) of the 2005 Act in respect of any order made under the section 9(1) power.

Local Authority Trading Standards Offices
Members of the Health Committee
Directors of Education
Directors of Public Health

ASH Scotland
Association of Scottish Community Councils
Asthma UK Scotland
Barnyards Scotland
British Dental Association
British Heart Foundation
British Hospitality Association
British Lung Foundation Scotland

British Medical Association
Cancer Research UK – Northern region Care Commission
CBI Scotland
Chest, Heart & Stroke Scotland
Children First
Children in Scotland
Citizens Advice Scotland
COSLA
Diabetes UK Scotland
HHC Ltd VISITSCOTLAND
Highland & Islands Enterprise
MacMillan Cancer Relief
Marie Curie Cancer Relief
Oxfam in Scotland
Royal College of Nursing
Royal College of Physicians
Royal College of Surgeons of Edinburgh
Royal Environmental Health Institute of Scotland
Royal Society of Edinburgh
SACRO Health & Well-Being Consultant
Salvation Army
Save The Children
Scotland CAN
Scotland's Commissioner for Children and Young People
Scotland's Health at Work
Scottish Consumer Council Scottish Business in the Community
Scottish Football Association
Scottish Grocers' Federation
Scottish Premier League Ltd
Scottish Retail Consortium

In addition the Scottish Executive undertook 4 consultation seminars with stakeholder groups in Aberdeen, Glasgow, Dundee and Edinburgh: qualitative focus groups with young people; consultation with young people through the Young Scot portal; engaged with the Scottish Youth Parliament Health Committee as well as an online consultation through the Executive consultation portal.

Financial effects

The financial effects are set out in the following Regulatory Impact Assessment.

Scottish Executive, Directorate for Health Improvement
June 2007

Regulatory Impact Assessment

1. Title of Proposal

1.1 The Smoking, Health and Social Care (Scotland) Act 2005 (Variation of Age Limit for Sale of Tobacco etc and Consequential Modifications) Order 2006.

2. Purpose and Intended Effect of Measure

Objective

2.1 To reduce the availability and consumption of cigarettes among older children and young teenagers and reduce the prevalence of smoking.

Background

2.2 Smoking has long been recognised as the most important preventable cause of ill-health and premature death in Scotland. Around 13,000 people die in Scotland each year from smoking related diseases. In January 2004 the Scottish Executive published the first ever action plan designed specifically for Scotland: *A Breath of Fresh Air for Scotland*[i] with the stated goal of reducing the unacceptable toll that smoking takes on Scotland's health. The Plan offers a comprehensive programme of action to tackle smoking. This includes the expansion of NHS smoking cessation services; the roll out of test purchasing in order to strengthen enforcement around age restricted goods; and triggered Scotland's largest ever public debate on minimising the impact of second hand smoke which led to the introduction of the smoke-free laws in March 2006.

2.3 The Smoking, Health and Social Care (Scotland) Act 2005[ii] gives Scottish Ministers power to raise by means of an order the age limit for tobacco sales specified in the Children and Young Persons (Scotland) Act 1937, such an order may only be made only after consultation with such persons as Scottish Ministers consider appropriate on a draft of the order. In exercising that order making power, it is intended that the Children and Young Persons (Protection from Tobacco) Act 1991 may also be amended at the same time under that order, using the power under section 39 of the 2005 Act to make consequential amendments, so as to provide an ancillary amendment to ensure that the age on notices in retail premises and on vending machines in that 1991 Act is also raised at the same time.

2.4 Before reaching a decision on whether to exercise these powers Ministers tasked the "Smoking Prevention Working Group" chaired by Dr Laurence Gruer, to consider the evidence for raising the age for tobacco sales in Scotland. The Working Group reported to Ministers in November 2006 recommending that the age for tobacco sales should be raised from 16 to a minimum age of 18.

2.5 Raising the age for purchase as part of a wider package of tobacco control measures may contribute to reducing the growth of youth smoking rates. Other measures include the roll out of the Young Scot branded PASS accredited proof of age card, development of an enforcement protocol with local authority partners in order ensure effective enforcement of the age limit by trading standards officers and education and communication with retailers. Possible future enforcement measures are outlined at Section 12.

Rationale for government intervention

2.6 Smoking is dangerous at any age, but the younger people start, the more likely that they are to smoke longer and die early from smoking. We know that eighty two percent of adult smokers start smoking in their teens. Unless effective action is taken young children will continue to take up smoking every day.

