



Department  
of Health &  
Social Care

# **The impact of tobacco laws introduced between 2010 and 2016**

**Survey form**

## Introduction

We are conducting a post-implementation review looking at the tobacco legislation introduced between 2010 and 2016.

The review considers how effective tobacco legislation has been in:

- discouraging young people from taking up smoking and vaping
- encouraging existing smokers to quit
- protecting others from the harmful effects of cigarette smoke

The legislation introduced during this time includes bans on:

- displaying tobacco products and prices in shops
- selling nicotine-inhaling products, including e-cigarettes, to under 18s
- buying nicotine-inhaling products on behalf of someone under 18 (proxy purchasing)
- smoking in cars containing children

We want your opinions and evidence on the legislation. Your views will help us to assess whether the legislation has achieved its objective.

## Instructions

Please complete this application form in word format. You will be able to change the sizes of the answer boxes as appropriate for your answer.

You do not have to respond to every question. You can choose to respond to only those questions that are relevant to you.

Please return this form by email when completed to: [healthy.behaviours@dhsc.gov.uk](mailto:healthy.behaviours@dhsc.gov.uk)

If you wish to respond in writing, please print and complete this form, attaching any additional sheets as necessary and send it to the address below. If you would prefer not to use the form, or are unable to do so, please write with your answers and comments to:

**Tobacco Legislation Consultation 2019  
Healthy Behaviours  
Department of Health and Social Care  
2N04 Quarry House  
LS2 7UE**

# Consultation questions

## Section 1: The Tobacco Advertising and Promotion (Display) (England) Regulations 2010

These regulations apply to the display of tobacco products in small and large shops (display ban) and came into force on 6th April 2012 in larger shops and 6th April 2015 for all other outlets.

The regulations prohibit the display of tobacco products in small and large shops, allowing trading to continue but preventing them from being used as promotional tools. All retailers are required to cover up cigarettes and hide all tobacco products from public view.

The full [Tobacco Advertising and Promotion \(Display\) \(England\) Regulations 2010](#) are published on [Legislation.gov.uk](#)

### Objectives

- To protect children and young people from health harms of smoking.
- Create a supportive environment for adults who are trying to quit smoking by implementing the prohibition of tobacco products displays.

The regulations recognise that retailers need to be able to serve customers and restock products, and that staff need to know where products are kept.

**Do you think the display ban of tobacco in small and large shops has helped to reduce the number of children and young people smoking?**

Yes, I think it has

No, I don't think it has

I don't know if it has or has not

**Please give reason(s) for your answer.**

The British Lung Foundation (BLF) is pleased to be responding to this consultation.

Lung disease is one of the three biggest killer disease areas in the UK. It kills 115,000 people each year, the equivalent of one person every five minutes, and approximately 12 million people in the UK (around 1 in 5) have a history of asthma, chronic obstructive pulmonary disease (COPD) or another longstanding respiratory illness. The British Lung

Foundation is the only charity looking after the nation's lungs. We provide hope, help and a voice for people with all lung conditions through our research, our helpline and local groups, and our local and national campaigns. Our aim is to make sure that one day everyone breathes clean air with healthy lungs.

As a member of the [Smokefree Action Coalition](#) - an alliance of over 300 organisations across the UK – we're committed to promoting public health, protecting children and lessening health inequalities by reducing the harm caused by tobacco. Achieving the ambition of a smokefree England requires the strict regulation of tobacco including the tobacco regulations being consulted on here. Please note the BLF does not have any direct or indirect links to, or receive funding from, the tobacco industry. It is unfortunate that links to the tobacco industry is not requested when filling out this consultation.

Please note that it is very difficult to separate out the contribution of each individual piece of tobacco control legislation. The comprehensive strategic approach taken in the UK to implement both legislative and non-legislative activities to reduce the smoking rate have all contributed to the broad success we've seen. The preservation and strengthening of current legislation, alongside funding and delivery of activity such as mass media quit campaigns and specialist stop smoking services will all contribute to a move towards a smoke-free 2030.

However, there is clear evidence that the display ban has played a part in helping to reduce prevalence in children and young people:

- Evidence from 25 countries in Europe found that the implementation of PoS display bans was associated with a significantly larger drop in the odds of regular adolescent smoking both in boys and girls than in countries without display bans ([Van Hurck M et al, 2018](#)).
- This is backed up by evidence from England where smoking rates among children and young people have continued to decline since the implementation of the ban. In 2010, pre-ban, 9% of 11-15 year olds in England were current smokers, and the proportion who had 'ever smoked' was 27%. In 2013, the year after the ban on PoS tobacco displays in large shops was introduced, the current smoker rate had fallen to 7%, and then to 6% by 2016, a year on from the full PoS display ban. In 2013 21% had ever smoked, falling to 19% in 2016. ([NHS Digital, 2019](#)).
- There is also evidence that promotion of tobacco at point of sale increases youth smoking by increasing susceptibility to smoking and odds of smoking experimentation and initiation. ([Paytner J, Edwards R, 2009](#); [Robertson L et al, 2016](#); [Mackintosh AM et al, 2012](#) [Robertson L et al, 2016](#)).
- Youth smoking susceptibility (defined as the absence of a firm decision not to smoke) among UK teenagers aged 11-16 decreased following the implementation of PoS

tobacco ban, from a high of 28% pre-ban, to 23% mid-ban and 18% after the ban had been completely implemented. ([Ford A et al, 2019](#))

- The PoS display ban of tobacco has also supported the denormalisation of tobacco use. The proportion of children believing that smoking appears unappealing or that “it’s not OK” increased as a result of the ban ([Ford A et al, 2019](#)).
- Evidence of the denormalisation effect is supported in other jurisdictions also, with the proportion of young people believing more than a fifth of people their age smoked declining following the PoS display ban of tobacco in Ireland, from 62% to 46% ([McNeill A et al, 2011](#)).
- Since the introduction of the display bans in the UK the proportion of children reporting they had not seen tobacco on display has increased from 5% in 2012 to 17% in 2018. ([NHS Digital, 2019](#) Table 3.25).
- The proportion of child smokers (11-15) getting their cigarettes from shops has declined too. ([Laverty A, 2018](#), [NHS Digital, 2019](#)).

