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24 April 2007

Street Litter Consultation  
Local Environment Quality Team  
Zone 7/D9, Ashdown House  
123 Victoria Street  
London SW1E 6DE

Dear Sirs,

Consultation on the proposal to extend existing regulatory controls for dealing with street litter under sections 93 and 94 of the Environmental Protection Act 1990 as amended.

We are responding to the above consultation on behalf of the principal members of the Tobacco Manufacturers' Association (TMA) – British American Tobacco<sup>1</sup>, Gallaher Limited and Imperial Tobacco Ltd (UK). Some of those members may also choose to respond to the consultation in their own right.

There are three questions for the consultation:

*1. This consultation outlines actions being taken by Government to tackle the problem of smoking-related litter. Do you think any further interventions are needed by Government to help reduce this form of littering?*

As from 1<sup>st</sup> July, the 10 million or so adult smokers in England will, for the most part, only be able to smoke in the open air, in their own or someone else's home, or in a vehicle primarily used for private purposes. There is therefore a general expectation that, as a direct but unintended consequence of the smoke-free provisions of the Health Act 2006, there will be an increase in smoking-related street litter. That need not and should not be the case.

Smokers, as much as any other members of society, should behave responsibly. Littering signifies a lack of respect for public space, and is both thoughtless and irresponsible.

Whilst central government and Parliament set the legal framework for litter control and offences, the behaviour changes that are necessary, and the steps that can be taken to minimise litter can only be effectively addressed by effort at the local level. In the case of cigarette litter, that effort needs to be addressed to:

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<sup>1</sup> British American Tobacco: British American Tobacco (Holdings) Limited and British American Tobacco UK Limited

smokers, who need to behave more responsibly and be aware of the possible consequences of the thoughtless disposal of cigarette ends and packs;

local authorities who need to provide adequate litter and cigarette disposal facilities on their streets;

businesses and property owners, who should sensibly provide their own cigarette litter bins if such litter might otherwise accumulate on their premises or on their street frontage; and,

employers who have a role to play in making sure that their workforce is more litter conscious.

What is needed most in the period leading up to the coming into force of the indoor smoking ban is guidance and advice for local authorities on cigarette litter reduction and control measures, that draw on experience in this country and internationally.

The consultation paper refers to the ENCAMS cigarette litter campaign that was run in partnership with ten local authorities in February 2006. The campaign used a variety of methods to influence changes in behaviour and to make provisions for the safe disposal of cigarette litter. The subsequent survey outcomes were encouraging: 52% said that they were likely to change their behaviour, and there was a 35% decrease in cigarette-related litter in the local authority areas participating in the survey.

For the most part, however, since the passage of the Health Act 2006 the emphasis of the publicity and promotion of central and local government and their agencies has largely been on the scope of the smoking bans and their enforcement. Advice and guidance on simple, practical steps that can and should be taken to accommodate smoking and prevent and control cigarette litter have been afforded scant attention.

DEFRA consulted on its draft guidelines for local authorities – "Preventing Cigarette Litter in England" – in February this year, at which time the TMA submitted comments. The draft provided valuable practical advice on the provision of ashtrays and bins, anti-littering signage, the cleaning up of cigarette ends, working partnerships with local organisations, community leadership, changing the behaviour of smokers, and the role of enforcement. It is understood that the final document will be published shortly, but it is disappointing that this will be little more than two months before the smoking bans come into force.

*2. Do you think the current proposal would provide an effective mechanism for dealing with smoking-related litter in and around street areas? If not, what other measures would help to achieve this objective?*

Street Litter Control Notices (SLCNs) are means of last resort for dealing with recurrent street litter that is defacing an area. They are used when all other attempts to resolve a problem have failed. Thus they cannot really be seen as mechanisms for dealing with the generality of smoking-related litter in and around streets.

To date the use of SLCNs has also been restricted to the premises described in the Street Litter Control Notices Order 1991 (SLCNO 1991), the SLCN (Amendment) Order 1997 and the new subsection 93(3A) inserted in the EPA 1990 by the CNEA 2005. In respect of all those descriptions of premises, to use the words of section 93(2)(c) of the EPA 1990, "there is produced, as a result of the activities carried on on the premises, quantities of litter or refuse of such a nature and in such amounts as are likely to cause the defacement of any part of the street, or of open land adjacent to the street, which is in the vicinity of the street".

