

# The Good, the Bad, and the Ugly

*Imperial Tobacco's response to the Welsh Assembly Government's Draft Tobacco Control Action Plan for Wales*

**Imperial Tobacco Group**  
April 2011

## Introduction

***"Most people now know of the dangers of smoking to their general health"***

*- Draft Tobacco Control Plan for Wales, 23 February 2011*

## The attack on free adult choice

Under the banner of "public health policy" many adult lifestyle freedoms and choices including where to smoke, how much to drink and what to eat, have been unjustifiably attacked. The underlying philosophy appears to be that, left to ourselves, we will inevitably make bad choices and that encouragement is less effective than controlling behaviour through regulation. The Nanny State has become the Bully State. Nudge has rapidly turned to shove.

## The Five Principles of Good Regulation

Imperial Tobacco supports policy formulation based on the Better Regulation Commission's "Five Principles of Good Regulation"<sup>1</sup> - that legislation should be proportionate, accountable, consistent, transparent and targeted. Legislation should be based on rigorous evidence. Over recent years our adult consumers, our trade partners (such as retailers and vending operators) and we as manufacturers have all felt the impacts of legislation that is often illogical, unjustified and disproportionate.

Much of it has failed to meet the principles of good regulation and has been based on dubious evidence – or no evidence at all. The Welsh Assembly Government's ("the **Government**") most recent publication, a *Draft Tobacco Control Action Plan for Wales* ("the **Plan**")<sup>2</sup> looks set to follow the same flawed approach.

Since tobacco regulation often sets the pattern for a wider policy agenda, we call for an alternative approach based on freedom of adult choice combined with the right encouragement, information and incentives. Imperial Tobacco believes that support for 'libertarian paternalism' (or 'Nudge' as it has become known) has grown as it becomes clearer that the current approach to public health policy formulation has failed to meet its stated objectives.

**The time has come for all Governments and Health Departments to engage in meaningful, transparent dialogue with Imperial Tobacco and the tobacco sector. Until the current situation changes, and a balanced debate takes place, policy will continue to be ineffective and disproportionate in their approach.**

This paper summarises Imperial Tobacco Limited's response to the Government's Plan.

<sup>1</sup> The Orange Book, Management of Risk Principles & Concepts 2004, <http://www.hm-treasury.gov.uk/>

<sup>1</sup> House of Lords' Select Committee on Economic Affairs 5<sup>th</sup> Report of Session 2005-06 p6 sections 4, 6, 8

<sup>2</sup> <http://wales.gov.uk/consultations/healthsocialcare/tobaccocontrol/?lang=en>

## The Good

### Youth smoking prevention

The Government is to be congratulated for appearing to tackle the difficult, long-term solutions needed to prevent youth smoking, such as school education and proxy purchasing, as detailed in Action Area Two of the Plan.

Provided such education is based on independent factual information rather than that provided by organisations with vested interests, such as ASH and the pharmaceutical industry, Imperial Tobacco welcomes and will support the Government's efforts in this area. Similarly, provided that Trading Standards Services carry out test purchasing exercises in a sensible and consistent manner using clear National guidance, Imperial Tobacco also supports stronger sanctions on retailers who break the law by selling to underage customers.

## The Bad

### Unjustified, excessive and disproportionate

Three core elements should be central to any Government's approach to developing public policy:

- (i) a rigorous assessment of the effectiveness of existing policy and legislation;
- (ii) clear evidence to show further legislation or regulation is justified and necessary; and
- (iii) sound evidence demonstrating that the policy will achieve its aims.

In the absence of the latter, pilot schemes should test new approaches. The Plan does not meet these elements; indeed, nor did proposals to ban of the display of tobacco products, tobacco vending machines or even the ban on smoking in public places.<sup>3</sup>

Overall, the Plan appears to be a further example of policy-driven evidence development. In this regard it is consistent with many policy approaches to tobacco control so far – unjustified and excessive bans, and restrictions on individuals and businesses, rather than proportionate, effective evidence-based approaches to tackling public policy concerns such as youth smoking and illicit trade.

