

This summary in English is published on pages 29-36 in the report *A review of the Tobacco Act - New steps towards a reduction in tobacco use* (SOU 2016:14)

## **Summary**

In this report, the Inquiry presents a number of proposals that aim to reduce the use of tobacco and to combat illicit trade in tobacco. The proposals consist mainly of a permit requirement for selling tobacco, an expansion of the ban on smoking to include more environments and products, a tobacco display ban in shops and certain amendments to regulations on snus and the supervisory organisation. The Inquiry also presents proposals for implementation of regulations on traceability and labelling contained in the Tobacco Products Directive (2014/40/EU). In addition, the Inquiry has made a systematic, linguistic and editorial overview of the Tobacco Act (1993:581). The Inquiry proposes a new, structurally revised Tobacco Act, as a result of the overview.

In its report, the Inquiry also proposes an analysis and assessment of whether there is reason to introduce requirements for plain tobacco packaging in Sweden and whether national measures are needed for implementing the WHO Protocol to Eliminate Illicit Trade in Tobacco Products.

### **Permit requirement**

The Inquiry proposes that retail and wholesale trade in tobacco products should be permitted only by those who have permits for such trade. Permits should only be granted to a person who can show that he or she, with regard to personal and economic conditions and other circumstances, is suited to conducting the activities and that the activities will be carried out in accordance with the requirements of the Tobacco Act. Persons applying for a permit must be able to show that there is an appropriate self-inspection programme for the

activities. Permit applications must be subject to consideration by the municipalities. Before a decision is made regarding a permit, the Swedish Police Authority, and also Swedish Customs if the application concerns wholesale trade, is to express its opinion regarding the suitability of the applicant.

A permit for retail trade in tobacco is to refer to a particular sales outlet, while a permit for wholesale trade is to apply to the business.

The Inquiry proposes that a person operating wholesale trade in tobacco products may deliver such products only to persons who have a permit to conduct wholesale or retail trade in such products and the salesperson must make sure that the purchaser has such a permit. Tobacco products that may not be offered to consumers due to incorrect labelling must not be offered to retail traders either.

The Inquiry proposes the removal of the current possibility for municipalities to impose a sales prohibition on a business operator. Instead, municipalities should have the opportunity to issue a permit holder with a warning, if the permit holder no longer meets the permit requirements, or does not follow the regulations that apply for selling tobacco. If a warning is not a sufficiently intrusive measure, municipalities should be able to revoke the permit.

A person who intentionally or through negligence sells tobacco products without having a permit for wholesale or retail trade in tobacco products is to be convicted of unlawful tobacco sales. Other acts that are currently punishable as unlawful tobacco sales under the Tobacco Act are to be classified instead as unlawful tobacco handling. The Inquiry proposes that the prescribed scale of penalties for unlawful tobacco sales be raised to imprisonment for at most two years or, if the offence is to be considered gross, imprisonment for at least six months and at most six years. The Inquiry further proposes a new provision on confiscation which means that tobacco products that

have been the subject of an offence under the Tobacco Act, or their equivalent value and proceeds from such an offence are to be declared forfeit, unless this is manifestly unreasonable.

### **A broader ban on smoking**

The Inquiry proposes that the current ban on smoking in the Tobacco Act be broadened and also include certain public places outdoors, such as café and restaurant terraces, entrances to establishments and other spaces to which the public has access, areas outdoors that are intended to be used by those travelling by domestic public transport, enclosed areas mainly intended for sports training, and playgrounds to which the public has access.

The Inquiry further proposes that the smoking ban, in addition to tobacco smoking, should include the use of herbal products for smoking, electronic cigarettes – both with and without nicotine – and certain other stimulants corresponding to smoking in their use but that do not contain tobacco.

A person who, in their capacity as owner or on other grounds, manages an outdoor area subject to a smoking ban, must be responsible for maintaining the smoking ban. However, with regard to entrances to establishments and other spaces to which the public has access, a person who, in their capacity as owner or on other grounds, manages an establishment or space, must be responsible for maintaining the smoking ban in such entrances.

