

**EXPLANATORY MEMORANDUM TO
THE TOBACCO ADVERTISING AND PROMOTION (SPECIALIST TOBACCONISTS)
REGULATIONS (NORTHERN IRELAND) 2012**

SR 2012 No. 244

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health, Social Services and Public Safety to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under Sections 6(A1), 7B(3) and 19(2) of the Tobacco Advertising and Promotion Act 2002 and is subject to the negative resolution procedure.

1.3 The Rule is to come into operation 6 April 2015.

2. Purpose of the Rule

2.1 These regulations provide exemptions for specialist tobacconists to the general prohibition of the display of tobacco products set out in the Health Act 2009. They allow tobacco products to be displayed within specialist tobacconists as long as they are not visible from outside the shops. They also amend the existing exemption for tobacco advertising by specialist tobacconists, in the Tobacco Advertising and Promotion Act 2002 (TAPA), which allows advertising only within, or fixed to the outside of, these shops. The regulations come into force on 6 April 2015.

3. Territorial extent and application

3.1 This Statutory Rule applies only to Northern Ireland.

4. Legislative Context

4.1 The new sections 6(A1) and 7B of the Tobacco Advertising and Promotion Act 2002 (c.36) ("the Act") were inserted by sections 20 and 21 of the Health Act 2009 (c.21). Sections 20 and 21 came into force for the purpose of making regulations on the day on which the Health Act 2009 obtained Royal Assent (12 November 2009).

4.2 Section 6(A1) of the Act allows the appropriate Minister (in Northern Ireland, the Department of Health, Social Services and Public Safety) to provide in regulations that no offence is committed under section 2 of the Act, which allows tobacco advertising provided it is in, or fixed to the outside of, the premises of a specialist tobacconist and complies with prescribed conditions. This power replaced, except in relation to Scotland, the exclusion for specialist tobacconists previously provided by section 6(1) of the Act.

4.3 Section 7B(3) of the Act allows the appropriate Minister to provide in regulations that no offence is committed under section 7A(1) of the Act (which prohibits tobacco displays) if the display complies with requirements specified in regulations.

4.4 The Health Act 2009 contains a number of other new regulation-making powers in relation to tobacco (concerning the display of tobacco products, restrictions on the display of tobacco product price lists and the prohibition of sales of tobacco products from vending machines). The Department of Health, Social Services and Public Safety intends to make four sets of regulations under these powers during the course of 2012; one other set of regulations (on the display of tobacco products) is also subject to the negative procedure. The remaining two, regulating tobacco product price lists and

prohibiting tobacco sales from vending machines, are subject to the affirmative procedure. The vending machines regulations were made on 19 January 2012.

5. Policy background

5.1 The primary focus of the tobacco provisions in the Health Act 2009 is on protecting children and young people from the health harms of smoking. A consequential benefit of the policy will be to create a more supportive environment for adults who are trying to quit smoking.

5.2 Preventing children and young people from adopting the smoking habit is key to achieving the Department's long-term aim of a tobacco-free society. Recent evidence shows that in Northern Ireland, 82% of adults in Northern Ireland took up the habit while in their teens, and that 8% of children aged 11 to 16 are regular smokers.

5.3 The Department wishes to take action to enable young people not to start smoking and to support those people who want to give up smoking. There is extensive evidence that both tobacco advertising and tobacco promotion through displays of products, encourage young people to start smoking and that since the Tobacco Advertising and Promotion Act 2002 banned tobacco advertising, the tobacco industry has increasingly focused on the display of tobacco in shops as a way of promoting its products.

5.4 These Regulations intend to give an exemption, with restrictions, for specialist tobacconists, allowing them to display tobacco products within their stores. The reason for the exemption is because of both the specialist nature of their trade -meaning a full removal of display would be highly burdensome - and because young people are not commonly customers in specialist tobacconists, indeed some shops voluntarily operate an adult only policy.

