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**South Ayrshire Council
Consultation Response**

Date Consultation Was Received: 13th December 2006

Subject: Smoking Prevention Working Group Report: Towards a Future Without Tobacco

Respondent: South Ayrshire Council Trading Standards service

Date of Response: 9th February 2007

This response is submitted on behalf of Trading Standards as part of Legal and Protective Services within the Development Safety & Regulation Department of South Ayrshire Council.

About South Ayrshire Council

South Ayrshire Council is a unitary local authority that was formed in April 1996 following the re-organisation of Scottish local government.

Situated in the South West of Scotland, South Ayrshire covers an area of 422 square miles (120,223 hectares) and has an approximate population of 114,000. The area is made up of a mixture of large towns (including Ayr, Prestwick, Troon, Maybole and Girvan) with many rural villages spread across a wide area. Containing a rich mix of agricultural land, woodlands and forests, South Ayrshire also has a long and spectacular coastline. Farming, tourism, and sport (particularly golf), form an integral part of the area's economy.

South Ayrshire Council consists of four Departments:

- Chief Executive
- Education, Culture & Lifelong Learning,
- Social Work, Housing & Health,
- Development, Safety & Regulation.

The Development Safety & Regulation Department consists of enforcement, legal and regulatory services, such as Planning, Building Standards, Licensing, Legal, Community Safety, Trading Standards and Environmental Health.

Trading Standards in South Ayrshire

Trading Standards is broadly responsible for ensuring that the markets for goods and services operate fairly for consumers and business alike. The bulk of our work comes from legislation that both empowers and imposes duties on our officers. We facilitate and police the commercial market by a combination of consumer complaints, routine visits, sampling and special projects. Advice is given where possible and enforcement action is taken where necessary.

Specifically, Trading Standards deals with areas as diverse as metrology, product safety, credit, animal health & welfare and fair trading - including prices, trade and property descriptions, counterfeit goods, trademark infringement and advertisement accuracy. High quality consumer and business advice as well as consumer debt counselling is also provided by Trading Standards.

Trading Standards in South Ayrshire has traditionally striven to be innovative in matters of service delivery and at the forefront of developments that affect the profession. In this regard we are grateful to be able to respond on the relevant matters within this consultation document and look forward to positive change as a result.

Response

South Ayrshire Council welcomes the report Towards A Future Without Tobacco produced by the Smoking Prevention Working Group. The following responses are made on behalf of South Ayrshire to selected recommendations as outlined on pages 7-10 of the report.

5. Ensure that much greater efforts are made to enforce the prevailing legal age of purchase. These should include: the use of proof of age; active test purchasing; prosecution with heavy fines and education of retailers and trading standards officers

South Ayrshire Council has long advocated the use of a proof of age being the first authority in Scotland to adopt such a scheme. However it is not enough to recommend such a scheme. In order for it to be universally accepted the scheme has to be promoted heavily to all retail sectors that may use it. This includes sellers of tobacco but also alcohol, fireworks and solvents. In addition the card has to be easily available to young people who are of an age to rely on it to prove their age. This requires promotion through schools as well as businesses selling age-restricted products. In addition there needs to be easy access to these cards for young people outwith the education system.

South Ayrshire took part in the Lord Advocate's Tobacco Pilot looking at the use of under age test purchasers to test purchase cigarettes. This has led to a proactive approach to the enforcement of all age related legislation. We have a programmed scheme of test purchasing throughout the year, which results in official warnings, and reports to the Procurator Fiscal for traders found to be selling to underage test purchasers.

Unfortunately this is not the case universally throughout Scotland as there are significant differences in how Local Authorities approach such enforcement. This variance is as a result of a number of factors:

- Many Trading Standards Services do not have the additional resources to devote to labour intensive test purchasing regimes. In the absence of these additional resources it is difficult to see all services fully embarking on these enforcement programmes.
- There is still in our opinion a misguided view in some Trading Standards and Educational Services as well as with some elected members that test purchasing using children is dangerous for the young people involved. This view persists despite the overwhelming evidence from the Tobacco Pilot and other sources that this is not the case.
- Despite training having been undertaken in the past there are still areas where staff require further training.

The law on tobacco is unusual in comparison with other consumer protection laws in that there are virtually no powers for inspectors contained within the Acts. The law on tobacco sales should be reviewed in line with other consumer protection laws to ensure that officers have the powers to inspect premises, seize evidence and take actions where they are obstructed.