In conclusion, the evidence suggests that the display ban of tobacco in small and large shops has helped to reduce the number of children and young people smoking.

### **Do you think the tobacco display ban has encouraged and supported adult smokers to quit?**

Yes, I think it has

No, I don’t think it has

I don’t know if it has or has not

### **Please give reason(s) for your answer.**

Fresh, a tobacco control programme primarily working within the North East of England, have outlined in their submission to this consultation how tobacco displays ‘made quitting hell’ for smokers. Prior to the implementation of the display ban, they spoke to a former smoker who said: *‘...it is really hard when you walk into a shop and cigarettes are there being promoted in your face. There is so much temptation which sometimes makes it hell to stay quit. Not everyone finds that easy to resist... I don’t think cigarettes should be displayed in shops – kids really do see those big bright colourful displays as cool.’*

Beyond anecdotal evidence from smokers themselves, there is strong evidence that display and promotion is closely linked with smoking behaviour. As such the current evidence suggests the display ban on tobacco in small and large shops has encouraged and supported adult smokers to quit:

- PoS tobacco display and promotion is associated with smoking behaviour ([Paytner J, Edwards R, 2009](#); [Robertson L et al, 2016](#); [Ollila H, 2015](#)). Furthermore, as a systematic review shows, this association is reversible ([Robertson L et al, 2016](#)).
- Using data from 129,957 respondents one study concluded that even the 2012 partial PoS ban led to a decline in smoking prevalence which could not be accounted for by other drivers such as seasonal factors, e-cigarette use or price changes ([Kuipers MA et al, 2017](#)).
- This effect is supported by global evidence. A study using data from 77 countries between 2007 and 2014 found that PoS display bans reduced overall adult daily smoking, male smoking and female smoking by about 7%, 6% and 9% respectively ([Yanyun He et al, 2018](#)).
- PoS tobacco display and promotion bans are also effective in reducing impulse purchasing and cravings. A study from Australia found that, when shopping for items other than cigarettes, 1 in 4 adult smokers had purchased cigarettes on impulse as a result of seeing a PoS display. Smokers who had made a quit attempt in the last 12 months and recent quitters also reported experiencing an urge to buy cigarettes as a result of PoS display exposure ([Wakefield M et al, 2008](#)).
- Nearly a third of smokers agreed that the removal of PoS displays would make it easier for them to quit ([Wakefield M et al, 2008](#)).
- A study comparing two countries which had implemented a PoS display ban of tobacco at the time, Australia and Canada, with two countries which had not, UK and US, found that impulse purchasing of cigarettes was lower in those that had implemented a PoS display ban ([Li L et al, 2013](#)).
- Adult smoking prevalence in England has continued to steadily decline since the PoS display ban of tobacco's implementation ([ONS, 2019](#))

**What impact do you think the display ban has had on:**

### **(a) The general population:**

The PoS display ban of tobacco has had no detrimental impact on the general population. As evidenced above, the PoS display ban of tobacco has supported the further denormalisation of tobacco and is likely to have increased understanding of the unique harms of tobacco products.

It's been suggested from various trading standards teams that they're often reliant on intelligence from the community to find regulatory breaches due to limited internal resource. Therefore, we also recommend that more is done to raise public awareness of the regulations, including how to raise complaints with trading standards, to help facilitate the important enforcement work of trading standards.

### **(b) Retailers;**

Retailer compliance with the PoS display ban of tobacco has been very high and suggests that the regulations are straightforward to implement.

One UK study found that 98% of small retail outlets selling tobacco in four communities in Scotland were compliant with the new regulations, demonstrating the ease of their implementation. Further "non-compliance was restricted almost entirely to minor contraventions." ([Eadie D et al, 2016](#)). Similarly, evidence from research carried out by Trading Standards in England in 2017/18 has shown that the compliance rate with point of sale requirements is around 95%.

Concerns about the financial burden that compliance with the regulations might place on retailers are also unfounded. The Association of Convenience Stores (ACS) estimated the cost to each retailer of implementing the ban to be up to £10,000 ([Scottish Grocers' Federation, 2009](#)). Yet the Government Impact Assessment did not support this claim, calculating that compliance would amount to a one-off cost of £450 to £850 (depending on shop size) ([DH, 2011](#)).

Experience from Ireland confirms this, with the average cost of compliance to the retailer amounting to £300. Further, the tobacco industry funded over 90% of the costs in 4 out of 10 shops ([WHO, 2017](#)).

In general compliance with the regulations is very high. To maintain this, we hope local trading standards teams are able to discuss the regulations with small retailers in particular, ensuring they are clear on their obligations. Ultimately the regulation should ensure no promotional material for cigarettes from the tobacco industry can be displayed and that retailers are aware of this. Trading standards teams should also be confident they can act to remove any material which is in breach.

### **(c) Manufacturers;**

The primary objective of the display legislation is to reduce smoking uptake by children and young people and support adults smokers to quit. To be effective the legislation by necessity will have a negative impact on tobacco sales by tobacco manufacturers.

