

ANTI-SOCIAL BEHAVIOUR BILL

RESTRICTING THE SALE OF SPRAY PAINTS TO PERSONS AGED UNDER 18 REGULATORY IMPACT ASSESSMENT

TITLE

- 1 Proposed measure to restrict the sale of aerosol spray paints to persons aged under 18 within the Anti-social Behaviour Bill.

PURPOSE AND INTENDED EFFECT OF THE MEASURE

Issue

- 2 To tackle the sale of spray paints to minors which may be used in acts of graffiti which causes a major blight on the community.

Objective

- 3 The objective is to control and reduce the anti-social misuse of spray paints by minors in acts of graffiti.
- 4 The Government proposes that this will be achieved by the introduction of a triable offence in the Anti-social Behaviour Bill relating to the selling of aerosol spray paints to under 18s. The offence should be by summary trial only and the maximum penalty should be a fine up to Level 4.
- 5 It will affect retailers in terms of compliance and may also affect spray paint manufacturers. It will impact on young people under 18 years old by prohibiting unsupervised access to spray paints. Local authorities and communities should benefit from less graffiti.
- 6 This proposed measure should not be seen in isolation but rather as one of a number of measures designed to tackle graffiti including effective clean up action by local Authorities, improved lighting and use of CCTV surveillance, planting hedges before graffiti hot spots, use of graffiti proof building materials and anti-graffiti paint, Neighbourhood and Street warden patrols, intelligence led policing and diversionary activities for youths.

Background

- 7 There is a similar measure, clause 18, in the 8th London Local Authorities Bill (a Private Bill) published in November 2001 and introduced into the House of Lords on 10 January 2002. The wording as it currently stands, seeks to ban the "supply of" aerosol paint or indelible marker pens in the course of a business to any person *who appears to be* under the age of 18 years old. The promoters of the Bill have had extensive discussions with Home Office, DTI and representatives of the retailers and manufacturers of such products. They have now reached a compromise where the ban will be on the "sale of" any aerosol paint to any person who is under the age of 18 years. The limitation to sale has been agreed to remove legitimate supply by businesses to under 18s for example employees using these products in the workplace.

- 8 There is also other relevant legislation that bans the sale of other articles to those under 18, for example alcohol and solvents. The regulations for controlling sales of volatile substances were made under the Consumer Protection Act 1987.
- 9 Other relevant legislation here is the Intoxicating Substances (Supply) Act 1985. The restrictions on sale of alcohol is covered by Licensing Act of 1964 and Licensing Act (Retail Sales) 1988 which prevent the sale of alcohol to under 18s. The provisions of the Confiscation of Alcohol (Young Persons) Act 1997 are widely used to reduce the incidence of under age drinking and associated nuisance in public places.

Risk Assessment

- 10 The misuse of spray paints is a growing problem as witnessed by the increasing amounts of graffiti that so blight our communities. It is a widespread problem not exclusively confined to urban areas. The estimated average cost of an incident of criminal damage against individuals and households was £510 in 1999/2000. The total cost of all such crimes in England and Wales was estimated to be £1.5billion. The costs are higher for criminal damage against the commercial or the public sector. Each incident is estimated at £890 and the total cost of all such incidents is estimated at £4.1 billion in 1999/2000 resulting from 6 million incidents. [Source Home Office study by Brand and Price 2000]. Whilst it is true that not all criminal damage is graffiti this clearly demonstrates that even if it is only accounts for 20% of the total this would be £0.82 billion.
- 11 A more specific idea of the costs of graffiti can be gleaned by looking at London. The estimated cost of cleaning up graffiti in London is £23 million and the social and economic costs are estimated at over £100 million in 2001-2. [Source London Assembly Report on Graffiti published in May 2002].
- 12 These costs do not take into account the other costs that it has on the economy, or the social costs, which it has in terms of increasing the fear of crime and deterring the public from using public spaces and public transport.
- 13 There is evidence in the London Assembly Report on Graffiti and from Local Authority surveys that young people are responsible for much of the graffiti through misuse of the aerosol spray paints in their possession. It is difficult to give a precise figure on the percentage of graffiti committed by under 18s but it is believed to be well over 60 % of all graffiti. We believe that graffiti is often done by those under 18, and that preventing the sale of spray paints to those under 18 would have a significant impact on the prevalence of graffiti .The measure aims to prevent young people under the age of 18 from purchasing spray paints while unsupervised (at present anyone can buy spray paints) and to make it triable offence to sell spray paints to under 18 year olds and the maximum penalty should be a fine at Level 4. A level 4 fine is currently set at £2,500. The penalty for selling alcohol to an under 18 is a level 3 fine (£1,000), the penalty for selling intoxicating solvents to under 18's is 6 months imprisonment and/or a level 5 fine (£5,000), the penalty for selling tobacco to an under 16 is a level 4 fine (£2,500).
- 14 We have decided to set the penalty for selling aerosol paints to under 18's to be a level 4 fine (£2,500) to send out a clear message to offenders that this behaviour will not be tolerated. Measures have already been included in the Criminal Justice Bill, as part of the wider PACE reforms, to enable the police to stop and search those they believe are carrying spray paints or other items that could be used for graffiti. The proposed measures will build on this action.

