

Consultation on proposed tobacco control regulations for England (under the Health Bill 2009)

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Consultation on proposed tobacco control regulations for England
(under the Health Bill 2009)

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Purpose

The purpose of this consultation is to seek the views of stakeholders on proposed tobacco control regulations. The powers to make these regulations are set out in the Health Bill 2009, which is currently before Parliament.

There are four sets of proposed regulations that cover:

- tobacco displays;
- tobacco product price displays;
- advertising and display of tobacco products in specialist tobacconists; and
- requirements on tobacco vending machines.

These proposed regulations will apply to England only.

Views are invited on each set of regulations, and particular questions are asked throughout the document to guide the preparation of responses. The impact assessments for these regulations are appended at the end of the document and views are also invited on these.

The consultation will run from 12 October 2009 until 4 January 2010.

Information about how to respond is on pages 8–9. All responses received within that time will be considered carefully and used to assist in finalising the regulations before they are made.

Introduction

Reducing the harm caused by smoking

The Government is committed to reduce smoking rates and the health harms caused by smoking. Our efforts over the last decade have seen considerable success: the number of people who smoke in England has dropped by almost 2.4 million, with prevalence falling from 28% in 1998 to 21% in 2007. Nevertheless, smoking remains the leading cause of premature death and illness, and it is the primary reason for the gap in healthy life expectancy between the rich and poor. Smoking kills more than 80,000 people in England each year – more than alcohol, road traffic and other accidents, suicide, illegal drugs and diabetes combined.

In 2008 the Department of Health published the *Consultation on the future of tobacco control*, which received almost 100,000 responses and prompted further debate on what measures need to be taken to move toward a tobacco-free future. The Government has committed to developing and publishing a new tobacco control strategy by the end of 2009, and the measures proposed in this consultation form a key element of the new strategy. This strategy will look to go further, faster, on preventing the unnecessary harm caused by tobacco. However, before the strategy is published, the Government has decided to take the opportunity provided by the Health Bill 2009 to legislate in two areas for which the Government firmly believes there is convincing evidence to justify action. The Health Bill that was introduced into the House of Lords on 15 January 2009 includes clauses to:

- remove unsolicited tobacco promotion through the display of tobacco, which includes regulating price lists and controlling advertising and display by specialist tobacconists; and
- introduce safeguards to prevent underage sales from cigarette vending machines.

The tobacco control proposals in the Health Bill continue to be debated in Parliament. This consultation is an opportunity for stakeholders to consider the detail of the proposed draft regulations. These draft regulations have been developed to both inform parliamentary debates and to gather the views of key stakeholders. While not pre-judging the outcome of parliamentary decisions on the Health Bill, these draft regulations have been developed on the basis of the tobacco control provisions as they appear in the Health Bill on the date of the publication of this consultation.

The primary focus of the provisions in the Health Bill is on protecting children and young people. Today's children are tomorrow's potential smokers. Two thirds of adults who have ever smoked in the UK say that they started before they were 18. The tobacco industry needs to recruit young people to smoke to replace those who give up and those who die each year. Evidence shows that since the Tobacco Advertising and Promotion Act 2002 (TAPA) banned tobacco advertising, the tobacco industry has put more focus on the display of tobacco in shops as a way of promoting its products. The industry has supplied shops with promotional cigarette packet displays, to draw the attention of shoppers to tobacco products. There is clear evidence that these promotional activities encourage children to start smoking, and therefore it is important that displays, like advertising, are prohibited.

Local trading standards officers carry out test purchases to see whether young people under 18 are able to buy cigarettes from vending machines. In 2008 the average failure rate for these test purchases (where young people succeeded in buying cigarettes) was 40%.

The role of these tobacco control policies is first, to do everything possible to enable young people to remain smoke-free and second, to support those people who want to give up smoking.

While the need for the Government to take action is clear, we must also ensure that we also support the principles of better regulation and avoid imposing undue new burdens on business. In particular, we firmly believe that small shops are at the heart of our communities and it is vital that we listen to shopkeepers to make sure that the regulations are workable and cost-effective in practice. We believe that these regulations strike the right balance, but it is important that we hear views on their practical implications for those that they affect most.

Summary

The four areas of regulation that are included in this consultation document are:

- tobacco displays;
- tobacco price lists;
- specialist tobacconists; and
- tobacco vending machines.

Definitions

Retail businesses: The regulations and consultation document apply to any business selling tobacco products to the public. Certain provisions are also proposed for the tobacco wholesale trade.

Large shops: The regulations on displays and price lists refer specifically to a 'large shop'. This is a shop with a relevant floor area exceeding 280 square metres; this is the same as the definition in the Sunday Trading Act 1994 (Schedule 1). The 'relevant floor area' means the internal floor area of the shop used for the serving of customers and the display of goods, and therefore does not include any storage areas that are not accessible by the public. Most retailers will already know whether their business is categorised as a large shop, in order to comply with the Sunday Trading Act.

Other businesses: This includes many different premises, for example market stalls, bars, convenience stores, mobile vans, trains and ships. It is intended that the regulations will apply to ships which the public have access to but not to seagoing ships. Vessels that can be used by the public and that operate in English domestic waters will be included; for example, tour boats or boats used as restaurants or nightclubs.

Specialist tobacconists: Specialist tobacconists have already been defined in TAPA and the same definition is used in these proposals. The TAPA definition of a 'specialist tobacconist' is a shop selling tobacco products by retail, where more than half of sales on the premises are of cigars, snuff, pipe tobacco and smoking accessories (such as pipes, lighters and papers).¹

Tobacco products: 'Tobacco products' are any products manufactured partly or wholly from tobacco intended to be smoked, sniffed, sucked or chewed, such as cigarettes, cigars and loose rolling tobacco. This definition does not include accessories such as pipes, lighters and rolling papers.

1 Tobacco Advertising and Promotion Act 2002, Section 6(2).

Tobacco displays

Research shows that displays of tobacco products promote tobacco use. Display of tobacco encourages young people to try smoking and undermines the efforts of people who want to quit smoking by prompting impulse buys. Openly displaying tobacco products in shops across England seriously challenges the public health messages that smoking is dangerous and addictive.

Subject to parliamentary consideration, the tobacco-related provisions in the current Health Bill would introduce a general prohibition on the display of tobacco products in the course of retail business. This means that shops and other businesses will no longer be able to have tobacco products, such as packs of cigarettes, on view. However, the Health Bill includes powers for the Secretary of State to make regulations to introduce exemptions from this general prohibition. We propose using these powers to provide exemptions which ensure that shops and other businesses can continue to serve their customers and which also take account of the particular needs of some types of business. The proposed regulations include three key provisions to:

- allow customers to purchase and view tobacco products when they choose to;
- ensure that the particular needs of duty-free and bulk sale businesses are recognised; and
- allow businesses to restock tobacco products during business hours.

Price displays

The Department of Health wishes to ensure that businesses can continue to trade efficiently while being able to comply easily with the new regulations, as well as with relevant consumer protection and EU legislation. The Government believes that retailers need to be able to communicate with customers about tobacco product prices, and therefore provision is proposed to allow shops to display a price list of the tobacco products they stock as well as shelf labels. However, to ensure that price lists and shelf labels do not become advertisements or promotional tools, the regulations propose stipulations on size and design.

Specialist tobacconists

‘Specialist tobacconists’ are shops in which over 50% of trade is in specialist tobacco products. To restrict display of all tobacco products within these shops would be a disproportionate burden on the businesses, given the nature of their trade and customers. Specialist tobacconists are generally not used by children and so present a low risk of affecting young people’s behaviour and are unlikely to significantly encourage the take up of smoking, or encourage impulse buying. Using the powers in the Health Bill, the Government therefore intends to allow specialist tobacconists to display tobacco products within their shops, provided that displays cannot be seen by the public from outside the shop. Also, specialist tobacconists are currently allowed to advertise specialist tobacco products; in order to bring consistency to advertising and displays throughout all shops, the proposed regulations, through powers introduced by the Health Bill, would require that advertising is only allowed within the shop. This will ensure that businesses can continue to trade, but the Government’s objective of removing tobacco display and promotion from general view is achieved.

Tobacco vending machines

Since vending machines are self service, they provide easy access to tobacco – including for people under the legal age of sale of 18. Although sales of tobacco products from vending machines represent only 1% of the overall tobacco market, a disproportionate number of sales to under-18 year olds are made from vending machines. Compared to other sources, vending machines were in 2008 a usual source of tobacco for 10% of children aged 11–15 years who say they smoke.

The Health Bill 2009 contains powers to make regulations to impose requirements on, or to prohibit entirely, the sale of tobacco through vending machines. The proposed regulations are designed to impose requirements with the aim of eliminating underage sales from vending machines. However, if after two years the proposed regulations are not successful in substantially reducing underage sales, the Government is committed to giving consideration to prohibiting tobacco vending machines altogether.

Impact assessments

The impact assessments for these regulations are attached in Appendices A and B. The Department of Health would welcome stakeholders' observations on these. For additional information on costs and benefits, we recommend that stakeholders refer to the impact assessments published for the Health Bill.²

Enforcement

The effect of Clause 21 of the Health Bill would be to insert four new sections (sections 7A to 7D) into TAPA. These new clauses would make it an offence to display tobacco products or their prices in any way not permitted by the new clauses, as read with any regulations made under them. Therefore, if a business or person is found in breach of legislation on tobacco displays, price lists, or display and advertising in specialist tobacconists, the penalties would be the same as those laid down in Section 16(2) of TAPA. The maximum penalties for a person found guilty of an offence under or by virtue of TAPA are, on summary conviction, a maximum imprisonment period of six months, a fine not exceeding the statutory maximum (currently £5,000), or both; or, on indictment, a maximum imprisonment period of two years, a fine, or both. Under Section 13 of TAPA, enforcement is the responsibility of specified local authorities.

