

SALE OF TOBACCO TO UNDER-AGE PERSONS: VARIATIONS OF AGE LIMIT

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During stage 2 proceedings of the Smoking, Health and Social Care (Scotland) Bill, Duncan McNeill MSP lodged an amendment which sought to give Ministers the power to alter the age at which an individual can be sold tobacco.

The amendment does not seek to change the current age, but the intention is to allow Ministers to raise it, most probably to 18 years. The policy intent of this is to reduce the prevalence of smoking in young people.

This briefing discusses the implications of the amendment including those relating to enforcement and its potential public health impact.

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SUMMARY OF KEY POINTS

- The amendment seeks to give Scottish Ministers the power to raise the legal age at which a person can be sold tobacco. The intention of the amendment is to allow Ministers to raise the legal age from 16yrs to 18yrs
- Recent survey data shows that 6% of 13 year olds and 19% of 15 year olds are regular smokers
- The majority of regular underage smokers obtain their cigarettes from retail outlets
- A substantial proportion of underage smokers also use social means to acquire cigarettes. Such sources are more likely to be used by younger smokers
- Prosecutions for underage sales of tobacco in Scotland have been restricted due to Crown Office guidance on the use of child volunteers in test-purchasing schemes used to gather evidence
- Between 1991 and 1998, there were 7 prosecution reports submitted to the Procurator Fiscal in relation to underage tobacco sales by retailers. This compares to a figure of 173 in England
- The Lord Advocate recently revised prosecution policy to allow child volunteers to be used to gather evidence on the illegal sale of age restricted goods (with the exception of alcohol purchases)
- There is some support among the general public for raising the legal age, and a higher age already exists in a number of countries worldwide
- ASH Scotland has questioned the evidence on the effectiveness of raising the age, and has instead called for greater enforcement of current restrictions. Greater enforcement is supported by FOREST
- There does not appear to be any research which has looked specifically at the effect of raising the legal age for purchasing tobacco on smoking prevalence in young people
- Research evidence on the effect of access restrictions on smoking prevalence is inconclusive, but there is some evidence that restrictions together with a high level of enforcement may reduce smoking prevalence
- A large proportion of young people in Scotland frequently access alcohol which already has an age restriction of 18yrs

INTRODUCTION

During Stage 2 proceedings of the Smoking, Health and Social Care (Scotland) Bill, Duncan McNeil MSP lodged an amendment which would give Scottish Ministers the power to amend, by order, section 18 of the Children and Young Persons (Scotland) Act 1937 (the 1937 Act). This section prescribes the age at which a person can be sold tobacco. At the moment it is legal to sell tobacco to people aged 16 and over.

Although the amendment does not actually specify an age, the implicated intention is to allow Ministers to raise the legal age to 18 years. The Health Committee approved the amendment at stage 2 and the Deputy Health Minister made a commitment to bring forward a technical amendment at stage 3 which would require any change to the 1937 Act to be made by the affirmative resolution procedure.

The intention of the amendment is to reduce the availability of, and access to cigarettes by young people and thereby reduce the number of young people smoking. A number of backbench MPs recently supported an early day motion tabled in the House of Commons, calling for the age to be raised to 18 in England ([The Scotsman](#)).

The amendment would require Ministers to consult on any change in age.

SMOKING IN YOUNG PEOPLE

Smoking in young people in Scotland has, in general, been declining over the past decade (Lamb, 2005). The most recent survey of substance use in young people (Child and Adolescent Health Research Unit, 2004) showed that:

- 6% of 13 year olds and 19% of 15 year olds were regular smokers¹
- smoking rates are higher amongst girls, with 24% of 15 year old girls and 14% of 15 year old boys being regular smokers
- prevalence of regular smoking among 15 year old boys has decreased from 30% in 1996 to 15% in 2000 and has since remained around that level
- prevalence of regular smoking among 15 year old girls has decreased from 30% in 1996 to 24% in 2000 and has remained at 24% since 2000

The data also shows that among 15 year old daily smokers, the age of onset ranged between 11.6 years for girls and 12.2 years for boys (HBSC, Currie et al, 2004). Data shows that those who start smoking earlier tend to smoke more cigarettes ([Office for National Statistics](#), 2003).

HOW DO UNDER 16s OBTAIN CIGARETTES?

The most recent survey of substance use in young people showed that among regular smokers:

- 86% of 15 year olds and 62% of 13 year olds buy their cigarettes from shops
- 15% of 15 year olds and 13% of 13 year olds buy their cigarettes from vending machines
- 14% of 15 year olds and 21% of 13 year olds report buying their cigarettes from friends or relatives
- 10% of 15 year olds and 19% of 13 year olds report buying their cigarettes from someone else

Other sources include being given cigarettes by friends, siblings and family, or taking them. Younger smokers (13 year olds) were more likely to obtain cigarettes this way than older smokers (15 year olds). In addition, a number of smokers indicated that they obtained their cigarettes by some 'other way'.

