



Dennis McKenna,  
Clerk to the Oireachtas Health Committee,  
Houses of the Oireachtas,  
Leinster House,  
Kildare St,  
Dublin 2,  
D02 XR20.

17<sup>th</sup> of January, 2020

**Re: GENERAL SCHEME OF A PUBLIC HEALTH (TOBACCO AND NICOTINE INHALING PRODUCTS) BILL 2019**

Dear Mr McKenna,

Further to recent engagement by Ms Aishling Sheridan of the HSE Tobacco Free Ireland Programme on our behalf, please find enclosed a submission on the GENERAL SCHEME OF A PUBLIC HEALTH (TOBACCO AND NICOTINE INHALING PRODUCTS) BILL 2019, a copy of the HSE Tobacco Free Ireland Programme Plan 2018-2022 and a copy of the HSE State of Tobacco Control Report.

We understand work of this current Health Committee ceased with the dissolution of the 32<sup>nd</sup> Dáil on the 14<sup>th</sup> of January 2020. Nevertheless, tobacco control is a key public health matter and there is urgency in relation to progressing the measures proposed in the Bill, so we would be grateful if you could ensure this submission receives appropriate attention in due course.

The HSE Tobacco Free Ireland Programme is available to discuss this matter further with the Health Committee as required.

Yours faithfully,

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**Ms Martina Blake**  
**HSE Tobacco Free Ireland**  
*Programme Lead*

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**HSE Tobacco Free Ireland**  
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Enclosures:

1. Submission
2. HSE Tobacco Free Ireland Programme Plan 2018-2022
3. State of Tobacco Control Report

Submission on

**GENERAL SCHEME OF A**

**PUBLIC HEALTH (TOBACCO AND NICOTINE INHALING PRODUCTS) BILL 2019**

**October 2019**

From

*Health Service Executive Tobacco Free Ireland Programme*

**1. Executive Summary**

The HSE Tobacco Free Ireland Programme (HSE TFIP) coordinates and leads tobacco control activity across the health services to ensure implementation of the HSE actions in the 2013 government policy, “*Tobacco Free Ireland*”. We welcome this opportunity to make a submission on the General Scheme of the Public Health (Tobacco and Nicotine Inhaling Products) Bill 2019.

Tobacco control remains the single greatest opportunity to protect and improve the public’s health in Ireland. The comprehensive national tobacco control approach, to which the HSE TFIP contributes, is enabling good progress in tackling smoking. However, each week in Ireland 100 lives are lost due to smoking and second-hand smoke. Tobacco control is not a done deal. A series of new game-changing legislative measures must be put in place to extend our national tobacco control approach if the promise of a Tobacco Free Ireland is to be realised.

Through providing for a system of licensing, which establishes a robust and comprehensive basis to regulation of the tobacco retail environment in Ireland, and creating further restrictions on the sale of tobacco and nicotine inhaling products, the proposed PUBLIC HEALTH (TOBACCO AND NICOTINE INHALING PRODUCTS) BILL 2019 is a key and immediate opportunity to extend our national tobacco control approach with further evidence-based best practices to benefit the public’s health. For this reason, the proposed heads of Bill is welcomed by the HSE TFIP as one of the important steps needed to protect progress in tobacco control and bring about a Tobacco Free Ireland. It must proceed without undue delay. Many countries have already progressed measures set out in the heads of Bill, and it is critical that Ireland does not fall behind.

The HSE TFIP offers a number of specific recommendations on the proposed heads of Bill in this submission:

- Head 9: Consider separate licences for separate classes of retail activity;
- Head 10: Consider education and training of all retailers and staff on tobacco and nicotine inhaling products licensing laws be included in application and renewal requirements;
- Heads 16 and 17: Consider extension to include nicotine inhaling products;
- Part 4 and 5: Ensure adequate resourcing of regulatory activity, including resource capacity within HSE Environmental Health Service;
- Head 35: Ensure proposals in the Bill address potential for mobile self-service vending machines and adequately provide for prohibition of the retail of inhaled nicotine products through self-service vending machines.

In addition, the HSE TFIP offers some general observations for consideration.

International evidence and experience indicates that the density of tobacco retail outlets is associated with increased smoking prevalence through promotion of smoking initiation and sustaining continued smoking. In addition, it has been shown that the density of tobacco retail outlets is greatest in most deprived areas. The HSE TFIP recommends that the density of retail outlets in Ireland should be monitored and reviewed with reference to the relationship with smoking prevalence and deprivation at small area level so as to inform any further measures which may be required to address tobacco retail density as a factor in the promotion of smoking initiation and sustaining continued smoking. Particular attention is required in respect of people living in our most deprived areas who, compared with people living in our most affluent areas, can expect to live on average 5 years less and for whom differences in smoking behavior are a key driver of this unfair health gap.

