

**THE TOBACCO AND PRIMARY MEDICAL
SERVICES (SCOTLAND) ACT 2010**
**A CONSULTATION ON TOBACCO
DRAFT REGULATIONS**



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SCOTTISH GOVERNMENT

**THE TOBACCO AND PRIMARY MEDICAL
SERVICES (SCOTLAND) ACT 2010**

**A CONSULTATION ON TOBACCO
DRAFT REGULATIONS**



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PURPOSE



PURPOSE

The purpose of this consultation is to seek the views of stakeholders and members of the public on regulations covering:

- The prohibition of tobacco displays
- Regulation of display of prices
- Application for registration and additional premises for moveable structures
- Fixed penalty notice scheme for tobacco sales offences.
- Application for registration and additional premises etc.
- Prescribed documents for verification of age
- Display of warning statements



**THE CONSULTATION PROCESS:
HOW TO RESPOND**

THE CONSULTATION PROCESS: HOW TO RESPOND

Responding

The consultation period for these regulations runs from 27th April 2010 to 20th July 2010. Consultation responses should be sent within this time to:

TobaccoDisplayandSaleRegulations@scotland.gsi.gov.uk

Or by writing to

Tobacco Regulations Consultation Exercise
Scottish Government
Area 3-N
St Andrew's House
1 Regent Road
Edinburgh
EH1 3DG

Data Protection

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form at Annex B as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library and on the [Scottish Government consultation web pages](http://www.scotland.gov.uk/Consultations/Current) by 17th August 2010 – www.scotland.gov.uk/Consultations/Current. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.



The Consultation Process: how to respond

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the draft regulations. We aim to issue a report on this consultation process in September and publish regulations in autumn 2010.



INTRODUCTION

INTRODUCTION

These regulations form part of the Scottish Government's effort to support today's children making the right choices, one of the most important for their health being the decision not to become a smoker.

A generation after the health risks associated with smoking were demonstrated beyond dispute; smoking remains one of the principal causes of illness and premature death in Scotland and is estimated to be responsible for 13,500 deaths each year.

The facts are stark: some 15,000 young people start to smoke each year in Scotland. While smoking is dangerous at any age, the younger people start the more likely they are to smoke longer and to die early as a result of smoking. A child who starts smoking at 14 or younger is four times more likely to die of lung cancer than someone who starts to smoke at age 25 or over, and 15 times more likely to die of lung cancer than someone who never smokes. It is also known that 82% of adult smokers start smoking in their teens.

These regulations follow from the Tobacco and Primary Medical Services (Scotland) Act 2010, which received overwhelming support from the Scottish Parliament in January of this year. The Act is a bold step towards making tobacco less attractive and less accessible to children and young people under 18 and will see the end of tobacco displays and the sale of tobacco from vending machines.

The Act does not sit in isolation. In May 2008 the Scottish Government published the smoking prevention action plan "*Scotland's Future is Smoke-free*" setting out an ambitious programme of measures designed specifically to dissuade children and young people from smoking by reducing the affordability, attractiveness and availability of tobacco products to children and young people. This five year action plan takes a multi-agency approach to reducing youth smoking rates with ownership spanning across the NHS, the Third Sector, local authorities and the business sector.

This consultation is an opportunity for stakeholders and members of the public to contribute to the Scottish Government's consideration on the detail of some of the measures in the Tobacco and Primary Medical Services (Scotland) Act 2010.

DISPLAY OF TOBACCO AND PRICES REGULATIONS



DISPLAY OF TOBACCO AND PRICES REGULATIONS

Policy Aim

The policy aim of these regulations is to protect children and young people under 18 from the promotion of tobacco through the display of tobacco and smoking related products in places where tobacco products are for sale, whilst minimising the impact on tobacco retailers.

Tobacco and Primary Medical Services (Scotland) Act 2010

Section 1(1) of the Act makes it an offence to display tobacco products or smoking related products in the course of business. The display of smoking related products is only caught by the ban in premises where tobacco products are also for sale. Smoking related products are defined in section 35(2) as:

- cigarette papers;
- cigarette tubes;
- cigarette filters;
- apparatus for making cigarettes;
- cigarette holders, and
- pipes for smoking tobacco products

Section 1(2) of the Act exempts Specialist Tobacconists from the prohibition of tobacco displays in relation to all tobacco products other than cigarettes and hand-rolling tobacco provided the display is inside the Specialist Tobacconist's premises and complies with any requirements which may be prescribed. A Specialist Tobacconist is defined in the Tobacco Advertising and Promotion Act 2002 as "a shop selling tobacco products by retail (whether or not it also sells other things) more than half of whose sales on the premises in question derive from the sale of cigars, snuff, pipe tobaccos and smoking accessories". Information provided by the Independent Scottish Specialist Tobacconists' Association suggests that there are currently 10 shops in Scotland that qualify as Specialist Tobacconists.

Section 1(4) allows Scottish Ministers to make regulations which allow the display of tobacco and smoking related products provided it complies with specified requirements.

Display of Tobacco and Prices Regulations

Intention of Proposed Regulations

The intention of the Tobacco and Primary Medical Services (Scotland) Act 2010 (Display of Tobacco and Prices) Regulations 2010 is to provide detail of the tobacco display ban.

Requirement for displays and advertisements of tobacco or smoking related products in Specialist Tobacconists:

Whilst it is generally accepted that children and young people do not frequent Specialist Tobacconists, a number of stakeholders have been concerned that allowing specialists to display tobacco in a way that is visible from the outside of the shop could expose children and young people to the promotion of tobacco. Regulation 3 bans the display of any tobacco or smoking related product in a Specialist Tobacconist where that display is visible from outside their premises. This regulation also requires a health warning in a prominent and readily visible position within a Specialist Tobacconist. Regulation 16 brings advertising law in line with displays law in relation to Specialist Tobacconists.

Requirements for display of tobacco or smoking related products: Regulation 4 sets out exemptions to the tobacco products and smoking related products display ban. This regulation allows for three categories of display: requested display, incidental display and the display within a tobacco area for bulk tobacconists and duty free shops.

Requested display: Requested display is defined in regulation 4(2) as a display to a person following a particular request by that person to buy, or for information about, a tobacco or smoking related product. The intention of this regulation is to allow retailers to show their customers products that they intend to buy or request more information about. It should be noted that the use of “particular” in this regulation is intended to narrow requested display only to those products specified by the customer.

Incidental display: The temporary display of tobacco and smoking related products when carrying out prescribed activities in the ordinary course of business is exempt under regulation 4(1)(b) . Such displays are defined in regulation 4(2) as incidental displays. There are a number of exemptions including stocktaking, staff training, pricing and refurbishment under this category of display. In this regulation reference to “ordinary course of business” is intended to allow trading standards to take action where they believe a retailer to be displaying tobacco for longer than necessary to carry out exempted activities.

Display of Tobacco and Prices Regulations

Retailers have been most concerned about what kind of storage unit will comply with the legislation, making representations that the Act alone does not provide the necessary clarity. Ministers have listened very closely to the concerns raised and have come to understand the practical issues around banning the display of tobacco, particularly for smaller shops. The most important issue to retailers has been to retain the gantry. These regulations allow the storage of tobacco in gantries. However, following representations from interested parties, Ministers are concerned that without stipulating an area that could be displayed during a transaction, the legislation would remain ambiguous and solutions such as shower curtains could be installed. Therefore, these draft regulations prescribe that the display of an area of tobacco or smoking related products whilst retrieving a product for the purpose of a sale or requested display is allowed provided that an area no greater than 120 square centimetres is displayed, (this equates to an area no greater than one tobacco product).

Display within a bulk tobacconist and duty free premises: Regulation 4(1)(c) allows duty free and cash and carry retailers to display tobacco and smoking related products if the display is within an area where only such products are for sale and is not visible from any other part of the premises.

Requirements for display of prices of tobacco or smoking related products:

Regulations 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 relate to the regulation of display of prices of tobacco and smoking related products.

General requirements: Regulation 7 stipulates that a display of prices of tobacco products may be in the form of a price list, a price label and a requested price list. Regulation 8 sets out requirements for any display of prices. This prescribes the information that can be contained on any display of prices of tobacco and smoking related products; the colour of text; where lower and upper case can be used on the display, and the font of text.

Price lists: Regulation 9 sets out the requirements, additional to regulation 8, which must be met for the display of prices in a price list. This regulation allows tobacco retailers to display a price list for every till situated in an area where tobacco is sold. This regulation prescribes the contents, size and size of text for any display of a price for tobacco and smoking related products.

Display of Tobacco and Prices Regulations

Price lists available only on request: Regulation 10 sets out the requirements additional to those in regulation 8 where the display is of a price list to customers on request, which can be made available from each till point within an area where tobacco is sold. This regulation sets out the size and content of such price lists. The purpose of such price lists is to accommodate those with impaired vision or those persons for whom English is not their first language.

Price labels: Regulation 11 sets out the requirements additional to those in regulation 8 where the display is a price label on the tobacco storage unit. Provision has been made for such displays to allow staff to locate products on request. This regulation stipulates the size and content of the price label.

Specialists and bulk tobacconists: Regulation 12 allows specialist tobacconists and bulk tobacconists to display a price list for tobacco and smoking products visible outside their premises or tobacco area. Such displays are subject to the general requirements provisions (regulation 8) and to additional requirements for price lists (regulation 9(1) (a) to (d)). Such displays are limited to one display for each premise.