### The Plan assumes that the decline in smoking prevalence and consumption is a direct result of previous policies.....

The Government's tobacco control policies have never been subjected to proper evaluation. There is therefore no basis on which to claim that the decline in smoking rates is a direct result of such policies<sup>4</sup>, particularly when, even with a 'comprehensive strategy' in place, smoking prevalence has remained flat amongst adults in Wales since the introduction of the smoking ban in 2007<sup>5</sup>.

<sup>3</sup> House of Lords, Select Committee on Economic Affairs Report "Government Policy on the Management of Risk", 7<sup>th</sup> June 2006

<sup>4</sup> <http://wales.gov.uk/consultations/healthsocialcare/tobaccocontrol/?lang=en> – para. 1, page 8

<sup>5</sup> <http://wales.gov.uk/consultations/healthsocialcare/tobaccocontrol/?lang=en> – para. 3, page 7



There has been a steady long term decline across Europe in prevalence and consumption, with no obvious linkage to regulatory measures. Official NHS figures confirm that Wales has followed this wider European trend<sup>6</sup>.

It is therefore bewildering that the Government sees adult free choice as a 'problem'; that prevalence stagnation is due to a lack of mass-media anti-smoking campaigns<sup>7</sup>, the use of niche tobacco products<sup>8</sup>, and smoking in cars and homes<sup>9</sup>, all of which were considered negligible issues at the time of the smoking ban<sup>6</sup>. When informed adults choose to continue smoking the answer should not be yet more draconian and disproportionate policies to force behaviour change.

**.....is not founded on an understanding of the factors that cause people to start smoking or to continue to smoke.....**

An understanding of these factors must be central to achieving effective policy aims. They are well researched and widely known. Almost all academic studies conducted on smoking begin with at least an attempt to assess these factors. Their omission here betrays an approach that is more anti-smoker than it is pro-public health – 'denormalising' smoking as an activity is clear evidence of this<sup>10</sup>. As a result, policy is not led by empirical evidence but by pressure from anti-smoker lobby groups.

**.....and does not address the real causes of health inequalities, so will do nothing to alleviate them**

One example of where the Plan fails to tackle underlying factors is in relation to health inequalities. The Plan claims that "*Smoking is also a leading cause of health inequalities, having been identified as the main cause for the gap in life expectancy between rich and poor.*"<sup>11</sup>

The belief that health inequalities arise as a consequence of smoking is spurious. As set out clearly in the Marmot Report published in the UK last year, the root causes of health inequalities are fundamental:

*"...Most effective actions to reduce health inequalities will come through action within the social determinants of health. However, attempts to reduce health inequalities have ... relied increasingly on tackling more proximal causes (such as smoking), through behaviour change programmes. Part of the explanation for this emphasis lies with the comparative ease of identifying action to address behaviour, rather than the complexity of addressing social inequalities shaping such behaviours."*<sup>12</sup>

Marmot sets out two alternatives; one challenging but effective, one simple but ultimately inadequate. The Government appears guilty of opting for the latter option.

<sup>6</sup> <http://www.wales.nhs.uk/sites3/Documents/568/WCH%20smoking%20ban%20report%20E%20final.pdf>

<sup>7</sup> <http://wales.gov.uk/consultations/healthsocialcare/tobaccocontrol/?lang=en> – page 18

<sup>8</sup> <http://wales.gov.uk/consultations/healthsocialcare/tobaccocontrol/?lang=en> – page 28

<sup>9</sup> <http://wales.gov.uk/consultations/healthsocialcare/tobaccocontrol/?lang=en> – pages 31-32

<sup>10</sup> <http://wales.gov.uk/consultations/healthsocialcare/tobaccocontrol/?lang=en> – action 1.2, page 11

<sup>11</sup> <http://wales.gov.uk/consultations/healthsocialcare/tobaccocontrol/?lang=en> – Introduction, page 6

<sup>12</sup> Fair Society, Healthy Lives (Marmot Report) p.86, 2010

### Therefore the approach to cessation is likely to be ineffective

A recent study (Dunbar et al 2010)<sup>13</sup> found that being in situations where smoking is not permitted actually increased cravings to smoke. Based on the thesis that craving is a predictor of smoking relapse, the existence of workplace and other public smoking bans may in fact make cessation more difficult by causing more craving. This is consistent with the UK evidence about the lack of effect of smoking bans on quit rates.