In summary, the HSE TFIP welcomes the proposed heads of Bill. It offers the opportunity to deliver on long-planned, evidence-based best practices in tobacco control which will enable a significant step forward towards a Tobacco Free Ireland.

It will not be the final step.

The HSE Tobacco Free Ireland Programme recognises emerging policy matters in relation to the wider tobacco control agenda in Ireland, including e-cigarettes and questions such as advertising (point of sale, outdoor and online/social media) and flavouring. However, acknowledging the scope of the proposed heads of Bill, the HSE TFIP urges the Oireachtas to progress this critical step towards a Tobacco Free Ireland without delay. We recommend that a review of the “Tobacco Free Ireland” policy be undertaken to ensure that a programme of legislative measures is in place to deliver evidence-based best practices for tobacco control so that the promise of an Ireland where the public is well protected from the harms of smoking is realised. In addition, we recommend that the role for a Public Health Tobacco Control Research Group, similar to that recently announced in relation to the Public Health (Alcohol) Act 2018, be examined to monitor and evaluate the effectiveness of national tobacco control measures.

Finally, tobacco industry uses a wide range of tactics to thwart tobacco control and undermine political leadership for public health. The HSE TFIP reminds the Oireachtas of the importance of ensuring that its scrutiny of this proposed Bill takes account 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.

## 2. About the HSE Tobacco Free Ireland Programme

The HSE Tobacco Free Ireland Policy Priority Programme (HSE TFIP) was established in 2016 under the “Healthy Ireland in the Health Services Implementation Plan”.<sup>1</sup> Its role is to mobilise the health services to improve health and wellbeing and play its part in the achievement of government’s goal to reduce smoking prevalence to less than 5% of the population by 2025. The HSE TFIP coordinates and leads tobacco control activity across the health services to ensure implementation of the HSE actions in the government policy, “Tobacco Free Ireland”.<sup>2</sup> Figure 1 illustrates the HSE TFIP Model and in an average working day:

- 10 responses are made to queries and complaints about tobacco control;
- 60 inspections and test purchases with minors are conducted to ensure compliance;
- 1,000 people who smoke are supported with online information;
- 60 people who smoke are enabled to sign up online to a quit plan;
- 50 people who smoke are provided with intensive smoking cessation support;
- 330 people who smoke with a medical card are provided with medication-based support;
- 1-in-2 people who smoke using intensive support who became smoke free.

Figure 1: HSE Tobacco Free Ireland Programme Model



A “HSE Tobacco Free Ireland Programme Implementation Plan 2018-2021” (enclosed) was published on the 31<sup>st</sup> May 2018, setting out the HSE strategic direction and priority actions to contribute to national tobacco control agenda.<sup>3</sup> The objectives of the HSE TFIP over the next four years are to:

- Prioritise the protection of children in all of our initiatives and contribute to the denormalisation of tobacco use for the next generation;
- Support people to quit and treat tobacco dependence as a health care issue;
- Monitor, build and maintain compliance with tobacco legislation.

The HSE TFIP comprises a small multidisciplinary team with skills across public health, health promotion and improvement, epidemiology and research methods, communication, programme and project management and quality improvement. We work with a range of internal and external partners in embed best practices in tobacco control within the health service and beyond.

### 3. The State of Tobacco Control in Ireland

In 2018, the HSE published *“The State of Tobacco Control in Ireland”* (enclosed) to better inform the HSE Tobacco Free Ireland Programme Planning 2018-2021 through describing the current state of tobacco control in Ireland, measuring progress and identifying challenges where focus is now required.<sup>4</sup>

Smoking is continuing to decline in Ireland. At the end of the last century, almost 1-in-3 adults in Ireland smoked.<sup>5</sup> The Healthy Ireland Survey 2019 found that, in the five year period 2015-2019 smoking (daily and occasional) prevalence among people aged 15 years and older fell from 23% to 17%.<sup>6</sup> The recent Health Behaviour of School Aged Children report found that there the prevalence of ever use of tobacco had reduced from 16% in 2014 to 11% in 2011.<sup>7</sup>

Despite this progress, the continuing toll on public health in Ireland from smoking and second-hand smoke is stark. Over 100 deaths and over 1,000 hospital episodes each week are attributable to tobacco use, which continues to be the leading preventable cause for ill-health, disability and premature mortality. *“An assessment of the economic cost of smoking in Ireland”* found that smoking and second-hand smoke cost the health services some €500m per annum, 3% of the annual allocation to the HSE; the total cost to society was €1.6b per annum, with welfare losses due to smoking-related morbidity and mortality of over €9b per annum.<sup>8</sup>

Against this context, some key trends are emerging.