Trade tobacconists: The Act exempts trade tobacconists from the display ban (section 1(3)). Regulation 13 requires that the only requirement for trade tobacconists in relation to prices is that they must not display price lists of tobacco products in a way that is visible from outside their premises.

Impact Assessment

A partial impact assessment of these regulations is set out at Annex A.

Commencement: These regulations would come in to force in October 2011 for large shops (premises with a floor area larger than 280 square metres) and October 2013 for all other tobacco retailers.

Display of Tobacco and Prices Regulations

Views are invited on the following questions

Displays

- 1. Do you agree that tobacco retailers should be allowed to implement the Act by displaying tobacco and smoking related products in the way set out in the regulations?**

If not, how would you regulate the display of tobacco and smoking related products?
- 2. Do you agree that specialist tobacconists, cash and carries and duty free shops should be allowed to implement the Act by displaying and advertising tobacco products and smoking related products in the way set out in the regulations?**

If not, how would you regulate the display and advertisement of tobacco and smoking related products?
- 3. Do you agree that these proposed regulations set out an effective, proportionate and workable approach?**

If not, how would you amend the regulations to make them more effective, proportionate and workable?
- 4. Do you believe that these regulations are enforceable?**

If not, how would you amend the regulations to ensure that they are enforceable?
- 5. Do you have any other comments on these regulations?**

Display of Tobacco and Prices Regulations

Views are invited on the following questions

Display of prices

6. Do you agree that tobacco retailers should implement the Act by being allowed to display price lists for tobacco and smoking related products in the way set out in the regulations?
If not, how would you regulate the display of price lists for tobacco and smoking related products?
7. Do you agree that these proposed regulations set out an effective, proportionate and workable approach?
If not, how would you amend the regulations to make them more effective, proportionate and workable?
8. Do you believe that these regulations are enforceable?
If not, how would you amend the regulations to ensure that they are enforceable?
9. Do you have any other comments on these regulations?

2010 No.

PUBLIC HEALTH

**The Tobacco and Primary Medical Services (Scotland) Act 2010
(Display of Tobacco and Prices) Regulations 2010**

Made - - - -

Laid before the Scottish Parliament

Coming into force in accordance with regulation 1(1)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1(2)(c), 1(4), 2, 3(1), 3(2), 3(5) and 40(2) of the Tobacco and Primary Medical Services (Scotland) Act 2010⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1.—(1) These Regulations may be cited as the Tobacco and Primary Medical Services (Scotland) Act 2010 (Display of Tobacco and Prices) Regulations 2010 and come into force for the purposes of large shops on [] October 2011 and for all other purposes on [] October 2013.

(2) For the purposes of this Regulation –

“large shop” means a shop which has a relevant floor area exceeding 280 square metres; and

“relevant floor area”, in relation to a shop, means the internal floor area of so much of the shop as consists of or is comprised in a building but excluding any part of the shop which is used neither for the serving of customers in connection with the sale of goods nor for the display of goods.

Interpretation

2.—(1) In these Regulations:—

“the Act” means the Tobacco and Primary Medical Services (Scotland) Act 2010;

“bulk tobacconist” means a shop selling tobacco products (whether or not it also sells other products) whose sales of cigarettes or hand rolling tobacco measured in accordance with paragraph (2), meet the following conditions—

- (a) at least 90% of its cigarette sales are in pre-packed quantities of 200 or more cigarettes in their original package, and the remainder in pre-packed quantities of 100 or more cigarettes in their original package; and
- (b) at least 90% of its hand rolling tobacco sales are in pre-packed quantities with a weight of 250g or more in their original package, and the remainder in pre-packed quantities with a weight of 125 grams or more in their original package ;
- (c) it is not a trade tobacconist.

“display” means—

⁽¹⁾ 2010, asp 3

(a) in regulations 3 and 4, a display in the course of business of tobacco products or smoking related products in a place where tobacco products are offered for sale; and

(b) in regulations 7, 8, 9, 10, 11, 12 and 13, a display in the course of business of prices of tobacco products or smoking related products in a place as defined in regulation 5;

(c) in regulation 14, both types of display.

“duty free shop” means an export shop as defined in regulation 3 of the Excise Goods (Export Shops) Regulations 2000⁽²⁾

“original package” means the package in which the cigarettes or hand rolling tobacco were supplied for the purpose of retail sale by the manufacturer or importer and “packaged for sale” is construed accordingly;

“other feature” means a logo, trademark, symbol, motto, type-face, colour or pattern of colour, picture, artwork, imagery, appearance, message or other indication that constitutes all or part of the recognisable identity of a product, but does not include a bar code or stock number;

“trade tobacconist” means premises⁽³⁾ where tobacco products are offered for sale in the course of business involving the sale of such products only to persons who carry on a tobacco business or their employees;

“tobacco area” means a part of premises containing only tobacco products and smoking related products.

(2) The sales referred to in the definition of “bulk tobacconist” are to be measured by sale price –

(a) during the most recent period of twelve months for which accounts are available, or

(b) during the period for which the shop has been established, if it has not been established long enough for twelve months’ accounts to be available.

Requirements for displays of tobacco products or smoking related products in specialist tobacconists

3.—(1) The requirements in section 1(2)(c) of the Act are prescribed below.

(2) Each display must include a notice which—

(a) contains the statement—

“Tobacco products can damage your health and are addictive”;

(b) is not less than 297 millimetres by 420 millimetres; and

(c) is displayed in a prominent position and is readily visible to persons seeing the display.

(3) Each character of the statement on the notice must be not less than 36 millimetres high.

(4) The display must not be visible from outside the specialist tobacconist.

Requirements for display of tobacco products or smoking related products in the course of business

4.—(1) In accordance with section 1(4) of the Act, no offence is committed in relation to a display which complies with the requirements specified below—

(a) the display is a requested display; or

(b) the display is an incidental display; or

(c) the display is in premises which are a bulk tobacconist or duty free shop and is—

(i) in a tobacco area; and

(ii) not visible from any other part of the premises.

⁽²⁾ (S.I. 2000/645)

⁽³⁾ “premises” is defined in section 35 of the Tobacco and primary Medical Services (Scotland) Act 2010 to include any place and any vehicle, vessel or moveable structure.

(2) In this Regulation-

“requested display” is a display to a person following a particular request by that person to purchase, or for information about, a tobacco product or smoking related product;

“incidental display” means a display which occurs in the course of the following being conducted in the ordinary course of business in relation to tobacco products or smoking related products—

- (a) stocktaking;
- (b) ordering stock;
- (c) staff training;
- (d) pricing;
- (e) cleaning of the premises where the tobacco business is carried on;
- (f) refurbishment of the premises where the tobacco business is carried on;
- (g) refitting of the premises where the tobacco business is carried on;
- (h) retrieving a product for the purpose of a sale or requested display provided that, in relation to that retrieval, an area no larger than 120 square centimetres is displayed;
- (i) restocking.

Place where requirements as to display of prices apply

5. In subsection 3(1) of the Act, “place” means any premises where tobacco products are offered for sale in the course of a business.

Requirements for display of prices of tobacco products or smoking related products

6. (1) The requirements for the purposes of section 3(1) of the Act are prescribed —

- (a) for specialist tobacconists and bulk tobacconists in regulation 12 ;
- (b) for trade tobacconists in regulation 13; and
- (c) otherwise in regulations 7, 8, 9, 10 and 11.

7. A display may be—

- (a) a price list which complies with the requirements in regulations 8 and 9;
- (b) a requested price list, as defined in regulation 10(3), which complies with the requirements in regulations 8 and 10;
- (c) a price label which complies with the requirements in regulations 8 and 11.

Requirements for all forms of display of prices

8. A display —

- (a) may only contain the following information in relation to tobacco products or smoking related products:—
 - (i) the brand name of the product;
 - (ii) where pre-packed, the number of units in the package or, where sold by weight, the net weight of the product;
 - (iii) in relation only to cigars, the country of origin and the dimensions;
 - (iv) in relation only to pipe tobaccos, the cut and type of tobacco used; and

- (v) the price of the product⁽⁴⁾
- (b) must be printed—
 - (iii) in black Helvetica bold or plain type on a white background;
 - (iv) in type which has a consistent size throughout the text; and
 - (v) in lower case except that the first letter of a word may be in upper case type.
- (c) except as otherwise provided by regulation 10(1)(b), must not contain any other feature.

Additional requirements for displays on price lists

9.—(1) Where a display is in the form of a price list it must—

- (a) have the title “Tobacco products/Smoking related products price list”;
- (b) may include sub-headings for “cigarettes”, “hand rolling tobacco”, “cigars”, “pipe tobaccos”, “other tobacco products” and “smoking related products”.
- (c) not include the prices of any other products;
- (d) be worded with characters no higher than 7 millimetres;
- (e) have no border or frame;
- (f) not exceed 1250 square centimetres in size; and
- (g) not exceed the limit in paragraph (2).

(2) The limit is—

- (a) one price list for each separate area where tobacco products or smoking related products are located and can be paid for; or
- (b) where there is more than one till at any such location, one price list for each such till.

Additional Requirements for displays on price lists available only on request

10.—(1) Where a display is in the form of a requested price list —

- (a) no character of the wording may be greater than 4 millimetres high;
- (b) the only other feature displayed is a picture of the actual tobacco product or smoking related product, as packaged for sale, where the size of such picture does not exceed 50 square centimetres;
- (c) it must not exceed the limit in paragraph (2).