2.7 In Scotland in 2004 14% of boys and 24% of 15 year old girls were regular smokers by 15. Among regular smokers almost all (86%) of 15 year olds and almost 2/3 (62%) of 13 year olds reported buying cigarettes from shops (SALSUS 2004)[iii].

2.8 Under the Children and Young Persons (Scotland) Act 1937, as amended by the Children and Young Persons (Protection of Children from Tobacco) Act 1991, it has been illegal to sell tobacco products in Scotland to customers under the age of 16 since 1937. This follows similar legislation passed in England in 1933. In the 1930s, smoking was considered a fairly harmless behaviour. It was not until the 1950s that the link with lung cancer was made. Since then, the list of serious conditions to which both active and passive smokers are at risk has grown enormously. It is also now established that nicotine is a highly addictive drug. In the light of our current knowledge, it is hard to justify that such a dangerous product, clearly labelled as lethal, should be sold to minors.

2.9 Raising the age of purchase for tobacco sales, as part of a range of measures, would help reinforce the message to the population in general and young people in particular that tobacco is a highly dangerous substance and should be avoided. If the age restriction is properly enforced it should contribute to a reduction in the consumption of tobacco by young people.

3. Consultation

3.1 The power to raise the age limit for tobacco sales specified in the Children and Young Persons (Scotland) Act 1937, was given to Scottish Ministers in the Smoking, Health and Social Care (Scotland) Act 2005. The Scottish Executive asked the "Smoking Prevention Working Group" chaired by Dr Laurence Gruer, to consider the evidence for raising the age for tobacco sales in Scotland. The Group reported to the Minister for Health and Community Care on 22 November 2006 and recommended that the minimum age for tobacco sales should be raised to 18.

3.2 The Scottish Executive undertook a consultation with the public on regulations to raise the age limit to 18 and a partial Regulatory Impact Assessment (RIA) formed part of the consultation.

3.3 This full RIA as the partial one sets out the options for increasing the age limit to 18 and the transition period that would be required in order to ensure a smooth transfer for both young people and businesses.

4. Options

4.1 The options for any change to legislation are:

Option 1: do nothing - continue to have an age limit of 16

Option 2: increase the age limit to 18 with a 6-12 month period of transition
Option 3: increase the age limit to 18 with a 12-18 month period of transition

Option 1: Do nothing - continue to have age limit of 16

4.2 Option 1 would not require any change to the current legislation. This is effectively a do-minimum approach, which would maintain the existing legislative age limits but pursue policy objectives for tighter control through non-legislative means. This option would be underpinned by policies in the tobacco plan, such as the roll out of PASS accredited proof of age cards and tighter enforcement by local authorities of age restricted goods through test purchasing.

4.3 The downside to this option is that by continuing to have an age limit of 16 in Scotland sends the wrong message out to young smokers about the dangers of tobacco. Most adult smokers start at a young age and by not increasing the age limit to 18 young people will continue to become addicted to smoking.

Option 2: Increase the age limit to 18 with a 6-12 month period of transition

4.4 This option would require a change to be made to the current legislation. A draft of the proposed Smoking, Health and Social Care (Scotland) Act 2005 (Variation of Age Limit for Sale of Tobacco Purchase and Consequential Modifications) Order 2006 is provided at Appendix 1.

4.5 An increase in the age limit for purchasing tobacco products to 18 would be a big step in helping to reduce the availability of tobacco products to young people. This option would be supported by the other policies in the tobacco plan and would send a strong message to the general population about the dangers of tobacco.

4.6 In addition the Executive also consulted on how best to take forward recommendations contained in the Smoking Prevention Working Group Report "Towards a Future Without Tobacco"[iv] which details further tobacco control measures. These include a negative licensing scheme for tobacco retailers in order that vendors who repeatedly sell cigarettes to underage customers can be prohibited from selling tobacco and prohibiting the display of tobacco products at point of sale. If the Executive decides to accept this recommendation it will require primary legislation, and we would consult separately on these.

4.7 Raising the age to 18 would reinforce the public health message that tobacco is a substance which should be avoided. However, the positive benefits of increasing the age limit are dependent on the change being enforced and a strong communications campaign informing retailers and the public of the change.

4.8 The Executive will undertake a communication campaign to advise the public and retailers about the change in age for tobacco sales, including distributing an information pack to all affected retailers. It is envisaged that Local Authority Trading Standards Offices will have a key role in implementing the change of age for tobacco sales as they have regular contact with retailers and would be able to advise tobacco retailers on the necessary changes required in order that they comply with the new law and ensure that all relevant premises have received an information pack on the change of age.