- 15 It is recognised that aerosol paints have a number of legitimate uses, including creative use by young people but these are comparatively limited. The proposal is not therefore to prohibit their use altogether but to prohibit their sale to persons under 18. We are not seeking to prevent their legitimate use, but under this proposed measure minors would be required to get adults to buy spray paints, the adults would then be morally and socially responsible for the reasonable and legitimate use of these products. The inconveniencing of minors who are law-abiding citizens will be far outweighed by the impact on the perpetrators of graffiti and the misery that they cause the public at large.
- 16 There are risks that the ban will cause irresponsible adults to buy spray paints and supply them to minors with the express purpose of committing acts of graffiti. Restricted access to spray paints might also result in greater use of indelible marker pens and etching tools and ordinary paints to commit acts of graffiti. There is also a risk that spray paints will be stockpiled before the ban becomes law or that youths will be able to buy them in Scotland as so far the Scottish Executive have indicated an unwillingness to introduce a similar measure in Scotland. However we consider that all these risks are outweighed by the potential benefits of the proposed measure.

OPTIONS

- 17 At present there are no statutory regulations covering the age limits relating to spray paints.

- 18 Five options have been considered for dealing with the issues:

Option 1: To do nothing and continue to rely on the London Local Authorities Bill.

Option 2: To seek to introduce a voluntary code of practice governing the sale of spray paints.

Option 3: Legislate to make spray paints subject to a licensing or registration scheme. This would include a ban on the supply to persons under 18 years old, the control of the display of the banned items and to limit sales by under 18 year old sales assistants without a control regime.

Option 4: Legislate to restrict the sale of aerosol spray paints to persons under 16.

Option 5: Legislate to restrict the sale of aerosol spray paints to persons under 18.

Option 1

- 19 To do nothing and continue to rely on the London Local Authorities Bill. Were this to become law it would only apply to minors in Greater London and would lead to an obvious risk that the under 18s would be able to buy spray paints in the rest of the country and bring them into London. It would also not stop other Local Authorities taking their own similar but different action leading to a plethora of different rules across the nation which would be confusing for both business and consumers.

- 20 The cost of doing nothing would be the continuing cost to the community and economy of clean up of graffiti, which has been increasing over the last few years.

Option 2

- 21 To seek to introduce a voluntary code of practice governing the sale of spray paints. This has been tried for example in a minority of the 33 London Boroughs and has not been universally accepted by all traders nor do LAs have any sanctions where businesses chose to ignore the ban. There is an obvious risk that the under 18 would be able to buy spray paints from unscrupulous traders who would have no qualms in ignoring a voluntary code but would be deterred by legislation. This would give the necessary teeth to those charged with trying to oversee a voluntary code of practice. The costs of the option would be for Local Authorities' Trading Standards in setting up codes of practice and publicity with very minor costs to retailers.