As evidenced above, tobacco manufacturers voluntarily offer retailers support to ensure tobacco displays are compliant with new legislation. Further, via sales representatives, manufacturers have offered retailers incentives for maintaining stock levels and availability, positioning brands in particular places (despite them being covered) and verbally recommending specific brands to customers ([Stead M et al. 2018](#)).

Tobacco manufacturers value promotion at the point of sale despite legislation to prevent this, which reinforces the importance of this legislation and ensuring it is enforced.

For instance, a staff member at BLF Wales recently saw point of sale display materials on display in a small retailer in Cardiff, which had been distributed to the shop by tobacco company. The display promoted the 'offers on tobacco' and was placed next to the counter. The material was taken down on raising the issue with Trading Standards – although they could not confirm whether the material was in breach of the regulations due to what they called 'ambiguity in the wording', which is concerning in itself.

This example demonstrates that manufacturers are continuing to produce and distribute point of sale display materials which go against this regulation.

It's therefore incredibly important that all retailers are aware of the regulation. This is particularly relevant as new tobacco products are developed for the market – such as heated tobacco products. Retailers may need to be reminded that such point of sale display material is inappropriate and likely in breach of the regulation.

**(d) Other stakeholders (please specify);**

The primary enforcement agency of PoS regulation is Trading Standards. Trading Standards have faced severe cuts which threatens their ability to enforce these regulations, among others.

The National Audit Office has calculated that the number of full-time equivalent Trading Standards staff has decreased by 56% in seven years, 81% of teams report that funding reduction shad had a negative impact on their ability to protect consumers in their area ([NAO, 2016](#)).

In 2009 spending on trading standards was £213 million; in 2018/19 it is due to fall to just over half that, at £108 million ([Labour Communities & Local Government, 2018](#)).

To ensure these and the other tobacco retail regulations are most effectively enforced and, more broadly, to ensure the illicit market in tobacco continues to decline, additional funding for regional trading standards operations is needed. This will support enforcement activity at local level.

In response to English local authority FOI requests in July/August 2019, sent on behalf of the BLF, there appear to be areas who suggest trading standards teams don't have capacity to focus on ensuring compliance with these regulations. The variation between the number of breaches being investigated across local authorities is vast. It's highly likely this is linked to capacity of the trading standards officers.

In Wales, our Welsh BLF office submitted FOI requests on the 18th of July 2019, seeking information concerning enforcement and reporting of 'Tobacco Advertising'. We requested for the total number of reported instances and following actions from those instances. Out of 22 local authorities in Wales, only 5 were recording data on the matter, with 189 reported investigations over 4 years, resulting in 1 fine and 4 warnings issued.

What was apparent from our investigation was the lack of resources available to conduct checks, investigations and enforcement. With many authorities indicating that when instances were reported, they would seek to first educate and instruct on best practice. However, we are concerned whether this tactile approach is too lenient and allowing illegal activity to continue.

Further, authorities indicated that due to the lack of resources, they were intelligence-led and relied upon information and reports from the public. We are concerned that such reliance will not increase enforcement of these regulations, but may instead encourage retailers to engage in illegal practices by selling lower cost tobacco products to customers so that they do not report breaches

Such regional activity has been shown to be effective where it has been funded ([NAO 2013-14](#)) and it is a vital part of a local tobacco control strategy. The tobacco manufacturers should be required to provide funding to government to pay for this in line with the 'polluter pays' principle as suggested in the ASH report Smoking Still Kills endorsed by over 120 health organisations, ([Smoking Still Kills 2015](#)) and subsequently suggested as an option the Green Paper [Advancing our health: Prevention in the 2020s – consultation document](#).

Important stakeholders to consider are the local authority services of Trading Standards and Environmental Health who are vital in monitoring the legislation being reviewed in this consultation and who play a vital role in the delivery of tobacco control.

Regulatory services are facing a funding crisis and while monitoring exercises have been carried out, they are not always routine. Regulatory services as a whole need to be reviewed and options considered including working across bigger footprints, sharing services, greater collaboration, improved national leadership, co-ordination and priority setting in order to ensure continued public protection from a deadly product. An opportunity for their funding could be through the introduction of a polluter pays charge on the tobacco companies.

We hope trading standards teams are being consulted within his process. They should be confident the regulations are fit for purpose and support them to take action against breaches of the regulations.

**Please provide details and evidence for your answers.**

**Is the display ban an effective way to protect children and young people from taking up smoking and supporting those who wish to quit?**

Yes, I think it is

No, I don't think it is

I don't know if it is or is not

**Please give reason(s) for your answer.**

As evidenced above, the display ban is an effective way to protect children and young people from taking up smoking and support those who wish to quit

The answers above demonstrate that the objectives of this regulation, namely (i) To protect children and young people from health harms of smoking and (ii) to create a supportive environment for adults who are trying to quit smoking by implementing the prohibition of tobacco products displays, are being met.

As mentioned above, the Government has recently set out its ambition for England to go smokefree by 2030, with a commitment that further proposals to help deliver this ambition be set out in due course. At the same time, the Government gave the industry an ultimatum to make smoked tobacco obsolete by 2030 ([DHSC, 2019](#)).

The objectives remain appropriate, are being met by the regulation, and could not be met by other means or less regulation, so there is no justification for repealing them.

**Were there any economic losses or gains (for individuals, businesses and wider society) associated with implementing the display ban on tobacco products?**

Yes, I think there were some economic losses or gains

No, I don't think there were any economic losses or gains

I don't know if there were any economic losses or gains

**Please give reason(s) for your answer, including any quantitative values and provide evidence.**

Overall there's economic gain in society for implementing the display ban.