4.9 If option 2 is chosen as the preferred option the Order would come into force 6-12 months after it is made.

Option 3: Increase the age limit to 18 with a 12-18 month period of transition

4.10 This option is effectively the same as option 2 and would require a change to legislation and would also be supported by the other policies in the tobacco plan. The difference between this option and option 2 is the implementation timeframe.

4.11 There is a risk that the timeframe for this option is too long and may result in the dilution of the impact of the communication campaign at a higher cost.

4.12 If option 3 is chosen as the preferred option the Order would come into force 12-18 months after the Order is made.

5. Sectors and groups affected

5.1 An increase in the minimum legal age for purchasing tobacco would have an affect on the young people aged 16 and 17 who can at present legally purchase cigarettes but would no longer be able to do so under the proposed legislation.

5.2 Retailers selling tobacco to young smokers would be affected by any change to legislation since those smokers aged 16 and 17 currently purchasing cigarettes would no longer be able to do so.

5.3 The tobacco industry would also be affected by any change in consumption by smokers or in the prevalence of smoking.

5.4 Any reduction in the purchase of tobacco and cigarettes as a result of an increase in the smoking age may have a resultant impact on the UK Exchequer.

5.5 Local authorites would be impacted because they will be responsible for monitoring and enforcing any change in the minimum legal age for the purchasing of tobacco products.

5.6 NHS Smoking Cessation services may experience an increase in demand for their services from young people aged 16-17 who wish support in quitting smoking.

5.7 No data is available on the prevalence of smoking among young people in minority ethnic groups in Scotland. However, the 'Drug use, smoking and drinking among young people in England in 2005'[v] survey found that 9% of pupils of White and Mixed ethnicity were regular smokers, 5% of Black pupils were regular smokers and just 3% of Asian pupils were regular smokers[1].

5.8 In the long run there will also be a positive effect on public health due to a reduction in prevalence of smoking and this will have an impact on the NHS in Scotland, although it will take a minimum of 20 years for these effects to be realised.

[1] These figures are age standardised. The 2005 survey combined the 2003, 2004 and 2005 survey results for minority ethnic groups.

6. Costs of Options

Option 1 – Do nothing - continue to have age limit of 16

6.1 There would be no financial costs to retaining the current age limit of 16.

Option 2 – Increase age limit to 18 with a 6-12 month period of transition

6.2 Evidence suggests that children and young people obtain cigarettes from a number of sources e.g. shops, family and friends. However, older adolescents are more likely to purchase cigarettes from shops. SALSUS 2004 reported that 62% of 13 year old, and 86% of 15 year old regular smokers sourced cigarettes from shops.

6.3 Increasing the age limit for purchasing tobacco products will make it less likely that retailers will sell to very young people, especially those under 16, as they will be more obvious to retailers as being underaged. Although it is unlikely that the increase in the age limit will stop young smokers from smoking completely it is likely to affect their consumption levels.

6.4 It is anticipated that an increase in the age of sale for tobacco products to 18 will have the greatest impact on the 13-15 year old age group and subsequent adult smoking patterns. Therefore, for the purposes of this RIA the analysis concentrates on this age group[2].

6.5 The effect on consumption of cigarettes was based on the percentage of regular smokers, aged 13 and 15, who have reported buying cigarettes from shops from a newsagent, tobacconist or sweetshop. This estimates that the consumption of cigarettes among 13-15 year olds could fall by as much as 9.6 million cigarettes per year if the legal age was increased to 18 (Appendix 2 details this calculation).

6.6 The increase in age limit, accompanied by other policies in the Tobacco Action Plan including the restrictions on smoking in public places and taking forward recommendations in the report "Towards a future without tobacco" will help to denormalise smoking among young people and stress the seriousness of the associated health risks which will have an impact on stopping children from taking up smoking.

6.7 Any fall in smoking prevalence among young people will have a knock on effect on adult smoking prevalence rates in the long run. A long term decrease in prevalence will have a knock on effect on the tobacco industry, however, since there are no tobacco producers or manufacturers in Scotland these effects are outwith the scope of this RIA.