## The Ugly

### The Government's reliance on anti-tobacco charities displays a concerning undue influence on policy.....

The Plan contains multiple references to unelected anti-smoker groups, indicating an alarming level of undue influence on policy formulation and implementation. For example, ASH Wales are featured no less than 39 times in the 45-page Plan. Such levels of influence from vested interest groups invariably lead to unrealistic, unachievable and ineffective policies.

Imperial Tobacco questions why ASH Wales appear to be directly involved in at least 23 of the 59 actions contained in the Plan – some 39% of the total. The facts suggest that, rather than tobacco manufacturers having an undue influence over policy, it is the anti-smoking lobbying industry and other vested commercial interests that are having a disproportionate impact on policy<sup>14</sup>, with manufacturers unfairly excluded from debate.

To address such concerns about influence on policy, transparency should also apply equally to NGOs and to the pharmaceutical companies that are prominent in shaping the tobacco cessation agenda. This will ensure proper accountability for the expenditure of public money and dispel any suspicion of public policy being steered by sectional or commercial interests.

### .....so it focuses on the wrong areas, and it is obvious why

Any effective tobacco control measures aimed at improving outcomes for deprived communities should focus primarily on controlling the illicit rather than the legitimate trade in tobacco. In many communities, where smoking rates are well above the national average, a higher proportion of smokers will be sourcing their tobacco from illicit providers and criminal gangs. For example, in Ireland the evidence is unequivocal that many former paramilitaries have moved into this highly lucrative business. It is also worth noting that since the introduction of the display ban Ireland has seen a dramatic increase in illicit trade.

Smugglers and organised criminal gangs do not adhere to any of the existing tobacco laws, including those restricting sales to under 18s, and the illicit trade makes tobacco products more easily available. It is therefore disappointing that illicit trade is only mentioned a mere 4 times in the entire Plan (compared to the citations of 39 ASH Wales) despite the threat it poses to undermine the commendable efforts to reduce youth smoking.

Given this imbalance of focus it is unsurprising that in considering how to further limit the supply of tobacco to young people, rather than focus on illicit trade, the Plan instead focuses on the

<sup>13</sup> Dunbar et al "Do smokers crave cigarettes in some smoking situations more than others? Situational correlates of craving when smoking", Nic and Tob Research 2010 12: 226-234A

<sup>14</sup> <http://wales.gov.uk/consultations/healthsocialcare/tobaccocontrol/?lang=en> – para. 2.14, page 13



possibility of retailer licensing. Attempts to limit the availability of tobacco from legitimate sources will be undermined by an increase in the supply originating from organised criminal gangs who will welcome the broadening of their market share.

### **The ban on smoking in public places has not been the success imagined or claimed.....**

Part of the 'comprehensive strategy' to encourage smokers to quit was the banning of smoking in public places (of which many were private places, owned and run by landlords). Evidence presented in *A Smokefree Future* on smoking prevalence actually showed a small rise in adult smoking prevalence since 2007<sup>15</sup>. This was also reflected in SALSUS survey in Scotland where a similar upturn in youth smoking occurred after the smoking ban was introduced in 2006<sup>16</sup>. This completely undermines the view that the smoking ban has reduced the prevalence of smoking or the consumption of tobacco.

The Plan insists that there is no evidence of a shift in smoking to the home from pubs and workplaces. Considering that prevalence levels have remained flat at 24% since 2007 it leads one to question where else the Government thinks the adult smokers, who have been forced out of pubs, now smoke.

Other claims that have been made, including that the smoking ban has led to a reduction in cardiac arrests<sup>17</sup>, have been shown to be unfounded.<sup>18</sup>

### **.....and has already had a devastating effect on pubs and local communities.....**

Rather than talking up what it sees as the benefits of the smoking ban, we would ask the Government to be more forthcoming in its Plan about the significant unintended consequences, in particular the devastating impact that it has on local community pubs<sup>19</sup>. It is now beyond all reasonable doubt that the smoking ban has had the biggest single impact on accelerating pub closures in the UK since 2007. This provides a stark warning to those considering increasing smoking restrictions in and around pubs. Instead, the Government should listen carefully to those in the licensed trade, many of who are calling for greater flexibility within the existing ban.