Option 3

- 22 Legislate to make spray paints subject to a licensing or registration scheme, this would include a ban on the supply to persons under 18 years old, the control of the display of the banned items and to limit sales by under 18 year old sales assistants without a control regime. A system of licensing would be necessary so as to ensure that someone responsible for illegal sales could be easily identifiable. This would be extremely bureaucratic and difficult to manage. It would also, impose enormous burdens on the retail sector and would be expensive and difficult to police. It would clearly be a disproportionate response to the perceived problem.
- 23 DTI's suggestion that the restriction should be on the "sale of" rather than "supply of" has been accepted. This is because "supply" would (unless narrowly defined) cover a wide range of transactions in which physical control of an item is transferred from one person to another. Thus "supply" would not just apply to retail sales but to any business where an employer legitimately puts a young person in possession of a spray paint– for example a bicycle repair business or an under 18 collecting aerosols from a wholesaler on behalf of a retailer.
- 24 There is currently legislation governing the employment of under 18s involved in the selling of alcohol. The problem with a measure that replicates the 1964 Licensing Act clause entitled "Prohibition of unsupervised sales by persons under 18" which requires that sales of intoxicating liquor to require approval by an authorised adult is that this would require there to be a licensee (as with alcohol) so as to allow for effective enforcement of any offence.
- 25 Restrictions on the storage/display of spray paints as there are with fireworks or solvents was considered but rejected as it would open the Government up to the charge over regulation and an increased burden of costs to be borne by the retail sector. It will be in businesses' own interest to protect their stock against theft.

Option 4

- 26 Legislate for persons under the age of 16 years old. This has been rejected, as it is critical to include those who are aged 16-18 as they are key perpetrators.

Option 5

- 27 Legislate to restrict the sale of aerosol spray paints to persons under 18. Current evidence would suggest that the misuse of spray paints is, in the main, committed by young people. It seems appropriate therefore not to allow people below the age of 18 years to purchase these major sources of graffiti nuisance. The new offence of selling spray paints to a person under 18 should not interfere unduly with legitimate usage of spray paints and will send a clear message that the Government expects spray paints to be used for legitimate purposes by responsible adults or under the supervision of responsible adults but this is not in the legislation and is just an aspiration. Taken with the proposed changes to PACE, which will enable the police to stop and search those they believe are carrying spray paints or other items that could be used for graffiti, this will be an important plank of the Government's fight against graffiti.

COSTS AND BENEFITS

Business sectors affected

- 28 See costs to business.

Benefits

- 29 The benefits are identified under the risk assessment section and include the cost of cleaning up and reducing incidents of graffiti in London.
- 30 The London underground spend £2.5m a year on removing and combating "the sprawling spray paint menace" (see www.thetube.com). This is just one business so the cost across England and Wales to business would be a substantial increase on that figure. The ban of the sale of spray paint to under 18 year olds should reduce the cost to business of removing and combating spray paint graffiti.

Costs to business

General

- 31 The spray paint market in 20021-2 is estimated at a market size totalling some £130 million per annum broken downs as follows: DIY £50m, Automotive £40m, Industrial £25m and Specialist £15m. The number of retail outlets selling spray paint is estimated to be 28,000.
- 32 There could be a severe loss to the market by the changes proposed in Options 3 and 5. Paint manufacturers might face severe difficulties and also a wide range of retailers, wholesalers, stockists and distributors.
- 33 It has been indicated that Options 3 or 5 could possibly terminally damage the emerging, growing (doubled in last 4 years) specialist market. The current value of the specialist market is about £15million and is growing at around 16% a year. Many of the specialist applications are for the age-group in question for such things as models, leisure products, replicas etc. An entire market has been built up to cater for these youngsters' interests with product branding often following through to the spray paints.

- 34 Not only could the specialist sector suffer. Other main markets for which the 16-plus age-group is crucial are maintenance/touch-up paints for bicycles, motorcycles and, for the 17-plus age-group - car paints (where spraying, except for small scratches, is the only possible technology).
- 35 A further market at risk is the industrial one, which includes professional applications of spray paints by e.g. modern apprentices in their daily jobs and does involve under 18-year olds being sent to purchase paint materials. Agricultural / farming market could lose as much as a quarter of a million pounds a year.
- 36 Information on costs for Options 3 and 5 has been obtained from the retail industry and other sources.