Like most countries, the impact of tobacco in Ireland is unfolding differently for men and women, with differences in smoking behaviour, differences in the burden of smoking-related disease and differences in the use of smoking cessation services. There is a wide and unfair gap in smoking and its effects across the social gradient in Ireland. Some aspects of tobacco control, however, like the design and delivery of mass media campaigns, use of face-to-face services and access to medication-based supports for people with medical cards, work to address this positively. Smoking in pregnancy and the needs of people with mental health problems also demand particular attention. Priority actions in these areas are underway by the HSE TFIP. Overall, considering the needs of different population groups must become central to tackling smoking in Ireland, especially as smoking prevalence declines.

A changing face to the tobacco epidemic is becoming clear. Declining youth smoking is a welcome testament to the impact of tobacco control measures in Ireland. However, across age groups, smoking is now most common among young adults, suggesting that the age of smoking initiation is increasing in Ireland. Occasional smoking, which includes what is sometimes referred to as “social” smoking, is also an emerging challenge. Consumption of “Roll-Your-Own” (RYO) tobacco products is becoming more common in Ireland, especially among younger people who smoke.

Finally, the emergence of e-cigarette use is also a key trend. In addition to use among adults, new findings reported in the recent Health Behaviour of School Aged Children report on e-cigarette use among children and young people.<sup>6</sup> The HSE TFIP has previously advised on the need to horizon scan to understand and determine national policy on e-cigarettes and we welcome a decision by the Department of Health to commission an independent and authoritative review by the Health Research Board as a basis to evidence-informed policy-making in Ireland. In the interim, and in line with findings of a Health Information and Quality Authority Health Technology Assessment published in 2017,<sup>9</sup> the HSE does not recommend e-cigarettes as a stop smoking support.

In summary, tobacco control remains the single greatest opportunity to protect and improve the public's health in Ireland. The comprehensive national tobacco control approach, to which the HSE TFIP contributes, is enabling good progress in tackling smoking. Political leadership in progressing evidence-based legislative measures has made a measurable contribution to this progress. As a country, our culture around smoking has changed dramatically and everyone has played a role in this social progress. Tobacco control, however, is not a done deal. No single step will bring about a Tobacco Free Ireland. If we are to avoid the continuing loss of 100 lives each week in Ireland, a series of new game-changing measures must be put in place to extend our national tobacco control approach and effect further reductions in smoking prevalence.

#### 4. Observations on PUBLIC HEALTH (TOBACCO AND NICOTINE INHALING PRODUCTS) BILL 2019

In 2013, “*Tobacco Free Ireland*” proposed that Ireland sets a date of 2025 to be tobacco free. In Ireland a tobacco free society will mean the achievement of a smoking prevalence rate of less than 5% of the Irish population by 2025. Tobacco will still be available but at a higher price and in restricted outlets.

Legislative initiatives have been the principle drivers of declining smoking prevalence in Ireland.<sup>10</sup> As demonstrated in the past with smoke-free workplace legislation, and more recently with plain-packing legislation, political leadership to protect and improve health through tobacco control measures is well-supported by the public, including smokers.<sup>6</sup> Developing, enacting and implementing further legislative measures are a vital step in saving the 100 lives that are lost each week in Ireland from preventable disease caused by smoking and second-hand smoke.

“*Tobacco Free Ireland*” recommended a suite of legislative measures to better regulate the tobacco retail environment in Ireland. Such measures are consistent with recommendations by the World Health Organization (WHO). Part IV of the WHO “*Framework Convention on Tobacco Control (FCTC)*” on measures relating to the reduction of the supply of tobacco recommends that signatories, including Ireland, “adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products.”<sup>11</sup> There is a strong evidential basis that better regulation of the tobacco retail environment prevents smoking initiation and helps people stop smoking; in particular, tobacco retail licensing is acknowledged internationally as “a valuable part of comprehensive tobacco control” and has recently been identified as a key step towards the tobacco endgame, to which Ireland has committed.<sup>12,13</sup>

In 2014, consultation on legislation in relation to the sale of tobacco products and non-medicinal nicotine delivery systems, including e-cigarettes, commenced. Since then, other significant legislative measures in tobacco control, including transposition of the Tobacco Products Directive and Standardised Packaging of Tobacco have successfully been enacted and there is now a need to progress the proposed heads of Bill to further strengthen regulation of the tobacco retail environment in Ireland.