A person who is responsible for maintaining the smoking ban must clearly communicate the smoking ban using signs and intervene with information and reminders as needed. The possibility to dismiss a person who, despite being reminded, is smoking where smoking is not permitted, is to apply also in the proposed smokefree outdoor environments.

The Inquiry proposes that the smoking ban provisions be gathered in the new Tobacco Act and that the current smoking ban that is subject to penalty in the Public Order Act (1993:1617) be cancelled.

### **Display ban**

The Inquiry proposes that it should be prohibited to store tobacco products and their packaging in full view of customers at sales outlets. Also other commercial messages that market tobacco products at sales outlets should be prohibited (display ban). In addition, tobacco products sold to consumers should not be offered in a way that will give the customer access to the product before payment is made (self-service).

Product and price lists inside sales outlets may be permitted, provided that such lists have a neutral design and are located at the point in the shop where tobacco products are being sold. The lists are to be positioned so as not to be visible from outside the sales outlet.

Specialist shops for tobacco products, i.e. shops that only sell tobacco products and accessories for such products, must be exempt from the display ban and the ban on self-service. The sales permit must state when a sales outlet constitutes such a specialist shop. Commercial messages inside specialist shops must be positioned so as not to be visible from outside the sales outlet.

### **Traceability and labelling**

In order to implement the regulations on traceability and labelling under the Tobacco Products Directive, the Inquiry proposes that unit packets of tobacco products be marked with unique identification and security labels. Manufacturers and importers must be responsible for ensuring that packaging is marked with such labels. Tobacco products that lack such labels may not be offered to consumers or retailers in business activities.

Further, the Inquiry proposes that business operators engaging in trade in tobacco products, with the exception of those operating retail trade, must register all unit packets when they assume possession of them or when the packets leave their possession, and at all intermediary levels. The equipment necessary for registering the tobacco products must be provided by the tobacco manufacturers.

Business operators who take part in the delivery chain for tobacco products must maintain registers of all relevant transactions.

Manufacturers and importers of tobacco products must store relevant data with an independent third party, whose activities are to be monitored by an external auditor. Both the third party and the auditor are to be approved by the European Commission and the tobacco manufacturers must bear the costs of data storage.

A more detailed design of the systems and labelling is to be adapted to the technical standards for the establishment and operations of the system for tracking and identification and for the security labelling laid down by the European Commission through implementing acts. The Inquiry proposes that the Government, or the authority designated by the Government, should be allowed to issue more detailed regulations on the design of identity and security labelling, such as technical standards for the establishment and operations of a system for tracking, registration and responsibility for registration, including data storage of relevant data.

### **Effective regulation of snus**

The Inquiry proposes that snus and chewing tobacco no longer be equated with foodstuffs under the Food Act (2006:804). This means that snus will no longer be subject to the product requirements of the Food Act. The Inquiry considers that the Public Health Agency of Sweden can and should issue regulations on additives in snus that should be banned and thresholds for harmful substances that snus may

contain or give rise to. Such regulations should include bans on additives in snus that give an impression of snus having a health benefit or a reduced health risk, or being associated with energy and vitality, and that are carcinogenic, mutagenic or reprotoxic and have been added to the product in such quantities that the toxic or addictive effect or the carcinogenic, mutagenic or reprotoxic properties increase on consumption to a considerable or measurable extent.

Snus is not covered by the prohibition in the Tobacco Products Directive of a characterising flavour in certain tobacco products. In the Inquiry's view, objective reasons exist for regulating snus containing flavouring. However, considering mainly the practical difficulties of such regulation, the Inquiry has taken the view that no regulations on snus containing flavouring should currently be introduced. On the other hand, the Inquiry proposes a measure that may be expected to have a corresponding effect, namely a prohibition on references to taste, smell or additives on snus packaging and on the product itself.

The Inquiry also proposes setting a minimum amount of snus that a package may contain, in the same way as cigarettes. A unit packet of pouch snus is to contain at least 20 pouches. Snus should not be offered to consumers in smaller amounts.