The provisions in the Health Bill on tobacco vending machines in England and Wales insert a new Section 3A into the Children and Young Persons (Protection from Tobacco) Act 1991. They also insert a new Section 12D(1)(c) into the Children and Young Persons Act 1933 (CYPA). Any offence for breaking the requirements on vending machines will therefore be covered by sections 12A to 12D of CYPA. Sections 12A to 12D of CYPA were introduced by the Criminal Justice and Immigration Act 2008 and they provide for magistrates to impose orders prohibiting the sale of tobacco, for periods of up to a year, by persons or shops found to have committed specified tobacco offences (which relate to the sale of tobacco to people under 18) on three occasions. Under Section 5 of the 1991 Act, enforcement is the responsibility of specified local authorities.

² Impact assessments for the Health Bill 2009: www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/DH_093280

Timetable and next steps

Following this consultation, Health Ministers will carefully consider responses from stakeholders and will produce a final version of regulations taking into account the feedback received. The regulations are expected to be made in 2010.

The Health Bill will prohibit the display of tobacco products. This prohibition and the proposed exemptions, as described in the regulations, are intended to come into force on 1 October 2011 for large shops and 1 October 2013 for all other businesses. The same timetable applies for the implementation of requirements on price lists. The regulations on specialist tobacconists are intended to commence on 1 October 2013. The regulations on vending machines would come into effect on 1 October 2011.

In so far as the regulations include any draft technical standard, they will need to be notified to the European Commission in accordance with the Technical Standards Directive. Health ministers are currently considering when to notify the European Commission. Any decision to notify the regulations during the consultation period will be mindful of the need to notify a further draft of the technical standard in accordance with that Directive, should the relevant regulation be changed as a response to this consultation, or as a result of comments made by the Commission or other Member States pursuant to the notification under the Directive.

We aim to give businesses as long as possible to prepare after the regulations have been passed by Parliament, and that is why we are aiming to lay the regulations as far as possible in advance of the 2011 and 2013 commencement dates. After the regulations have been passed we will work with retail organisations and LACORS (Local Authorities Coordinators of Regulatory Services) to develop implementation guidance and support for both businesses and trading standards officers.

The consultation process: how and when to respond

The consultation document has been made available to key stakeholders in England, and we would particularly welcome responses from the retail and vending machine sectors, including representatives of the hospitality trade who may have tobacco vending machines on their premises. We would also welcome responses from any group or individual with an interest in these proposals. The main text of this document (but not the regulations or impact assessments) will also be available in Urdu and Gujarati from 30 October (please see the Department of Health website³).

The Department of Health requests that responses are written in English and, where appropriate, responses are accompanied by references to research or other evidence. We ask that consultation responses are made either by email with the pro forma attached or on the hard-copy pro forma provided. Should you need to respond in an alternative format for accessibility reasons, please contact us at the email or postal addresses given below.

3 www.dh.gov.uk/en/Consultations/Liveconsultations/DH_106454

Responses to this consultation must be received by 4 January 2010.

Tobacco Regulations Consultation
Department of Health
Room 712, Wellington House
133–155 Waterloo Road
London
SE1 8UG

Email: tobaccoconsultation@dh.gsi.gov.uk

A summary of consultation responses will be made available on the Department of Health website (www.dh.gov.uk) as soon as possible after the completion of the consultation, and in any event no later than three months after the consultation closes.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that under the Freedom of Information Act there is a statutory code of practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department of Health.

The Department of Health will process your personal data in accordance with the Data Protection Act, and in most circumstances this will mean that your personal data will not be disclosed to third parties.

This consultation adheres to the Cabinet Office's *Code of Practice on Consultation*. In particular, we aim to:

- consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy;
- be clear about what our proposals are, who may be affected, what questions we want to ask and the timescale for responses;
- ensure that our consultation is clear, concise and widely accessible;
- ensure that we provide feedback regarding the response received and how the consultation process influenced the development of the policy;
- monitor our effectiveness at consultation, including through the use of a designated consultation coordinator; and
- ensure that our consultation follows better regulation best practice, including carrying out a regulatory impact assessment if appropriate.

The full text of the code of practice is on the Department for Business, Innovation and Skills' website at www.berr.gov.uk/files/file47158.pdf

Comments on the consultation process itself

If you have any concerns or comments that you would like to make which relate specifically to the consultation process itself, please contact:

Consultations Coordinator
Department of Health
3E58, Quarry House
Leeds
LS2 7UE

Email: MB-DH-consultations-coordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.

1. Displays of tobacco products

Policy aim

- 1.1 To remove the display and promotion of tobacco products to discourage young people from taking up smoking and to create a supportive environment for people who want to quit smoking, while minimising bureaucracy for retailers.

Health Bill 2009

- 1.2 As drafted at the time of this publication, Clause 21 of the Health Bill prohibits the display of tobacco products in the course of a business. This means that when the provisions are commenced, shops and other businesses will no longer be able to have tobacco products, such as packs of cigarettes, on view.
- 1.3 The Health Bill creates a ‘blanket’ prohibition of the display of all tobacco products, but there are two key exemptions:
 - the tobacco trade, for example wholesalers selling tobacco products to retailers, provided any such displays are not seen by members of the public; and
 - displays made to people over the age of 18 who have either asked to purchase a tobacco product or asked for information about it.

Intention of proposed regulations

- 1.4 The Tobacco Advertising and Promotion (Display) (England) Regulations 2010 are proposed to be made to set out arrangements for the display of tobacco products. The Bill contains a number of regulation-making powers that allow the Secretary of State to modify the ‘blanket’ prohibition in England. The proposed regulations in this consultation would allow for the following:
 - For products to be displayed in the course of serving a customer. This means, for example, that shopkeepers will not be committing an offence if people, including children, happen to see tobacco when a customer is being served.
 - For shops that only sell tobacco in bulk to have a separate tobacco display area. This means that airside duty-free shops and cash and carry shops will be able to display bulk tobacco provided that there are no other products in the area and the display is not visible from outside the area.

- For the restocking of tobacco products. This means that the temporary display of tobacco products during restocking would not be an offence. However, tobacco products must not be on display while being moved around a shop, for example to and from a stock room.

- 1.5 **Timings and place:** Regulations on display distinguish between large and small shops and other businesses by using the existing definition under the Sunday Trading Act 1994, which defines ‘large’ as being a shop with more than 280 square metres of floor area devoted to displaying goods and serving customers. The prohibition of display of tobacco products, and therefore also the exemptions proposed in the regulations, will come into force on 1 October 2011 for large shops and 1 October 2013 for small shops and other businesses. This timetable recognises the concerns that small businesses have about their ability to prepare quickly for implementation and the possible impact on their trade.
- 1.6 **Temporary display while serving customers:** The Health Bill allows ‘requested displays’. In practice, this means that shop staff are permitted to display products when customers aged 18 or over have asked to buy tobacco or have requested information about a product. It is intended that once the customer has finished looking at it, the product should either be sold or put back out of sight again. It is appreciated that it is possible that other customers may see tobacco products while customers are being served. Proposed regulation 4(2) provides an exemption for a display of tobacco products in storage units, provided that the display does not exceed 1,500 square centimetres and does not take longer than is necessary to remove the product from the unit. In practice, this will mean that no offence will be committed where a tobacco storage unit is opened to serve a customer, provided the flap or door that is opened is no larger than 1,500 square centimetres in area. ‘Storage unit’ means any type of gantry, unit or shelf in which tobacco products are held pending sale (including tobacco jars and humidors). The regulations would apply to all storage units that hold any tobacco products, even if the unit is also used to store other products alongside the tobacco. In calculating the relevant area, it is the total area of the unit that is revealed that will count, regardless of the quantity or area of tobacco products that are visible once any door, flap or cover is opened. For tobacco holders such as tobacco jars, it would be possible to comply with the proposed regulations by using opaque jars or covering transparent jars, to ensure that the tobacco within is not visible; there would then be no need for the jar to be within a cupboard, provided the tobacco product itself is not on view.
- 1.7 Regulation 4(3) also provides an exemption for the display of tobacco not held in storage units, provided that the display is solely as a consequence of a requested display and lasts no longer than the requested display (except for specialist tobacconists, where specified considerations are made).
- 1.8 **Bulk tobacconists:** Regulation 5 applies to shops that only sell tobacco products in large packs, i.e. a minimum of cartons of 200 cigarettes or rolling tobacco in large packs of 250 grams or more. This exclusion does not apply to shops that also sell cigarettes or rolling tobacco in any smaller packets. The proposal will allow duty-free and cash and carry retailers to have a separate area for tobacco, in which displays would be allowed provided that these displays are not visible to customers or members of the public from outside the area. A notice stating ‘It is illegal to sell tobacco products to anyone under the age of 18’ must be exhibited at the entrance of the tobacco area, which will serve both to indicate where the tobacco area is and as a reminder of the age restrictions on the purchasing of tobacco.

- 1.9 **Restocking:** It is recognised that during restocking customers may see tobacco products. The regulations include an exemption on restocking so as not to make it illegal to restock during opening hours, which for some shops would be very burdensome. Therefore the regulations allow display during restocking if it is solely as a consequence of the restocking and lasts for no longer than is necessary. For example, while the staff are restocking the shelves they are not committing an offence, but it would be an offence to leave an open box of tobacco products on display, even if they are later used for restocking. The regulations do not create an exemption for display during transit across the shop floor to restock; during this time tobacco products must not be visible to the public. During restocking, only the limited area of the storage unit may be open at any one time (1,500 square centimetres). It is intended that once staff have restocked products in one part of the unit, the flap or door covering that part should be closed. When a business is closed to the public, so customers are not on the premises, the restrictions to restocking do not apply and display would not be an offence.
- 1.10 **Advertising on storage units:** Shopkeepers may choose to have labels on storage units to indicate where specific products are kept. Where these include the product price, the label must comply with the proposed Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010 (see section 2, below). Where they do not include the price, labels must comply with proposed regulation 7. Businesses may choose to use one or the other type of label but not both.
- 1.11 **Existing point of sale regulations:** The proposed regulations will revoke the existing Tobacco Advertising and Promotion (Point of Sale) Regulations of 2004. This means that tobacco advertising, including at the point of sale, would be prohibited under Section 2 of TAPA.