Through providing for a system of licensing, which creates a robust and comprehensive basis to regulation of the tobacco retail environment in Ireland, and creating further restrictions on the sale of tobacco and nicotine inhaling products, the proposed PUBLIC HEALTH (TOBACCO AND NICOTINE INHALING PRODUCTS) BILL 2019 is an key opportunity to extend evidence-based best practice in tobacco control in Ireland in the public interest. Owing to their addictiveness and impacts on human health, tobacco and inhaled nicotine products should not be treated as normal consumer products.

For this reason, the heads of Bill is welcomed by the HSE TFIP as one of the important steps needed to protect progress in tobacco control and bring about a Tobacco Free Ireland.

It must proceed without undue delay.

In addition to support for international and national commitments on tobacco control, this proposed heads of Bill also supports broader policy on health and wellbeing and the lives of children and young people.<sup>14, 15</sup>

A number of specific observations and recommendations are made by the HSE TFIP.

#### **Head 9**

In relation to Head 9, two categories of license are proposed at subhead (2). The HSE TFIP recommends that this be examined. Separate licences for separate categories of products may provide a more precise and

parsimonious regulatory mechanism, as well as providing greater retailer choice and flexibility. At subhead (6) and (8), the HSE TFIP welcomes clarification that a separate licence is required for each premises at which products are to be sold.

### **Head 10**

In relation to Head 10, subhead (4) specifies the application and renewal requirements. The HSE TFIP notes and welcomes new measures regarding minimum age for sale of tobacco or nicotine inhaling products. Noting the general provision at subhead (4)(e) and subhead (5)(b), the HSE TFIP recommends that, either through specific provision in the heads of Bill, or through secondary regulations or through administrative measures to implement the legislation, education and training of all retailers and staff on tobacco and nicotine inhaling products licensing laws be included as an evidence-based good practice to increase compliance.<sup>11</sup> Appropriate administrative measures to deliver and ensure completion of education and training as an application and renewal requirement will be required.

### **Part 3**

In general, the HSE TFIP welcomes restrictions on the sale of tobacco and nicotine inhaling products as set out in Part 3 of the heads of Bill. We recommend, however, that Heads 16 and 17 be extended to include nicotine inhaling products. The HSE TFIP welcomes prohibition of the sale of tobacco and nicotine inhaling products by persons under the age of 18 years at Head 18, and recommends that subhead (2) be removed as it is misaligned with the rest of the heads of Bill, lacks sound basis and is inconsistent with evidence-based good practice on regulation of the tobacco retail environment. In particular, the HSE TFIP note sand strongly welcomes prohibition of the sale of tobacco and nicotine inhaling products to persons under the age of 18 years and since it addresses a lacuna in relation to retail of nicotine inhaling products. In conjunction with Head 21, the emphasis on the protection of children and young people in the heads of Bill is noted by the HSE TFIP as consistent with “Tobacco Free Ireland” and very welcome. The proposed heads of Bill should enable a discussion around minimum age for tobacco and inhaled nicotine products in Ireland, taking account that international evidence and practice is moving towards increasing this age.<sup>16</sup>

### **Part 4 and 5**

The HSE TFIP notes and welcomes provisions at Part 4 and 5 of the heads of Bill concerning compliance and enforcement. In particular we note and welcome provisions proposed at Head 24 in relation to test purchasing to support measures at Part 3 of the heads of Bill. Evidence-based best practice points to the importance of active, annual reporting requirements and strong enforcement, including loss of a tobacco retail licence as a genuine consequence when violating licensing conditions, as mechanisms that will translate implementation of the proposed legislative measures into benefits for public health.<sup>11</sup> Research evidence has demonstrated that inadequate monitoring and enforcement undermines the potential impact and public health benefit of sound legislative measures in relation to licensing of tobacco retail.<sup>17</sup> The HSE TFIP advises that it will be critical that implementation is adequately resourced and, in particular, that the necessary staffing level capacity and other resources of the HSE Environmental Health Service to monitor compliance with measures set out in the proposed heads of Bill is assured; this advice is consistent with expert opinion on lessons learned from implementation of similar legislative measures internationally.<sup>18</sup>

### **Head 35**

In relation to self-service vending machines, the HSE TFIP notes and welcomes proposals at Head 35 to repeal exemptions to licensed premises and registered clubs which allow them to sell tobacco products in this way. It is important to assure that these proposals in the heads of Bill address potential for mobile self-service

vending machines and adequately provide for prohibition of the retail of inhaled nicotine products through self-service vending machines.