The Government's impact assessment estimated the measure would result in a £120.5 million net benefit to society ([DH, 2011](#)). Smoking is estimated to cost society around £11 billion a year ([DH, 2017](#)) and measures like these regulations which are successful in contributing to the reduction of smoking prevalence and preventing the uptake of smoking deliver an economic benefit.

There is unlikely to have been any significant economic impact on retailers. Over two thirds (69%) of retailers in a previous survey for ASH acknowledged that they do not make much profit from cigarettes compared to other products ([ASH, 2016](#)).

When comparing profit margins on tobacco products to non-tobacco products this point is made clear, with the average profit margin on tobacco products at just 6.6% compared to an average of 24.1% for non-tobacco products ([ASH, 2016](#)).

The average weekly profit made by small retailers on tobacco products is just 1.6% of total sales income, whereas profits from non-tobacco products accounts for 17.6% of sales income ([ASH, 2016](#)).

Further, the majority of transactions (79%) in small shops are for non-tobacco products only, with a small minority of transactions including tobacco alongside other products (13%). Just 8% of small shop transactions are for tobacco products only. All everyday products drive footfall in small shops, not just tobacco ([ASH, 2016](#)).

There has been no evidence of economic losses to retailers or Government through a growth in the illicit tobacco market as a consequence of the tobacco display ban with the

volume of illicit tobacco on the UK market continuing to decline in the years since it was implemented ([HMRC, 2019](#)).

There is therefore no justification for any relaxation of the regulations in light of economic concerns.

## **Section 2: The Tobacco and Advertising (Specialist Tobacconists) (England) Regulations 2010**

These regulations apply to the display of tobacco products in Specialist Tobacconists and came into force on 6th April 2015.

These regulations provide exemptions for specialist tobacconists to the general prohibition of the display of tobacco products. They allow tobacco products to be displayed within specialist tobacconists as long as they are not visible from outside the shops. Additionally, the legislation permits tobacco advertising provided it is in, or fixed to the outside of premises of a specialist tobacconist and complies with prescribed conditions.

The full [Tobacco and Advertising \(Specialist Tobacconists\) \(England\) Regulations 2010](#) are published on [Legislation.gov.uk](#).

### **Objectives**

- To protect children and young people from the health harms of smoking.
- Create a supportive environment for adults who are trying to quit smoking by implementing the prohibition of tobacco product displays.

The regulations recognise that retailers need to be able to serve customers and restock products, and that staff need to know where products are kept.

### **Do you think the display ban of tobacco in specialist tobacconists has helped to reduce the number of children and young people smoking?**

Yes, I think it has

No, I don't think it has

I don't know if it has or has not

**Please give reason(s) for your answer.**

As demonstrated above, the PoS display of tobacco regulations have collectively been effective in reducing smoking amongst children and young people.

With regard to regulations specific for specialist tobacconists, some concerns remain regarding conditions of exemption.

Specialist tobacconists are broadly exempt from the PoS regulations as long as products are not visible from outside the premises. This does nothing to prevent under 18s from entering the premises.

The products and services offered by specialist tobacconists are intended only for those aged 18 or over. Other retailers and premises with the same intended audience such as sex shops and betting shops require a license and are prohibited by their license conditions from allowing under 18s on their premises. The same requirement should be placed on specialist tobacconists.

The small number of specialist tobacconists should make this regulation easily enforceable.

**Do you think the display ban in specialist tobacconists has encouraged and supported adult smokers to quit?**

Yes, I think it has

No, I don't think it has

I don't know if it has or has not

**Please give reason(s) and evidence for your answer.**

Specialist tobacconists are unable to display tobacco products on the exterior of their premises and as a result are not able to promote tobacco products to passers-by.

**Has the display ban within specialist tobacconists had any further impacts not covered in the questions above?**

Yes, I think there have been further impacts

X No, I don't think there have been further impacts

I don't know if there have been any further impacts

**Please give reason(s) and evidence for your answer if yes or no.**

Given the relatively small changes required from specialist tobacconist as a result of the PoS display ban (i.e. ensuring their products and advertisements are not visible from outside the premises), and the ease of compliance with this regulation, there is unlikely to have been any further significant impact.

**Is the display ban in specialist tobacconists an effective way to protect children and young people from taking up smoking and supporting those who wish to quit?**

Yes, I think it is effective

No, I don't think it is effective

I don't know whether it is or is not effective

**Please give reason(s) and evidence for your answer.**

Whilst the regulations are effective insofar as they are part of the wider PoS display ban of tobacco which, as evidenced above, has been effective in protecting children and young people from the harms of tobacco and supporting those who wish to quit, the concerns expressed above risk undermining this.

Between 2014 and 2016 more than 127,000 children a year aged 11-15 started to smoke in the UK, according to analysis by Cancer Research UK - this amounts to around 350 young people a day, equivalent to 22 minibus loads of secondary school children ([APPG on Smoking and Health, 2019](#)).

Once started it is difficult to stop, with two thirds of those who try smoking going on to become regular smokers ([Birge M et al, 2017](#)).

To achieve the Government's ambition of a smokefree England by 2030, more action is required, as recognised by the commitment to further proposals ([DHSC, 2019](#)). In order to sell tobacco, retailers should be required to have a license. ([APPG on Smoking and Health, 2019](#)).

Not allowing under 18s to enter premises of a specialist tobacconist could be part of a license condition specific to specialist tobacconists.

