



## Public Health White Paper (Wales) Consultation

### Response by ACS (the Association of Convenience Stores)

1. ACS (the Association of Convenience Stores) welcomes the opportunity to respond to this consultation. ACS represents 33,500 stores across the UK, all of which have an important role to play in supporting public health policy. In Wales, there are nearly 3000 stores, employing over 22,500 staff<sup>1</sup>. ACS supports the Welsh Assembly Government's aims to tackle public health issues including smoking, alcohol-related health harms and obesity. We are actively working with the Home Office and Department of Health to support these aims, including through support of initiatives such as the Responsibility Deal.
2. ACS actively supports a number of initiatives, including Challenge 25, Community Alcohol Partnerships and Change4Life, and fully support efforts to further reduce health harms and encourage customers to make healthy and responsible choices. We also support the aims of the Welsh Government to introduce a 'health in all policy' approach to regulation, to ensure co-ordinated and consistent public health policy.
3. However, it is essential that any regulatory measures to further this aim are evidence based and proportionate. Of particular concern are proposals for a tobacco retailers register, which would impose financial and administrative burdens on the sector, and poses a significant risk of focusing enforcement activity on legitimate retailers to the exclusion of those not registered and those engaged in the illicit trade.
4. Proposals for Minimum Unit Pricing (MUP) are also concerning due to the lack of devolved powers for the licensing system. To introduce MUP without licensing powers could lead to unnecessary complications and confusion. This is especially so given the continuing legal case over the Scottish Government's plans to bring in MUP.
5. We continue to believe that action on public health issues is most effective when operated in co-operation with retailers, to ensure efficient and effective delivery of outcomes. In this submission we set out our views on each of the policy proposals, alongside answers to the specific questions asked in the consultation.

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<sup>1</sup> ACS Local Shop Report 2013

## **Tobacco and electronic cigarettes**

### *Tobacco Retailers' Register*

6. ACS opposes proposals to introduce a tobacco retailers register in Wales, as this would impose additional costs on retailers and risks focusing enforcement action on legitimate retailers rather than those engaging in the illicit trade. Tobacco contributes on average 20.1% to the turnover of a general convenience store and can account for as much as 80% turnover for a newsagent<sup>2</sup>. A convenience retailer or newsagent prohibited from selling tobacco will no longer have a viable business. The introduction of a retailers' register risks focusing enforcement action in registered retailers only, rather than addressing issues such as the illicit trade, which has a significant detrimental impact on both public health and legitimate retailers. This is increasingly likely given the widely reported resourcing pressure on trading standards officers.
7. Action to tackle smoking and health harms need to be part of a comprehensive strategy which addresses the illicit trade, health education, youth access and retail regulations. In relation to retail, we support measures to address the issue of under-age sales, including the introduction of a ban on proxy purchasing for tobacco, which ACS actively campaigned for. We welcomed the recent addition of this to the Children and Families Act in the Westminster Parliament, and further welcome the decision that this will be extended to also cover Wales.

### **Q1. Do you agree with the proposal to create a tobacco retailers' register for Wales under the terms outlined above?**

8. As stated above, ACS does not support proposals for a Tobacco retailer' Register.

### **Q2. Do you consider that the creation of such a register will (i) assist in attempts to reduce under age sales of tobacco products, and (ii) assist in the enforcement of the display ban?**

9. ACS is concerned that the register would result in enforcement action being targeted at legitimate retail, while side-lining action to tackle the illicit trade. The illicit trade represents a significant threat to both public health and legitimate retail. Tackling this must form a central part of any tobacco control or public health policy.
10. A recent project launched by ASH Wales<sup>3</sup> states that 'to date, no steps have been taken in Wales to evaluate the scale of the problem [with the illicit trade] or to introduce a campaign equivalent to those that have taken place in the English regions'. The Welsh Assembly Government should work closely with industry and charities to ensure more focus is placed on this essential area of public health policy.