Some general observations and recommendations are also made by the HSE TFIP.

International evidence and experience indicates that tobacco retail licensing measures, similar to those in the proposed heads of Bill, offers potential to reduce the density of tobacco retail outlets, easier access to which is associated with increased smoking prevalence through promotion of smoking initiation and sustaining continued smoking;<sup>11, 19</sup> price of license in particular offers potential to impact tobacco retail outlet density.<sup>20</sup> In the proposed heads of Bill, Head 13 provides for the establishment of a register of licences and plans to include measurement of smoking prevalence by small area have been announced for Census 2021 in response to advice by the HSE TFIP and the Department of Health.<sup>21</sup> The HSE TFIP recommends that the density of retail outlets in Ireland should be monitored and reviewed with reference to the relationship with smoking prevalence at small area level so as to inform any further measures which may be required to address tobacco retail as a factor in the promotion of smoking initiation and sustaining continued smoking. In that regard, the HSE TFIP recommends that attention is paid to the potential of this proposed legislation to impact health inequalities. International evidence and experience indicates that the density of tobacco retail outlets is greatest in the most disadvantaged areas.<sup>22</sup> There is a stark and significant health gap in Ireland: compared with living in the most affluent areas, people living in the most deprived areas can expect to live on average 5 years less.<sup>23</sup> Differences in smoking behavior are a key driver of health inequalities. The HSE TFIP recommends that the density of tobacco retail outlets in Ireland are closely monitored by area-based deprivation measures to ensure that people in deprived areas benefit at least equally from the potential health gain offered by the proposed legislation and, insofar as possible, health inequalities are narrowed; further targeted measures which may be required to address inequalities in tobacco retail as a factor driving the 5 year gap in life expectancy between people living in the most affluent and most deprived areas in Ireland.

The HSE TFIP also notes that this proposed heads of Bill will not address other policy matters in relation to the wider tobacco control agenda in Ireland, including e-cigarettes and questions such as advertising (point of sale, outdoor and online/social media) and flavouring. The HSE TFIP notes and welcomes the commissioning of an independent and authoritative review on e-cigarettes by the Health Research Board, which will provide a basis to evidence-informed policy-making in Ireland. The comprehensive response which will be required to that report should not delay the opportunity to take forward necessary measures proposed in this heads of Bill.

We recommend that a review of the “Tobacco Free Ireland” policy be undertaken to ensure that a programme of legislative measures is in place to deliver evidence-based best practices for tobacco control so that the promise of an Ireland where public protection from the harms of smoking is realised.

Finally, we recommend that the role for a Public Health Tobacco Control Research Group, similar to that recently announced in relation to the Public Health (Alcohol) Act 2018, be examined to monitor and evaluate the effectiveness of key tobacco control measures.

## 5. Conclusions

The proposed heads of Bill offers the opportunity to deliver on long-planned, evidence-based best practices in tobacco control which will enable a significant step forward towards a Tobacco Free Ireland.

It will not be the final step.

This week over 100 people will die from smoking and second-hand smoke related diseases in Ireland and over 1,000 people will be hospitalized. Despite good progress, continuing urgency is required to tackle smoking in Ireland.

Recognising the scope and intended purpose of the proposed heads of Bill, the HSE TFIP urges the Oireachtas to progress this critical step towards a Tobacco Free Ireland without delay.

“A large body of evidence demonstrates that tobacco companies use a wide range of tactics to interfere with tobacco control. Such strategies include direct and indirect political lobbying and campaign contributions, financing of research, attempting to affect the course of regulatory and policy machinery and engaging in social responsibility initiatives as part of public relations campaigns.”<sup>24</sup>

This opportunity presented by this proposed heads of Bill for strong political leadership to protect the health of the public should not be undermined.

The HSE TFIP reminds the Oireachtas of the importance of ensuring that its scrutiny of this proposed heads of Bill takes account 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.<sup>25</sup>

**ENDS**

**17<sup>th</sup> of January 2020**

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