In addition to further supporting the objectives of this regulation, a retailer license for tobacco would help prevent illicit tobacco sales and thereby protect legitimate business and retailers who comply by legislation and support Government tax revenues ([APPG on Smoking and Health, 2019](#)).

**Were there any economic losses or gains (for individuals, businesses and wider society) associated with carrying out this regulation in the community?**

Yes, I think there were economic losses or gains

No, I don't think there were economic losses or gains

I don't know if there were economic losses or gains

**Please give reason(s) and evidence for your answer.**

Insofar as the display ban in specialist tobacconists was a component of the wider PoS display ban of tobacco regulations, there were significant economic benefits delivered to society as evidenced above.

Given the relatively small changes required from specialist tobacconists to make premises compliant with the regulations, there are unlikely to have been any significant economic burdens placed on them as a result.

Furthermore, specialist tobacconists, like other small retailers, were given three years longer than large shops before they were required to implement the PoS display regulations.

## Section 3: The Tobacco and Advertising (Display of Prices) (England) Regulations 2010

These regulations impose requirements on the display of prices of tobacco products in small and large shops and came into force on 6th April 2015.

The regulations permit only three types of tobacco price displays within retailers:

- 1) Poster style lists (up to A3 in size) which can be permanently on show but must not exceed 1,250sq centimetres in size
- 2) A list including pictures of products, which must not be left on permanent show, but can be shown to any customer aged 18 or over who asks for information on tobacco products sold; and
- 3) Price labels, which can be placed on shelving, storage units or tobacco jars. One price label is permitted for each product either on the covered shelf where the product is stored or on the front of the storage unit.

The full [Tobacco and Advertising \(Display of Prices\) \(England\) Regulations 2010](#) are published on Legislation.gov.uk.

### Objectives

- To protect children and young people from the harms of smoking
- Create a supportive environment for adults who are trying to quit smoking by ensuring that price lists and labels cannot be exploited as forms of tobacco promotion.

The regulations do recognise that shops and businesses need to display necessary information on what tobacco products they sell and for what price.

**Have the restrictions on the display of prices of tobacco products helped reduce the number of children and young people smoking?**

- Yes, I think they have
- No, I don't think they have
- I don't know if they have or have not

**Please give reason(s) and evidence for your answer**

Insofar as the restriction on the display of prices of tobacco products is part of the wider ban on the display of tobacco products at PoS, the regulation has been effective in reducing the number of children and young people smoking, as evidenced above.

However, this objective could be better met with the simplification of the regulations relating to the display of prices for tobacco products as detailed below.

**Have the restrictions on the display of prices of tobacco products helped encourage and support adult smokers to quit?**

Yes, I think they have

No, I don't think they have

I don't know if they have or have not

**Please give reason(s) and evidence for your answer.**

Insofar as the restriction on the display of prices of tobacco products are a part of the wider ban on the display of tobacco products at the PoS, they have been effective in encouraging and supporting adult smokers to quit.

However, the regulations relating to the display of prices for tobacco products remain too lenient in allowing multiple opportunities for the promotion of products. They are also more complex than is required as a result and could be improved with simplification.

The price of cigarettes has historically been an important marketing device for tobacco companies ([Spanopoulos D et al, 2012](#); [Henricksen L, 2012](#)), especially in targeting people with lower incomes who experience higher rates of smoking and consequently find themselves at the sharp end of health inequalities ([ONS, 2019](#); [Marmot M et al, 2010](#)).

Currently, there are three ways in which tobacco product prices can be made visible to customers: (i) illustrated price lists available on request, (ii) a permanently displayed price list, (iii) prices and product names on the shelves.

This leaves too much opportunity for the product name and price to be marketed to the public. Multiple lists are also unnecessary from a consumer perspective: (i) smokers are brand loyal ([Cummings KM et al, 1997](#)) knowing what they will purchase before they enter the shop, (ii) with the introduction of standardised packs, lists containing pictures of

products become redundant, (iii) in Ireland, no provision was made for marking storage units on the outside

The regulations also leave room for tobacco industry promotion of their brands through retailers, for example, by incentivising retailers to only display their products on lists, or to put them at the top of lists.

The number of price lists which could be displayed in a shop is also a concern, with the regulations allowing “one price list for each separate area where tobacco products are both located and can be paid for” or “where there is more than one till...one price list for each such till.”

This allowance goes too far and would allow numerous price lists to be on display, unnecessarily drawing attention to the presence and availability of tobacco products to individuals among whom exposure is detrimental.

In order to ensure the regulations deliver the benefits intended and meet their stated objectives, the requirement should be that: (i) only one price list on permanent display in any shop in addition to label and price markings according to regulations inside tobacco displays but NOT outside (ii) all products available for sale should be listed, in alphabetical order.

**What impact do you think the restriction of display of prices of tobacco products has had on the following:**

**(a) The general population**

As evidenced above, product price and its display on tobacco packaging has always been an important promotional tool for tobacco manufacturers. Whilst the regulations together have been successful, as evidenced above, they could be improved with simplification.

**(b) retailers**

As evidenced above, smokers are extremely brand loyal and there is unlikely to have been any increased burden on retailers, via lengthily transaction times or otherwise, as a result of regulations changing the way prices are displayed. As evidenced above,

compliance in the UK is extremely high demonstrating that there is no obvious burden placed on retailers as a result of the regulations.

**(c) manufacturers**

These regulations significantly curb tobacco manufacturers ability to use price as a promotional tool. This has reduced impulse purchasing, decreased smoking susceptibility and helped to reduce smoking prevalence, as evidenced above.