(2) The limit is—

- (a) one price list for each separate area where tobacco products or smoking related products are located and can be paid for; or
- (b) where there is more than one till at any such location, one price list for each such till.
- (3) In this Regulation, “requested price list” means a price list which is made available to a person following a particular request by the person for information about tobacco products or smoking related products for sale in the premises where such a request takes place.

Additional requirements for displays on price labels

11.—(1) Where a display is in the form of a price label it must—

- (a) be on the storage unit where the particular tobacco product or smoking product is kept pending sale;
- (b) be worded with characters which are no higher than 4 millimetres;
- (c) not exceed 9 square centimetres in size;
- (d) not exceed the limit in paragraph (2).

⁽⁴⁾ The indication of the selling price of all products, including tobacco products, is regulated by the Price Marking Order (S.I. 2004/102).

(2) The limit is one display for each separate location in a storage unit where a particular tobacco product or smoking related product is held.

Requirements for displays of prices in specialist and bulk tobacconists

12. If visible from the outside of the premises of the specialist tobacconist or the tobacco area of the bulk tobacconist, the display must be a price list which—

- (a) complies with the requirements set out in regulations 8 and 9(1) (a) to (d); and
- (b) is limited to one display for each premises or tobacco area.

Requirements for displays of prices in trade tobacconists

13. The display must not be visible from the outside of the premises.

Displays of prices which are also advertisements

14. Where a display also amounts to an advertisement for the purposes of the Tobacco Advertising and Promotion Act 2002⁽⁵⁾, if it complies with the requirements of these regulations it is to be treated as a display of tobacco products or smoking related products or a display of prices and not as an advertisement for the purposes of offences under that Act.

Repeal of the Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2010

15. The Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2004⁽⁶⁾ are repealed.

Amendment of the Tobacco Advertising and Promotion (Specialist Tobacconist) (Scotland) Regulations 2004

16. In regulation 2 of the Tobacco Advertising and Promotion (Specialist Tobacconist) (Scotland) Regulations 2004⁽⁷⁾ after paragraph 5 insert—

“(5A) The advertisement must not be visible from outside the specialist tobacconist.”

St Andrew’s House,
Edinburgh
2010

[]

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the display of tobacco or smoking related products in specialist tobacconists (regulation 3) and in other retail premises (regulation 4). They also provide in

⁽⁵⁾ 2002 c.36, amended by [].
⁽⁶⁾ SSI 2004/144.
⁽⁷⁾ SSI 2004/211

relation to the display of prices of tobacco products and smoking related products (regulations 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14).

Section 1(1) of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the Act”) makes it an offence to display tobacco products or smoking related products in a place where tobacco products are offered for sale. Section 1(2) of the Act provides an exemption for specialist tobacconists provided the display does not include cigarettes or hand rolling tobacco and it complies with prescribed requirements. Regulation 3 prescribes these requirements which are that the display must include a warning notice and must not be visible from the outside of the specialist tobacconist.

Section 1(4) of the Act allows Scottish Ministers to provide that no offence is committed under section 1(1) if a display complies with specified requirements. Regulation 4 provides that no offence is committed if the display of tobacco or smoking related products is a requested display, an incidental display or is in a bulk tobacconist or duty free shop provided it is in part of the premises which only contains tobacco and the display is not visible from outside that area.

Regulation 4(2) defines “requested display” and “incidental display”.

Section 3(1) of the Act allows Scottish Ministers to impose requirements in relation to the display of prices of tobacco products or smoking related products in a place where tobacco products are offered for sale.

Regulation 5 defines “place” in section 3(1) to mean any premises where tobacco products are offered for sale in the course of a business. “Premises” is defined in section 35 of the Act to include any place and any vehicle, vessel or moveable structure.

Regulation 6 specifies which of the subsequent regulations apply to different types of retailers in relation to display of prices of tobacco and smoking related products. Regulation 12 specifies the requirements for specialist and bulk tobacconists. Regulation 13 set out the requirements for trade tobacconists and regulations 7,8,9, 10 and 11 set out the requirements for all other retailers.

Regulations 7 sets out the ways in which retailers may display prices of tobacco and smoking related products. These are prices lists, requested price lists and price labels. Each of these must comply with the requirements set out in subsequent regulations.

Regulation 8 sets out the requirements for all forms of display of price lists. These are requirements as to the information which can be included and the way in which that is presented.

Regulation 9 sets out the requirements in addition to those in regulation 8 if the display of prices is by way of a price list. This is a price list which can be displayed at all times in contrast to a requested price list which can only be displayed if requested by the customer. The Regulation sets out requirements as to the title and headings of the list and its size. Only one price list can be displayed in each area in premises where tobacco products and smoking related products are located and can be paid for. If there is more than one till in that area there can be a price list displayed at each till.

Regulation 10 sets out the requirements in addition to those in regulation 8 if the display of prices is by way of a requested price list. The regulation sets out the required size of the wording and that the only feature which is allowed is a picture, less than 50 square centimetres in size, of the tobacco product or smoking related product.

Regulation 11 sets out the requirements in addition to those in regulation 8 if the display of prices is by way of price labels. It sets out requirements that the label must be on the storage unit where the product is kept pending sale and as to the size of the label. Only one label is allowed for each part of the storage unit where a particular product is kept.

Regulation 12, as read with regulation 6(1)(a), sets out the requirements for specialist and bulk tobacconists. These only apply if the display of prices is visible from outside the specialist tobacconists or the tobacco area within a bulk tobacconists. The requirements in regulations 8 and 9(1)(a) to (d) must be complied with.

In terms of regulation 13, as read with regulation 6(1)(b), the only requirement for displays of prices in trade tobacconists is that they must not be visible from outside the premises.

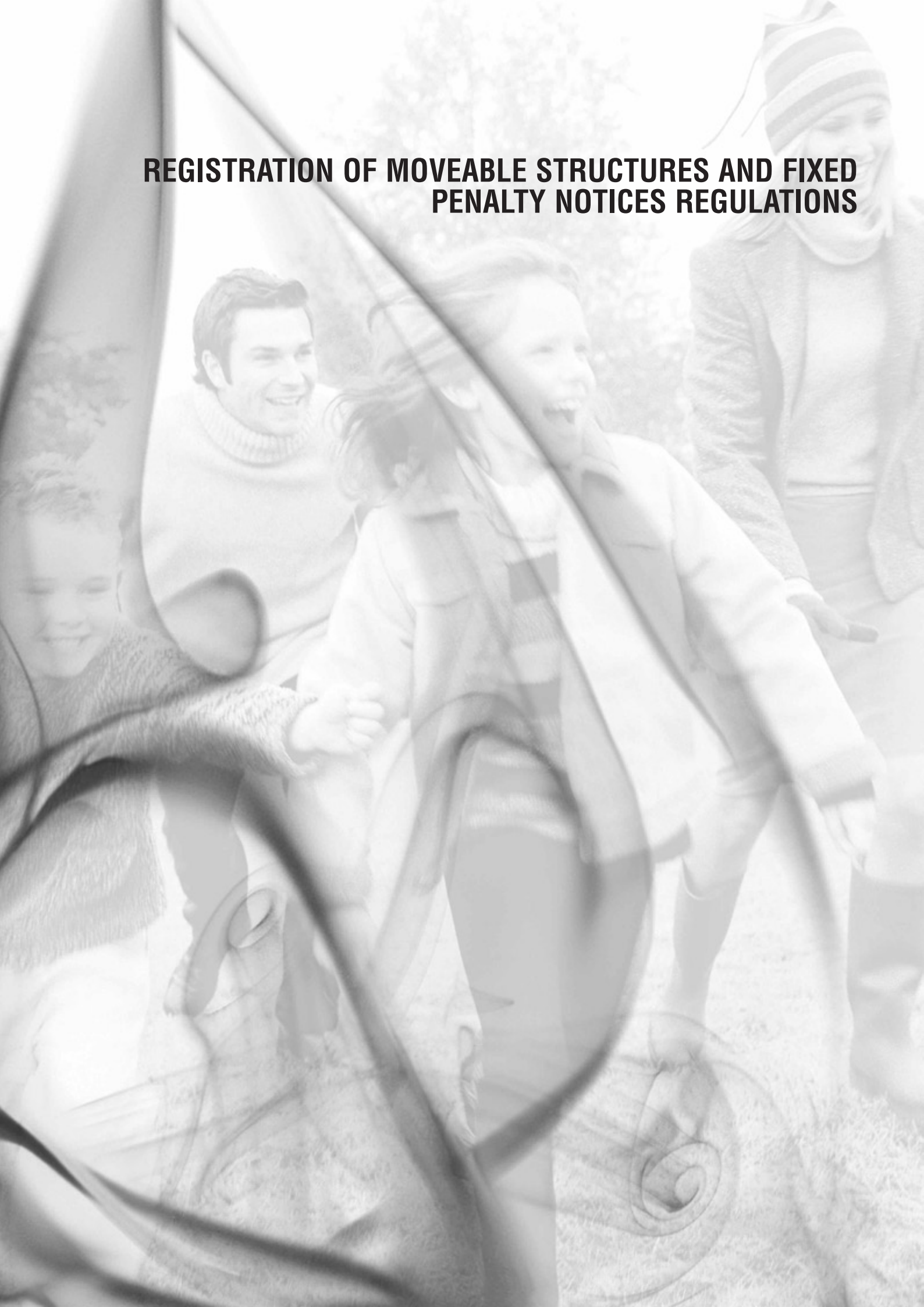
Regulation 14 clarifies that if a display of tobacco products or prices meets the requirements of these Regulations then it is to be subject to the regulatory regime under these provisions rather than that under the Tobacco Advertising and Promotion Act 2002 which regulates tobacco advertising.

The Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2010 which regulated tobacco advertising at points of sale and on tobacco vending machines are repealed (regulation 15).

The Tobacco Advertising and Promotion (Specialist Tobacconist) (Scotland) Regulations 2004 are amended to bring the advertising in line with the restrictions on display in such premises that they must not be visible from the outside of the premises.

[These Regulations were notified in draft to the European Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council (Official Journal No. L204, 21.7.98, p.37) as amended by Directive 98/48/EC of the same institutions (Official Journal No. L 217, 5.8.98, p.18), which lays down a procedure for the provision of information in the field of technical standards and regulations.]

**REGISTRATION OF MOVEABLE STRUCTURES AND FIXED
PENALTY NOTICES REGULATIONS**



REGISTRATION OF MOVEABLE STRUCTURES AND FIXED PENALTY NOTICES REGULATIONS

Policy Aim

The policy aim of these regulations is to reduce the availability of tobacco and smoking related products to children and young people under 18, whilst minimising the impact on business.

Tobacco and Primary Medical Services (Scotland) Act 2010

The Act establishes a tobacco sales registration scheme. This will allow retailers to be clearly identified, enabling trading standards officers and others to offer advice and support to them to avoid illegal sales.

The Act also introduces a fixed penalty notice scheme for tobacco offences under the Act.

Intention of Proposed Regulations

The Tobacco and Primary Medical Services (Scotland) Act 2010 (Registration of Moveable Structures and Fixed Penalty Notices) Regulations 2010 sets out how persons selling tobacco from a moveable structure can apply to be on the Register of Tobacco Retailers and sets out the details of the fixed penalty notice scheme.

Registration of moveable structures: Regulations 3, 4, and 5 set out information required on any application by a person seeking to sell tobacco from moveable premises to register for the tobacco sales registration scheme. These regulations are in line with other schemes relating to street traders.

Period in which a notice can be given: Regulation 6 prescribes that a fixed penalty can be issued up to seven days after the day on which an offence was committed. This is in line with other fixed penalty schemes operational in Scotland, including the smoking ban fixed penalty notice scheme.

Amount of fixed penalty: Regulations 7 and 8 set the fixed penalty amount for businesses and individuals found to be in breach of offences under Part 1 of the Tobacco and Primary Medical Services (Scotland) Act 2010. Regulation 7 sets the fixed penalty level at £50, with the discounted amount at £30, for persons found to be buying or attempting to buy tobacco under 18 and for persons under 18 who do not on request from a constable surrender tobacco products or provide information set out in the Act. Regulation 8 sets the amount of the fixed penalty notice at £200, with the discounted amount at £150, for all other offences in Part 1 of the Act. This regulation sets out that the level of fixed penalty will increase by £200 for every offence committed within a one year period. It should be noted that a fixed penalty cannot be issued to any person under 16.

Registration of Moveable Structures and Fixed Penalty Notices Regulations

Impact Assessment

An impact assessment on the Tobacco and Primary Medical Services (Scotland) Act 2010 was carried out in relation to the tobacco sales registration scheme. It is deemed that these regulations put no additional burden on business. A copy of the impact assessment can be found at <http://www.scotland.gov.uk/Publications/2009/02/27120518/0>

Commencement: These regulations would come in to force in spring 2011.

Views are invited on the following questions

- 1. Do you agree that retailers selling tobacco from a moveable structure should provide the information set out in the regulations to register for the tobacco sales registration scheme?**
If not what information do you think such retailers should provide?
- 2. Do you agree that the period in which a notice can be given should be set at seven days?**
If not, do you believe that the period in which a notice can be given should be more or less than seven days?
- 3. Do you believe that the levels of fixed penalty notices set out in the regulations are appropriate?**
If not do you believe that the levels should be higher or lower than those set out in the regulations?
- 4. Do you agree that these proposed regulations set out an effective, proportionate and workable approach?**
If not how would you make regulations more effective, proportionate and workable?
- 5. Do you believe that these regulations are enforceable?**
If not how would you make regulations more enforceable?
- 6. Do you have any other comments on these regulations?**

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No. []

PUBLIC HEALTH

**The Tobacco and Primary Medical Services (Scotland) Act 2010
(Registration of Moveable Structures and Fixed Penalty Notices)
Regulations 2010**

Made - - - -

Laid before the Scottish Parliament

Coming into force - - [] *March 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 24 and 40(2) of and paragraphs 3 and 4 of Schedule 1 to the Tobacco and Primary Medical Services (Scotland) Act 2010⁽⁸⁾ and all other powers enabling them to do so.

In accordance with section 40(4) of that Act a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Tobacco and Primary Medical Services (Scotland) Act 2010 (Registration of Moveable Structures and Fixed Penalty Notices) Regulations 2010 and come into force on [] March 2011.

(2) In these Regulations “the Act” means the Tobacco and Primary Medical Services (Scotland) Act 2010.

Application of Chapter 2 of the Act (Register of Tobacco Retailers) to vehicles and other moveable structures (excluding vessels)

2. If premises are moveable premises chapter 2 of the Act applies subject to the following modifications.

3. For—

- (a) “addresses of all premises at which the applicant proposes to carry on a tobacco business” in section 11(2)(b) of the Act; and
- (b) “address of the further premises at which the applicant proposes to carry on a tobacco business” in section 11(2)(c) of the Act,

substitute in accordance with paragraph (2).

(2) Where it is proposed to carry on business from moveable premises—

⁽⁸⁾ 2010 asp 3.

- (a) In a fixed location substitute—
 - i:— (i) a description which identifies the location of all premises at which; and
 - (ii) the type and registration number of the vehicle or a description and dimensions of the moveable structure being the premises from which, the applicant proposes to carry on a tobacco business.
- (b) in a location which is not fixed substitute—
 - i:— (i) a description which identifies each street or area at which; and
 - (ii) the type and registration number of the vehicle or a description and dimensions of the moveable structure being the premises from which, the applicant proposes to carry on a tobacco business.

4. The references in the Act to—

- (i) “addresses” in section 11(4)(b); and
- (ii) “address” in sections 11(5), 13(1)(a) and 13(1)(b)

are to be read in accordance with the substitutions in regulation 2.

5. In this Regulation—

“moveable premises” means premises consisting of a vehicle or other moveable structure from which the applicant proposes to carry on a tobacco business but excluding a vessel.

Time after which a fixed penalty notice may not be given

6. The time prescribed for the purpose of paragraph 3 of schedule 1 to the Act is 7 days after the day on which the offence took place.

Amount of fixed penalty and discounted amount for offences under sections 5 and 7 of the Act

7. The amount prescribed for the purposes of paragraphs 4(a) and (b) of schedule 1 to the Act for offences under sections 5 and 7 of the Act are respectively—

- (a) £50 (fixed penalty); and
- (b) £30 (discounted amount).

Amount of fixed penalty and discounted amount for all other offences under Chapters 1 and 2 of the Act

8.—(1) Subject to paragraph (2) the amounts prescribed for the purposes of paragraphs 4(a) and (b) of Schedule 1 to the Act for offences under Chapters 1 and 2 of the Act other than sections 5 and 7 are respectively—

- (a) (fixed penalty) £200; and
- (b) (discounted amount) £150.

(2) Where a person is issued with a fixed penalty notice (“the fixed penalty notice”) and that person has been the subject of previous enforcement action within the prescribed period the amounts prescribed for the purposes of paragraphs 4(a) and (b) of Schedule 1 to the Act are set out in Table 1.

(3) The prescribed period is one year ending on the date the fixed penalty notice is issued.

(4) “enforcement action” means the issue of a fixed penalty notice which is not subsequently withdrawn or the conviction for an offence under chapter 1 or 2 of the Act.

Table 1

<i>Number of previous enforcement actions within prescribed period</i>	<i>Amount of fixed penalty £</i>	<i>Discounted amount £</i>
One	400	350
Two	600	550
Three	800	750
Four	1000	950
Five	1200	1150

Amounts continuing in increments of £200 for consecutive numbers of previous enforcement actions.

St Andrew's House,
Edinburgh
2010

[]

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the application of Chapter 2 of Part 1 (Register of Tobacco Retailers) and the fixed penalty notice scheme under section 27 of and Schedule 1 to the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the Act”).

Regulations 2, 3, 4 and 5 make provision in relation to the application of Chapter 2 to moveable premises. Vessels are excluded.

Chapter 2 of the makes provision in relation to a Register of Tobacco Retailers which is to be established in accordance with section 10 of the Act. Section 11 of the Act provides in relation to applications to be put on this Register.

These Regulations are made under section 24 of the Act which allows Scottish Ministers to modify Chapter 2 to apply its provisions to moveable structures. Regulations 3 and 4 modify section 11 of the Act to take account of the fact that tobacco businesses carried on from moveable premises will not have a fixed address as is envisaged by section 11.