6.8 Any reduction in prevalence of smoking and consumption of tobacco products in the under 16s will result in a reduction in adult smoking rates in the long run. For the purposes of this RIA it is assumed that the reduction in consumption of shop bought cigarettes is equal to the reduction in prevalence. It is estimated that a long term reduction in prevalence of as much as 0.7 percentage points may occur (Appendix 2 sets out the methodology used to calculate this reduction in prevalence). Any fall in tobacco sales will have an impact on

[2] Data is unavailable for 14 year olds, therefore, figures for 14 year olds are assumed to be the mid-point between 13 and 15 year olds.

retailers selling to young people, however, there will be a replacement effect as children will have more money to spend on non-tobacco products.[3]

6.9 Signage costs will be negligible since it is only the age on signs, both in premises and on automatic vending machines, which will require replacing and this could easily be done using a sticky label or a similar device or supplying a laminated replacement sign as part of the Executive's communication pack for retailers.

6.10 The change in age limit would need to be communicated to the public and retailers. It is estimated that a communications campaign would cost the Scottish Executive £200,000 - £250,000 to raise public awareness and £100,000 to communicate the changes to retailers.

6.11 Trading Standards Officers currently monitor and enforce the laws associated with age restricted goods, including the current age limit of 16 for tobacco goods; and we would not anticipate that additional training would be necessary for Trading Standards Officers if the age limit were increased to 18. However it is possible that additional costs may be incurred if a more stringent enforcement regime is applied to tobacco sales as a result of the recommendations contained in the Smoking Prevention Working Group Report. This will be considered under the current Spending Review.

6.12 An increase in the smoking age to 18 will also clearly impact on the 33,000 16 and 17 year olds currently smoking legally. Research[4] suggests that 16 year old smokers smoke an average of 10 cigarettes a day and 17 year old smokers, 11. Combining this with smoking prevalence data means over 6 million packets of cigarettes are bought by 16 and 17 year olds in Scotland each year. Option 2's transition period of 6 to 12 months, will have an impact on current 16 year old smokers since they will no longer be able to purchase cigarettes legally until they are 18. However, there will be fewer 17 year olds affected by the change.

6.13 An increase in smoking age may encourage some young people to try to stop smoking. Therefore, they will require smoking cessation support from cessation services. Young people have been identified as a priority group for smoking cessation services and we would expect that part of the additional £2 million funding being allocated to services in 2007/08 would be used to help any additional young people with their quit attempt. NHS Smoking Cessation Services are available in all Scottish Health Boards and offer smokers free group or one to one counselling in support of their quit attempt.

6.14 Recent changes to age restrictions on Nicotine Replacement Therapy products allow children above the age of 12 to use products such as nicotine gum and patches to help them quit smoking. NRT is available on prescription. Smokers using NHS services and NRT are up to 4 times more likely to quit than with no support at all.

6.15 NHS Health Scotland receives funding from the Scottish Executive to produce media campaigns to target young people. The recent "Butts" media campaign focused on motivations to quit that matter to this target group making the link between the cost of smoking, smell and unattractiveness to the opposite sex.

Costs to the UK Exchequer

[3] Consultation on Under-Age Sale of Tobacco, Department of Health, July 2006, page 31
[4] Scottish Household Survey 1999-2005

6.16 Any reduction in consumption of cigarettes will have an associated effect on tax revenue to the Exchequer. The Department of Health have calculated the tax revenue per stick to be about 19 pence[5]. Therefore, given a reduction in consumption for under 16s of up to 9.6 million cigarettes there may be a fall in tax revenue of up to £1.8 million per year. However, in line with government guidance it is assumed that a reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly equivalent macroeconomic effects.

6.17 A reduction in smoking prevalence may have a knock-on effect on retailers of complementary goods such as matches and lighters, however, no data is available to estimate these effects.

Option 3 – Increase age limit to 18 with a 12-18 month period of transition

6.18 It is assumed that this option will have the same effect on the consumption of cigarettes and the prevalence of smoking as discussed under option 2. The difference between options two and three is the increased length of the transition period.

6.19 Signage costs will be the same as under option 2.

6.20 It is estimated that a communications campaign for both the public, and business would be similar to the costings for option 2 as a shorter focused campaign would be more cost effective than a protracted media campaign which would risk diluting the message.

6.21 It is assumed that there is no difference in training and enforcement costs between options 2 and 3.

6.22 We are unable to calculate the cost to other retailers other than tobacco retailers. Data is not available for sales to the under 18 age group, and there are no other significant complementary purchases for these goods in this age group.