However, opportunities remain for tobacco manufacturers to take advantage of the allowances made for the display of prices of tobacco products. The regulations could therefore be improved and simplified by enacting the above recommendations.

**(d) other stakeholders (please specify)**

N/A

**Please give reason(s) and evidence for your answers.**

**Is restricting the display of prices of tobacco products an effective way to protect children and young people from taking up smoking and support those who wish to quit?**

Yes, I think it is effective

No, I don't think it is effective

I don't know if it is or is not effective

**Please give reason(s) and evidence for your answer.**

As evidenced above, product price and its display on tobacco packaging has always been an important promotional tool for tobacco manufacturers. Whilst the regulations together have been successful in protecting children and young people from the harms of tobacco, as evidenced above, they could be improved by being simplified.

**Were there any economic losses or gains (for individuals, businesses and wider society) associated with carrying out this regulation in the community?**

Yes, I think there were economic losses or gains

No, I don't think there were economic losses or gains

I don't know if there were economic losses or gains

**Please give reason(s) and evidence for your answer.**

Insofar as the regulations are part of the wider PoS regulations, and insofar as these regulations in particular have curbed promotional efforts, they will have delivered a significant economic benefit to society without simultaneously placing one on retailers, as evidenced above.

## Section 4: The Smoke-free (Private Vehicles) Regulations 2015

The regulations came into force as of 1st October 2015 and apply in England. Regulation 5; penalties and discounted amount also applies in Wales. These regulations make it an offence for:

- A person to smoke in a private vehicle when someone under the age of 18 is present
- A driver not to stop a person smoking when someone under the age of 18 is present.

The regulations are thought to have minimal impact in business. Police Authorities are the designated enforcement offices, with the power to issue Fixed Penalty Notices (FPN) to anyone found to be non-compliant with the law.

The full [Smoke-free \(Private Vehicles\) Regulations 2015](#) are published on Legislation.gov.uk.

### Objectives

- To prevent adverse effects of second-hand smoke (SHS) on children in private vehicles, where the level of SHS can be significantly more concentrated than elsewhere. Intervention was deemed necessary as children are unable to exert their choice to leave the vehicle unlike adults.

**Have the Smoke-free (Private Vehicles) Regulations helped prevent people from smoking in vehicles with children?**

**Yes, I think they have**

**No, I don't think they have**

**I don't know if they have or have not**

**Please give reason(s) and evidence for your answer.**

The regulations have been effective in preventing people from smoking in vehicles with children. The British Lung Foundation led the campaign for this legislation to be passed and we are proud of the benefits this has brought to children at risk from second hand smoke.

A report by the Chartered Institute of Environmental Health (CIEH) and Improving Performance in Practice (iPiP) ([CIEH & iPiP, 2016](#)) found that compliance with the Smoke-free (Private Vehicles) Regulations 2015 is very high. There were no contraventions of the legislation found in any of the 255 vehicles inspected as part of the survey at 8 locations in two distinct geographical areas in England.

Awareness of the existence of legislation prohibiting smoking in private vehicles is also high, with the majority of people interviewed by the insights gathering team felt the legislation had made a difference.

Recent data from NHS Digital's Smoking Drinking and Drug Use Among Young People publication confirms the effectiveness of the regulations. In 2014, a year before the ban, 34% of pupils reported being exposed to secondhand smoke in the last year and 66% reported never being exposed. In 2016, 26% reported being exposed in the last year, whilst 74% reported never being exposed ([NHS Digital, 2019](#)).

However, the regulations will work best if sustainable funding is given for public health campaigns highlighting the dangers of second hand smoke more broadly. This will ensure maximum impact in reducing harm for exposure to second hand smoke.

**What impact do you think the Smoke-free (Private Vehicles) Regulations have had on the following:**

**(a) The general population**

There is a high positive impact on the general population.

Firstly, the regulation has had a clear benefit on children's health. Second hand smoke is detrimental to children in particular, placing them at higher risk of respiratory infections, asthma and cot death. Even smoking one cigarette in a car leads to a high level of secondhand smoke, and smoking in a car – even with the window open – causes exposure to dangerous chemicals 100 times higher than recommended in safety guidelines. It's extremely positive that the proportion of pupils reporting exposure to second hand smoke in a car was 23% in 2018, down from 34% in 2013.

The regulation has also played a significant role in demonstrating that smoking in confined spaces is not the norm, and has raised awareness of the harms of second

hand smoke. Overall, this is likely to have helped lower the exposure levels in other spaces.

**(b) retailers**

It's unlikely there has been no significant impact on retailers.

**(c) manufacturers**

(d) It's unlikely there has been no significant impact on retailers.

**(e) other stakeholders (please specify)**

N/A

**Please give reason(s) and evidence for your answers.**

**Do you believe prohibiting smoking in private vehicles is an effective way to protect children and young people from harms of tobacco and second-hand smoke?**

Yes, I think it is

No, I don't think it is

I don't know if it is or is not

**Please give reason(s) and evidence for your answer.**

Yes, it has absolutely been an effective way to protect children and young people. legislation combined with public information has been critical in ensuring the success of these regulations.