Option 3

- 37 There would be considerable costs involved in a controlled access regime i.e. locked display cabinets etc. It could have a major impact on customers it could potentially have a big impact on sales and service in large DIY stores as customers might not be prepared to queue up/wait to collect their paint.
- 38 One large retailer has stated that the merchandising methods would require considerable changes if they were to apply a 'fireworks control' style of presenting product to the customer and helped identify the costs to it. They estimate these costs as:
- The cost of changing merchandising/display equipment about, estimated at about £0.8m across the chain.
 - The staff costs for the 'managed sales' rather than customer self select, to be in the order of £0.7m pa (based on their assumptions for the extended transaction times).
 - Removes sales staff from assisting mainstream customers about £0.2m pa lost sales on other product categories.
 - Minor costs relating to training and information printing about £0.02m.
- 39 Spread across business, using the estimate of 1 in 4 losses in sales, it is estimated that the loss in sales would be £32m based on the £130m figure above. This estimate, as it is based on loss of sales, covers the losses incurred by retailers, wholesalers, stockists and distributors. The estimate does not include a possible offset saving by for example: parents buying the paints for their children and present sales of spray paint being, in part, offset by an increase in sales in the brush paint area. Using an assumption that this offset might result in an offset saving of 25% of the losses of sales the cost to business might reduce to £24m (£32m -£8m).
- 40 In addition using the costs information from one large retailer and assuming 28,000 retail outlets made up as follows: 9,000 selling of hardware paints and glass, 8,000 selling motor vehicle parts and accessories 5,000 selling wholesale of wood construction materials and sanitary equipment (which will include wholesale of paint) 5,000 sale of automotive fuel (inc forecourt shops) the costs

of controlling access, extended transaction times and lost sales on other products for all retail outlets could be £121m (set up costs £58m and annual costs £63m).

41 Total cost of option 3 is estimated in the range of £145m to £153m in year 1.

Option 4

42 This option has not been costed but they would be similar to option 5.

Option 5

43 In the 20,000 outlets where age related sales restrictions currently apply the unit cost is between £20 - £50 based on figures from a large retailer.

44 In the 8,000 outlets where no age related sales restrictions currently apply the unit cost is in the range £300 - £500 including costs to set up training etc.

45 The costs to industry of merely adding spray paints to the list of other age related sales will be very modest for major market players and the larger DIY shops. The total cost is estimated in the range £0.4m to £1m. This covers training of staff and information printing. The costs for smaller retailers may be a little higher as they will not benefit from economies of scale and a small number of outlets will not already sell age restricted items. However we have assumed that many garages sell tobacco and many wholesale of wood construction materials and sanitary equipment and shops sell solvents etc. The total cost for outlets where no age related sales restrictions currently exist is in the range £2.4m to £5m. Therefore total costs range between £2.8m and £6m.

46 The range on loss of sales estimated under Option 3 is £24m to £32m per annum at present level of sales. Using this as a baseline the maximum loss of sales under Option 5 would be less because there would be fewer restrictions on sales as they will openly displayed (as now) and controlled at the point of sale. We believe the range of lost sales would be revised down to between 10-15% £13m to £20m.

47 The claims by manufactures that the loss of sales will be nearly £50m i.e. 40% of the total market are being challenged as this would imply that much of the use of their products is for graffiti.

48 Total cost of Option 5 is the costs of training and information between £2.8m-£6m year 1 only and the transfer for lost sales of £13m-20m a year as customers could purchase their goods elsewhere so that this will not be a loss to business as a whole.

EQUITY AND FAIRNESS

49 All under 18s are affected and all specialised retail outlets arts crafts and car shops some stationers and many hardware shops.