6.23 Assuming the price of a typical packet of cigarettes is £4.60[6] and the increase in age limit to 18 results in a reduction in consumption for under 16s of 479 thousand packets of 20. This would result in a fall in spending on tobacco of £2.2 million. The total effect would therefore be higher as a result of the drop in purchases by 16 and 17 year olds. This effect would be spread throughout retailers in Scotland and it is likely that a reduction in expenditure on tobacco would be offset by an increase in expenditure elsewhere.

7. **Benefits of Options**

[5] Consultation on Under-Age Sale of Tobacco, Department of Health, July 2006, page 26, paragraph 23
[6] Consultation on Under-Age Sale of Tobacco, Department of Health, July 2006, page 26, paragraph, 23

Option 1 – Do nothing - continue to have age limit of 16

7.1 No change to the current legislation would be required under option 1, therefore, there are no communication or administration costs to the Scottish Executive. However, there are also no public health benefits from this option.

Option 2 – Increase age limit to 18 with a 6-12 month period of transition

7.2 The increase in age limit demonstrates the seriousness of the Scottish Executive's policy to cut smoking prevalence in Scotland. The increase in age accompanied by the cultural shift created by the introduction of smoke-free public places should also help ensure that smoking becomes less attractive to young people and consequently there will be fewer new recruits to smoking.

7.3 Cigarettes are a singularly dangerous product. Recent research suggests that addiction to nicotine can develop very quickly within a few months or even weeks. Many lifelong smokers started smoking in their teens - and can expect to lose on average ten years of life expectancy. Therefore, this is an important step to discourage the young from starting to smoke.

7.4 The nicotine in tobacco is highly addictive and this explains why young people become and remain regular smokers. An increase in age limit to 18 may reduce the number of young people buying tobacco, therefore, reducing the likelihood that they become addicted smokers in their adult lives. The 2005 Scottish Household Survey[vi] reported that 25% of 16 year olds smoke cigarettes nowadays.

7.5 Children who do not start smoking or stop will have extra income to spend on other goods. This is difficult to measure but would help to compensate retailers for any reduction in tobacco sales from children and young teenagers. SALSUS 2004 reported that 7% of 13 year old and 6% of 15 year old regular[7] smokers spend over £20 per week on smoking, the majority of 13 year olds (65%) spent between at least £1 but less than £10 on smoking and 57% of 15 year olds spend between £1 and £10[8].

7.6 Any gains from a reduction in adult smoking prevalence would take a lifetime to come through (a minimum of 20 years). Assuming that increasing the minimum age to 18 ultimately reduces smoking prevalence among adults by 0.7 percentage points this would, in the long term, lead to over 350 lives being saved every year in Scotland.[9] This translates into a gain for the Scottish economy of up to £170 million per year[10], in addition to this it is estimated that the NHS would incur savings of up to £3.8 million[11] per year. It should be noted that it may be 20 years or more before these benefits will be realised.

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[7] Regular is defined as smoking weekly or more frequently.
[8] Table 5.9, SALSUS 2004 http://www.drugmisuse.isdscotland.org/publications/abstracts/salsus_national04.htm
[9] This is based on 13,000 deaths per year being attributed to smoking in Scotland.
[10] Based on the Department of Health's assumption that 'a smoker killed by their own habit on average loses 16 years of their life and that the benefits of one person per year to the UK economy is £30,000'. See 'Consultation on the Introduction of Picture Warnings on Tobacco Products'. Available from: http://www.dh.gov.uk/assetRoot/04/13/54/96/04135496.pdf
[11] Based on the total cost to the NHS of active smoking of £140 million per annum. *International Review of the Health and Economic Effects of the Regulation of Smoking in Public Places,* http://www.hebs.com/researchcentre/pdf/InternationalReviewFullReport.pdf

Option 3 – Increase age limit to 18 with a 12-18 month period of transition

7.7 All of the health benefits for option 2 will also apply to option 3 since the only difference between the options is the length of the transition period. The key health benefit stems from the long term reduction in adult smoking rates.

7.8 The longer transition period with this option will be beneficial for 16 and 17 year old smokers because it will provide them with a greater period of time to stop smoking and allows a sufficient length of time for all the current 17 year old smokers and many of the 16 year old smokers to reach 18 when they will be able to purchase cigarettes legally even after a change in legislation.

7.9 Raising the minimum legal purchase age for tobacco products to 18 for Scotland would mirror the World Health Organisation recommendation and is also policy in a number of other countries e.g. Finland, Sweden, Canada, Australia, United States and New Zealand[12].