### **Some supervisory matters etc.**

The Inquiry proposes that the Swedish Police Authority and municipalities should have equivalent supervisory responsibility under the Tobacco Act, and that the immediate supervisory responsibility of the Public Health Agency of Sweden and the Consumer Ombudsman should be clarified in the Act. Furthermore, the Inquiry proposes that the central supervisory responsibility under the Tobacco Act of the Swedish Work Environment Authority, which currently only fulfils a formal function, be cancelled. In addition, the Inquiry presents proposals for confidentiality provisions in the Public Access to

Information and Secrecy Act (2009:400) concerning information that is found at a permit or supervisory authority.

The Inquiry proposes that the current possibility for supervisory authorities to in certain cases decide to take charge of tobacco products be cancelled. The Inquiry also proposes new rules concerning duty of notification for municipalities and an obligation on the part of the Public Health Agency of Sweden to keep a central register for supervision, follow-up and evaluation of the application of the Tobacco Act and for the production of statistics.

### **Plain tobacco packaging**

The Inquiry considers that tobacco consumption in Sweden may be expected to decrease if a requirement for tobacco to be sold in plain packaging is introduced. Such regulation is therefore justified in terms of tobacco policy. The assessment of the Inquiry is that a requirement for plain tobacco packaging should be regarded as compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms, trademark rights, design rights, WTO law, EU law and the Instrument of Government. However, the Inquiry considers that such a requirement would not be compatible with the current provisions of the Freedom of the Press Act. Consequently, a requirement for plain tobacco packaging can only be introduced if an exception making such a requirement is introduced in the Constitution. At present, no requirement for plain tobacco packaging should therefore be introduced.

### **The WHO Protocol to Eliminate Illicit Trade in Tobacco Products**

The Inquiry considers that incorporation of the WHO Protocol to Eliminate Illicit Trade in Tobacco Products into Swedish law will not require any legislative amendments other than those that follow from the proposals on traceability and labelling of tobacco products.

## **Entry into force and transitional provisions**

The Inquiry proposes that the new Tobacco Act come into force on 1 January 2018, when the current Tobacco Act (1993:581) will cease to apply. However, the Inquiry proposes that the regulations on traceability and labelling apply from 20 May 2019. The Inquiry proposes certain transitional provisions whereby sales of tobacco products, which under currently applicable rules are reported to the municipality, under certain conditions may continue until the permit authority takes a decision regarding the permit. In addition, the Inquiry proposes that wholesale trade is to be permitted without a permit during a transitional period. Snus that does not meet the proposed requirements regarding labelling or amounts, but that was manufactured before the act enters into force, may be sold during a transitional period even after the new act has entered into force.

## **Consequences**

The proposed permit process for tobacco sales will result in increased handling costs for municipalities. It is anticipated that these costs can be fully financed through application fees. Applying the regulations on traceability and labelling requires the adoption by the European Commission of certain supplementary legal acts. The Inquiry considers that it is not currently possible to specify with any degree of certainty which consequences these regulations may have for the supervisory authorities – primarily the Public Health Agency of Sweden – but there is reason to follow up the matter. It is considered that other proposals will only have marginal consequences for the supervisory authorities. Consequently, no need for additional resources is foreseen.

The Inquiry considers that the new permit requirement for retail traders and wholesalers, at least initially, may generate a slightly increased number of appeals. The proposed possibility for supervisory authorities to cancel sales permits may also lead to a slightly increased

number of appeals. However, there is no reason to assume anything other than that the number of appeals will remain at a relatively low level in the long term. The proposed permit process should therefore not lead to anything other than a slightly increased workload in the administrative courts. The Inquiry considers that it should be possible for the increase to be handled within the framework of the current activities of the administrative courts with no particular additional resources.

It is the Inquiry's assessment that the proposals on a permit requirement and an display ban will lead to adaptation costs for retailers and wholesalers. However, the costs cannot be expected to be so great as to constitute a limitation in practice of the possibilities of selling tobacco. Furthermore, the Inquiry considers it to be inevitable that the new requirements regarding snus will lead to adaptation costs for manufacturers, as there will have to be an alignment of part of the product range on the market.