SMALL FIRMS' IMPACT TEST

50 The impact on small businesses has been covered above.

51 The Small Business Service have commented as below:

- 51.1 “Based on the RIA estimates, Option 5 is the costliest measure to business in the White Paper. The total cost to business of the selected approach is estimated at £15.8 to 26 million per annum **around a fifth of the total UK spray paint market**. We are also concerned by the stark statement that the proposed measure could terminally damage the emerging, growing specialist market for these paints (primarily for modelling and hobbyists); worth £15m out of the total market of £130m. The latest estimate we have seen suggests that up to 40% of the specialist market would be lost; worth £6m.
- 51.2 The SBS is not at all convinced that the London Assembly report cited shows that the 16-18 age group is critical to this issue and that a blanket ban on sales to all under 18s is necessary; many legitimate users may be unnecessarily caught by the measure. In the restricted time available it has not been possible to determine all of these and how they might be substantiated. It seems to us however that the impacts should be explored more fully before proceeding, given the scale of the estimates and that they may prove to be underestimates.
- 51.3 A key area we feel are the many young people in the 16-18 age group who will own a vehicle of some kind (mopeds from 16, cars and motorcycles from 17) and will need to maintain and repair it. The latest estimate we have is that up to 30% of the automotive market could be lost; worth £12m. Additionally, the DIY segment of the market is worth £50m, over a third of the total; 16 year olds and above can be householders in their own right with a legitimate need for spray paint for DIY use.
- 51.4 In our view therefore, a more measured approach would be to restrict the ban on sales to under 16s only, or at the very least to exempt those aged 16 or 17 who can prove both their age and that they own a vehicle from an under 18 ban. We would expect both to reduce the costs to business and note that neither option have been specifically costed in the RIA.
- 51.5 We would also add that the costs of any penalties on businesses and of seeking compliance by local authorities have been omitted thus far.”

ENFORCEMENT AND SANCTIONS

- 52 Test purchases by Trading Standard Officers (TSOs), complaints and information received by police will be ways in which the need to take enforcement action will be identified. The maximum penalty to enforce the proposed law is expected to be £2,500.
- 53 Figures for costs of enforcement not available at present. Comparisons with the enforcement costs of other age related sales like tobacco alcohol and solvents and work done on the Licensing Bill is being made.

COMPETITION ASSESSMENT

- 54 The recommended Option 5 creates a new offence of selling spray paints to people below the age of 18. It will have an impact on manufacturers of aerosol spray paints and those retailers who sell such spray paints. This could result in a

reduction in the volume of sales of aerosol spray paints and will require some training of sales assistants. The costs of training staff and loss of sales are not likely to be sufficient to affect competition since sales of spray paints to this age range would be unlikely to constitute a significant proportion of businesses' overall sales. In addition, the requirements would apply equally to all businesses. A Competition Filter is attached at Annex A.

CONSULTATION

55 The following have been informally consulted British Retail Consortium, DTI, Small Business Service, National Hardware Federation and the, British Coatings Federation (BCF).

MONITORING AND REVIEW

56 Arrangements for monitoring and review will be included in the final Regulatory Impact Assessment but we will aim to test and monitor the impact on a sample of large and small businesses for the impact on manufacture and sales and LAs/TSOs and magistrates' courts for impact vis a vis enforcement.

SUMMARY AND RECOMMENDATION

57 The objective is to control and reduce the anti-social misuse of spray paints by minors in acts of graffiti. To achieve that objective it is recommended that Option 5, legislate to restrict the sale of aerosol spray paints to persons under 18, is adopted.

58 The cost of this option ranges between £15.8m to £26m in year one and £13m - £20m thereafter at current prices. The social and economic benefits to England and Wales will be substantial for example the potential savings to London Underground who spend £2.5m a year to combat and remove spray paint.

MINISTERIAL DECLARATION

59 I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs

Signed by the responsible Minister

Bob Ainsworth

Date 26 March 2003

Contact Point

The contact point for this RIA is:

Lee Kettlewell
ASBU
Home Office
5th Floor
50 Queen Anne's Gate
London SW1H 9AT

Tel. 020 7273 3173

email Lee.Kettlewell@homeoffice.gsi.gov.uk

20 March 2003

COMPETITION FILTER

The competition filter	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	Yes
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	Yes
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the market characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No