7.10 An age limit of 18 for tobacco products would bring them into line with most other restricted goods e.g. alcohol, fireworks and solvents. One age limit for a large number of restricted products will make enforcement easier for retailers. It will also be easier to produce signage and training materials which would benefit both retailers and enforcers.

7.11 Any reduction in sales of tobacco products to young people as a result of an increase in the age limit for retailers would be compensated in part by an increase in sales of other goods.

7.12 Under all three options the Executive would continue to pursue the Tobacco Control Action Plan, which sets out a programme of action to tackle smoking, particularly in deprived communities. In addition the Executive will consider how best to take forward the recommendations contained in the Smoking Prevention Working Group Report "Towards a future without tobacco".

8. Summary of Costs and Benefits

8.1 This section provides a summary of the costs and benefits of the various options. This represents the best information that is available at the moment and is only intended as a guide rather than a definitive costing of options.

Option 1

Costs

- Sends the wrong message out to young smokers about the dangers of tobacco.
- By not increasing the age limit to 18 young people will continue to become addicted to smoking.
- There would be no financial costs to retaining the current age limit.

Benefits

[12] Consultation on Under-Age Sale of Tobacco, Department of Health, July 2006, page 10

- Requires no change to the current legislation.
- No communication or administration costs to the Scottish Executive.

Option 2

Costs

- Requires change to the current legislation.
- Any effect on adult smoking prevalence rates in the long run will have a knock on effect on the tobacco industry, however, there are no tobacco producers or manufacturers in Scotland.
- Increased cost of smoking cessation support.
- Communications campaign would cost the Scottish Executive £200,000 - £250,000 to raise public awareness and £100,000 to communicate the changes to retailers.
- Any fall in tobacco sales will have an impact on retailers selling to young people.
- Signage costs which are negligible.
- Fall in spending on tobacco of £2.2 million.
- Sales of complementary goods such as matches and lighters may be affected.
- A fall in tax revenue of up to £1.8 million.

Benefits

- This would be a big step in helping to reduce the availability of tobacco products to young people.
- Sends a strong message to the general population about the dangers of tobacco.
- A reduction in consumption of 9.6m cigarettes per year or 479,000 packets of 20 for the 13-15 age group (more when 16-17 included).
- Will help to denormalise smoking among young people.
- Stresses the seriousness of the associated health risks which will have an impact on stopping children from taking up smoking.
- The health benefits from an increase in the age limit would take a lifetime to come through (a minimum of 20 years). The long term fall in prevalence will result in an estimated 350 lives per year being saved in Scotland.
- A gain for the Scottish economy of up to £170 million per year.
- Savings to the NHS would incur savings of up to £3.8 million per year.
- Brings cigarettes into line with most other restricted goods, will make enforcement easier for retailers, and make it easier to produce signage and training materials.

Option 3

8.2 This option essentially has the same costs and benefits as option 2, however, there is a risk that the longer timeframe for this option is too long and may result in the dilution of the impact of the communication campaign at a higher cost.

Social Benefits

8.3 *Improving Health in Scotland: the Challenge*[vii] makes it clear that efforts to improve health are inextricably linked to the pursuit of social justice. Furthermore, some of the highest rates of smoking are to be found amongst the most disadvantaged communities in Scotland.

8.4 According to the 2005 Scottish Household Survey, the smoking rate in Scotland of 16-18 year olds in the most affluent areas was 16%. In the most deprived areas the 16-18 smoking rate is almost 50% higher at 23%. The benefits in reduced smoking prevalence brought about an increase in the minimum age will therefore accrue to the most deprived areas. Table 2 shows the prevalence for each Carstairs deprivation score.

Table 2: Smoking Prevalence and Deprivation

	Carstairs deprivation (1=least deprived; 5=most deprived)				
Age / Gender	**1**	**2**	**3**	**4**	**5**
	%	**%**	**%**	**%**	**%**
16-18 year olds					
Both sexes	16	19	19	19	23

Tobacco Industry Impacts

8.5 As there are no tobacco manufacturing or production activities based in Scotland, any reduction in smoking prevalence will have no associated impact on turnover or employment in Scotland.

9. Small/Micro Firms Impact Test

9.1 The impact on small and micro businesses has also been considered. Small retailers and newsagents may experience a drop in tobacco sales to their young customers, however, it is not envisaged that there would be a significant reduction in overall revenue. Informal consultation with these businesses by the Department of Health supports this view. Also, any losses in tobacco sales may be replaced by an increase in sales of non-tobacco products such as magazines and confectionery.

