



## **Consultation on the anti-forestalling restrictions on home-use removals of tobacco products**

### **Response from FRESH- Smoke Free North East**

1. Fresh is the North East of England's comprehensive tobacco control programme, commissioned by all 12 local authorities in the region. Fresh was the UK's first dedicated tobacco control office, set up to tackle the worst smoking rates in England which, in 2005, were 29% amongst the adult population. By 2012 this had dropped to 22%. Fresh works in partnership with the 12 local authority-led tobacco control alliances to deliver comprehensive activity at regional and local levels and to influence action nationally in order to support smokers to quit, prevent young people from starting to smoke and to protect people from tobacco-related harm. Fresh is also one of the lead partners in the national Tackling Illicit Tobacco for Better Health Partnership which aims to reduce the demand for and the supply of illicit tobacco as part of broader strategies to reduce tobacco use.

#### **General Observations**

2. For the purpose of this consultation response, we treat "forestalling" as meaning an increase in the clearance of rate of cigarettes and other tobacco products, so that they can be released into the UK market immediately preceding the Budget, with the intention that duty paid on these products will be at the lower pre-Budget rate, thereby artificially lowering the price to be paid. This is generally followed by lower than average release of products in the month of so after the Budget.
3. The price of tobacco products is important to smokers and 'flash' pricing is frequently used to indicate lower price offers. There has also been a growth in low price brands of cigarettes in particular, where purchase price is manipulated by reducing the number or size of cigarettes in a pack. Addicted smokers move to these brands or hand rolling tobacco to reduce their overall spend. Forestalling has two important effects that militate against the central objectives of tobacco taxation:
  - It reduces the potential public health gain from increases in tobacco taxation, since it delays the effective date of tax increases and therefore any consequential price rises. Increases in the price of tobacco products are known to be the single most effective policy level to encourage smokers to quit.<sup>1</sup>
  - It reduces the total revenue from tobacco tax in any given year
4. The recent extent of forestalling is well illustrated by HMRC's Tobacco Bulletin for November 2013, which shows a spike in tax receipts in April levied at the pre-budget rate, followed by a sharp drop in May, for the financial years 2011/12, 2012/13, and 2013/14. It should be noted that this pattern is present for tax receipts from home produced cigarettes, imported cigarettes, cigars, hand rolling tobacco, and other tobacco

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<sup>1</sup> [The Effects of Increasing Tobacco Taxation: A Cost Benefit Analysis](#): A report for ASH by Howard Reed, Landsman Economics.

products. This illustrates that measures currently in place to prevent forestalling are insufficient.

5. FRESH supports moves to restrict and control this practice and would like to see the most effective possible measures taken by HMRC to reduce the extent of forestalling. To ensure maximum impact and consistency we feel that these measures should be applied to all tobacco products including hand rolling tobacco and specialist forms of tobacco.
6. It should be noted that that the 2012 Fifth Conference of the Parties to the Framework Convention on Tobacco Control (FCTC) adopted a set of guiding principles and recommendations on the implementation of Article 6 of the FCTC (price and tax measures to reduce the demand for tobacco). Paragraph 8 (anti-forestalling measures) states that: "*Parties should consider imposing effective anti-forestalling measures*".<sup>2</sup> The European Union collectively and all Member States individually are Parties to the FCTC.
7. Since tobacco taxation has a profound impact on public health, we consider that Article 5.3 of the FCTC should apply in relation this consultation. Article 5.3 states that in relation to policies affecting public health Parties should: "*act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law*". This mandate was expanded further in the FCTC Conference of the Parties' Guidelines for Implementation of Article 5.3. These state that Parties should implement measures to prevent interference by the tobacco industry in all branches of government that may have an interest in, or the capacity to affect, public health policies with respect to tobacco control<sup>3</sup>.

## **Specific Questions**

### **Question 1 is not relevant to FRESH as an organisation**

### **Question 2: Do you have a preference from the list of potential controls? If yes, please specify which one and give your reasons why.**

8. We have no specific preference from the list of potential controls. We recommend that the primary legislation gives the Government flexibility, by Public Notice, to introduce appropriate controls including those proposed:-
  - Changing the formula, for example by reducing or removing the 28 day uplift.
  - Retaining the same formula but introducing a monthly cap of a maximum percentage of the total allocation which can be cleared in any one month.
  - Retaining the same formula but introducing equal monthly restrictions within the overall period of the restriction.

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<sup>2</sup> [http://apps.who.int/gb/fctc/PDF/cop5/FCTC\\_COP5%287%29-en.pdf](http://apps.who.int/gb/fctc/PDF/cop5/FCTC_COP5%287%29-en.pdf)

<sup>3</sup> World Health Organization. 2003. WHO Framework Convention on Tobacco Control. Geneva: World Health Organization. Available at: <http://whqlibdoc.who.int/publications/2003/9241591013.pdf> and FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Available at: [http://www.who.int/fctc/protocol/guidelines/adopted/article\\_5\\_3/en/index...](http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index...)

This should include the power to introduce any additional measures and/or any combination of the above as circumstances require.

**Question 3: Do you have any alternative solutions for the pre-budget restrictions which will ensure a smooth pattern of clearances in the pre-Budget period? If yes, please provide details.**

9. FRESH is strongly opposed to voluntary arrangements, agreements or memoranda of understanding with the tobacco industry, which has repeatedly shown that it will not be bound by them. The solution to forestalling is to apply appropriate legislation, backed by appropriate penalties for non-compliance.

**Question 4: Should the same restrictions apply to all businesses who remove cigarettes for home use regardless of the size of the business?**

10. Yes, since making exemptions or variations for small businesses would simply create a loophole in the legislation which the industry would seek to exploit.

**Question 5: Should restrictions be extended to any other tobacco products e.g. hand rolling tobacco (HRT), cigars, pipe tobacco and chewing tobacco?**

11. Yes, since the evidence shows that forestalling occurs in relation to all tobacco products in the UK market.
12. In relation to the public health impact of tobacco taxation, it should be noted that in the UK market, there is evidence of a recent shift in consumption patterns towards hand-rolling tobacco and cheaper brands. Research by Professor Anna Gilmore et al of the University of Bath, based on General Household Survey data, showed that while smoking prevalence across the UK dropped from 26.8% in 2001 to 20.8% in 2008, this decline was seen only among smokers of filter cigarettes, while the proportion smoking hand-rolled tobacco remained static. In consequence, the share of all smokers who consume HRT has increased since 1990. The proportion of smokers mainly using HRT increased from 25% of men and 8% of women in 1998 to 39% of men and 23% of women in 2009.<sup>4</sup>

**Question 6: What impacts would extending the scope to other tobacco products have?**

13. Apart from increasing tax revenue, it would also maximise the public health benefits of tobacco tax rises across all tobacco product types.

**Question 7: If restrictions were to be extended to other tobacco products, should there be any exclusions and, if so, why?**

14. We can see no justification for excluding any tobacco product legitimately sold in the UK market from anti-forestalling measures. Other tobacco regulation relating to public health, such as health labelling, recognises that all tobacco products are harmful therefore all products should be treated consistently in relation to forestalling.

For more information on this submission, please contact Catherine Taylor at Fresh on 0191 333 7140, or [catherine.taylor@freshne.com](mailto:catherine.taylor@freshne.com).

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<sup>4</sup> Office for National Statistics. *General Lifestyle Survey Overview: A report on the 2010 General Lifestyle Survey*. 2012.