Impact assessment

- 1.12 The impact assessment for the tobacco display regulations is included in Appendix A and assesses the potential benefits of these regulations in terms of reduced costs to business. It compares the expected cost of compliance with a complete prohibition, where no regulations are made, with the cost of the proposed approach where regulations provide for temporary displays to allow customers to be served and take account of different types of retailers. Paragraph 18 of the impact assessment that accompanied the Health Bill details the benefits of removing tobacco displays in terms of life years saved from a reduction in smoking prevalence. This results in a net benefit of £520 million (from a range of £45 million to £975 million), based on the lifetime health benefits arising from fewer young people starting to smoke over a ten-year period. Stakeholder feedback on the impact assessments is welcomed.

Views are invited on the following questions

1. Do you believe that these proposed regulations set out an effective and workable approach to removing the display of tobacco products?

(If 'No', how do you think it might be possible to amend the regulations so that they achieve this aim?)

2. Do you believe that the proposed regulations are comprehensive and cover all types of sales of tobacco?

(If 'No', how would you amend the regulations so that they are comprehensive?)

3. Do you believe that these proposed regulations are proportionate and avoid imposing unnecessary burdens on businesses to achieve removing the display of tobacco products?

(If 'No', how would you amend the regulations? Please provide costings where appropriate.)

4. Do you believe that these proposed regulations are enforceable?

(If 'No', how do you think it might be possible to amend the regulations so that they are enforceable?)

5. Do you agree that having separate tobacco display areas is an effective and workable approach for retailers of bulk tobacco products?

(If 'No', how would you amend the regulations so that they are effective and workable for retailers of bulk tobacco products?)

6. Do you have any other comments on the proposed regulations?

(If 'Yes', please write your comments in the pro forma provided.)

Proposed regulations

PUBLIC HEALTH, ENGLAND

Tobacco Advertising and Promotion (Display)(England) - Regulations 2010

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	<i>1st October 2011</i>

The Secretary of State, in exercise of the powers conferred by sections 4(3), 7A(2), 7B(3) and 19(2) of the Tobacco Advertising and Promotion Act 2002(a), makes the following Regulations:

Citation, commencement, effect and application

1.—(1) These Regulations may be cited as the Tobacco Advertising and Promotion (Display)(England) Regulations 2010 and come into force on 1st October 2011.

(2) Regulation 3 and the definitions of “large shop” and “relevant floor area” shall cease to have effect on 1st October 2013.

(3) These Regulations apply in relation to England.

(4) These Regulations do not apply to specialist tobacconists.

Interpretation

2. In these Regulations—

“the Act” means the Tobacco Advertising and Promotion Act 2002;

“area of storage unit” means the total area of the storage unit in which tobacco products and any other products are visible;

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

“original package” means the package in which the cigarettes were supplied for the purpose of retail sale by the manufacturer or importer;

“package” means any box, carton, or other container;

“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;

“storage unit” means a gantry, cabinet or unit, tray, shelf or other product in which a tobacco product is held pending sale;

“shop” means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods.

(a) 2002 c.36. Sections 7A and B were inserted by the Health Act 2009 (c.), section 21.

Meaning of place

3. For the purposes of section 7A of the Act, “place” means a large shop.

Display as a consequence of a requested display

4.—(1) This regulation applies where a requested display (“the requested display”) is made to an individual (“A”) aged 18 or over.

(2) No offence is committed under section 7A(1) of the Act by a display of tobacco products in a storage unit, to individuals other than A, if—

- (a) the display—
 - (i) is solely as a consequence of the requested display, and
 - (ii) lasts for no longer than is necessary to remove the requested product from the storage unit; and
- (b) the area of storage unit in which tobacco products are displayed does not exceed 1,500 square centimetres.

(3) No offence is committed under section 7A(1) of the Act by a display of tobacco products other than in a storage unit, to individuals other than A, if the display—

- (a) is solely as a consequence of the requested display; and
- (b) lasts for no longer than the requested display.

(4) In this regulation, “the requested product” means the product which A asked to purchase or for information about.

Display in bulk tobacconists

5.—(1) This regulation applies to bulk tobacconists.

(2) A bulk tobacconist is a shop selling tobacco products (whether or not it also sells other products) which does not sell either—

- (a) cigarettes other than in pre-packed quantities of 200 or more cigarettes in their original package; or
- (b) hand-rolling tobacco other than in packages with a weight of 250 grams or more.

(3) No offence is committed under section 7A(1) of the Act by a display of tobacco products if—

- (a) the display is—
 - (i) in a part of the shop (“the tobacco area”) containing tobacco products and smoking accessories only; and
 - (ii) not visible from outside of the tobacco area; and
- (b) a notice displaying the following statement—

“It is illegal to sell tobacco products to anyone under the age of 18” -

is exhibited at the entrance to the tobacco area. -

(4) The dimensions of the notice to be exhibited in accordance with paragraph (3)(b) must be not less than 297 millimetres by 420 millimetres and the size of the statement to be displayed on the notice must be such that no character is less than 36 millimetres high.

Display during restocking

6.—(1) This regulation applies where a person is actively engaged in restocking a storage unit.

(2) No offence is committed under section 7A(1) of the Act by a display of tobacco products if—

- (a) tobacco products are displayed in the course of being placed in the storage unit only;

- (b) the display lasts for no longer than is necessary to place products in the storage unit; and
- (c) the area of storage unit in which tobacco products are displayed does not exceed 1,500 square centimetres.

Advertising on storage units

7.—(1) Subject to the following paragraphs of this regulation, no offence is committed under section 2 of the Act by the indication on a storage unit of tobacco products held in such storage unit.

(2) This regulation applies where such indication complies with the requirements of paragraph (3).

(3) The requirements are that such indication—

(a) is limited to the following information in relation to tobacco products—

- (i) the brand name of the product, and
- (ii) where pre-packed, the number of units in the packages or, where sold by weight, the net weight of the product,

(b) is printed—

- (i) in black Helvetica bold or plain type on a white background,
- (ii) in a font size consistent throughout the text with characters which are no higher than 3 millimetres, and
- (iii) in lower case type, except that the first letter of a word may be in upper case type;

(c) does not exceed 9 square centimetres in size;

(d) is limited in number to one indication for each separate location in a storage unit where a particular tobacco product is displayed;

(e) does not contain any other feature.

(4) For the purposes of paragraph (3)(d), an indication includes a display of the price of the particular tobacco product.

(5) In this regulation—

“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.

Revocations

8. The Tobacco Advertising and Promotion (Point of Sale) Regulations 2004^(a) are revoked.

Signed by authority of the Secretary of State for Health

Name
Minister of State
Department of Health

^(a) S.I. 2004/765.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for exemptions from the prohibition of tobacco displays imposed by section 7A(1) of the Tobacco Advertising and Promotion Act 2002 (“the Act”).

These Regulations do not apply to specialist tobacconists. The Tobacco Advertising and Promotion (Specialist Tobacconists)(England) Regulations 2010(a) make provision for exemptions for specialist tobacconists from the prohibition on displaying and advertising tobacco products.

These Regulations also make provision for a two stage introduction for the prohibition of tobacco displays. Section 7A(1) prohibits the display of tobacco products in a ‘place’. Regulation 3 defines ‘place’ as meaning a large shop (defined in regulation 2). From 1st October 2011 displays of tobacco products will be prohibited in large shops. From 1st October 2013 the prohibition of tobacco displays will apply generally to any place.

Regulation 4 applies when there is a display of tobacco products to an individual following a particular request by the individual to purchase a tobacco product, or for information about a tobacco product, a “requested display” (defined in section 7B(8) of the Act). No offence will be committed by a display of tobacco products to persons other than the individual who requested the display if the requirements in regulation 4 are met.

Regulation 5 allows for displays of tobacco products in “bulk tobacconists”. “Bulk tobacconists” are defined (in regulation 2) to mean shops that do not sell cigarettes or hand-rolling tobacco in small units. Tobacco products may be displayed if they are in an area of the shop containing only tobacco products and smoking accessories and the requirements of regulation 5 are met.

Regulation 6 allows for displays of tobacco products during restocking. Tobacco products may be displayed only whilst they are being placed in a unit in which they will be held pending sale (a “storage unit” defined in regulation 2). A limit is imposed on the area of the unit in which products may be visible during restocking.

Regulation 7 enables an indication on a storage unit of tobacco products held in the unit if the requirements in this regulation are met.

The Tobacco Advertising and Promotion (Point of Sale) Regulations 2004, which permitted certain tobacco advertisements to be published at places where tobacco products are sold, are revoked. Section 2 of the Act prohibits tobacco advertising.

(a) S.I. 2010/

2. Regulating display of prices of tobacco products

Policy aim

- 2.1 To allow shops and businesses to display the prices of tobacco products on sale for customer information, without promoting the products.

Health Bill 2009

- 2.2 The Health Bill gives the Secretary of State the powers to regulate the display of prices of tobacco products in England. The Bill would make it an offence to display prices in such a way that would breach the requirements set out in the regulations.

Intention of proposed regulations

- 2.3 The Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010 are proposed to set out arrangements for the display of tobacco product prices.
- 2.4 In order to allow retailers to continue to trade in tobacco products, customers will need to know what they sell. There is also a need to take account of European legislation and domestic consumer protection law. The intention is to allow retailers to display plain information on what tobacco products they sell and for what price, but without allowing any use of brand colours or other design features that would promote tobacco products.
- 2.5 The Department of Health also recognises the need that many shops have for shelf labels to facilitate an efficient service and for stock management purposes. The proposed regulations will allow both a plain price list and shelf labels that meet specified requirements. The regulations on the size, typeface and colour of these labels have been informed by the specifics of labels that are currently being used in England, as advised by retailer stakeholders.
- 2.6 **Commencement:** The regulations on the display of tobacco product prices will come into force at the same time as the display regulations: 2011 for large stores and 2013 for small stores and all other businesses.
- 2.7 **General requirements for the display of prices of tobacco products:** Regulation 5 sets out the general requirements that must be met for any type of display of prices, that is a price list, a price list available only on request, prices on storage units and vending machines.