Regulation 3(2) provides that if the business is carried on from moveable premises in a fixed location then, in the application for registration, it will be necessary to give the following details in relation to those premises:-

- (i) a description which identifies the location of the premises and
- (ii) the type and registration number of the vehicle or a description and dimensions of the moveable structure.

If the business is carried on from moveable premises which are not in a fixed location then, in the application for registration, it will be necessary to give the following details in relation to those premises:-

- (i) a description which identifies each street or area at which the business is carried on; and
- (ii) the type and registration number of the vehicle or a description and dimensions of the moveable structure.

Regulations 6,7 and 8 provide in relation to the fixed penalty notice scheme.

Section 27(1) of the Act provides that a council officer or a constable may issue a fixed penalty notice if they have reason to believe that the person has committed an offence under Chapters 1 or 2 of the Act which are the tobacco offences

Regulation 6 provides that a fixed penalty notice can not be given after 7 days from the date of the offence.

Regulation 7 prescribes the amount of the fixed penalty for offences under sections 5 (purchase of tobacco products by persons under 18) and 7 (confiscation of tobacco products from persons under 18) of the Act as £50. The discounted amount for these offences is £30. This is the amount which will be due provided the penalty is paid within the discounted payment deadline. The deadline will be stated on the fixed penalty notice. In accordance with paragraph 5 of Schedule 1, it must be at least 14 days after the day the fixed penalty notice is given. Section 27(2) of the Act provides that a person must be 16 years or over to be issued with a fixed penalty notice.

Regulation 8 prescribes the amount and the discounted amount for all other offences under chapters 1 and 2. The amount is £200 and the discounted amount is £150.

If the person receiving the fixed penalty notice has already had a fixed penalty or a conviction for a tobacco offence under the Act within the previous year, the amounts are escalated in accordance with Table 1.

REGISTER OF TOBACCO RETAILERS REGULATIONS



REGISTER OF TOBACCO RETAILERS REGULATIONS

Policy Aim

The policy aim of these regulations is to make tobacco products less available to children and young people under 18, whilst minimising the impact on business.

Tobacco and Primary Medical Services (Scotland) Act 2010

Registration scheme

The Act establishes a tobacco sales registration scheme. This scheme allows retailers to be clearly identified, enabling trading standards officers and others to offer advice and support to them to avoid illegal sales. The Act sets out information required on any application to be on the Register of Tobacco Retailers. Under section 11 retailers are required to provide their name and address and the address of all premises at which they propose to carry out a tobacco business. Scottish Ministers can prescribe other information which must also be contained in the application.

Banning orders

Under section 19 of the Act retailers are required to display a notice where they have been banned from selling tobacco. The Act requires that such a notice must state that the premise has been banned from selling tobacco and the period for which the banning order applies. The Act allows Scottish Ministers to set out other requirements in regulations.

Intention of Proposed Regulations

The Tobacco and Primary Medical Services (Scotland) Act 2010 (Register of Tobacco Retailers) Regulations 2010 sets out other information required by Ministers in order to register a tobacconist on the tobacco sales register. Ministers have committed to the registration scheme being very simple to minimise impact on businesses; therefore other information required has been kept to a minimum.

Other information contained in an application to be registered: These regulations require retailers to state in any application to be on the Register of Tobacco Retailers: the name and address of the person completing the form; whether they are banned from carrying on a tobacco business at the premise specified in the application; whether they are exempt from the displays ban as a specialist tobacconist, and whether the floor area of the premise specified in the application exceeds 280 square metres. These regulations include a sunset clause for the requirement for information relating to floor area, which will remove this requirement after the 2013 implementation deadline for the displays ban.

Register of Tobacco Retailers Regulations

Tobacco retailing banning notices: Regulation 5 sets out the dimensions of the tobacco retailing banning order notice and the height of the wording on the notice. Schedule 1 to these regulations sets out the wording of the notice. The dimensions of the notice and wording on the notice are in line with that of the warning statement (see page 40).

Impact Assessment

An impact assessment on the Tobacco and Primary Medical Services (Scotland) Act 2010 was carried out in relation to the tobacco sales registration scheme. It is deemed that these regulations put no additional burden on business. A copy of the impact assessment can be found at <http://www.scotland.gov.uk/Publications/2009/02/27120518/0>

Commencement: Retailers will be able to register from spring 2011. Offences relating to the register would not come in to force until autumn 2011. This allows retailers six months to register.

Views are invited on the following questions

- 1. Do you agree that retailers selling tobacco should provide the information set out in the regulations to register for the tobacco sales registration scheme?**
If not what information do you think such retailers should provide?
- 2. Do you agree that these proposed regulations set out an effective, proportionate and workable approach?**
If not how would you make regulations more effective, proportionate and workable?
- 3. Do you believe that these regulations are enforceable?**
If not how would you make regulations more enforceable?
- 4. Do you have any other comments on these regulations?**

2010 No.

PUBLIC HEALTH

**The Tobacco and Primary Medical Services (Scotland) Act 2010
(Register of Tobacco Retailers) Regulations 2010**

Made - - - -

Laid before the Scottish Parliament

Coming into force - - [] *March 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 11(2)(d)⁽¹⁾ and 19(5) of the Tobacco and Primary Medical Services (Scotland) Act 2010⁽²⁾ and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Tobacco and Primary Medical Services (Scotland) Act 2010 (Register of Tobacco Retailers) Regulations 2010 and come into force on [] March 2011.

2. In these Regulations—

“the Act” means the Tobacco and Primary Medical Services (Scotland) Act 2010; and

“relevant floor area” means the internal floor area of so much of the premises as consists of or is comprised in a building but excluding any part of the premises which is used neither for the serving of customers in connection with the sale of goods nor for the display of goods; and

“banning order” means an Order made under section 15(3) of the Act.

Other information to be contained in application to be registered or to add further premises to an entry in the Register

3. The information prescribed for the purposes of section 11(2)(d) of the Act is—

- (a) whether the applicant proposes to carry on a tobacco business as a specialist tobacconist within the meaning of section 6(2) of the Tobacco Advertising and Promotion Act 2002⁽³⁾;
- (b) the name and address of the person completing the form;
- (c) whether at the date of the application the applicant is banned, under an order made under section 15(3) of the Act, from carrying on a tobacco business at any premises specified in the application;

⁽¹⁾ “prescribed” is defined in section 35 of the Tobacco and Primary Medical Services (Scotland) Act 2010.

⁽²⁾ 2010, asp 3.

⁽³⁾ 2002, c.36.

- (d) whether the relevant floor area of the premises at which the applicant proposes to carry on business exceeds 280 square metres;

4. Regulation 3(d) and the definition of “relevant floor area” cease to have effect on [] October 2013.

Tobacco Retailing Banning Order Notices – dimensions, wording and the size of statement

- 5.—(1) The dimensions of the notice are not less than 297 millimetres by 420 millimetres.
- (2) The wording of the statement to be displayed on the notice is in the form set out in the Schedule to these Regulations.
- (3) The size of the statement on the notice is that no character is less than 36 millimetres high.
- (4) In this regulation, “notice” means the notice to be displayed in accordance with section 19 of the Act.

A member of the Scottish Executive

St Andrew’s House,
Edinburgh 2010

Tobacco Retailing Banning Order Notice

These premises have been specified in an Order under section 15 of the Tobacco and Primary Medical Services (Scotland) Act 2010.

[Insert name and address of person against whom the banning order has been made] has been banned from carrying on a tobacco business at these premises for a period of [insert period for which banning order has effect] from [insert date banning order was made].

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 10 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the Act”) requires the Scottish Ministers to keep a register of persons carrying on a tobacco business. Section 11(2) of the Act sets out what must be contained in an application to be registered or to add premises to a person’s existing entry in the register. These Regulations prescribe the other information which must be contained in such an application.

The additional information is-

- Whether the applicant is a “specialist tobacconist (regulation 3(a))
- The name and address of the person completing the form; (regulation 3(b))
- Whether the applicant is banned from retailing tobacco under an order made under section 15(3) of the Act (a tobacco retailing banning order) (regulation 3(c))
- Whether the floor area exceeds 280 square metres (regulation 3(d)).

Regulation 4 provides that regulation 3(d) and the definition of “relevant floor area” cease to have effect on [] October 2013. These provisions will cease to be relevant when the requirements of the Act are in force for all retail premises regardless of floor area.

Section 19 of the Act requires that where premises have been specified in a tobacco retailing banning order under section 15 of the Act and the person against whom that order was made is carrying on a retail business at those premises, then a notice has to be displayed.

Section 19(3) sets out the requirements for that notice and in section 19(5) Scottish Ministers are given power to prescribe the size and wording of the notice. These are prescribed in regulation 5 and the Schedule to these Regulations.

PRESCRIBED DOCUMENTS REGULATIONS



PRESCRIBED DOCUMENTS REGULATIONS

Policy Aim

The policy of these regulations is to reduce the availability of tobacco to children and young people under 18, whilst minimising the impact on business.

Tobacco and Primary Medical Services (Scotland) Act

Section 4 of the Act restates with modifications the offence in section 18 of the Children and Young Persons (Scotland) Act 1937 of selling tobacco products to under 18s. A retailer will have a defence to this offence if he/she is believed at the time of sale that the customer was over 18 and showed acceptable proof of identification. The Act sets out a list of acceptable proof of identification, which includes a passport or a driving licence. Ministers are given the power to set out in regulations other documents as acceptable forms of ID.