The harms of secondhand smoke and its effect on children is well known ([RCP, 2010](#)) (outlined below):

- An Australian study found that children exposed to secondhand smoke in their parents' car had double the risk of a persistent wheeze compared with children who had not been exposed. (Kabir Z et al, 2009)
- In Canada, a study examining exposure to SHS in both the home and in cars found that, when considered separately, both home and car exposure were significantly associated with chronic bronchitis in children and adolescents aged 12-19 years. ([Martin J et al, 2006](#))
- Observational studies examining the prevalence of smoking in cars by socioeconomic area suggests that children in lower socioeconomic groups are likely to be more frequently exposed to SHS than other children, compounding the already unacceptable health inequalities faced by these children. ([Moore GF et al, 2014](#))
- Furthermore, children who are regularly exposed to smoke in cars are up to six times more likely to smoke themselves. ([Jarvie JA, Malone RE, 2008](#))

However, there is a clear need to maintain campaigns about the risks of smoking in cars with children, because a number are still being exposed to smoke in a car.

**Were there any economic losses or gains (for individuals, businesses and wider society) associated with carrying out this regulation in the community?**

Yes, I think there were economic losses or gains

No, I don't think there were economic losses or gains

I don't know if there were economic losses or gains

**Please give reason(s) and evidence for your answer.**

There will have been significant health and economic gains as a result of these regulations.

It is highly likely that the level of smoking related illness caused by second hand smoke has been reduced.

The Government Impact Assessment estimated a net benefit of £30.8 million to £63.8 million as a result of the regulation ([DH, 2014](#)). The evidence set out above supports this, with economic benefits coming from a healthier population (and increased productivity), reduced burden and costs on our health services and a reduced number of road traffic accidents.

There is no evidence to show that the objectives could be achieved with a system that imposes less regulation.

## Section 5: The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015

These regulations came into force as of 26 March 2015 for proxy purchasing and 1 October 2015 for all other provisions. These regulations apply in England and Wales.

The regulations prohibit both the sale of Nicotine Inhaling Products (NIPs) including e-cigarettes to under 18s, as well as the purchase of these products on behalf of a minor (proxy purchasing).

The full [Nicotine Inhaling Products \(Age of Sale and Proxy Purchasing\) Regulations 2015](#) are published on [Legislation.gov.uk](#).

### Objectives

- To limit the sale of nicotine inhaling products (NIPs) such as electronic cigarettes (and related products including refill cartridges and nicotine liquids) to adults only, with only certain limited exceptions for medicinal products.
- Limit the availability of NIPs to under 18's, restricting scope for children and young people to become addicted to nicotine, minimising potential gateway effect into smoking.

**Do you think the Nicotine Inhaling Products Regulations have helped to prevent the sale of nicotine inhaling products, including e-cigarettes, to under 18s?**

Yes, I think they have

No, I don't think they have

I don't know if they have or have not

Please give reason(s) and evidence for your answer.

We believe these regulations have helped to prevent the sale of nicotine inhaling products, including e-cigarettes, to under-18s. Generally, the regulations are appropriate and seem to be working, because we have not seen any significant increase in the number of young people regularly using an e-cigarette since the introduction of the regulations.

The regulation must strike a balance between ensuring they are not accessible to young people, but are available and marketed to adult smokers looking to quit cigarettes. Generally, we believe the current regulations have this balance right. However, the

government must continue to monitor the situation and commit to collecting survey data on regular and occasional e-cigarette use by young people.

This is what we know about e-cigarette use in young people:

The latest Smoking Drinking and Drug Use Among Young People data from NHS Digital, published August 20<sup>th</sup> 2019, shows that e-cigarette use among 11-15 year olds has remained the same since 2016. Regular use remains extremely low at 2%, as does occasional use, at 4% (both the same as 2016) ([NHS Digital, 2019](#)).

The proportion of those that have ever tried e-cigarettes and those that have never tried them also remains the same as 2016 levels (15% and 75%, respectively) ([NHS Digital, 2019](#)). Since 2016, the proportion of children sourcing their e-cigarette and materials from a shop has declined, from 37% in 2016 to 29% in 2018 ([NHS Digital, 2019](#)).

Moreover, evidence suggests that for the most part, compliance is improving. Compliance with the regulations is high and has improved over time: in a review of compliance carried out by the Chartered Trading Standards Institute (CTSI illegal sales of nicotine inhaling products (NIPS) occurred in 39% of test purchases ([CTSI, 2016](#)). In a follow-up survey, compliance improved substantially with an overall non-compliance rate of 25% ([CTSI, 2016](#)), demonstrating the effectiveness of the regulations.

According to the most recently available data, provided by CTSI's annual tobacco control survey for 2017/18, levels of compliance and activity remained broadly similar to 2016/17 levels ([CTSI, 2018](#)).

Whilst the regulations have therefore been effective, enforcement and compliance could be improved. As evidenced earlier, this should be understood in the context of substantial cuts to Trading Standards ([NAO, 2016](#); [Labour Communities & Local Government, 2018](#)), the primary enforcers of this regulation.

There must be regular studies looking at the level of compliance – including proxy purchasing of nicotine inhaling products for under-18s – to monitor compliance over time.

There has been some concern raised about a recent spate of respiratory illnesses in the USA which appear to be linked to vaping. Whilst it is important to keep evidence under review as to the safety of vaping, and of the health effects of different components, Public Health England remain clear that the risks associated with vaping are significantly (95%) lower than the risks of smoking. There has not yet been any suggestion that people in the UK have had their health negatively affected, which suggests our stronger regulatory framework has ensured the safety of products on the market.

**Has anyone else benefitted from the age restriction and proxy purchasing (when an adult buys a product on behalf of a minor) ban on nicotine inhaling products?**

Yes

No

I don't know

**Please give reason(s) and evidence for your answer.**

Children and retailers will have benefitted from the regulations.