- 2.8 **Price lists:** Regulation 6 sets out the requirements which must be met for the display of prices in a price list. The regulations allow one price list to be located at each till that is situated in an area where tobacco products are both available and paid for. To prevent the price list from becoming a promotional tool, the price list must comply with specifications on colour, size and content, as set out in regulations 5 and 6. The maximum size of 630 square centimetres roughly equates to an A4 sheet of paper. The maximum character size of 7 millimetres roughly equates to a font size of 30 point.
- 2.9 **Price lists on request:** Regulation 7 takes into consideration people who would like to see which products are for sale, and people for whom English is not their first language; shops will also be allowed price lists that include pictures of the products. Those lists are only to be made available on request of the customer and must comply with the typeface and size specifications in regulation 7. These specifications allow the inclusion of pictures, in particular to assist people with reading difficulties, and state a maximum character size, which is approximately a font size of 14 point, which is recommended by the Royal National Institute of Blind People to ensure accessibility to more people.⁴
- 2.10 **Price labels for storage units:** Price labels can be displayed on the tobacco gantries or the covers of the display units with the intention of ensuring that the retailer can identify where different products are positioned within the gantry; such labels could also be used on tobacco jars. These price labels must comply with the requirements of regulation 8 in terms of the size and typeface and the general requirements in regulation 5. The maximum character size of 3 millimetres roughly equates to a font size of 12 point.
- 2.11 **Vending machines:** Vending machines currently use small coloured pictures of the products available for sale but if, as proposed, the Tobacco Advertising and Promotion (Point of Sale) Regulations 2004 are revoked, then these will no longer be permitted. These pictures will have to be replaced by text-only price labels which comply with regulation 9 in terms of size and the general requirements of regulation 5. The maximum size of 15 square centimetres is roughly the size of the majority of existing labels or 'decals'. The maximum character size of 5 millimetres roughly equates to a font size of 20 point.
- 2.12 **Specialist and bulk tobacconists:** Specialist and bulk tobacconists will only have to comply with the specifications of the regulations if they display a price list that is visible from outside their store/tobacco area.

Impact assessment

- 2.13 Please see the impact assessment at Appendix A for removing displays, as this includes the impact on price lists.

⁴ www.rnib.org.uk/professionals/accessibleinformation/text/Pages/clear_print.aspx

Views are invited on the following questions

- 7. Do you believe that these proposed regulations set out an effective and workable approach to making information available for customers and staff, without creating avenues for promotion?**

(If 'No', how do you think it might be possible to amend the regulations so that they achieve this aim?)

- 8. Do you have any comments on the proposed requirements for the design of price lists?**

(If 'Yes', please comment and describe the changes you would make.)

- 9. Do you believe that the proposed sizes and allowable features of labels on storage units will meet the need for the efficient operation of shops?**

(If 'No', how would you amend the regulations so that the labels on storage units are appropriate?)

- 10. Do you believe that these proposed regulations are enforceable?**

(If 'No', how do you think it might be possible to amend the regulations so that they are enforceable?)

- 11. Do you have any other comments on the proposed regulations?**

(If 'Yes', please write your comments in the pro forma provided.)

Proposed regulations

STATUTORY INSTRUMENTS -

PUBLIC HEALTH, ENGLAND

Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010

<i>Made</i>	- - - -	***
<i>Coming into force</i>		
<i>for the purposes of large</i>		
<i>shops and vending machines</i>		<i>1st October 2011</i>
<i>for all other purposes</i>		<i>1st October 2013</i>

The Secretary of State, in exercise of the powers conferred by sections [7C] and 19(2) of the Tobacco Advertising and Promotion Act 2002(a), makes the following Regulations.

A draft of these Regulations was laid before Parliament in accordance with section [19(3)] of that Act and approved by resolution of each House of Parliament.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010 and come into force—

- (a) for the purposes of large shops and automatic machines for the sale of tobacco products, on 1st October 2011; and
- (b) for all other purposes, on 1st October 2013.

(2) These Regulations apply in relation to England.

(3) 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. In these Regulations—

“the Act” means the Tobacco Advertising and Promotion Act 2002;

“bulk tobacconist” means a shop selling tobacco products (whether or not it also sells other products) from a part of the shop (“the tobacco area”) from which tobacco products are not visible outside such area and which does not sell either—

(a) 2002 c. 36. Section 7C was inserted into the Tobacco Advertising and Promotion Act 2002 by section [21] of the Health Act 2009 (c. []).

- (a) - cigarettes other than in pre-packed quantities of 200 or more cigarettes in their original package; or
 - (b) hand-rolling tobacco other than in packages with a weight of 250 grams or more; -
- “original package” means the package in which the cigarettes were supplied for the purpose of retail sale by the manufacturer or importer and “packaged for sale” shall be 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;
- “package” means any box, carton, or other container;
- “premises” includes any place and any vehicle, vessel, hovercraft, stall or moveable structure;
- “price list” means a list of the prices of tobacco products normally offered for sale in the place where such list is displayed or made available;
- “shop” means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods;
- “storage unit” means a gantry, cabinet or unit, tray, shelf or other product in which a tobacco product is held pending sale.

Meaning of “place”

3. For the purposes of section 7C of the Act, “place” means premises in England where tobacco products are offered for sale in the course of a business, including from an automatic machine, other than premises—

- (a) which are accessible only to persons who are engaged in, or employed by, a business which is part of the tobacco trade, and
- (b) from which the prices of tobacco products are not visible from the outside of the premises.

Display of prices of tobacco products

4.—(1) The requirements specified below apply for the purposes of section 7C of the Act.

(2) Subject to regulation 10, a display of prices of tobacco products in a place shall—

- (a) in all cases, comply with the general requirements specified in regulation 5, and
- (b) in the case of automatic machines for the sale of tobacco products, comply with the requirements specified in regulation 9, or
- (c) in all other cases, comply with the requirements specified in—
 - (i) regulation 6 (in relation to price lists),
 - (ii) regulation 7 (in relation to price lists available on request), or
 - (iii) regulation 8 (in relation to the display of prices on storage units).

(3) Where a display of prices of tobacco products in a place also amounts to an advertisement for the purposes of the Act, if it complies with the requirements of these Regulations it is to be treated as a display of prices and not as an advertisement for the purposes of offences under the Act.

General requirements for the display of prices of tobacco products

5. The requirements are that a display of prices of tobacco products—

- (a) - shall be limited to the following information in relation to tobacco 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, and
- (iii) - the price of the product^(a);
- (b) - shall be printed—
 - (i) - in black Helvetica bold or plain type on a white background,
 - (ii) - in type which has a consistent size throughout the text, and
 - (iii) - in lower case type, except that the first letter of a word may be in upper case type; and
- (c) except as otherwise provided by regulation 7(e), must not contain any other feature.

Price lists

- 6.—(1) The requirements are—
- (a) that the display of prices of tobacco products is in the form of a price list; and
 - (b) - that the price list—
 - (i) - has the title “Tobacco products price list”,
 - (ii) - does not include the prices of any other products,
 - (iii) - is worded with characters which are no higher than 7 millimetres,
 - (iv) - has no border or frame,
 - (v) does not exceed 630 square centimetres in size; and
 - (vi) is limited in number in accordance with paragraph (2).
- (2) The price list shall be limited in number to—
- (a) one price list for each separate area where tobacco products are both 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.

Price lists: available only on request

- 7.—(1) The requirements are—
- (a) that the display of prices of tobacco products is in the form of a price list which is made available to an individual aged 18 or over following a particular request by the individual for information about tobacco products for sale in the place where such request takes place;
 - (b) that all reasonable steps are taken to ensure that the individual making such a request is aged 18 or over before such a display takes place;
 - (c) that the display lasts for no longer than is needed for the individual to obtain the information sought by that individual;
 - (d) - that the size of the wording on the price list shall be such that no character is greater than 4 millimetres high;
 - (e) - that the only other feature displayed is a picture of the actual tobacco product, as packaged for sale, where the size of such picture does not exceed 50 square centimetres; and
 - (f) - that the price list shall be limited in number to—
 - (i) - one price list for each separate area where tobacco products are both located and can be paid for, or

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

(ii) - where there is more than one till at any such location, one price list for each such till.

(2) For the purposes of paragraph (1)(b), a person is treated as having taken all reasonable steps to establish that the individual is aged 18 or over if either—

- (a) - from the individual's appearance nobody could reasonably have suspected that the individual was aged under 18; or
- (b) - the person asked the individual for evidence of the individual's age and the evidence would have convinced a reasonable person.

Storage units

8. The requirements are—

- (a) - that the price of the tobacco product is displayed on a storage unit where that particular product is kept pending sale;
- (b) - that such display—
 - (i) - is worded with characters which are no higher than 3 millimetres, and
 - (ii) does not exceed 9 square centimetres in size; and
- (c) - is limited in number to one display for each separate location in a storage unit where a particular tobacco product is held.

Vending machines

9. The requirements are—

- (a) that the price of the tobacco product is displayed on an automatic machine from which that particular product is sold; and
- (b) that such display—
 - (i) is worded with characters which are no higher than 5 millimetres,
 - (ii) does not exceed 15 square centimetres in size,
 - (iii) is made in proximity to a selection button by which the particular tobacco product can be selected, and
 - (iv) is limited in number to one display for each such selection button.

Specialist and bulk tobacconists

10.—(1) Except as provided in paragraphs (2) and (3), these Regulations shall not apply to specialist tobacconists or bulk tobacconists.

(2) A display of prices of tobacco products which is visible from—

- (a) the outside of the premises of a specialist tobacconist, or
- (b) the outside of the tobacco area of a bulk tobacconist,

shall comply with the requirements of paragraph (3).

(3) The requirements are that such a display—

- (a) - shall comply with the general requirements specified in regulation 5,
- (b) - shall comply with the requirements of regulation 6(1)(a) and (b)(i) to (v), and
- (c) - is limited in number to one display for each premises.

Signed by authority of the Secretary of State for Health

Name
Minister of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose requirements in relation to the display of prices of tobacco products in a place in England in the course of a business.

Regulation 1 provides that these Regulations shall come into force on 1st October 2011 for large shops and vending machines, and on 1st October 2013 for all other purposes.

Regulation 3 defines the meaning of 'place' for the purposes of section 7C of the Tobacco Advertising and Promotion Act 2002 (displays: prices of tobacco products). It is defined as meaning premises in England where tobacco products are offered for sale in the course of a business, other than premises which are accessible only by persons engaged in, or employed by, the tobacco trade and which do not display the prices of tobacco products on the outside of the premises.