¹ pupils who reported that they usually smoked one or more cigarettes a week

These figures show that the majority of regular smokers buy their cigarettes from shops, with a higher proportion of 15 year olds using this source. A higher proportion of younger smokers obtain cigarettes through informal social means, such as buying cigarettes from someone they know or being given them. This may indicate that the age restriction on purchasing tobacco does, to a certain degree, act as a deterrent from buying tobacco from this outlet. However, it is unclear whether this inhibits actual tobacco use, or whether the individual merely acquires cigarettes by another means.

SCOTTISH EXECUTIVE ACTION

The Scottish Executive target in relation to smoking and young people is to reduce the percentage of school children aged 12 to 15 who smoke to 11% by 2010.

With regards to action aimed specifically at targeting young people and smoking, '[A Breath of Fresh Air for Scotland](#)' (Scottish Executive, 2004) included aims to:

- agree an enforcement protocol with local authority partners to guide more effective enforcement of the Children and Young Persons (Protection from Tobacco) Act 1991
- look at ways to raise awareness about illegal sales and to encourage the public to report retailers who sell cigarettes to under-16s
- continue to support the roll out across Scotland of the Dialogue Youth Project and associated Young Scot card which provides proof of age
- work with Young Scot, The Scottish Retail Consortium, CoSLA and the Society of Chief Officers of Trading Standards in Scotland to encourage support of the Young Scot Card, including by retailers

Within 'A Breath of Fresh Air for Scotland', the Scottish Executive made a commitment to commission research which will look at the factors that influence young people to take up smoking in the first place. This is being taken forward by an expert group called the 'Smoking Prevention Working Group' chaired by Dr Laurence Gruer of NHS Health Scotland. The group meets for the first time in August and as part of its remit, will consider what effect the legal age limit has on the uptake of smoking. The group is expected to report to Ministers between May and August 2006.

ENFORCEMENT

The Children and Young Persons (Protection from Tobacco) Act 1991 (the 1991 Act), made it a duty of local authorities to enforce section 18 of the 1937 Act. This duty of enforcement is carried out by Trading Standards Departments within each of the local authorities and the Procurator Fiscal is responsible for subsequent prosecutions. The 1991 Act also:

- increased (to £2,500) the maximum fine for retailers found guilty of selling cigarettes to children under 16yrs
- puts the onus on the retailer to establish the age of the individual. Previously the 1937 Act allowed retailers to sell to those who were 'apparently' over 16yrs
- prohibits the sale of unpackaged cigarettes
- requires retailers and vending machines to display warning statements that cigarettes and other tobacco products can only be sold to people over 16yrs

PROSECUTIONS IN SCOTLAND

Previous Scottish Office guidance (Scottish Office, 1992) ruled out the use of child volunteers for test purchasing of age restricted goods such as tobacco. This guidance stated that child volunteers could not be used in such a capacity for the purposes of gathering evidence for prosecution. It was only

acceptable to use them as part of surveys to estimate the extent of illegal purchasing, and even then, should only be used as a last resort.

This guidance limited the collection of evidence by Trading Standards Officers and as a result, the number of prosecutions in Scotland has been much less than in England and Wales. Figures obtained from Trading Standards in Scotland show that between 1991-1998 there were 173 retailers subject to prosecution in England, compared to 7 prosecution reports submitted to the Procurator Fiscal in Scotland².

However, in February 2005, the Lord Advocate announced that he would revise prosecution policy to allow test-purchasing of age-restricted goods (except alcohol) by children (Crown Office and Procurator Fiscal Service, 2005). This followed a consultation and a tobacco test-purchasing pilot carried out in Moray, Stirling, South Ayrshire and Edinburgh.

PUBLIC OPINION AND RESPONSES TO THE AMENDMENT

There does seem to be some support for raising the age of purchase to 18, and this would mirror policy in a number of countries worldwide³. Higher age restrictions do exist and recently both New York and California have considered raising the legal age beyond 18.

A call to raise the limit to 18 has been made by Tayside Local Medical Committee in a motion to the British Medical Association's (BMA) annual conference, which starts on 27 June 2005. In addition, a survey by the [BBC](#) last year found that 80% of respondents were in favour of raising the legal age to 18, and 55% supported raising it to 21. As mentioned previously, an early day motion in the House of Commons recently received the backing of almost 50 backbench MPs.