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<sup>2</sup> ACS Local Shop Report 2013

<sup>3</sup> ASH Wales: Tackling the illicit tobacco market in Wales (further information available at: <http://www.cancerresearchuk.org/science/research/who-and-what-we-fund/browse-by-location/cardiff/ash-wales/grants/elen-de-lacy-17633-ash-wales-tackling-the-illicit>)

11. The introduction of a register would not only fail to address the illicit trade, but the consultation document highlights that the register has been requested by trading standards as a useful tool to enforce compliance with the tobacco display ban and would *‘allow retailers that sell tobacco products to be clearly identified, enabling trading standards and others to offer advice and support to them to avoid illegal sales, as well as help to maintain a consistent schedule of test purchasing.’*
12. This presents a clear risk that the register would be used to co-ordinate enforcement action at those on the register, potentially penalising legitimate retailers who would already have absorbed the additional financial and administrative burdens involved in registering.
13. In addition, a review of compliance with the display ban by trading standards<sup>4</sup> in England, following the 2012 implementation for large stores, found no need for additional measures to aide compliance, with compliance with all aspects of the display ban stood at between 96% and 100%. They concluded that “Implementation of the Tobacco Advertising and Promotion (Display) (England) Regulations 2010 has been successful and compliance levels across the regulatory requirements is high in both large stores and cash and carry type businesses.”

**Q3. Do you consider the proposed fee structure to be reasonable? Please suggest an alternative if not.**

14. No. If introduced, a register should not be funded by retailers, but operated on a similar model to that already in place in Scotland, where registration is free. As highlighted in the consultation document, the benefits of the registration scheme would fall primarily to trading standards and local authorities. Retailers would therefore be expected to fund this scheme, despite the key beneficiaries being regulators, and with the extra concern that the registration system may in fact divert resources away from tackling the illicit trade. We therefore do not believe the potential benefits to retailers of a registration system are proportionate to the burdens it would impose on retailers.
15. Based on the number of shops in Wales, the cost to the convenience sector to register would be nearly £80,000, of which less than £8,000 would be charged to multiple site operators, due to the discount for additional sites registered. This would mean that small operators would take on a disproportionate share of the burden of setting up and running the registration scheme, especially when considering these stores often have significantly lower levels of tobacco sales by volume. In addition to this financial burden, shops would experience administrative costs in registering and ensuring all information was up to date.

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<sup>4</sup> <http://www.tradingstandards.gov.uk/policy/policy-pressitem.cfm/newsid/1108>

**Q4. Do you consider the proposed enforcement and penalty arrangements for the tobacco retailers' register to be appropriate? If not, could you please provide us with your suggestions?**

16. We agree that the use of restricted sales orders and restricted premises orders in cases where retailers repeatedly breach regulations would be proportionate, however detailed guidelines would be needed to ensure these strict penalties would be used only where appropriate to target the most serious repeat offenders. If introduced, we would also support strong penalties against those who do not register, however in addition we would call for detailed assurances that significant resource would also be put into identifying these retailers and those engaged in the illicit trade.

**Q5. Are there any other features of a tobacco retailers' register that we should consider?**

17. N/A

*Electronic cigarettes*

18. ACS' comments regarding proposals for e-cigarettes are limited to the potential impact on retailers and the principles of better regulation. E-cigarettes are a growing product category, which evidence suggests are effectively being used by smokers to help them to quit. Evidence produced by health charity Action on Smoking Health (ASH) highlighted that 71% of e-cigarette smokers do so to try and give up smoking, and 48% use them to reduce the amount of tobacco they smoke.<sup>5</sup>

19. ACS' concern over plans to ban the use of e-cigarettes in public places and places of work are twofold. Firstly, ACS supports the principles of better regulation and believes all regulatory interventions should be evidence based. We have not currently seen evidence put forward that would make the case that the proposed ban is necessary or proportionate. Secondly, the regulations would impose a new regulatory burden on stores, including new training requirements for staff who would have to enforce the ban in store.

**Q6. Do you consider that the use of e-cigarettes in enclosed and substantially enclosed public places (including work places) undermines and makes more difficult the enforcement of the current ban on smoking in such places?**

20. ACS is not aware of evidence which shows the use of e-cigarettes is undermining current tobacco control regulations.

**Q7. Do you consider that the widespread use of e-cigarettes in enclosed and substantially enclosed public places (including work places) normalises the act of smoking and acts as a gateway to the use of conventional tobacco products?**

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<sup>5</sup> <http://www.ash.org.uk/media-room/press-releases/:over-2-million-britons-now-regularly-use-electronic-cigarettes>

21. ACS supports the introduction of an age restriction for e-cigarettes and are working with the Department of Health ahead of the upcoming technical consultation and implementation of these proposals. We welcome the decision to extend the scope of the regulations to also cover sales in Wales.