Intention of the Regulations

The Tobacco and Primary Medical Services (Scotland) Act 2010 (Prescribed Documents Regulations 2010) allow the use of a photographic identity card bearing the national Proof of Age Standards Scheme hologram as verification of a person's age in relation to tobacco sales. This allows persons wishing to purchase tobacco to use cards such as the Young Scot National Entitlement Card as a form of ID.

Impact Assessment

It is deemed that there is no additional burden on business to be considered.

Commencement: These regulations would come in to force in spring 2011.

Views are invited on the following questions

- 1. Do you agree with the identify cards set out in these regulations?**
If not, do you believe that other cards should be added to the regulations or that the card set out in the regulations should not be included?
- 2. Do you agree that these proposed regulations set out an effective, proportionate and workable approach?**
If not how would you make regulations more effective, proportionate and workable?
- 3. Do you believe that these regulations are enforceable?**
If not how would you make regulations more enforceable?
- 4. Do you have any other comments on these regulations?**

2010 No.

PUBLIC HEALTH

**The Tobacco and Primary Medical Services (Scotland) Act 2010
(Prescribed Document) Regulations 2010**

Made - - - -

Laid before the Scottish Parliament

Coming into force - -

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 4(4) of the Tobacco and Primary Medical Services (Scotland) Act 2010⁽¹⁾ and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Tobacco and Primary Medical Services (Scotland) Act 2010 (Prescribed Document) Regulations 2010 and come into force on [].

(2) In these Regulations, “the Act” means the Tobacco and Primary Medical Services (Scotland) Act 2010.

Sale of tobacco products to persons under 18 – prescribed document

2. The description of document prescribed⁽²⁾ for the purposes of section 4(4)(c) of the Act (documents establishing a person’s age) is a photographic identity card bearing the national Proof of Age Standards Scheme⁽³⁾ hologram.

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
2010

⁽¹⁾ 2010 asp 3.

⁽²⁾ “prescribed” is defined in section 35 of the Tobacco and Primary Medical Services (Scotland) Act 2010.

⁽³⁾ The national Proof of Age Standards Scheme is run by PASSCO, company number 4570623, a company limited by guarantee with its registered office at 21 Dartmouth Street, London SW1 9BP.

2010

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 4 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the Act”) provides that it is an offence to sell a tobacco product or cigarette papers to a person under 18.

Section 4(2) of the Act provides a defence to such a charge that the accused believed the customer to be over 18 and had been shown a valid passport, EU photo driving licence or other document as the Scottish Ministers prescribe.

These Regulations prescribe a photographic identity card bearing the national Proof of Age Standards Scheme hologram as an additional form of acceptable identification (regulation 2).

DISPLAY OF WARNING STATEMENTS REGULATIONS



DISPLAY OF WARNING STATEMENTS REGULATIONS

Policy Aim

The policy aim of these regulations is to make tobacco less attractive to children and young people whilst minimising the impact on business.

Tobacco and Primary Medical Services (Scotland) Act 2010

Section 8 of the Act requires tobacco retailers to display a notice that states “It is illegal to sell tobacco products to anyone under the age of 18” at all points of sale of tobacco products. It is a restatement of the equivalent provision in section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991.

Intention of Proposed Regulations

The Tobacco and Primary Medical Services (Scotland) Act 2010 (Display of Warning Statements) Regulations 2010) sets out the dimensions of the statement to be displayed in a premise where tobacco is for sale and the height of the words on the statement. These regulations are a restatement of the equivalent provision in The Protection from Tobacco (Display of Warning Statements) Regulations 1992.

Impact Assessment

These regulations are a restatement of regulations already in force. Therefore it is deemed that there is no additional burden on business to be considered.

Commencement: Equivalent regulations are currently in force. These regulations would come in to force in autumn 2011.

Display of Warning Statements Regulations

Views are invited on the following questions

1. Do you agree with the dimensions of the warning statement as set out in the regulations?
If not, do you believe that the dimensions should be bigger or smaller?
2. Do you agree that these proposed regulations set out an effective, proportionate and workable approach?
If not how would you make regulations more effective, proportionate and workable?
3. Do you believe that these regulations are enforceable?
If not how would you make regulations more enforceable?
4. Do you have any other comments on these regulations?

2010 No.

PUBLIC HEALTH

**The Tobacco and Primary Medical Services (Scotland) Act 2010
(Display of Warning Statements) Regulations 2010**

Made - - - -

Laid before the Scottish Parliament

Coming into force - - - October 2011

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 8(5) of the Tobacco and Primary Medical Services (Scotland) Act 2010⁽¹⁾ and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Tobacco and Primary Medical Services (Scotland) Act 2010 (Display of Warning Statements) Regulations 2010 and come into force on [] October 2011.

(2) In these Regulations, “the Act” means the Tobacco and Primary Medical Services (Scotland) Act 2010.

Dimensions of warning notice to be displayed in premises where tobacco business is carried on

2.—(1) The dimensions of the notice are not less than 297 millimetres by 420 millimetres.

(2) The size of the statement to be displayed on the notice is that no character is less than 36 millimetres high.

(3) In this Regulation “notice” means the notice to be displayed in accordance with section 8 of the Act.

⁽¹⁾ 2010, asp 3.

Repeal of the Protection from Tobacco (Display of Warning Statements) Regulations 1992

3. The Protection from Tobacco (Display of Warning Statements) Regulations 1992⁽¹⁶⁾ are repealed.

St Andrew's House,
Edinburgh
Date

A member of the Scottish Executive

⁽¹⁶⁾ SI 1992/3328.

PARTIAL IMPACT ASSESSMENT DISPLAY OF TOBACCO AND PRICES

Policy Aim

The policy objective is to reduce the attractiveness of tobacco products among children and adolescents under the age of 18 leading to a reduction in smoking prevalence whilst minimising the impact on businesses.

Tobacco and Primary Medical Services (Scotland) Act 2010

The Act makes it an offence to display tobacco products and smoking related products in the course of business.

Intention of Proposed Regulations

The intention of the Tobacco and Primary Medical Services (Scotland) Act 2010 (Display of Tobacco and Prices) Regulations 2010 is to make tobacco less attractive to children and young people whilst minimising impact on business.

Timings

The Tobacco and Primary Medical Services (Scotland) Act 2010 (Display of Tobacco and Prices) Regulations 2010 would come in to force in October 2011 for large shops (premises with a floor area larger than 280 square metres) and October 2013 for all other tobacco retailers.

What are the problems being considered?

This Impact Assessment will look at whether there should be exemptions to the tobacco and smoking related products display ban.

Options

Option 1. Do Nothing

Option 2. Exemption for limited and requested display

ANNEX A

Partial Impact Assessment Display of Tobacco and Prices

Option 1. Do Nothing

Information

Under this option no regulations would be required and there would be no exemption to the displays ban. This would mean that showing a packet of cigarettes to a person on request, or incidentally to a person waiting to be served, may be in breach of the displays ban. Similarly, this may mean that re-stocking could fall foul of the legislation as it currently stands.

The Act states:

At no time can tobacco products be displayed. A person who in the course of business displays or causes to be displayed tobacco products or smoking related products in a place where tobacco products are offered for sale commits an offence.

The Scottish Ministers may provide in regulations that no offence is committed under subsection (1) in relation to a display of tobacco products or smoking related products which complies with requirements specified in the regulations.

Costs

There are a variety of potential costs that might be taken into consideration under the proposal to ban the display of tobacco products at points of sale. The costs to businesses, the Government, the UK Exchequer and Local Authorities must be considered.

Costs to retailers

Under this option it would be necessary for retailers to change the storage and possible placement of cigarettes within their shops. To estimate the costs faced by retailers from having to refit their sales outlets, data was obtained from a number of sources. Industry responses included those from Scottish Grocers Federation (SGF), the National Federation of Retail Newsagents (NFRN) and the Scottish Retailers Consortium (SRC). Estimates used by the Department of Health (DoH) in their consultation document are also available.

The number of affected premises in Scotland was derived from aggregated Scottish SIC classifications for retail, wholesale and pubs and clubs involved in the sale of tobacco, excluding hotels and restaurants. The estimate was 11,000 outlets, which may be high but we are aware that there are a variety of types of premise which retail cigarettes.

ANNEX A

Partial Impact Assessment Display of Tobacco and Prices

Costs to individual retailers will vary according to the size of the premises, the nature of the new sales unit/alterations made and the extent of the shop refitting. A range of cost estimates have been obtained from a number of trade organisations. In general the costs were provided based on the assumption that some form of "under the counter" storage unit would be required.

Cost estimates to individual retailers ranged from a minimum of £900 provided by NFRN to a maximum estimate of £25,000 (SRC estimate).

For small shops (local newsagents, small convenience stores etc) the NFRN estimates a cost of between £900 and £1,400.

The SGF estimate that for their members the costs could range from £5,000 to £10,000.

The SRC estimate that for shops at the top of the range the level of shop fitting required by their members could cost up to £25,000. This would apply to large supermarkets requiring a major refit.

The total impact on retailers across Scotland is difficult to quantify and will depend on the number of retailers who incur particular costs. An estimate of the potential range of capital costs involved has been made.