### **.....so any smoking restrictions in private places would be a completely unnecessary infringement of civil liberties.....**

Government has no mandate to regulate the private lives of adults who have chosen to use a legitimate product. Furthermore, the evidential base for the introduction of invasive legislation is often absent or highly flawed. For example, one report that was extensively recycled in the media claimed that second-hand smoke was *"...23 times more toxic in a vehicle than in a home..."*<sup>20</sup> Such claims are without any substance, and have been roundly refuted by the evidence<sup>21</sup>.

<sup>15</sup> A Smokefree Future, published February 2010, page 15

<sup>16</sup> Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) - National Report 2008, page 29

<sup>17</sup> Example: <http://www.walesonline.co.uk/news/wales-news/2008/06/30/heart-attacks-down-in-wake-of-smoking-ban-91466-21171023/>

<sup>18</sup> Are Public Smoking Bans Necessary? Dr Patrick Basham & Dr Juliette Roberts, Democracy Institute publication, October 2009, p.14-18

<sup>19</sup> [http://www.beerandpub.com/newsList\\_detail.aspx?newsId=317](http://www.beerandpub.com/newsList_detail.aspx?newsId=317)

<sup>20</sup> ASH Essential Information on: Smoking in Cars. ASH Factsheet July 2009

<sup>21</sup> MacKenzie R, Freeman B. Second-hand smoke in cars: How did the "23 times more toxic" myth turn into fact? CMAJ 2010;182:796-9

Imperial Tobacco believes that smokers should consume tobacco responsibly and with consideration to those around them, especially children who are often unable to exercise a choice in their environment and surroundings in the way that adults can. This can and should be achieved through education and information, not by an unreasonable and unnecessary infringement of personal liberties, and particularly not through "developing legislation around smoking in cars"<sup>22</sup>, which goes far beyond other more reasonable intentions in this area<sup>23; 24</sup>.

**.....which demonstrates that the Government's goal of a 'smoke-free society' is completely unrealistic**

The use of the term 'smoke-free' is a deliberate strategy to play down the real intention of the introduction of more restrictions and bans. More bans amount to more restrictions on personal freedoms. Moves towards a complete ban amount to making consuming a legal product an illegal activity.

Large bodies of evidence suggest such a goal is completely unrealistic. It is just a further development of the wider policy of 'denormalising' adults who choose to smoke. Smoking is a matter of adult freedom to make an informed decision to enjoy a legal product, and to do so in a considered and courteous way. It is acknowledged that many adult consumers display this courteous behaviour<sup>25</sup>, so to 'build on' this through yet more regulatory measures amounts to nothing more than bullying law-abiding adults into conforming to the way the Government wants them to behave.

Proposals to ban smoking in all NHS grounds is another example of this, and some NHS Trusts have recognised that it represents a step too far. In reversing the original decision throughout NHS Bristol sites, UH Bristol Chief Executive, Robert Woolley, said: *"We would rather conserve the dignity and the health of patients than the smokefree initiative."*<sup>26</sup>

Denormalisation is not a strategy that is pursued in other public health areas as it has been shown to be ineffective and counter-productive, alienating those whom policy-makers are trying to influence.

**Contact:**

We would welcome any opportunity to discuss the issues presented in this document in more detail. If you would like to do so please contact:

**Adam Cleave**  
UK Public Policy Manager  
Imperial Tobacco Limited  
PO Box 244  
Upton Road  
Bristol  
BS99 7UJ

<sup>22</sup> <http://wales.gov.uk/consultations/healthsocialcare/tobaccocontrol/?lang=en> – para. 5.2, page 31

<sup>23</sup> <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110317w0001.htm> (HL7562)

<sup>24</sup> <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110309/debtext/110309-0001.htm> (45187)

<sup>25</sup> <http://www.dhsspsni.gov.uk/tobacco-strategy-consultation.pdf> – para. 3.3, page 26

<sup>26</sup> <http://www.activbristol.com/news/detail/BristolHospitalslosetheplotandencouragesmokers-4592.html>

## General Questions

1. Do you agree with the draft Tobacco Control Action Plan for Wales' overall vision and aims?

Yes

☐

No

☒

Don't know or no views

☐

(If 'No' please write your comments below)

Please see our response document for details.



