

Appendix

Question 1: What concerns, if any, do you have about the enforcement of the minimum age limit for the purchase of tobacco?

Moray Council was one of 4 local authorities that took part in the 2002 pilot to test the effectiveness of using young people in 'test transactions' of tobacco. The Trading Standards service has used the technique for a range of age-restricted products since then. This has been allied with action to raise trader awareness, including information packs and training events. The Council has also actively promoted the use of the AccessMoray card, an approved proof of age card to assist retailers to correctly identify a potential buyer's age.

In 2002, 115 test transactions were conducted, resulting in 13 (11%) sales. Thirty nine test transactions of cigarettes were conducted this year, resulting in 2 (5%) sales. This tends to show that an enforcement program, including trader awareness, proof of age card and test purchasing can reduce inappropriate sales of tobacco and other age-restricted products.

With this in mind Moray Council is confident that regular and sustained action can reduce the level of illegal sales of tobacco. However, there is room for improvement in retailer behavior and other enforcement mechanisms should be considered.

Question 2: What are your views on the effectiveness of a positive licensing scheme, i.e. a scheme requiring all outlets to apply for and receive a licence before tobacco products could be sold?

The Council largely agrees with the arguments set out in the consultation paper. One disadvantage not identified is that some enforcement resources would be diverted to administration of the licensing scheme. As mentioned in the consultation document, a licensing system is at odds with the general thrust of Scottish and UK Government policy to reduce burdens on business.

Question 3: What are your views on the effectiveness of a negative licensing scheme, i.e. a scheme whereby any outlet is entitled to sell tobacco without a licence and sanctions are only applied once a breach of the law has occurred?

A negative licensing scheme carries many of the benefits of a positive licensing scheme, with less bureaucracy. The main deterrent; i.e. the loss of ability to sell tobacco products would be equally effective in both schemes. Moray Council believes that a negative licensing scheme would be useful in reducing illegal sales of tobacco products.

Question 4: Do you have a preference for either a positive or a negative licensing scheme?

Moray Council prefers the negative licensing model.

Question 5: What difficulties, if any, do you anticipate with the proposed legislation?

Moray Council believes that both positive and negative licensing schemes are workable and would help reduce illegal sales of tobacco products. The Council does not see any fundamental difficulties with the licensing proposals. The administration costs would fall to the Council and the Council seeks reassurance that any costs

would be recouped, either from licence fees set at 'cost recovery' levels, or alternatively by an increase in the local government settlement.

Question 6: Who should bear the costs of a tobacco licensing scheme?

Moray Council believes that the costs should be born by the suppliers. As previously mentioned, we prefer the negative licensing model as a means of reducing costs and targeting costs at those who sell illegally. If a positive licensing scheme is introduced, the costs should be banded to take account of the volume of sales.

Question 7: What sanctions would be appropriate for a retailer found to have sold or supplied tobacco to under-age customers?

Each case must be treated on its merits. Local flexibility is very important for fair and efficient administration of justice. At the lower end, warnings or fixed penalties are appropriate. For more serious, deliberate or repeated offences conviction and fine and licensing sanctions to forbid further sales are appropriate.

Question 8: If fixed penalty fines are applied, what appeals process should be put in place?

Appeal to the Sheriff Court would be appropriate.

Question 9: What sanctions should be applied to retailers who repeatedly sell or supply tobacco to under-age customers?

Conviction and fine and licensing sanctions to forbid further sales are appropriate.

Question 10: Do you have any other comments on the proposal?

Moray Council would encourage promotion of National Entitlement Card which carries the 'proof of age standards scheme' (PASS) hologram. Widespread recognition of the card by the public and retailers would greatly assist in reducing illegal age-restricted sales.

Licensing conditions should be standard across Scotland to reduce the burden on businesses, particularly national retailers. Licence conditions should require use of proof of age precautions and make reference to acceptable proof of age cards, including PASS accredited cards.

Moray Council has completed a limited pilot of the use of electronic card readers that can be used by retailers to ascertain the age of a potential buyer by reading the information stored electronically on the National Entitlement Card. The facility was popular with retailers. Subject to further evaluation, the technology should be supported as a means of assisting retailers to manage age-related sales.

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Question 11: Can you identify any equal opportunities impacts (either positive or negative) arising from this proposal?

No.