Table 1: Cost of refitting for display ban

Size of retail unit	Low: e.g corner shop/newsagent	Mid range: e.g grocers shops	High: e.g large supermarkets		
Cost to individual outlet	£900-£1,400 (NFRN)	£2,000-£10,000 (SGF)	Up to £25,000 (SRC response)	Total	Discounted
No of premises	4,600	5,600	800	11,000	
Low estimate	£4m	£11m	£8m	£23m	£22m
High estimate	£6m	£56m	£20m	£82m	£77m
Mid point	£5m	£34m	£14m	£53m	£50m

Assuming a shorter lead in time of one year to 2011 for large shops and for 50% of medium sized shops, and a three year lead in time to 2013 for the remaining small and medium sized premises this gives a range of discounted total cost of £22m – £77m (mid point £50m).¹

¹ These costs have been updated since the publication of the RIA to allow for the now shortened lead in time.

ANNEX A

Partial Impact Assessment Display of Tobacco and Prices

These estimates are likely to be at the upper end of costs for retailers. It should be noted that they are based on figures supplied by the industry and are not adjusted in any way. It should also be noted that retailers may already re-fit tobacco displays regularly. The Association of Convenience Stores advised DoH that tobacco gantries are currently replaced every 3-5 years.

DoH advised before the Act was introduced in Parliament that, based on the Canadian experience, costs for refits/alterations may be much lower than those used here. At the cost per squared foot they quoted for a large display, the cost to small retailers in the UK (based on data from the Local Authorities Coordinators of Regulatory Services) could be as little as £200.

These costs do not include other costs such as the removal and disposal cost of existing gantry/display, changes to shop security, or the costs of replacing focal point display stock. These would be in addition.

It is understood that the changes made may increase retailers' transaction times with products no longer on display, reducing the number of transactions per hour that a retailer can handle. However, as the Scottish Government is not specifying where and how tobacco products are stored, it is not known how significant a factor this may be.

Furthermore, the experience in Saskatchewan has shown no negative economic consequence on retailers due to the ban on tobacco displays.

It is believed that the main impact will be on children and young adolescents. Research found that 90% of smokers know what brand of cigarettes they are going to purchase before going into a shop and less than 10% change the brand they smoke annually. Assuming that banning displays would reduce sales in *under 18s* by 5%, this would result in a drop in income of around £360,000 per annum to retailers across Scotland. (Although these are, by definition, from illegal sales.)

Costs to society: A complete display ban at all times will minimise the visual access the public has to the products. The regulation is intended to reduce the number of would-be smokers under the age of 18 from taking up smoking. However, the cost of treatment of old-age related morbidity may increase in the long-term as a greater proportion of people who chose not to smoke reach a higher life expectancy (although it should be noted that action on smoking is part of policy measures designed to increase Healthy Life Expectancy.)

ANNEX A

Partial Impact Assessment Display of Tobacco and Prices

Costs to Scottish Government: There will be initial costs associated with providing information to retailers about the necessity to comply with new regulations, including their extent and the timing involved. Advertising and marketing costs are estimated to be in the region of £350,000.

Costs to the UK exchequer: A complete display ban at all times will help reduce consumption levels. Any reduction in consumption of cigarettes will have an effect on tax revenue to the Exchequer. Using data from HMRC receipts the revenue from tax and duty on each individual stick is around 22.5p. The reduction in consumption by 5% of under 18s would result in a loss of £1.4m per annum. In line with government guidance it is assumed that a reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly similar macroeconomic effects.

Costs to Local Authorities: Trading Standards Officers would have an essential role in advising businesses on how to comply with the proposed legislation. Trading Standards Services visit 10% of tobacco retailers for test purchasing purposes, a further 10% for business advice and an estimated further 10% for other Trading Standards duties. The Scottish Government has agreed to fund a national campaign to help Trading Standards Officers inform tobacco retailers of the implementation of this new legislation and avoid costs falling on local government. Nevertheless there would be an increase in demand for advice to businesses from trading standards in the run up to introduction which may come at some cost to local authorities.

Benefits

Banning displays would help de-normalise smoking as an activity and reduce the appeal and awareness of tobacco products amongst young people.

By completely concealing the display of tobacco, a number of people under the age of 18 might be stopped from buying tobacco thereby reducing the chance of becoming addicted adult smokers with a resulting increased life expectancy

It is assumed that there would be a reduction in take up of smoking in under 18s as a result of the ban. The long term fall in the prevalence rate is calculated based on the assumption that a fall in current consumption of cigarettes from the under 18 age group will feed through into a fall in the adult smoking prevalence rate. It is assumed that the fall in prevalence in under 18s will be maintained in adulthood.

The potential impact of banning displays was calculated assuming that the existence of displays at point of sale increases the odds of ever smoking by 10%.

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This means that if the current display of tobacco products resulted in a 10% increase in 'ever smokers', the rate of 11-15 year old 'ever smokers' would be 43% (instead of the current 47%) if these were prohibited.

The 4 percentage point gap between these two figures – the implied effect of existing advertising and display – may be associated with $(4 \times 0.27) = 1.14\%$ of the 13-15 year old sample being regular smokers. Using a birth cohort size of 60,000 births per annum, a 1.1% percentage point reduction in the number of regular smokers aged 11-15 would result in 690 fewer smokers in each annual cohort. If the reduction persists into adulthood (which is likely, as the reduction in display will persist), the estimates equate this to 1,140 discounted years of life^h saved in each annual cohort (monetised as £57m per annual cohort). When summed across 30 years and discountedⁱ the figure equals £1.08bn. Again if a more conservative assumption were made that, in line with the sales data analysis, prevalence decreased by 0.8% this would still lead to 560 fewer smokers per annual birth cohort resulting in an additional 930 life yrs (monetised as £4.7m per annum or £884m over 30 yrs).

Even if the impact were much smaller still – say a 2% reduction rather than 10%, (a 0.2% reduction in the number of smokers) the impact per annum would still be 148 fewer smokers per annual birth cohort resulting in an additional 246 life years. This goes to show that even if the display ban only has a relatively restricted effect, the difference in even a few percentage of people not smoking will have major health benefits.

Unintended Consequences

Loss in sales: The focus is on reducing sales to children and young adolescents. Small retailers and newsagents may experience a drop in tobacco sales to their young customers, although it should be noted that these are illegal sales. Any losses in tobacco sales may be replaced by an increase in sales of non-tobacco products such as magazines and confectionery. No significant competition issues have been identified with any of the options. The legislative options apply equally to all retail outlets and therefore are unlikely to have any significant competition implications.

Increased theft of stock: It has been argued that shop assistants may be distracted when retrieving tobacco products, making casual theft easier (particularly on petrol retailer forecourts.) It has also been suggested that new storage solutions may be less secure than lockable gantries, making burglary easier. There is no evidence that crime in shops has increased as a result of covering up tobacco displays in Iceland or Canada. The extent of any such effects that might occur is not quantifiable.

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Increased use of black market cigarettes: Identification of counterfeit cigarettes requires handling and close examination by enforcement officers so whether or not cigarettes are on display seems largely irrelevant to illicit trade and does not conclusively indicate that illicit trade will benefit from the display ban.

Option 2. Exemption for Limited and Requested Display

Information

The Tobacco and Primary Medical Services (Scotland) Act 2010 (Display and Prices) Regulations 2010 allows for three categories of display: requested display, incidental display and the display within a tobacco area for bulk tobacconists and duty free shops. Such exemptions mitigate cost and impact on business without undermining the policy objective, to make tobacco less attractive to children and young people under 18.

Requested display allows retailers to display to a person following a particular request by that person to buy, or for information about, a tobacco or smoking related product.

The temporary display of tobacco and smoking related products when carrying out prescribed activities in the ordinary course of business is also exempt. Such displays are defined as incidental displays. There are a number of exemptions including stocktaking, staff training, pricing and refurbishment under this category of display.

These regulations allow the storage of tobacco in gantries. However, following representations from interested parties, Ministers are concerned that without stipulating an area that could be displayed during a transaction, legislation would remain ambiguous, and solutions such as shower curtains could be installed. Therefore, these draft regulations prescribe that the display of an area of tobacco or smoking related products whilst retrieving a product for the purpose of a sale or requested display is allowed provided that an area no greater than 120 square centimetres is displayed.

These regulations also allow duty free and cash and carry retailers to display tobacco and smoking related products if the display is within an area where only such products are for sale and is not visible from any other part of the premise.

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Costs

Costs to retailers: These regulations allow retailers to modify current gantries. The cheapest solution presented to the Scottish Government involves covering each row of tobacco on the gantry with an opaque plastic fronting. This solution has been costed at £20 per row on a gantry for materials alone. This costing was based on a small gantry. For the purposes of the impact assessment we have assumed that a small shop would have eight rows per gantry, a medium sized shop two gantries of eight rows and a large shop four gantries of eight rows.

Table 2: Lowest Cost Solution – exemption for limited and requested display

	Small shops	Medium sized	Large shops	Total	Discounted Total (NPV)
No of premises	4,600	5,600	800	11,000	
Cost to individual outlet (per refit)	£160	£320	£640		
Total cost	£0.736m	£1.792m	£0.512m	£3.04m	£2.832m

Assuming a shorter lead in time of one year to 2011 for large shops and for 50% of medium sized shops, and a three year lead in time to 2013 for the remaining small and medium sized premises this gives a discounted value of **£2.832m**.