**Q8. Do you have any evidence or practical experiences to support your views in relation to questions 6 and 7? If so we would be grateful to receive such evidence or receive details of such experiences.**

22. Further to our answer to Q7, retailers are already choosing to introduce voluntary bans on sales of e-cigarettes to customers under the age of 18.

**Q9. Do you consider legislation would assist in the enforcement of the existing Smoke-Free requirements and reinforce the message that smoking is no longer the norm? Please provide evidence to support your answer, if available.**

23. As highlighted above, legislation should only be introduced if there is clear evidence of health harms that needs to be addressed. Consideration should also be given to those who would have to enforce the ban. Full communication with businesses and consumers would be needed ahead of implementation to avoid potential confusion or confrontation. This would have to include explanation of the evidence and reasons for a ban on the use of e-cigarettes in public spaces, as this may be harder for customers in stores to understand given the absence of direct health harms.

**Q10. In considering such a proposal, should the ban on the use of e-cigarettes in enclosed and substantially enclosed public and work places be subject to the same exemptions and penalties as conventional tobacco products?**

24. N/A

**Q11. What other measures, if any, should the Welsh Government be considering in relation to e-cigarettes?**

25. N/A

#### *Internet Sales of Tobacco*

**Q13. Do you consider there is a problem with persons aged under 18 receiving delivery of tobacco products which have been ordered online by an adult? Please provide evidence to support your response, if available.**

26. We agree that there is a potential risk of the increasing volume of internet sales becoming an avenue for under 18s to access age restricted products including alcohol and tobacco, however there is limited evidence available as to the scale of the risk in this area. More than 1 in 4 convenience stores now offer grocery delivery. Many stores that offer delivery of online purchases already have policies for drivers

to check the age of the recipient, however this does entail additional training and costs on behalf of the retailer.

27. ACS would welcome further research into this area before any decisions to introduce additional regulations on stores.

**Q14. Is this an area where the National Assembly for Wales should consider strengthening the existing legislative framework to make it an offence to deliver tobacco products to a person who is under the legal age of sale for tobacco products (which is currently 18)?**

28. As stated, ACS would welcome further study and evidence as to the scale of the issue before legislative proposals were brought forward. This should involve discussions with industry as well as relevant health bodies and charities. ACS would be happy to be involved this work.

**Alcohol**

29. The consultation paper sets out a range of significant changes to alcohol regulation that the Welsh Assembly Government is seeking to pursue. ACS is committed to promoting responsible retailing within the convenience sector, providing advice and highlighting best practice initiatives to our members.

30. We are actively working with the Home Office and Department of Health to support these aims, including through support of initiatives such as the Responsibility Deal and Challenge 25. We are also actively involved in a number of other responsible retailing schemes, including being founding members of Community Alcohol Partnerships, an initiative which encourages partnership working between retailers, local enforcement authorities and communities to address alcohol-related issues. ACS is also a founding board member of CitizenCard Ltd and the Proof Age Standards Scheme (PASS).

31. However, convenience retailing is a highly regulated industry, and it is essential that any proposals for further regulation are proportionate and evidence based. For these reasons we do not support the aim indicated in the consultation document of adding health as a fifth licensing objective, given that there is no way to link regional health data to individual licenced premises.

32. We are also disappointed with the focus within the consultation on the issue of “pre-loading” and the purchase of alcohol from the off-trade. The perception that more people are drinking at home and this is leading to higher levels of alcohol related harm is not based in fact. Studies have shown<sup>6</sup> that only around one in five of all drinkers drink at home before they go out, and no data is available on volumes of alcohol consumed at home. However there is evidence which shows that alcohol consumption rates both at home and in total are in decline. From 2004 – 2011

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<sup>6</sup> Alcohol, nightlife and violence: the relative contributions of drinking before and during nights, Bellis Et al 2008

consumption in the home fell by 8%<sup>7</sup> and overall alcohol consumption declined by 18%.<sup>8</sup>

33. ACS also has concerns over the proposals to introduce a Minimum Unit Price for alcohol in Wales given the lack of devolved licensing powers and the ongoing legal issues relating to the Scottish MUP. As highlighted in our submission to the UK Governments' Alcohol Strategy consultation in early 2013, there are also serious questions around the evidence base used to support MUP, and concerns over the lack of detail as to how this would be implemented and amended in future.

