GUIDE 1.1

Set policy objectives

1. Establish the aims and objectives

It is critical to establish clear aims and objectives for an effective policy development process of a tobacco control policy. Many domestic and international courts and tribunals apply legal tests to establish whether a measure is proportionate or justified in relation to its intended objectives. Where a government fails to formally establish those objectives, a legal challenge may be more difficult to defend.

Plain packaging serves multiple objectives within the broader context of tobacco demand reduction strategies. The broad objectives for plain packaging are to improve public health by:

- discouraging people from taking up smoking, or using tobacco products; and
- encouraging people to give up smoking, and to stop using tobacco products; and
- discouraging people who have given up smoking, or who have stopped using tobacco products, from relapsing.

The objectives of plain packaging are achieved by

- ***reducing*** the appeal and attractiveness of tobacco products to consumers,
- ***increasing*** the noticeability and effectiveness of health warnings on the packaging of tobacco products,
- ***reducing*** the ability of the packaging of tobacco products to mislead consumers about the harmful effects of smoking or using tobacco products,
- ***eliminating*** the ability of tobacco packaging to advertise and promote tobacco consumption,
- ***having a positive*** effect on smoking-related attitudes, beliefs, intentions and behaviours or assisting with the denormalisation of tobacco products.

This list is drawn from the objectives as expressed in the who fctc guidelines for Articles 11 and 13, Australia's Tobacco Plain Packaging Act 2011, Ireland's Public Health (Standardised Packaging of Tobacco) Act 2014 and the public consultation documents from the UK. Governments proposing plain packaging should consider which objectives are relevant for them but it is recommended that governments take a broad inclusive approach to the aims they wish to achieve and the means by which they should be achieved through the implementation of plain packaging.

An important point is that these objectives are evidence-based and capable of being monitored and evaluated.

2. Set out the objectives in official documents

It is important that a government sets out the aims for the policy clearly in official, publicly available documents or publications. For example, this can be in the preamble or explanatory notes of the legislation itself (as Australia and Ireland did); in public consultation documents (as the UK and Canada have done); or in a Regulatory Impact Assessment (such as the one published by New Zealand). Links to these documents are given below.

3. Establish that Plain Packaging is in furtherance of the WHO FCTC

It is also important that a government formally recognises that plain packaging is a policy recommended in the implementing guidelines for Articles 11 and 13 of the WHO FCTC. The fact that a country is adopting a policy in furtherance of its international legal obligations can be a significant factor for courts or tribunals asked to consider that policy. Giving effect to obligations in the who fctc is stated as an objective of both Australia and New Zealand's legislation, and is detailed in the UK consultation document.

4. Plain Packaging objectives work as part of a wider tobacco control policy

It is critical for policy and legal reasons that plain packaging is part of a wider tobacco control strategy that includes a comprehensive tobacco advertising, promotion and sponsorship (TAPS) ban, including a ban on point of sale advertising, and effective graphic health warnings in line with WHO FCTC recommendations.

It is critical for policy and legal reasons that plain packaging is part of a wider tobacco control strategy that includes:

- a comprehensive tobacco advertising, promotion and sponsorship (TAPS) ban, including a ban on point of sale advertising, and
- effective graphic health warnings in line with WHO FCTC recommendations.

The reasons for this are:

Policy issues

- It makes little sense to remove the advertising and promotional elements on tobacco packets but still allow advertising or promotion of tobacco products in other ways.
- One of the key aims of plain packaging is that it increases the noticeability and effectiveness of the Graphic Health Warnings, therefore a country should either have in place, or be introducing concurrently with plain packaging, health warnings that are in line with the recommendations of WHO FCTC Article 11 guidelines – at least 50% front and back with graphic pictures.
- In both Australia and in the EU countries that have introduced plain packaging, health warnings increased in size at the same time plain packaging was introduced.

Legal issues

- International legal challenges, as well as many national legal jurisdictions, often include a test of whether it is necessary or justified to introduce a measure that has the potential to restrict trade in goods or commercial activity. This type of legal argument includes consideration of whether there are less restrictive alternative measures that could also meet the policy objectives. If a comprehensive TAPS ban is not in place or being introduced, a court could consider that a TAPS ban may be a less restrictive option for achieving the policy objectives than introducing plain packaging.
- Tobacco companies could argue that that the efficacy of the policy would be undermined by other forms of advertising.
- There is significant research evidence that shows plain packaging is effective at increasing the noticeability of health warnings. But without regulations requiring effective health warnings that are in accordance with FCTC recommendations, it would be difficult to use that to support the defence of plain packaging in a legal challenge.

Key resources

- WHO publication Plain Packaging of Tobacco Products – Evidence, Design and Implementation:
  www.who.int/tobacco/publications/industry/plain-packaging-tobacco-products/en/
- Australian legislation that sets out the objectives of the law
  www.comlaw.gov.au/Details/C2013C00190
- UK 2012 consultation that describes the aims and objectives of the proposed policy:
  www.gov.uk/government/uploads/system/uploads/attachment_data/file/170568/dh_133575.pdf
- New Zealand's Regulatory Impact Assessment from 2012 sets out the objectives for the proposal:
  www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/plain-packaging-tobacco-productsregulatory-impact-statement-consultation-phase