These costs do not include other costs such as the removal and disposal cost of existing gantry/display, changes to shop security, or the costs of replacement focal point display stock. These would be additional costs. It is assumed that such costs would be lower than under Option 1 as retailers would be allowed to retain existing gantries. Similarly, these estimates do not take account of opportunities to offset costs through revenues from advertising on covered gantries.

It is understood that the changes made may increase retailers' transaction times with products no longer on display, reducing the number of transactions per hour that a retailer can handle. However, as the Scottish Government is not specifying where and how tobacco products are stored, it is not known how significant a factor this may be. However, it can be assumed that such issues may be mitigated by allowing retailers to retain gantries.

Furthermore, the experience in Saskatchewan has shown no negative economic consequence on retailers due to the ban on tobacco displays. This points to the same being the case in the UK.

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It is believed that the main impact will be on children and young adolescents. Research found that 90% of smokers know what brand of cigarettes they are going to purchase before going into a shop and less than 10% change the brand they smoke annually. Assuming that banning displays would reduce sales in *under 18s* by 5%, this would result in a drop in income of around £360,000 per annum to retailers across Scotland (although these are, by definition, from illegal sales.)

Costs to society: A complete display ban at all times will minimise the visual access the public has to the products. The regulation is intended to reduce the number of would-be smokers under the age of 18 from taking up smoking. However, the cost of treatment of old-age related morbidity may increase in the long-term as a greater proportion of people who chose not to smoke reach a higher life expectancy (although it should be noted that action on smoking is part of policy measures designed to increase Healthy Life Expectancy.)

Costs to Scottish Government: As with Option 1, there will be initial costs associated with providing information to retailers around the necessity to comply with new regulations (whichever option is introduced) including their extent and the timing involved. Advertising and marketing costs are estimated to be in the region of £350,000.

Costs to the UK Exchequer: A display ban of this nature is aimed at reducing consumption levels. This in turn will have an associated effect on tax revenue to the Exchequer.

Costs to Local Authorities: Trading Standards Officers will still have an essential role in advising businesses on how to comply with legislation. As stated previously, the Scottish Government has agreed to fund a national campaign to help Trading Standards Officers inform tobacco retailers of the implementation of this new legislation and avoid costs falling on local government. Nevertheless there would be an increase in demand for advice to businesses from trading standards in the run up to introduction which may not lead to a need for additional resources but would cause a reprioritisation of duties and resources. Whichever option is chosen, Trading Standards and local authorities will still have to play a significant role in the execution of the ban. Therefore, the cost, while varying slightly, will remain an issue whether a full ban is decided upon or a restricted ban.

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Benefits

The potential impact of banning displays was calculated assuming that the existence of displays at point of sale increases the odds of ever smoking by 10%.

This means that if current display of tobacco products resulted in a 10% increase in 'ever smokers', the rate of 11-15 year old 'ever smokers' would be 43% (instead of the current 47%) if these were prohibited.

The 4 percentage point gap between these two figures – the implied effect of existing advertising and display – may be associated with $(4 \times 0.27) = 1.14\%$ of the 13-15 year old sample being regular smokers. Using a birth cohort size of 60,000 births per annum, a 1.1% percentage point reduction in the number of regular smokers aged 11-15 would result in 690 fewer smokers in each annual cohort. If the reduction persists into adulthood (which is likely, as the reduction in display will persist), the estimates equate this to 1,140 discounted years of life^h saved in each annual cohort (monetised as £57 million per annual cohort). When summed across 30 years and discountedⁱ the figure equals £1.08bn. Again if a more conservative assumption were made that, in line with the sales data analysis, prevalence decreased by 0.8% this would still lead to 560 fewer smokers per annual birth cohort resulting in an additional 930 life yrs (monetised as £4.7m per annum or £884m over 30 yrs).

Even if the impact were much smaller still – say a 2% reduction rather than 10% (a 0.2% reduction in the number of smokers) the impact per annum would still be 148 fewer smokers per annual birth cohort resulting in an additional 246 life yrs. This goes to show that even if the display ban only has a relatively restricted effect, the difference in even a few percentage of people not smoking will have major health benefits.

It is assumed that there would be a reduction in take-up of smoking in under 18s as a result of the ban. The long term fall in the prevalence rate is calculated based on the assumption that a fall in current consumption of cigarettes from the under 18 age group will feed through into a fall in the adult smoking prevalence rate. It is assumed that the fall in prevalence in under 18s will be maintained in adulthood.

The key health benefits come from a long term reduction in the adult smoking rates. Even relatively small changes in the smoking rate will yield significant health benefits both in terms of lives saved and reduced NHS costs.

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We assume that the greater the area of display of tobacco products the lesser the health benefits realised. The impact assessment for the Tobacco and Primary Medical Services (Scotland) Act 2010 considered the impact of restricting the display of tobacco products. As stated above, the effect size in the Henriksen study is very large – showing a 50% increase in the odds of ever smoking and, as stated above, UK point of sale advertising is already quite restrictive, so the comparison is not entirely fair. We assume a much more modest effect from displays. In the case of the size – and therefore altering the size of – displays we have assumed 5%. (We have assumed 10% in the case of a ban). This means that if current advertising and display of tobacco products resulted in a 5% increase in the odds of ‘ever smoking’, the rate of 11-15 year old ‘ever smokers’ would be 45% (instead of the current 47%) if these were restricted.

We assume that the greater the area of display of tobacco products the lesser the health benefits realised. These regulations allow retailers to display an area no greater than 120 square centimetres, which equates to an area no greater than one tobacco product. Under Option 1 children and young people would be able to see products being passed to customers on sale. These regulations allow no more display than Option 1 and therefore we can assume will result in the same health benefits.

Unintended Consequences

Loss in Sales: The focus is on reducing sales to children and young adolescents. Small retailers and newsagents may experience a drop in tobacco sales to their young customers, although it should be noted that these are illegal sales. Any losses in tobacco sales may be replaced by an increase in sales of non-tobacco products such as magazines and confectionery. No significant competition issues have been identified with any of the options. The legislative options apply equally to all retail outlets and therefore are unlikely to have any significant competition implications.

Increased theft of stock It has been argued that shop assistants may be distracted when retrieving tobacco products making casual theft easier. There is no evidence that crime in shops has increased as a result of covering up tobacco displays in Iceland or Canada. The extent of any such effects that might occur is not quantifiable.

Increased use of black market cigarettes: Identification of counterfeit cigarettes requires handling and close examination by enforcement officers so whether or not cigarettes are on display seems largely irrelevant to illicit trade and does not conclusively indicate that illicit trade will benefit from the display ban.

Tobacco Industry: There is no tobacco manufacturing or production in Scotland. Any reduction in smoking prevalence has no associated impact on turnover or employment.

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Small/Micro firms impact test: The impact on small and micro businesses has also been considered. The focus is on reducing sales to children and young adolescents. Small retailers and newsagents may experience a drop in tobacco sales to their young customers, although it should be noted that these are illegal sales. Any losses in tobacco sales may be replaced by an increase in sales of non-tobacco products such as magazines and confectionery.

Legal Aid Impact test: There are no legal aid impact test issues to consider.

Competition Assessment: No significant competition issues have been identified with any of the options. The legislative options apply equally to all retail outlets and therefore are unlikely to have any significant competition implications.

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Summary

	Costs	Benefits
Option 1: do nothing	Small retailers: £1.2k one-off cost* Medium retailers: £6k one-off cost* Large retailers: up to £17.5k one-off cost* Local Government: no costs Scottish Government: £350k for advertising	690 fewer smokers** per year monetised as £884m saving over 30 years.***
Option 2: Limited exemption to ban	Small retailers: £160 one-off cost**** Medium retailers: £320 one-off cost**** Large retailers: £640 one-off cost**** Local Government: no costs Scottish Government: £350k for advertising	690 fewer smokers** per year monetised as £884m saving over 30 years.***

* based on responses to Regulatory Impact Assessment consultation and on the assumption that cigarettes will have to be kept under the counter.

** indicative figures based on Californian study of 2,100 students.

*** based on DoH calculation that each child deterred from taking up smoking = 1.66 discounted life yrs and DoH valuation of a year of a life as £50,000

**** based on £20 per row in gantry and assumptions around number of rows per gantry.

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Conclusions

The intended outcome of this intervention is to reduce the number of under 18 year olds who take up smoking due to awareness of tobacco products from display.

There is evidence to suggest that abolishing point of sale displays of tobacco products will protect children from tobacco promotion and reduce the recruitment to smoking. Some studies have shown that retail tobacco marketing results in a 50% increase in the odds of ever smoking amongst young people.

Limited exemptions to the display ban as set out in the Tobacco and Primary Medical Services (Scotland) Act 2010 (Display of Tobacco and Prices) Regulations 2010 considerably reduces burdens on business without undermining the health benefits realised from a display ban.

Recommendation and summary: It is recommended that the Scottish Government make limited exemptions to the display ban as set out in the Tobacco and Primary Medical Services (Scotland) Act 2010 (Display of Tobacco and Prices) Regulations 2010.

ANNEX B



RESPONDENTS INFORMATION FORM

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

Example

A	B	C	D
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(Please complete in **BLACK** ink and in **BLOCK CAPITALS**, one per box)

1. Name/Organisation

Organisation Name

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Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Forename

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

2. Postal Address

POSTCODE _____ Phone _____ Email _____

3. Permissions

I am responding as ...

Individual

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise ?

Please tick as appropriate Yes No

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DATE RECEIVED

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