9.2 The Executive have given advance warning of their intention to consult on raising the age for tobacco sales to the Scottish Retail Consortium and the Scottish Grocers Federation and sent them copies of the Smoking Prevention Working Group Report "Towards a future without tobacco". These were discussed at the latest meeting of the "Underaged Sales Enforcement Group" which took place on the 4 December 2006 and was attended by representatives of both the Scottish Retail Consortium and Scottish Grocers Federation. The Scottish Retail Consortium have also sent the Executive a copy of the British Retail Consortium's response to the Department of Health consultation on raising the age for tobacco sales, which took place earlier in 2006. The Consortium is supportive of raising the age to 18 in line with other age restricted goods, while allowing a minimum of 6 months to implement the necessary changes.

9.3 In addition copies of the consultation documents have been sent to the Director of the National Federation of Retail Newsagents and the Scottish Chamber of Commerce and other business interests inviting their comments on the proposals.

9.4 The executive will continue to work with business and the representatives throughout the consultation period to ensure their interests are heard.

10. Test Run of Business Forms

10.1 No new forms are likely to be introduced as result of the proposals on raising the age. Trading Standards Offices already require to complete a return to the Scottish Executive on an annual basis to advise the Executive of what action they have taken over the previous year in relation to enforcing and complying with the Children and Young Persons (Protection from Tobacco) Act 1991. These returns will be amended to reflect the fact that the age for tobacco sales has been raised to 18.

11. Competition Assessment

11.1 No significant competition issues have been identified with any of the options. Any change to the age limit will apply in all retail settings.

11.2 It is thought that only a small proportion of shops will rely significantly on tobacco sales to 16-17 year olds, however, these retailers may be disproportionately affected by options two and three.

11.3 A competition filter is attached at Appendix 3.

11.4 As the regulation would apply equally across those selling tobacco products, competition should not be adversely affected. However, the regulation itself is likely to impact on small firms rather than those larger ones. Any increase in costs over and above those which the average firm experiences will put those smaller firms at a competitive disadvantage. In addition smaller firms are unlikely to be able to absorb the cost as well as larger firms as the former may not be able to attract the expenditure that would have been spent on cigarettes compared to the latter who have a wide range of goods and services on offer.

12. Possible Future Enforcement and Sanctions

12.1 In addition to raising the age for tobacco sales to 18 the Smoking Prevention Working Group have made a range of recommendations on reducing the availability of cigarettes to young people, discouraging young people from smoking, and encouraging and enabling young regular smokers to stop.

12.2 The Scottish Executive will give careful consideration to the report and are consulting separately on the recommendations in the Smoking Prevention Working Group Report with the aim to develop a future Action Plan.

12.3 Some of the main areas of enforcement of underaged tobacco sales identified by the Working Group on which the Executive will be consulting separately are:-

- The need to ensure that greater efforts are made to enforce the legal age of purchase of cigarettes: including the use of proof of age; active test purchasing; education of retailers and trading standards officers and prosecution and heavy fines for those who sell tobacco to underaged young people.

- To consider the introduction of a negative licensing scheme to enable vendors who repeatedly sell cigarettes to underaged customers to be prohibited from selling tobacco products for a specified period of time.

- Prohibit the display of cigarettes at the point of sale, to be replaced by a simple list of brands available and their prices.

12.4 However, restricting the sale of tobacco products should not be considered in isolation in reducing smoking prevalence among young people; the Executive recognise that a raft of measures is necessary in order to facilitate a culture shift in young people's smoking habits. The Smoking Prevention Working Group report along with the 31 detailed recommendations made by the Working Group is available at:
www.scotland.gov.uk/Publications/2006/11/21155256/1.

13. **Declaration**

13.1 I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed
Date June 2007

Shona Robison, Minister for Public Health

Appendix 1

Health and Social Care (Scotland) Act 2005 (Variation of Age Limit for Sale of Tobacco Purchase and Consequential Modifications) Order 2006.

The draft Order would have two effects in order to raise the age of sale of tobacco products from 16 year to 18 years.