Regulation 4 provides that the display of prices of tobacco products in a place in England must comply with the requirements specified in the Regulations. Regulation 5 lays down general requirements which must be met by all such displays. Regulations 6 to 9 lay down additional requirements to be met in relation to particular means of displaying such prices. Indications of the selling price of tobacco products are also regulated by the Price Marking Order 2004.

Other than in the case of vending machines, prices may be displayed in one or more of the following ways: by way of price lists, which meet the requirements of regulation 6; by price lists available on request, which meet the requirements of regulation 7; and, by labels on storage units, which meet the requirements of regulation 8. In the case of vending machines, the requirements of regulation 9 must be met.

Regulation 10 limits the application of these Regulations to specialist tobacconists and bulk tobacconists (as defined in regulation 2). The Regulations only place requirements on the display of prices of tobacco products by such businesses where such a display would be visible from the outside of their premises.

3. Specialist tobacconists

Policy aim

- 3.1 To ensure that the regulation of tobacco displays and advertising in specialist tobacconists achieves the policy objective of not having tobacco products on display or advertised to the general public, while not imposing disproportionate costs on this specialist trade.

Health Bill 2009

- 3.2 The Health Bill replaces the existing ‘blanket’ exemption from the prohibition on tobacco advertising for specialist tobacconists in TAPA, with a power to provide for an exemption by regulations.
- 3.3 The Health Bill prohibition on displaying tobacco products applies to specialist tobacconists. However, it is proposed to make regulations to exempt specialist tobacconists, subject to certain requirements, from the general prohibition.

Intention of proposed regulations

- 3.4 The Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2013 are proposed to set out arrangements for specialist tobacconists.
- 3.5 These regulations make provision for both display and advertising of tobacco products in respect of specialist tobacconists. There are a number of reasons why the Government considers that specialist tobacconists warrant particular treatment. Firstly, there are few of them: we understand from the Association of Independent Tobacconists that there are around 45 shops in England. Secondly, they do not generally attract children or young people as customers, nor do they generally encourage impulse purchases of tobacco products. Therefore, the scope for specialist tobacconists to have a significant influence on the behaviour of young people or the wider smoking population is limited. Thirdly, as over 50% of their sales must be from specialist products and smoking accessories, a full prohibition of display is likely to have a significantly greater effect on specialist tobacconists and be more burdensome than for other retailers. The regulations propose to allow the display of tobacco products within specialist shops, provided that such displays cannot be seen by the public from outside the shop.
- 3.6 For the same reasons, Section 6 of TAPA currently allows specialist tobacconists, to advertise specialist tobacco products, provided that the advertisements comply with specific requirements in the regulations. The Government’s overall aim is to remove all unsolicited promotion or advertising of tobacco but it is mindful of the need to take a proportionate approach. It would be inconsistent to continue allowing advertising of tobacco products outside of specialist tobacconists when no other business can display or advertise in areas visible by the public.

However, given the particular circumstances of specialist tobacconists, the regulations propose to allow advertising to continue inside the specialist shops, provided that it cannot be seen by any members of the public who have not chosen to enter the shop.

- 3.7 In practice, this will mean that only people who choose to go into a specialist tobacconist will see tobacco displays and tobacco advertisements. The Government decided that it would not be justified to impose an age restriction on entering specialist tobacconists. However, there is no exemption from the law on underage sales: customers must be 18 years of age or over to buy any tobacco products from any retailer.
- 3.8 **Commencement:** The regulations would come into force on 1 October 2013.
- 3.9 **Advertising:** Advertisements will only be allowed within the store and must not be visible from outside the store. In practice this means that there cannot be any advertisements in the window of the store or on the outward-facing division wall if the specialist tobacconist is a shop within a larger shop. Each advertisement must include a health warning and health information which complies with the specifications laid out in the regulations.
- 3.10 **Displays:** Specialist tobacconists may display tobacco products within their store as long as the products are not visible from outside. This also means that tobacco products cannot be visible in the larger shop if the specialist tobacconist is a shop within a shop.

Impact assessment

- 3.11 Please see the impact assessment at Appendix A on the impact of regulating on displays of tobacco products, which includes the costs to specialist tobacconists. Stakeholder feedback on the impact assessments in this consultation is welcome.

Views are invited on the following questions

12. Do you believe that specialist tobacconists should be allowed to display and advertise tobacco products in the ways set out in the proposed regulations, given the nature of their business?

(If 'No', please describe how you would amend the regulations in regard to display and advertising by specialist tobacconists.)

13. Do you believe that these proposed regulations set out an effective and workable approach for specialist tobacconists?

(If 'No', how do you think it might be possible to amend the regulations so that they are effective and workable for specialist tobacconists?)

14. Do you believe that these proposed regulations are enforceable?

(If 'No', how do you think it might be possible to amend the regulations so that they are enforceable?)

15. Do you have any other comments on the proposed regulations?

(If 'Yes', please write your comments in the pro forma provided.)

Proposed regulations

STATUTORY INSTRUMENTS -

PUBLIC HEALTH, ENGLAND

Tobacco Advertising and Promotion (Specialist - Tobacconists)(England) Regulations 2010 -

Made - - - - ***
Laid before Parliament ***
Coming into force - - *1st October 2013*

The Secretary of State, in exercise of the powers conferred by sections 6(A1), 7B(3) and 19(2) of the Tobacco Advertising and Promotion Act 2002(a), makes the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Tobacco Advertising and Promotion (Specialist Tobacconists)(England) Regulations 2010 and come into force on 1st October 2013.

(2) In these Regulations “the Act” means the Tobacco Advertising and Promotion Act 2002.

(3) These Regulations apply to England.

Advertising in specialist tobacconists

2.—(1) No offence is committed under section 2 of the Act if a tobacco advertisement—

(a) is in a specialist tobacconist;

(b) is not for cigarettes or hand-rolling tobacco; and

(c) complies with the requirements specified in the following paragraphs.

(2) A tobacco advertisement must not be visible from outside of the premises of the specialist tobacconist.

(3) Each advertisement must include an area in which are displayed—

(a) a health warning as specified in paragraph (4); and

(b) the following health information—

“NHS Smoking Helpline 0800 169 0 169”.

(4) The health warning must state—

(a) - in a case where not less than half of the area of an advertisement (“the advertisement area”) is used to advertise tobacco products which are intended to be smoked—

“Smoking kills” or -

“Smoking seriously harms you and others around you”; and -

(b) - in any other case— -

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

(a) - 2002 c.36. Sections 6(A1) and section 7B(3) were inserted by the Health Act 2009 (c.), sections 20 and 21.

and, for the purposes of this paragraph, the advertisement area excludes the area in which the health warning and health information is required to be displayed by paragraph (3).

(5) The health warning and health information required to be displayed under paragraph (3) must cover—

- (a) - in a case where the total area of the advertisement exceeds 75 square centimetres, an area of at least 22.5 square centimetres; and -
- (b) - in any other case, an area which is not less than 30% of the total area of the advertisement; -

and, for the purposes of this paragraph, the total area of an advertisement includes the area in which the health warning and health information is required to be displayed by paragraph (3). -

(6) The health warning and health information which are required to be displayed under paragraph (3) must be—

- (a) - indelible;
- (b) - legible;
- (c) - printed in black Helvetica bold type on a white background;
- (d) - in a font size consistent throughout the text which ensures that the text occupies the greatest possible proportion of the area specified for the health warning and health information; -
- (e) - in upper case and lower case type as used in the health information in paragraph (3) or, as the case may be, in the health warning in question in paragraph (4); -
- (f) centred in the area in which the text is required to be printed;
- (g) displayed parallel to the floor;
- (h) surrounded by a black border outside the area specified for the health warning and health information, which shall be not less than 3 millimetres and not more than 4 millimetres in width, which does not interfere with the text of the warning or information; and
- (i) irremovably printed on the advertisement or affixed to the advertisement by means of an irremovable sticker.

Display of tobacco products in specialist tobacconists

3. No offence is committed under section 7A(1)(a) of the Act by a display of tobacco products if the display is—

- (a) in a specialist tobacconist; and
- (b) not visible from outside of the premises of the specialist tobacconist.

Revocations

4. The Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations 2004(b) are revoked.

Signed by Authority of the Secretary of State for Health

Name
Minister of State
Department of Health

(a) - Section 7A was inserted by the Health Act 2009 (c.), section 21.
(b) - S.I. 2004/1277.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the display of advertisements for tobacco products and the display of tobacco products, subject to certain conditions, in specialist tobacconists. Specialist tobacconists are shops that sell tobacco products by retail more than half of whose sales derive from the sale of cigars, snuff, pipe tobacco and smoking accessories.

Regulation 2 enables the publication of advertisements for tobacco products, other than cigarettes or hand-rolling tobacco, in specialist tobacconists provided that the advertisement is not visible from outside of the premises and contains the required health warning and health information.

Regulation 3 enables the display of tobacco products, including cigarettes and hand-rolling tobacco, in specialist tobacconists. Tobacco products must not be visible from outside of the premises.

The Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations 2004 are revoked by regulation 4.

DRAFT

4. Limiting children's access to tobacco vending machines

Policy aim

- 4.1 To prevent young people under the age of 18 from using tobacco vending machines, while still allowing adults to buy tobacco from them.

Health Bill 2009

- 4.2 The Health Bill provides powers for the Secretary of State in England to make regulations to impose requirements on the sale of tobacco through vending machines or to prohibit them outright. The Health Bill proposes that regulations may impose requirements relating to the location and design, construction or operation of the machines, and that regulations must make it clear who is liable for any breach of the requirements.

