

**EXPLANATORY MEMORANDUM TO  
THE TOBACCO ADVERTISING AND PROMOTION (DISPLAY)  
REGULATIONS (NORTHERN IRELAND) 2012  
2012 No. 246**

**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 4(3), 7A(2), 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 on 31 October 2012 for large shops other than bulk tobacconists (as defined in the regulations) and on 6 April 2015 for all other retailers of tobacco.

**2. Purpose of the Rule**

2.1 These regulations provide exemptions to the general prohibition of the display of tobacco products set out in section 21 of the Health Act 2009. They are intended to allow trading to continue but to prevent tobacco products being used as promotional tools.

**3. Territorial extent and application**

3.1 This Statutory Rule applies only to Northern Ireland

**4.1 Legislative Context**

4.1 The new sections 7A and 7B of the Tobacco Advertising and Promotion Act 2002 (c.36), were inserted by section 21 of the Health Act 2009 (c.21). Section 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). Section 7A(1) provides that a person who in the course of business displays tobacco products or causes them to be displayed in a place is guilty of an offence; section 7A(2) allows the appropriate Minister (in Northern Ireland, the Department of Health, Social Services and Public Safety) to make regulations providing for the meaning of “place”. Section 7B(3) allows the appropriate Minister to provide in regulations that no offence is committed if the display complies with requirements specified in the regulations.

4.2 The Health Act 2009 contains a number of other new regulation-making powers in relation to tobacco (concerning specialist tobacconists, restrictions on the display of tobacco product price lists and the prohibition of tobacco sales from vending machines). The Department of Health, Social Services and Public Safety intends to make four sets of regulations in total under these powers during the course of 2012; one other set of regulations (on specialist tobacconists) 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 are intended to deal with implementing the prohibition of tobacco product displays under the Health Act 2009. The requirements for specialist tobacconists in relation to the prohibition of the display of tobacco products are set out in separate regulations (the Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations (Northern Ireland) 2012).

5.5 These regulations recognise that retailers need to be able to serve customers, restock products, and staff need to know where products are kept. The regulations therefore offer some exemptions to temporary displays, for example, when serving a customer, restocking, cleaning and staff training and they also allow for labels on storage units. All of these exemptions are subject to specified restrictions. The particular circumstances of duty-free and other retailers only selling tobacco products to the public in bulk quantities, referred to in the regulations as "bulk tobacconists" are also recognised. They will be allowed to retain displays of tobacco products subject to the specified conditions.

## **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 displays of tobacco products. The consultation lasted for 12 weeks and closed on 24 December 2010. The Department received a total of 1,013 responses to the consultation from a wide variety of stakeholders including representatives from the: health sector; wider public sector; tobacco industry; and retail sectors.

6.2 The Department made two changes to the regulations in the light of suggestions made by stakeholders in their responses to the proposed regulations in the consultation, where the suggestions were considered to strike the appropriate balance between business concerns and the health benefit aims of the regulations. These changes were:

- an increase in the permitted size of temporary allowable display from 0.75sqm to 1.5 sqm; and
- to increase occasions when a temporary incidental display is permitted, to include when stocktaking, staff training and refurbishment are taking place.

## **7. Position in Great Britain**

7.1 This Rule replicates the following Statutory Instruments:

S.I. 2010 No. 445 The Tobacco Advertising and Promotion (Display) (England) Regulations 2010; and  
S.I. 2012 No. 1285 (W.163) The Tobacco Advertising and Promotion (Display) (Wales) Regulations 2012

7.2 Commencement dates in England and Wales for large shops, other than bulk tobacconists, are 6 April 2012 and 3 December 2012 respectively. Both countries will introduce the regulations for all other retailers from 6 April 2015.

7.3 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 impact on business, charities or voluntary bodies is that all businesses that sell tobacco to the public will have to cover up their displays of tobacco products. All businesses will have a lead-in time to prepare; the regulations will commence for large stores, other than bulk tobacconists on 31 October 2012, and will commence for all other businesses on 6 April 2015. Large stores are defined by using the existing definition in the Shops (Sunday Trading &c.) (Northern Ireland) Order 1997 of having a relevant floor area exceeding 280 square metres.

9.2 To minimise the impact of the requirements on small firms, the approach taken is to give small businesses over two years longer to comply with the legislation. This will both give preparation time and allow small stores to benefit from the experiences of large stores in implementing these regulations. To further minimise the impact on businesses, the permitted area of temporary allowable display has been increased since consultation to reduce the cost of refurbishment. Guidance will be issued to aid compliance with the regulations for both businesses and enforcement agencies.

9.3 The policy is intended to have a positive impact on the Health and Social Services due to the improved health of the population as achieved by reducing smoking rates into the long term.

9.4 A Regulatory Impact Assessment (RIA) is available on the Department's website ([www.dhsspsni.gov.uk](http://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 These regulations have been notified to the European Commission under the Technical Standards and Regulations Directive.