Thus, we see both the immediate adoption of the proposal in option 2 (adding premises providing food or drink for consumption on the premises) and the longer term adoption of option 3 (making s.93 of the EPA 1990 apply to any premises with the exception of residential premises, but confining the subsequent SLCNO to "any office premises"), as being a significant policy development. Both options add to the description of premises, in respect of which SLCNs might be issued, where the offending litter is not in anything like the same sense produced "as a result of the activities carried on on the premises", as is the case with the current prescribed descriptions of premises.

The smoking bans will apply to all enclosed and substantially enclosed work and public places, not just premises that provide food and drink for consumption on the premises, and not just any offices. We take the view that it should be possible for SLCNs to be issued in respect of any premises, should the need arise. We believe that this would also avoid the risk of disputes when different descriptions of premises are in very close proximity to one another and there is argument about the reasons for the litter.

Whilst the proposals are currently being made for reasons of the anticipation of cigarette litter, they would and should apply to any general litter.

We would much prefer that the primary legislation necessary under option 3 was proceeded with as soon as possible, rather than option 2 immediately. Then there would also be an opportunity for the extension of the scope of SLCNs to be fully considered by Parliament.

If in the future, and as a consequence of extending the description of premises, there were to be a significant increase in the number of SLCNs issued, we would hope that there would be a full assessment and investigation of the transfer of liabilities and costs from litter authorities to property owners and operators, so as to ensure a proper balance is maintained between them.

*3. Are there any other costs and benefits associated with this measure that are not identified in section 5 of the RIA? Do you have any comments on the estimates presented here?*

The partial RIA concludes that the analysis of costs and benefits shows that the proposals (options 2 and 3) would result in a net benefit to society overall, "since notices will only be issued in a minority of cases where there is a significant problem with smoking related litter causing defacement of land on, or in the vicinity, of a street." It would, of course, be the case that the proposed extensions of the description of premises in respect of which SLCNs may be issued, would not confine the scope of the notices only to cigarette litter. It is not clear whether this might have any effect on the number of SLCNs issued by local authorities.

The RIA further states: "The costs imposed on both local authorities and businesses would be relatively small and outweighed by the benefits associated with improved amenity, reduced cleaning costs from preventative measures and reduced fire risk."

We find it to be impossible to make any particularly helpful comment on the costs and benefits contained in the partial RIA, because there is so little, if any, reliable fundamental data available.

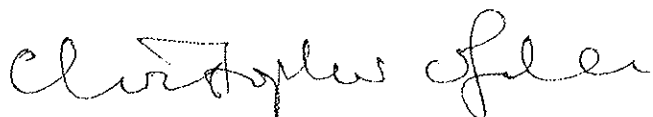
The translation of amenity benefits into monetary terms is notoriously difficult, and particularly so in this case, and is provided in the RIA only as being illustrative. It was found impossible to estimate the cost for businesses and the public if litter accumulates, resulting in a reduction in the quality of the local environment and negative impact on the economy. Such costs were not included in the cost benefit analysis as no agreed figures are available on the likely increase in littering from the indoor smoking restrictions. Also it was not possible to estimate the additional number of SLCNs that local authorities might issue. The identified benefits of the status quo are also only qualitative and could not be quantified.

The RIA also found that there are no directly relevant estimates available either for the incidence or costs of fire damage, or of the likely changes that would result from the proposal.

Further, and most significantly, the transfer costs relating to the passing of the liability associated with keeping an area clean from local authorities to businesses are largely unknown.

Given the current absence of so much relevant data, we would hope that, after the coming into force of the smoking bans and the litter proposals, it will be possible for a proper, full assessment to be made of the costs and benefits of the SLCN provisions.

Yours faithfully

A handwritten signature in cursive script, appearing to read "Christopher Ogden".

CHD Ogden  
Director