Intention of proposed regulations

- 4.3 The Protection from Tobacco (Vending Machines) (England) Regulations 2010 are proposed to set out restrictions on tobacco vending machines.
- 4.4 The Government remains concerned about the number of underage people that can access tobacco from vending machines. However, rather than ban vending machines altogether, the Government is willing to test whether more effective legislation can be successful in eliminating underage purchases of tobacco from vending machines. However, if after two years of the new regulations coming into force access to tobacco by underage people has not been substantially reduced, the Government is committed to giving consideration to prohibiting tobacco vending machines altogether.
- 4.5 The proposed regulations require that:
- vending machines must be located so that they can be supervised by staff;
 - vending machines must be supervised by staff;
 - vending machines must only be activated by staff;
 - activation is by remote control, allows sales of only one product at a time and automatically switches off after five minutes if there is no sale; and
 - staff activation is dependent on an age check where appropriate.
- 4.6 The key element of the proposed regulations is that there must be contact between the customer and a member of staff, which would, in effect, ban self service. This in itself would deter some underage purchases but, more importantly, the mandatory contact would help to ensure that

staff carry out age checks where these are appropriate. We believe that this will help to motivate staff, managers and proprietors to carry out effective age checks, as well as enabling more effective enforcement action to be taken by local authorities.

- 4.7 The regulations do specify that vending machines should be activated by remote control, but the precise mechanism used by the remote control is not specified (for example they could be radio or infra-red controls). This flexibility is intended to enable the vending machine industry to develop their own methods to achieve cost-effective and practical solutions. Activation of a machine means, in effect, switching it on so that it is able to be used for the sale of tobacco.
- 4.8 The requirements of these regulations will not apply to retail vending machines. A retail vending machine is an automated unit holding cigarettes or other tobacco products pending sale by the staff. This type of machine is being used by some shops to store cigarettes and they have been used widely in the Republic of Ireland. Retail vending machines are not for use by members of the public.
- 4.9 **Timing:** These regulations come into force on 1 October 2011.
- 4.10 **Details of how the vending machines will be activated and where they will be located:** A vending machine must be located where it can be supervised by a member of staff during the opening hours of the premises. The vending machine must only be activated for use by a member of staff on request by an individual. The member of staff must take all reasonable steps to ensure that that individual is over the age of 18. If any of the requirements set out in regulation 3 are breached, then the manager of the premises would be liable.
- 4.11 **Design of vending machines:** The regulations propose that any tobacco vending machine supplied for use in England must be designed so that it is activated by remote control. Each activation of the machine must enable the sale of only one packet of cigarettes (or if not cigarettes then one tobacco product), and the machine must de-activate automatically after use or after five minutes (whichever is first). The liability for ensuring that vending machines in use comply with the design requirements will be with the owner of the machine. Regulation 5 ensures that machines newly supplied to premises in England also comply with the design requirements; liability in this case falls on the supplier of the machine. Once these proposed regulations have come into force in 2011, any vending machine in use must have these design features.

Impact assessment

- 4.12 The impact assessment on vending machine restrictions is included at Appendix B, and assesses the potential benefits of these regulations in terms of reduced costs to business. The impact assessment calculates the cost of the system suggested to the Department of Health by both the National Association of Cigarette Machine Operators, which represents most small vending machines operators in England, and Sinclair Collis, the largest machine operator in England. For both, their favoured approach is a radio-frequency remote-control system that requires machines to be activated for use by a member of staff using a remote control. Stakeholder feedback on the impact assessments in this consultation is welcome.

Views are invited on the following questions

16. Do you believe that these proposed regulations set out an effective and workable approach to reducing underage sales of tobacco from vending machines?

(If 'No', how do you think it might be possible to amend the regulations so that they achieve this aim?)

17. Do you believe that proposals for the remote control operation of vending machines will be effective?

(If 'No', how do you think it might be possible to amend the proposal so that it is effective? Please include other solutions on how vending machines should be operated if appropriate.)

18. Do you have any comments on the proposed requirements for the location and supervision of vending machines?

(If 'Yes', how would you amend the regulations on location and supervision?)

19. Do you have any comments on the proposals in the regulations on liability for the operation, location and design of vending machines?

(If 'Yes', how would you amend the regulations with respect to liability?)

20. Do you believe that these proposed regulations are enforceable?

(If 'No', how do you think it might be possible to amend the regulations so that they are enforceable?)

21. Do you have any other comments on the proposed regulations?

(If 'Yes', please write your comments in the pro forma provided.)

Proposed regulations

STATUTORY INSTRUMENTS -

CHILDREN AND YOUNG PERSONS

Protection from Tobacco (Vending Machines)(England) Regulations 2010 -

Made - - - - - ***

Coming into force - - - - - 1st October 2011

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 3A(1) to 3A(3) of the Children and Young Persons (Protection from Tobacco) Act 1991(a).

A draft of these Regulations was laid before Parliament in accordance with section 3A(8)(a) of that Act and approved by resolution of each House of Parliament.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Protection from Tobacco (Vending Machines)(England) Regulations 2010 and come into force on 1st October 2011.

(2) These Regulations apply in relation to England.

Interpretation

2.—(1) In these Regulations—

“activate” means to make a machine capable of use for the sale of tobacco and cognate expressions are to be construed accordingly;

“automatic machine” means an automatic machine for the sale of tobacco;

“member of staff” means a person employed or otherwise working on a premises (whether as or on behalf of a contractor, as a volunteer or otherwise) who—

(a) has control or is concerned with the management of the premises; or

(b) acts under the direction of the person who has control or is concerned with the management of the premises;

“premises” includes any place and any vehicle, vessel, hovercraft or moveable structure.

(2) For the purposes of these Regulations, premises are “open to the public” if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not.

Requirements in relation to the location and operation of vending machines

3.—(1) This regulation applies where an automatic machine is located in premises open to the public.

(2) An automatic machine must be located so that a member of staff is able to supervise it.

(a) 1991 c.23. Section 3A was inserted by the Health Act 2009 (c.), section 22.

(3) An automatic machine must be kept under the supervision of a member of staff during the hours that the premises are open to the public.

(4) An automatic machine must not be used if it does not comply with the requirements of regulation 4.

(5) An automatic machine must be activated only by a member of staff (“S”) in response to a request from an individual (“A”) aged 18 or over.

(6) S must take all reasonable steps to ensure that—

(a) - A is aged 18 or over; and

(b) - the automatic machine is only used by either—

(i) A, or

(ii) -a member of staff.

(7) For the purposes of paragraph (6), S is treated as having taken all reasonable steps to ensure that A is aged 18 or over if either—

(a) - from A’s appearance nobody could reasonably have suspected that A was aged under 18; or

(b) S asked A for evidence of A’s age and the evidence would have convinced a reasonable person.

(8) Any person who controls or is concerned with the management of the premises shall be liable if the requirements of this regulation are breached.

Requirements in relation to the design of vending machines in use

4.—(1) This regulation applies where an automatic machine is located in premises open to the public.

(2) An automatic machine must—

(a) require activation by remote control prior to use;

(b) enable the sale of a single product only after activation; and

(c) automatically deactivate within 5 minutes of activation if no sale is made.

(3) The owner of the automatic machine shall be liable if the requirements of this regulation are breached.

Requirements in relation to the design of vending machines being supplied for use

5.—(1) This regulation applies where an automatic machine is supplied, or offered for supply, for location in premises open to the public.

(2) An automatic machine must—

(a) require activation by remote control prior to use;

(b) - enable the sale of a single product only after activation; and

(c) - automatically deactivate within 5 minutes of activation if no sale is made.

(3) Any person who supplies or offers for supply an automatic machine shall be liable if the requirements of this regulation are breached.

Signed by authority of the Secretary of State for Health

Name
Minister of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose requirements in relation to the sale of tobacco from an automatic machine.

Regulation 3 imposes requirements in relation to the location and operation of automatic machines. A machine must be located so that it is able to be supervised by a member of staff and then kept under supervision. A machine that does not comply with the design requirements set out in regulation 4 must not be used. Staff must activate the machine only in response to a request from an individual aged 18 or over and take all reasonable steps to ensure that the machine is then only used by that individual or by a member of staff. Liability for a breach of any of these requirements will fall on the person who controls or manages the premises.

Regulation 4 imposes requirements in relation to the design of automatic machines located in premises open to the public. Machines must: require activation by remote control prior to use, enable the sale of a single product only after activation and automatically deactivate within 5 minutes of activation if no sale is made. If a machine does not have these design features the owner of the machine will be liable.

Regulation 5 imposes the same requirements in relation to the design of automatic machines supplied, or offered for supply, on or after 1st October 2011.

DRAFT

Partial impact assessments

The impact assessments for these regulations are attached in Appendices A and B, and we welcome views on these. As the Health Bill would impose a general prohibition of displays, the impact assessment in the case of removing tobacco displays compares the expected cost of implementing the full prohibition without any regulations with the expected lower costs achieved by the proposed draft regulations.

Appendix A: Consultation-stage impact assessment of regulations supporting the prohibition of the display of tobacco

Summary: Intervention & Options

Department /Agency: Department of Health	Title: Impact Assessment of regulations supporting the prohibition of the display of tobacco products	
Stage: Consultation	Version: Completed	Date: 29 September 2009
Related Publications: Consultation on the future of tobacco control 2008; the Health Bill 2009; Consultation on proposed tobacco control regulations in England under the Health Bill 2009.		

Available to view or download at:

<http://www.dh.gov.uk/tobacco>

Contact for enquiries: Hannah Tait

Telephone: 020 79721322

What is the problem under consideration? Why is government intervention necessary?

Tobacco displays have been shown to increase the likelihood of children taking up smoking, and to undermine quit attempts among people who smoke. The Health Bill (Lords) 2009 would bring in a prohibition on the display of tobacco products. These regulations would be needed to enable delivery of this policy and to minimise costs to retailers for implementation.

What are the policy objectives and the intended effects?

The primary objective is to ensure the removal of tobacco displays could be achieved, thereby reducing smoking uptake among children and supporting those people who smoke and want to quit.

The secondary objective is to minimise costs and burdens to retailers of implementing this policy.

What policy options have been considered? Please justify any preferred option.

1. Do nothing: allow the complete display prohibition contained in the Health Bill to commence without regulations, meaning any visibility of tobacco products including at the point of sale would be an offence.

2. Preferred option: use the regulation-making powers in the Health Bill to limit the general display prohibition, thereby allowing the practical selling of tobacco, recognising the different ways in which tobacco can be sold in different retailing environments, and allowing display and advertising of specialist products to continue within specialist tobacco shops.