34. We do recognise that price and affordability do clearly have a link to consumption, and have supported and worked with Government on the recent introduction of a ban on below cost sales. We will continue to work with authorities to support responsible retailing and the reduction of alcohol related harms.

**Q15. Given the evidence base and public health considerations, do you agree that the Welsh Government should introduce a Minimum Unit Price for alcohol?**

35. We do not believe the Welsh Government should pursue Minimum Unit Pricing (MUP) outside the framework of the Licensing Act. To implement this policy without this could lead to an unnecessary complicated and burdensome approach for retailers, especially those trading across the Welsh border.

36. There are also continuing concerns over the ongoing legal issues around this policy and the strength of the evidence base used to support the proposal.

**Q16. Do you agree that a level of 50 pence per unit is appropriate? If not, what level do you think would be appropriate?**

37. If MUP were to be introduced we would welcome consistency in pricing across all UK jurisdictions.

**Q17. Do you agree that enforcing Minimum Unit Pricing for alcohol would support the reduction in alcohol related harms? Please provide evidence to support your answer, if available.**

38. A decision to introduce MUP is one for Ministers based on a clear assessment of the social research. We have recently supported measures to regulate price through the introduction of a ban on below cost sales, however we do not have a view on whether further price control is required.

**Q18. Do you think any level of Minimum Unit Pricing set by the Welsh Government should be reviewed and adjusted over time? Please provide evidence to support your answer, if available.**

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<sup>7</sup> Health and Social Care Information Centre, General Lifestyle Survey 2013

<sup>8</sup> General Lifestyle Survey Overview, Office of National Statistics 2013

39. N/A

**Q19. As the Welsh Government cannot legislate on the licensing of the sale and supply of alcohol, what enforcement and/or penalty arrangements do you think should be in place to introduce Minimum Unit Pricing for alcohol in Wales?**

40. As highlighted above, ACS has concerns over proposals for MUP to be introduced without the framework of the Licensing Act. If the Welsh Assembly Government does choose to pursue this option, detailed consultation with industry on proposals for how this could be achieved would be required.

**Q20. Do you think there are other measures that should be pursued in order to reduce the harms associated with excessive alcohol consumption?**

41. N/A

### **Obesity**

42. Tackling obesity and related conditions are clearly priorities for public health policy, given the growing number of people affected and the associated costs to society. Retailers also have a role to play in promoting healthy eating messaging and providing healthy alternatives to products in stores.

43. As part of the Responsibility Deal ACS committed to support and promote the Government's Change for Life initiative. Through this, we worked with symbol groups, independent retailers and local authorities to highlight and promote the benefits of the Change4Life within convenience stores. Through regular ACS communication to members, promotion through symbol groups and actively engaging with organisations, we have sent out over 1400 Change4Life packs to retailers throughout England and Wales, encouraging the sale of fresh fruit and vegetables in store.

44. Convenience store operators are committed to providing a good range of fruit and vegetables in store. The combined result of all activity in this area is that fruit and vegetables became the fastest growing product category in the sector in 2013, and have overtaken confectionery in terms of sales values.<sup>9</sup>

45. However, given the increasing political focus on healthy eating issues, there are increasing calls for direct regulation in this area despite the progress and developments already being seen. Suggestions such as a 'fat tax' or levy on sugary drinks have been proposed, but have also been trialled, most notably in Denmark, where they were not successful and shortly repealed.

46. We agree with the approach adopted by the Welsh Government that obesity is best addressed through a range of actions. Within the convenience sector there are many

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<sup>9</sup> ACS Local Shop Report 2013

existing examples of best practice within stores, where positive action is being taken without the need for additional regulation. This voluntary approach means solutions can be tailored to the size type and business model of the store in questions. We would urge policy makers to continue to work with industry to encourage these practices and build on recent successes, rather than adopt central, restrictive and burdensome regulations in this area.