5.5 It is not believed that specialist tobacconists are a source of tobacco for either under-18 year olds or a source of temptation for adults trying to quit smoking. In order to maintain this position, however, specialist tobacconists are being restricted so that display and advertising of tobacco products are not visible from outside the shop. This will bring Specialist Tobacconists in line with the general policy of removing tobacco product displays from the general public view. We understand there are only one or two shops in Northern Ireland that qualify to be Specialist Tobacconists. To be a specialist tobacconist, a shop must meet the conditions set out in section 6 of the Tobacco Advertising and Promotion Act 2002, including the requirement for 50% of sales to be from specialist tobacco products (not cigarettes or hand-rolling tobacco) and smoking accessories. Accompanying regulations on requirements for the removal of the display of tobacco products and tobacco product price lists are subject to separate regulations.

6. Consultation outcome

6.1 The Department of Health, Social Services and Public Safety published a consultation document on 1 October 2010 seeking views on four sets of proposed regulations on tobacco control, including proposed regulations on specialist tobacconists. The consultation lasted for 12 weeks and closed on 24 December 2010.

6.2 Responses to the consultation were received from those stakeholders involved in the specialist tobacco trade, as well as other small retailers, health stakeholders, the tobacco industry, the Health and Social Care services and individuals. The principle stakeholders concerned with restrictions on specialist tobacconists were represented by the Association of Independent Specialist Tobacconists and the Imported Tobacco Products Advisory Council.

6.3 No changes were made to the draft regulations following the consultation as the comments were generally on the principle of the exemption rather than the specific provisions proposed in the draft regulations. The consultation responses were carefully considered and the Department of Health,

Social Services and Public Safety decided, on balance, it was appropriate to provide the restricted exemption for specialist tobacconists. This decision recognises the nature of this particular type of retailer and accepts that the regulations strike the right balance between achieving the public health aims of the legislation whilst not creating unnecessary burdens for these businesses.

7. Position in Great Britain

7.1 This Rule replicates the following Statutory Instruments:

S.I. 2010 No. 446 The Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010; and
S.I. 2012 No. 1287 (W.164) The Tobacco Advertising and Promotion (Specialist Tobacconists) (Wales) Regulations 2012

7.2 The corresponding Statutory Instruments will also be commenced in England and Wales from 6 April 2015. Scotland is also expected to introduce similar legislation.

8. Equality Impact

8.1 In accordance with its duty under section 75 of the Northern Ireland Act 1988, the Department conducted a screening exercise on the proposals and concluded that they do not have any significant implications for equality of opportunity. The measures will not affect any of the section 75 groups disproportionately. In light of this, the Department considers that an equality impact assessment is not necessary.

9. Regulatory impact

9.1 The legislation applies to small business, and creates an exemption from the general prohibition on the display of tobacco products for specialist tobacconists shops, subject to conditions set out in the regulations.

9.2 To limit the impact on specialist tobacconists, which tend to be small businesses employing less than 20 people, a partial exemption on the prohibition of tobacco product displays has been created to minimise the burden of the prohibition in the Health Act 2009, while still achieving the health policy aims. In any case, all small businesses will have until 6 April 2015 to comply with the legislation. This will give shops time to prepare for the restrictions. Guidance on compliance with the regulations for both businesses and enforcement agencies will be made available in advance of the regulations being introduced.

9.3 A Regulatory Impact Assessment (RIA) is available on the Department's website (www.dhsspsni.gov.uk). The RIA covers the removal of the display of tobacco products, including price lists and specialist tobacconists, which are subject to separate regulations. The RIA demonstrates the regulations result in a combined net benefit of £41.32 million.

10. Financial implications

10.1 Minimal financial implications. The new legislation will be enforced by Environmental Health Officers in District Councils. It is not anticipated that there will be additional funding required to that which has already been provided by the Department for compliance with the Smoking (Northern Ireland) Order 2006.

11. Section 24 of the Northern Ireland Act

11.1 The Department believes that the Regulations are compatible with Section 24 of the Northern Ireland Act 1988.

12. EU implications

12.1 Not applicable.