## Action Area One: Promoting Leadership in Tobacco Control

2. Do you believe that the proposed actions will promote leadership in tobacco control?

Yes ☐ No ☒ Don't know or no views ☐

(If 'No', how do you think it might be possible to amend the Action Plan so that this aim is achieved?)

See Q1.

3. Do you have any other comments on Action Area one?

Yes ☒ No ☐

(If 'Yes', please write your comments below)

See Q1.

## Action Area Two: Reducing the uptake of smoking

4. Do you believe that the proposed actions will reduce the uptake of smoking?

Yes

☐

No

☒

Don't know or no views

☐

(If 'No,' how do you think it might be possible to amend the Action Plan so that this aim is achieved?)

See Q1.

5. Do you have any other comments on Action Area Two?

Yes

☒

No

☐

(If 'Yes', please write your comments below)

See Q1.



### Action Area Three: Reducing smoking prevalence levels

6. Do you believe that the proposed actions will reduce the smoking prevalence levels?

Yes ☐ No ☒ Don't know or no views ☐

(If 'No,' how do you think it might be possible to amend the Action Plan so that this aim is achieved?)

See Q1.

7. Do you have any other comments on Action Area Three?

Yes ☒ No ☐

(If 'Yes', please write your comments below)

See Q1.

#### Action Area Four: Reducing exposure to second-hand smoke

8. Do you believe that the proposed actions will reduce exposure to second-hand smoke?

Yes

☐

No

☒

Don't know or no views

☐

(If 'No,' how do you think it might be possible to amend the Action Plan so that this aim is achieved?)

See Q1.

9. Do you have any other comments on Action Area Four?

Yes

☒

No

☐

(If 'Yes', please write your comments below)

See Q1.



## Equality Impact Assessment

10. Do you think there would be any negative impact on individuals or communities on grounds of disability, race, gender and gender reassignment, age, religion and belief and non-belief, sexual orientation or Human Rights as a result of the Action Plan?

Yes

☒

No

☐

Don't know or no views

☐

(If 'Yes', please write your comments below)

See Q1.

## Other comments

11. Do you wish to make any other comments on the draft Tobacco Control Action Plan for Wales?

Yes

☒

No

☐

(If 'Yes', please write your comments below)

See Q1.

12. Please tick your occupation or the type of organisation you are responding on behalf of:

Academic sector	<input type="checkbox"/>
Health Network	<input type="checkbox"/>
Health Professional Body	<input type="checkbox"/>
Individual	<input type="checkbox"/>
Local authority	<input type="checkbox"/>
Local Health Board	<input type="checkbox"/>
NHS Trust	<input type="checkbox"/>
NHS worker	<input type="checkbox"/>
Primary care provider	<input type="checkbox"/>
Secondary care provider	<input type="checkbox"/>
Tobacco manufacturer	<input checked="" type="checkbox"/>
Tobacco retailer	<input type="checkbox"/>
Trading standards	<input type="checkbox"/>
Voluntary sector organisation	<input type="checkbox"/>
Other	<input type="checkbox"/>

Please specify.....



13. Please provide your name and contact information:

Name of respondent:

Adam Cleave

Name of organisation:

Imperial Tobacco Limited

Address:

PO Box 244  
Upton Road  
Bristol  
BS99 7UJ

Contact telephone number:

+44 (0)117 963 6636

Contact email address:

adam.cleave@uk-imp-tob.com

In submitting this response, are you representing a stakeholder organisation?

Yes

☐

No

☒

If yes, what is the name of your organisation?

The Welsh Assembly Government will only contact you should we seek further information about your response.