Despite repeated educational campaigns there is still a serious problem in the retail industry with lack of training and complacency with regards to underage sales. It is South Ayrshire's experience that the vast majority of sales of cigarettes to under age persons are not made cynically but are as a result of lack of training and/or complacency. Very often training regimes, where provided, consist of an employee simply reading over training materials and signing them off. More thought should be given by retailers (including national retailers), to carrying out regular mystery shopping campaigns. In addition retailers should consider asking Trading Standards Officers to come in and review their systems.

Heavily publicised prosecutions with heavy fines would be a very effective way of showing the seriousness with which society views such illegal sales. Unfortunately, Procurator Fiscals and individual courts do not always view these offences as being particularly serious. The Fiscal

may sometimes not take cases forward and when they are the fines may not always be substantial. For example one of our recent cases involving a blatant and cynical sale to a 14-½ year old attracted a £120 fine. These matters are obviously for the Procurator Fiscal's Service and the courts to decide but if a clear message is to be sent out that such sales are unacceptable then those caught in the act must be seen to be suitably punished.

6. Introduce a negative licensing scheme to enable vendors who repeatedly sell cigarettes to under-age customers to be prohibited from selling tobacco products.

South Ayrshire Council supports negative licensing as a way of dealing with repeat offenders. Some sellers may see the level of fines they incur in court as worth the risk and continue to sell products to under age persons. In these circumstances or in ones where traders refuse to invest in training their staff properly it seems entirely appropriate to prevent them selling tobacco products in the future.

Any person or company banned from selling such a product should also be banned from being involved in the sale of such products. This will prevent the situation which has arisen in other legislation where for instance a sole trader is banned one day from selling tobacco and his wife starts selling at the same premises the next day with the husband employed as a member of staff.

Consideration needs also to be given to the situation of retailers with multiple outlets. Does a ban resulting from one store in a chain mean the whole chain is banned? Is the manager of this store also personally banned? Conversely if a chain of stores makes illegal sales over a number of its stores should the whole chain not be banned from selling cigarettes?

Negative licensing also raises difficult questions in relation to the administration of such a scheme. For example, what would trigger a ban and for what length of time would the prohibitions remain in place? Who would administer the scheme and hear appeals from traders subject to a ban? What penalties would follow someone who breaks a negative licence?

7. Amend the current offence of selling tobacco products to anyone under the age of 16 by raising the minimum age to 18.

South Ayrshire has replied separately to the Scottish Executive consultation dealing specifically with this matter.

11. Commission research to ascertain the current extent to which young people in Scotland purchase cigarettes in packs of 10.

South Ayrshire supports research in this area. It is our experience that children in South Ayrshire are far more likely to ask for 10 cigarettes. One of the main reasons for this is cost. It seems logical therefore that the arguments expressed in the report at paragraph 3.14 would dictate that fewer young people would smoke if packets of 10 were no longer available and they had to buy the more expensive packets of 20.

19. Prohibit the display of cigarettes at the point of sale, to be replaced by a simple list of brands available and their prices.

South Ayrshire supports this recommendation. It has become apparent that in the absence of being able to use advertising materials at the point of sale companies involved in the sale of cigarettes are now using the branding on the cigarette packets themselves to advertise the product. Multiple packets are now displayed clearly for sale (in our opinion) to advertise the product to potential customers. This seems at odds with the aims of removing tobacco advertising at the point of sale. By removing all tobacco products from view this problem can be remedied.

02-09

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1234 to find out where your nearest public internet access point is, if you prefer to submit your response by e-mail.

8. To complement the written consultation we will also be holding regional seminars next year to engage directly with stakeholders on the recommendations made. Details of these will be circulated shortly.

Handling your response

9. We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form at Annex A as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and will treat it accordingly.

10. All respondents should be aware that the Scottish Executive are subject to the provisions of the Freedom for Information (Scotland) Act 2002 and would, therefore, have to consider any request made to it under the Act for information relating to responses to this consultation exercise.

Next steps in the process

11. Where correspondents have given permission for their responses to be made public, these will be made available to the public in the Scottish Executive Library by 28 March 2007 and on the Scottish Executive website by 4 April 2007. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. **Annex B** contains additional information about Scottish Executive consultation policy, including about access to consultation responses.

What happens next

12. Careful consideration will be given to all the comments received and, as indicated above, will inform the development of a 5 year action plan for consideration by the new administration following the Scottish Parliamentary elections in May 2007.

Comments and complaints

13. If you have any comment about how this consultation exercise has been conducted, or if you have any other queries, please contact John Glen at the above address or call 0131-244-5660.



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Head of Tobacco Policy