Option 2 is preferred because it will reduce the costs to business of covering tobacco

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Three years after the date of implementation of the policy, expected to be October 2014. Central funding would be made available for the collection and evaluation of relevant data.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Gillian Merron
Minister of State for Public Health

Date: 5 October 2009

Summary: Analysis & Evidence

Policy Option: 2	Description: Draft regulations as detailed in the 'Consultation on tobacco displays and vending machines, 2009'
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'		
	One-off (Transition)	Yrs	Option 2 has no costs as the regulations would reduce the cost of compliance, when compared with the cost of the complete prohibition of tobacco displays required by the Health Bill 2009.	
	£ 0		NB the table in paragraph 5 shows the comparison with the cost of prohibition with regulations	
	Average Annual Cost (excluding one-off)		Total Cost (PV)	£ 0
	£ 0		Other key non-monetised costs by 'main affected groups' one-off compliance costs for specialist tobacconists and bulk tobacconists (airside duty free shops and cash-and-carry stores)	

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'		
	One-off	Yrs	one-off: savings from lower compliance costs proposed regulations; annual: time savings of serving customers to both retailers and customers, and to retailer for stock-taking and re-stocking	
	£ 266 million	3		
	Average Annual Benefit (excluding one-off)		Total Benefit (PV)	£ 659 million
	£ 50.5 million		Other key non-monetised benefits by 'main affected groups' one-off: savings to specialist tobacconists with almost complete exemption from prohibition of tobacco displays, savings to bulk tobacconists and airside duty-free shops with tobacco display areas; annual: saved income by maintaining customer base	

Key Assumptions/Sensitivities/Risks risk of increased theft due to distracted staff members retrieving tobacco items from covered displays; a reduction in health benefits due to some visibility of tobacco during sales

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ N/A	NET BENEFIT (NPV Best estimate) £ 659 million
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What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		October 2011		
Which organisation(s) will enforce the policy?		Trading Standards		
What is the total annual cost of enforcement for these organisations?		£ N/A		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		Yes		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase – Decrease)		
Increase of	£	Decrease of	£	Net Impact £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

INTRODUCTION

Scope of this paper

1. This paper sets out the net positive economic impact of the draft regulations on tobacco displays in England, under the Health Bill 2009, which have been cleared by the Minister of State for Public Health and are being published for consultation.
2. The original Impact Assessment for the Health Bill considered the costs and benefits associated with removing tobacco displays and anticipated there would be regulations allowing cost-effective solutions which take account of different types of tobacco retailers. Since the Health Bill proposes a complete prohibition on display, this IA reviews only the impact of the draft regulations, comparing the cost associated with removing tobacco displays with and without regulations. Costs are estimated on the basis of consultation with stakeholders and those with experience in removing tobacco displays.
3. It is expected that a prohibition with the proposed regulations in place would not incur any fewer health benefits than a complete prohibition on tobacco displays. This is discussed more fully in the specific Health Impact Assessment on page 55.

Summary

4. These draft regulations would secure the delivery of a prohibition on tobacco displays, whilst enabling retailers to continue selling tobacco to adults and taking account of different retailing environments. Specifically, the regulations would:
 - Enable retailers to make temporary, limited-size displays when selling tobacco to customers, providing for low cost solutions to be used in covering tobacco displays;
 - Enable specialist tobacconists (those whose sales comprise at least 50% specialist tobacco products, such as pipe tobacco and cigars) to continue advertising specialist tobacco products, and displaying all tobacco products inside their shops, provided neither are visible from outside the shop;
 - Enable bulk-tobacconists to display tobacco in designated tobacco display areas; and
 - Allow full, plain price lists for tobacco to be visible to all customers and a price list with images available to adults on request.
5. This IA compares the high cost of implementing a complete prohibition with the savings incurred by the proposed regulations. It therefore demonstrates a net saving of **£659 million** discounted over 10 years. A summary table is provided below:

	Cost: complete prohibition	Cost: prohibition with regulations	Savings incurred: benefit of regulations
Average Annual	£ 86.7 million	£ 36.2 million	£ 50.5 million
One-off	£ 293 million	£ 27.7 million	£ 266 million
10-year Discounted Total	£ 979 million	£ 319 million	£ 659 million

Summation of the paper

6. This paper sets out briefly;
 - The relevant background to the tobacco display provisions in the Health Bill 2009;
 - A short narrative describing the consultation process for the proposed regulations;
 - A detailed economic assessment of the costs and benefits of the draft regulations;
 - Further specific impact assessments undertaken; and
 - A technical appendix providing further details on the economic analysis undertaken.

Background to the tobacco display provisions

7. Tobacco smoking is the leading cause of preventable morbidity and mortality in England and is the leading cause of health inequalities. Tobacco displays are a form of tobacco promotion: evidence shows that they encourage young people to start smoking and undermine efforts to quit by prompting impulse purchases¹.
8. The Consultation on the future of tobacco control² considered whether there should be further controls on the display of tobacco to reduce unsolicited tobacco promotion to children and people trying to quit smoking. Three options were presented: to retain the status quo; to place some restrictions on displays such as limiting size or ways in which tobacco may be displayed; or to remove tobacco displays altogether.
9. The consultation report³ shows that there were 95,488 responses to the question on tobacco displays, with around 84% favouring stricter controls, the vast majority expressing a preference for option 3: complete removal of tobacco displays.
10. Many in the tobacco retailing trade, particularly smaller retailers and their representatives, were against further restrictions at all. Many retailers expressed concern about the cost of removing tobacco displays. Specialist tobacconists, in particular, felt they were likely to go out of business altogether if they were not allowed to display tobacco products, which, by legal definition, forms at least 50% of their sales.
11. On 9 December 2008, the Government announced they would be seeking a prohibition on tobacco displays⁴. The general prohibition and accompanying regulation-making powers were laid before Parliament in the Health Bill 2009, which was introduced to the House of Lords on 15 January 2009.
12. During the passage of the Health Bill through Parliament, the Government committed to delaying commencement of the prohibition on tobacco displays until October 2011 for larger stores, and until October 2013 for smaller stores.
13. The Department of Health has been working with trade representatives across the retail trade as well as enforcement officers to develop draft regulations for consultation on tobacco displays. Key stakeholders include: the Association of Convenience Stores (ACS); the British Retail Consortium (BRC); the National Federation of Retail Newsagents (NFRN); the Association of Independent Tobacco Specialists (AITS); the Imported Tobacco Products Advisory Council

1 For a review of the evidence, see the Health Bill Impact Assessment, available at:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_093305 and the Cancer Research UK report, available at: info.cancerresearchuk.org/images/pdfs/tobcon_pointofsalerreport

2 Department of Health (2008). *Consultation of the future of tobacco control*. Department of Health, London. Available at: www.dh.gov.uk/tobacco

3 Department of Health (2008). *Consultation on the future of tobacco control: consultation report*, Department of Health, London. Available at: www.dh.gov.uk/tobacco

4 <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm081209/wmstext/81209m0001.htm#08120943000015>

(ITPAC); World Duty-Free; Airport Operators Association (AOA); the UK Travel Retail Forum (UKTRF); Cost-Co; and the Local Authorities Coordinators of Regulatory Services (LACORS).

The consultation process for these draft regulations

14. Informal consultation with key stakeholders has helped to develop draft regulations taking account of the needs of business and enforcement officers and to ensure regulations are practical, enforceable, avoiding undue burdens on business or enforcement authorities and meeting the five principles of good regulation:
 - transparency
 - accountability
 - proportionality
 - consistency
 - targeted only at cases where action is needed
15. This Impact Assessment is published alongside a consultation paper detailing the draft regulations and consultation questions. The consultation will run from 12 October 2009 until 4 January 2010 and respondents will need to use the response proforma provided either in hard-copy or online.⁵
16. Following the consultation, the Department of Health will publish a report summarising responses and will consider whether any changes to the regulations are necessary. Regulations would be laid before Parliament as early as possible in 2010, allowing a long lead-in time for businesses to prepare before the anticipated commencement date of 1 October 2011. For the purpose of calculations in this document, a lead-in time of 18 months is assumed.
17. The Department will work with key stakeholders across the retail trade and enforcement officers to develop guidance for enforcement officers and businesses. It is intended that this guidance will be available in 2010 to support preparation for implementation and compliance.

⁵ Consultation on proposed draft tobacco control regulations under the Health Bill 2009 in England www.dh.gov.uk/en/Consultations/LiveConsultations/DH_106454

COSTS AND BENEFITS

18. The Impact Assessment that accompanied the Health Bill details the benefits of removing tobacco displays in terms of life years saved from a reduction in smoking prevalence. This results in a net benefit of £520m (range £45m to £975m), based on the lifetime health benefits arising from fewer young people starting to smoke over a ten year period.
19. This Impact Assessment considers the likely cost to retailers of a general prohibition of tobacco displays and then considers the benefit of each of the regulations in terms of lowering the cost implications. Each regulation produces a 'saving' to retailers compared to having no regulations at all, and this is counted as a benefit of the proposed regulations. The health benefits are not discussed until the specific health impact assessment.

Cost of a complete prohibition on tobacco displays

Complete prohibition on display – one-off costs

20. The original cost benefit analysis for removing tobacco displays was based on an estimate of £1,000 per store, average, to remove tobacco displays. There has been a great deal of debate during passage of the Bill of the actual cost of removing tobacco displays. Evidence from the Canadian experience of removing tobacco displays indicates the costs could be much lower than £1,000 for small retailers, whilst larger stores will have larger displays and other shops may choose more expensive solutions that better suit their retailing environment.
21. The estimate of £1,000 per store was based on the assumption that shops would be able to choose their own solution and that low-cost solutions that used existing gantries and allowed limited, temporary displays when serving customers would be permitted by regulations.
22. Assuming no regulations were introduced alongside the commencement of the general prohibition on tobacco displays, the cost of removing displays would be much higher than £1,000. Under the counter or overhead solutions would be appropriate solutions, allowing sales assistants to select products for a customer without revealing any tobacco to the public at all. Under the counter solutions, or placing tobacco in drawers could cost as much as £4,965 per shop according to the Association of Convenience Stores (ACS)⁶. This takes into account the cost of the unit, fitting, and installation. The British Retail Consortium estimate removing displays with a below the counter solution could cost between £2,500 and £10,000 per store depending on the size of display.
23. In this Impact Assessment, we therefore will estimate the cost of a complete prohibition of tobacco displays as £4,965 average per small store, and £7,500 average per larger store.
24. The convenience store magazine published the grocery retail structure on 29 May 2009⁷. This data indicates there are 66,732 shops selling tobacco in the UK, including convenience stores, petrol forecourts, supermarkets and superstores. With a population factor of 0.838, this scales down to 55,921 shops selling tobacco in England.
25. To avoid confusion, the Government has committed to defining small and large stores by the existing Sunday Trading Act 2004 distinction, that is, those stores greater than 280 square metres are considered large. This means shops will already know whether they would need to comply with the display prohibition by 2011 or 2013.