**What impact do you think the age restriction and proxy purchasing ban on nicotine inhaling products has had on:**

**(a) People under 18**

As discussed above, the government has regulated e-cigarettes in an appropriate manner, meaning that to date they are primarily viewed as adult smoking cessation devices in the UK. This is demonstrated by the NHS Digital data presented above showing regular use of e-cigarettes by under 18s remains low ([NHS Digital, 2019](#)).

**(b) People over 18**

One concern which remains is the effect these regulations may have on people's perceived harm of e-cigarettes, particularly smokers who might consider using an e-cigarette to stop smoking.

Setting the age of sale for e-cigarettes at the same level as cigarettes may lead people to incorrectly believe they are equally as harmful.

E-cigarettes are now the most popular quitting method and are estimated to have contributed to an additional 18,000 long-term-ex-smokers in England in 2015 ([Beard E et al, 2016](#)) and a recent randomized control trial has found them to be twice as effective as NRT for smoking cessation, when combined with behavioural support

([Hajek P et al, 2019](#)), demonstrating the public health opportunity they present in reducing smoking prevalence.

One way to combat misconceptions about the harms of e-cigarettes (and the deterring effect this may have on smokers who might otherwise quit using them) would be to consult on raising the age of sale for tobacco products from 18 to 21.

This recommendation was made by the APPG on Smoking and Health in their 2019 report, and was submitted by ASH to the Department of Health and Social Care ahead of the publication of the Prevention Green Paper with the endorsement of 17 health and welfare organisations committed to reducing the harm caused by tobacco. ([APPG on Smoking and Health, 2019](#); [ASH, 2019](#)).

Doing this would also reinforce that tobacco is a product like no other, killing 1 in 2 of its long-term users when consumed as intended ([Doll et al, 2004](#)) and might also stimulate more smokers to use e-cigarettes to quit, thereby delivering health and economic benefits and contributing to the achievement of a smokefree England by 2030, as is Government ambition.

### **(c) Retailers**

For retailers, these laws have provided clarity on who nicotine inhaling products can be sold to and have provided more opportunity for retailers and Trading Standards departments to discuss underage sales prevention.

### **(d) Manufacturers**

**N/A**

### **(e) other stakeholders (please specify)**

As mentioned above, there is a wider risk that the regulations might reinforce false perceptions that e-cigarettes are as harmful as cigarettes, thereby preventing smokers from using them to quit. One way to help combat this would be by raising the age of sale for tobacco to 21, as detailed above.

**Please give reason(s) and evidence for your answers.**

**Is the age of sale restriction and ban on proxy purchasing of nicotine inhaling products an effective way to protect children and young people from harms of nicotine-containing products?**

Yes, it is effective

No, it is not effective

I don't know if it is or is not effective

**Please give reason(s) and evidence for your answer.**

Youth use of e-cigarettes has remained low since the regulations were introduced while it has become more difficult for young people to buy e-cigarettes. This suggests that the regulations have been associated with preventing the growth of e-cigarette use by under-18s and reinforcing the message that e-cigarettes are adult smoking cessation devices.

Results could be improved on by increased funding of Trading Standards which could and should be provided from the notification fees paid to the MHRA by e-cigarette companies.

**Were there any economic losses or gains (for individuals, businesses and wider society) associated with carrying out this regulation in the community?**

Yes, I think there were economic losses or gains

No, I don't think there were economic losses or gains

I don't know if there were economic losses or gains

**Please give reason(s) and evidence for your answer.**

There are unlikely to have been any economic losses as a result of this regulation



## Section 6: About you

**Title (Mr, Mrs, Ms, Dr, Professor):** Ms

**First name:** Rachael

**Surname:** Hodges

**Email address (optional):** Rachael.hodges@blf.org.uk

### In what capacity are you responding? (Required)

**An individual** – You are responding with your personal views, rather than as an official representative of a business / business association/ other organisation.

**Non-governmental organisation** – In an official capacity as the representative of a non-governmental organisation / Trade Union / academic institution / charity

**Business** – In an official capacity representing the views of an individual business.

**Public sector body** – In an official capacity as a representative of a local government organisation / public service provider / trade body or any other public sector body in the UK or elsewhere.

**Other – Please specify.**

**Are you happy for the Department of Health and Social Care to use your email address to send you updates about its policies?**

Yes

No

**Are you happy for the Department of Health and Social Care to use your email address to send you updates about other Department of Health and Social Care consultations?**

Yes

No

**What is your age?**

Under 15

16 - 19

20 - 24

25 – 29

30 – 39

40 – 49

50 – 59

60 – 69

70 – 79

80 or over

**What is your ethnicity?**

White

Mixed / multiple ethnic groups

Asian / Asian British

Black / African / Caribbean / Black British

Other ethnic group. Please specify.

**Do you consider yourself to be disabled?**

The Equality Act 2010 defines a person as disabled if they have a physical or mental impairment, that has a substantial and long-term (i.e. has lasted or is expected to last at least 12 months) and adverse effect on the person's ability to carry out normal day-to-day activities.

Yes

No

**Where do you live?**

England

Scotland

Wales

Northern Ireland

Other. Please specify.

**About your organisation (if relevant)**

**Name of organisation:**

British Lung Foundation

**Type of business / organisation:**

Charity

**How many employees does your business / organisation have?**

- Less than 10 employees
- 10 – 49 employees
- 50 – 249 employees
- 250 or more employees

**Feedback on the consultation**

**How did you hear about this consultation?**

- Social Media
- Received an email
- Word of mouth (family, friend, colleague)
- Direct communication from third sector or regulatory organisation
- Broadcast news (TV or radio)
- GOV.UK or other government website
- Newspaper (online or print)
- Website (non-government)
- Other. Please specify.