Access prevention methods (including implementing or raising the age of purchase) are pursued by a number of tobacco companies globally. For example, British American Tobacco (BAT) has been lobbying internationally for the legal age to be raised to 18, with some reported successes in Pakistan, Jamaica, Ukraine and Russia (British American Tobacco, 2004). BAT incorporates retail access prevention within its programme of corporate social responsibility and it states that it is company policy not to market to people under 18 ([BAT](#)).

However, ASH Scotland has questioned the evidence base for such a move and instead has stated it would like to see greater enforcement:

"If the law states that you have to be 16 to purchase tobacco, and 30% of 15-year-old girls are smoking, it suggests that the law is not working at the moment. Why would shifting the age limit to 18 make it any more effective?" (ASH Scotland Chief Executive, Maureen Moore, Sunday Herald, 12 June 2005)

Similarly, FOREST has stated that it does not object to the amendment in principle, but thinks it would need to be accompanied by rigorous enforcement, something which it states does not happen for the current age limit⁴.

² Personal Communication, Trading Standards Dept, City of Edinburgh Council

³ Countries with an age restriction of 18 include the USA, the Netherlands, Canada (6 provinces have a limit of 19yrs), China, Portugal, Cyprus, Hungary and Poland.

⁴ Personal Communication with FOREST, 23 June 2005

DO AGE RESTRICTIONS PREVENT THE UPTAKE OF SMOKING IN YOUNG PEOPLE?

The SALSUS survey shows the variety of ways in which under 16s go about obtaining cigarettes, with the majority of regular smokers purchasing their cigarettes from retail outlets (62% of 13 year olds and 86% of 15 year olds). However, the question is whether raising the legal age at which a person can be sold tobacco will inhibit smoking in young people.

There does not appear to be any research which has looked specifically at the effect of raising the minimum age of purchase for tobacco. However, a number of studies have looked at retail access prevention in general and the subsequent effect on illegal sales and smoking in young people. Stead and Lancaster (2005) carried out a review of such research and found that enforcement and community policies can lead to large decreases in underage sales, but offered limited evidence of a reduction in smoking prevalence.

Seven of the controlled studies in the review looked at the effect of enforcement interventions on smoking prevalence, with four reporting some kind of effect on smoking behaviour. These effects differed between studies, with some reporting reductions in smoking in younger age groups and others reporting reductions in daily but not weekly/monthly smoking. However, a previous review of the literature (Fichtenberg, 2002) detected no significant difference in youth smoking between communities with interventions to enforce access restrictions, and those without.

The review by Stead and Lancaster (2005) also found that few of the studies demonstrated sustained high levels of compliance among retailers and the authors suggest that continued reductions in illegal sales require a high level of enforcement. They also pose that in order to bring about a reduction in smoking prevalence, compliance by retailers may need to be above 80%:

“Legislation alone is not sufficient to prevent tobacco sales to minors. Both enforcement and community policies improve compliance by retailers, but the impact on underage smoking prevalence using these approaches alone may be small if the level of compliance attained does not sufficiently restrict access” (Stead and Lancaster, 2005)

Other research which has modelled the effects of youth tobacco access policies also concluded that a high level of compliance is likely to be necessary (especially in densely populated areas) and that the effectiveness of purchase restriction policies are limited due to the availability of other sources (Levy, 2000; Levy, 2001).

A briefing from the Health Development Agency in England states:

“The restraining pressure of age restrictions and their strict enforcement may delay the onset of smoking and have some effect on its prevalence, but the evidence is not conclusive”

The briefing also goes on to say that raising the age limit runs the risk of enhancing the image of smoking as an adult pursuit. They also claim that young people employ strategies to overcome age restrictions and that “even where retailers comply strictly, young people are able to obtain alcohol and will use similar strategies to get hold of cigarettes” (Health Development Agency, 2004).

The SALSUS survey of Scottish school pupils shows that 20% of 13 year olds and 43% of 15 year olds had an alcoholic drink in the week prior to the survey. This compares to 6% of 13 year olds and 19% of 15 year olds who are regular smokers (pupils who reported that they usually smoked one or more cigarettes a week). Of those who drank weekly, the main sources for alcohol were outlined as⁵:

⁵ Percentages add up to more than 100, as pupils gave more than one answer

- Shops – 35%
- Off licence – 29%
- Friend or relative – 23%
- Someone else – 19%
- Supermarket – 11%
- Pub – 11%
- Club or Disco – 9%

Of pupils who had ever drunk alcohol, 15 year olds were more likely than 13 year olds to obtain alcohol from retail outlets such as shops and off-licenses. 13 year olds were more likely to obtain alcohol from a friend, relative or someone else.

Due to the way the data is presented, it is not possible to compare whether the proportions accessing alcohol from commercial outlets are the same as for those who smoke regularly. However, the figures are interesting in the fact that a large proportion of young people in the survey were accessing a substance which already has an age restriction of 18 years.

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