Firstly it would modify section 18 of the Children and Young Persons (Scotland) Act 1937 (c.37) which makes it an offence to sell tobacco etc. to underaged persons and other preventative measures by substituting for the word "sixteen" where it occurs in subsections (1),(2) and (3) with the word "eighteen". It would therefore become an offence under 18(1) to sell to a person under the age of 18 years any tobacco or cigarette papers, whether for their own use or not. The provisions under 18(2) relating to an automatic vending machine for tobacco sales would also be triggered in relation to the use by any person under the age of 18 year.

Secondly would modify the Children and Young Persons (Protection from Tobacco) Act 1991 covering the display of warning statements in retail premises and on vending machines in order to substitute the number "18" for the number "16" where it appears on warning statements.

9(2) of the Smoking Health and Social Care (Scotland) Act 2005 requires Scottish Ministers to consult on the Order, which the Scottish executive is ensuring by issuing the draft Order in this way, and the Order would require to be made in the Scottish Parliament under affirmative procedures.

Appendix 2

Calculation of reduction in cigarette consumption for 13-15 year olds

SALSUS 2004 provides the percentage of 13 and 15 year olds who have reported buying cigarettes from 'shops' which includes buying from a newsagent, tobacconist or sweetshop; buying from garage shop; buying from supermarket; and buying from any other type of shop. Since 13 and 15 year olds can report more than one source the percentages for each main source do not total to 100. The estimates in this RIA are based only on the percentage of regular smokers who have reported buying from a newsagent, tobacconist or sweet shop only.

This estimate of the reduction in consumption of cigarettes is based on a number of factors: 13-15 year olds smoke about 53.6 million cigarettes per year. Buying cigarettes from a newsagent, tobacconist or sweet shop was reported to have taken place by 53% of 13 year olds and 79% of 15 year olds who regularly smoke. It is assumed that an increase in the age limit to 18 will result in the consumption of cigarettes falling by half the proportion bought in shops for the 13-15 year old age group to 26.5% for 13 year olds and 39.5% for 15 year olds. If it is assumed that half of these obtain cigarettes through other sources (such as family), this results in an overall reduction in consumption of 13% for 13 year olds and 20% for 15 year olds. This equates in total to a reduction of 9.6 million cigarettes or 479,000 packets of 20 for the 13-15 age group.

Calculation of the reduction in the long term prevalence rate

The long term fall in the prevalence rate was calculated based on the assumption that the fall in current consumption/prevalence of cigarettes for the 13-15 year old age group will feed through into a fall in the adult smoking prevalence rate in the long run.

The estimated reduction in smoking prevalence is equal to the estimated reduction in consumption for the 13-15 year old age group times the current prevalence rate. The long term reduction in prevalence is assumed to be one third of the short term fall in consumption/prevalence[13]. For example, a 17% fall in 14 year old prevalence, which is currently 12%, equates to 2 percentage points lower prevalence. Using the Department of Health's assumption that two-thirds of the now non-smoking under 16s (who would otherwise have smoked had the age-limit not been raised) go on to be smokers, results in a long term fall in adult smoking rates of 0.7 percentage points due to the reduction in smoking in the 14 year old age group. This analysis was repeated for the 13 and 15 year old prevalence/consumption, and averaged across the age groups.

[13] See 'Consultation on Under-Age Sale of Tobacco', Department of Health, July 2006, page 26, paragraph 26.

Appendix 3

Regulatory Impact Assessment - Competition Filter

The Smoking, Health and Social Care (Scotland) Act 2005 (Variation of Age Limit for Sale of Tobacco Purchase and Consequential Modifications) Order 2006.

Competition filter test questions

Question	Answer Yes/No
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	**No**
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	**No**
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	**No**
Q4: Would the costs of the regulation affect some firms substantially more than others?	**No**
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	**No**
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	**No**
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	**No**
Q8: Is the sector characterised by rapid technological change?	**No**
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	**No**

Questions 1-3

A definitive answer to these questions cannot be given, however, it would be unlikely that this area would be dominated to such an extent by an individual firm.

Question 4

Any change to the age limit will apply in all retail settings. If a small proportion of shops rely significantly on tobacco sales to 16-17 year olds, then they are likely to be affected by options two and three more than others.

Question 5

There is no evidence to suggest that the market structure would be affected.

Question 6

Other than signage costs, there would be no additional set-up costs as a result of the legislation. These signage costs will apply to existing enterprises as well.

Question 7-9

There is no evidence to suggest that there would be higher ongoing costs for new or potential firms that existing firms do not have to meet. Rapid technological change is not a major issue for the retail sector. There is no expectation that the legislation would restrict the ability of firms to choose the price, quality, range or location of their products.

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