⁶ Association of Convenience Stores response to *Consultation on the future of tobacco control* 2008

⁷ The Convenience Stores *Grocery Retail Structure* 2009, May 29, 2009, pg.32

26. According to the grocery retail structure article, and applying the population scaling factor for England, the small/large distinction applies as follows:
 - 35,035 convenience stores – small
 - 7,241 petrol forecourts – small
 - 7,515 convenience stores – small
 - 6,130 supermarkets and superstores – large
27. This results in an estimated 6,130 larger stores and 49,791 small stores in England.
28. Taking the average cost per store as detailed at paragraph 21 and the estimated number of stores detailed at paragraph 25, and allowing larger retailers 18 months to comply, and smaller retailers 3.5 years to comply, this results in a potential one-off cost to put tobacco under the counter in shops of **£293 million**.

Complete prohibition on display – unquantifiable one-off costs

29. There are groups of retailers who sell tobacco in ways that are different to the high-street store. Removing tobacco displays in, for example, specialist tobacconists and bulk tobacconists, could be much more costly than in a high street shop, although exact costs are not known.
30. According to the Association of Independent Tobacco Specialists (AITS)⁸ removing tobacco displays in specialist tobacconists would result in closure of 95% of specialist businesses, which equates to approximately 45 shops in England. This is due to their estimated costs of between £1,000 and £200,000 per store. Although individuals who would lose their trade may retrain and contribute to the economy in other ways, the retraining of staff and the removal of businesses would incur costs over the ten year period.
31. There are further regulation-making powers in the Health Bill that allow the Minister to make exemptions to the tobacco advertising ban⁹ for specialist tobacconists to advertise specialist tobacco products. At present, advertising of specialist tobacco products (e.g. pipe tobacco and cigars) is permitted anywhere on the premises of a specialist tobacconists, including affixed to the outside of the premises. This would be inconsistent with removing all promotion of tobacco through displays in every other shop. If no regulations were used, specialist tobacconists would become subject to the comprehensive advertising ban meaning they would have to remove all adverts for specialist tobacco products, which would also incur some costs.
32. Finally, during consultation and the development of regulations, bulk tobacconists were identified as a group that would incur very high costs if they had to remove tobacco displays completely. Bulk tobacconists include airport duty-free sales and cash-and-carry stores. Such shops sell only bulk tobacco products, defined as a minimum carton of 200 cigarettes, and a minimum size of 250g of hand-rolling tobacco.

Complete prohibition of display – annual recurring costs

33. The following points relate to recurring annual costs. The emboldened cost estimates relate to when the policy is fully in force:
 - a. Different methods of serving customers could result in additional time taken to serve. A report by the Centre for Economics and Business Research (CEBR)¹⁰ cites a small study from Convenience Store magazine¹¹, finding that serving a product from under the counter took

⁸ Association of Independent Tobacco Specialists response to *Consultation on the future of tobacco control 2008*

⁹ Tobacco Advertising and Promotion Act 2002

¹⁰ Centre for Economics and Business Research (2008), 'A review of the Department of Health's regulatory impact assessment on banning point of sale display of tobacco undertaken by CEBR on behalf of the Tobacco Retailers Alliance'.

¹¹ '£100m staff costs for gantry changes'. Convenience Store, August 22 (2008), pp 4.

8.8 seconds (versus 4.37 seconds when serving from a gantry), citing a calculation of an additional 230 minutes per week per store. Given the number of cigarettes estimated to be sold in shops in England is 39 billion, this leads to 4.8 million hours lost to the customer per annum. Using a value of £5.13 per hour of leisure time, this gives a time-loss value to the customer of **£12.3 million per annum**¹².

- b. Additional time to serve customers is also a cost to the retailer, monetised at £9.15 wage rate. The 4.8 million hours are therefore equivalent to a cost of **£22.0 million per annum**¹³.
- c. There may be increased stock-taking and restocking time. The Convenience Store magazine article referenced in the CEBR report argues that a move to under the counter could add around 2.5 hours per week in stock-taking and restocking time. This is equivalent to a cost of **£66.5 million per annum**.

Complete prohibition of display – unquantifiable annual recurring costs

34. A number of issues raised by respondents to the *Consultation on the future of tobacco control* could give rise to an economic cost. For those issues listed below, no quantified evidence is available to estimate the impact on cost.
- a. Increased theft of stock: shop assistants may be distracted when retrieving tobacco products making casual theft easier, (particularly on petrol retailer forecourts), or 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.
 - b. Customer migration to larger stores: customers might believe that larger stores have a bigger product range. A full price and availability list will be visible in every shop detailing what products are sold. Furthermore, the legislation will come into force in large shops first, meaning customers will be familiar with the concept of choosing from a list rather than a display when the legislation comes into force in smaller shops. It is anticipated that most people who smoke will continue to buy their tobacco at the same shop that they are accustomed to.
 - c. Increased use of black market cigarettes: identification of counterfeit cigarettes requires handling and close examination by enforcement officers so whether or not they are on display is largely irrelevant to illicit trade.
 - d. Cost of replacement 'focal point' stock: this was also discussed but not quantified in the CEBR report. However, if a retailer chooses a solution that frees up the space that a tobacco gantry used to occupy, they may rearrange existing stock or purchase new stock to occupy that space. New stock will turn a profit when it is sold, otherwise the retailer would not choose to purchase it. The solution used in Canada provided new advertising space at the shop counter that could be sold, for instance, to promote food products.
 - e. Reduction in sales in airports: if airport duty-free sales were subject to a complete tobacco display prohibition, it is predicted that fewer customers would purchase tobacco resulting in losses to the income of regional airports. It is expected that these customers would purchase duty-free tobacco at the arrival airport resulting in a displacement of trade from English regional airports to airports in other, non-EU countries.
 - f. Any increase in the cost of enforcement visits: it may be that trading standards officers need to provide guidance to businesses to explain the new regulations, for example. The Government has committed to providing local authorities with ample funds to support implementation and evaluation of the new regulations.

¹² See technical appendix for further information

¹³ See technical appendix for further information

Summary of costs

35. In summary, we would have **one-off costs of £293 million** and annual costs of **£100.7 million per annum**, once the display prohibition was fully in force. Taking account of the staggered commencement between large and small retailers, there would be a 10-year discounted cost of **£979 million**.

Benefits of proposed regulations limiting the general prohibition on tobacco displays

Proposed Tobacco Advertising and Promotion (Display) (England) Regulations 2010. Regulation 4: permitting limited, temporary displays to serve customers

36. The proposed regulations that accompany this Impact Assessment permit a temporary display that is limited to 1,500 sq cm. This means that retailers can show a small amount of display when they are serving a customer. In practice, retailers would be able to keep their existing tobacco shelving and use simple, low-cost covers, avoiding the need for under the counter or overhead solutions.
37. Many shops in Canada took this approach by applying simple magnetic covers to existing tobacco shelving. This would allow solutions modelled on the Canadian approach to be used in England. Estimates from a company that supplied 85% of the Canadian market vary depending on the size of the gantry, the number of stores making a purchase and the quality of the installation. The estimates vary from £210 to £450 for an individual store with 25 square feet of display area, and £850 for a store with twice that display space¹⁴.
38. A report by ASH on point of sale displays of tobacco¹⁵ used 153 visits by trading standards to tobacco retailers across seven of the Government regions found that the smallest tobacco display area was 1 metre by 1.3 metres (approximately 18.17 sq ft). The largest display area was 1.9 metres by 3.6 metres (approximately 73.59 sq ft). However, over 90% of retailer visited had displays of less than 50 sq ft, and 65% had displays of less than 25 sq ft. It is therefore considered that small stores, on average, display at most 25 sq ft (approximately 2.25 sq metres) of tobacco and large stores, on average, display 50 sq ft (approximately 4.5 sq metres) of tobacco.
39. To ensure estimates of cost take into account all possible costs, we will use an estimate of £450 per small store, and £850 per large store. Compared to the cost of implementing a complete prohibition with no regulations, this results in a one-off benefit of **£266 million**.

Proposed Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010 (unquantifiable)

40. A complete tobacco display prohibition would likely result in the closure of almost all specialist tobacconists. The Health Bill provides regulation-making powers to control both advertising of specialist products and display of all tobacco products in specialist tobacconists.
41. At present, advertising of specialist tobacco products (e.g. pipe tobacco and cigars) is permitted anywhere on the premises of a specialist tobacconist, including affixed to the outside of the premises. This would be inconsistent with removing all promotion of tobacco through displays in every other shop.

¹⁴ Emails from 4 Solutions Display to the Department of Health and ASH – available at www.dh.gov.uk/

¹⁵ MacGregor Consulting Ltd. *Tobacco Advertising at Point of Sale – report to ASH*, available at http://www.ash.org.uk/ash_3xe9h0zo.htm

42. The proposed regulations would limit advertising of specialist products to specialist tobacconists where the adverts were not visible outside the shop. The regulations would also allow specialist tobacconists to continue displaying all tobacco products provided these displays were not visible outside the shop.
43. The effect of these regulations would therefore mean promotion of tobacco, through advertising and display, would only be visible to those people who have chosen to enter a specialist tobacconist.
44. There are approximately 45 specialist tobacconists in England and some have a voluntary entry restriction preventing children from entering the shop unaccompanied. Those people trying to quit smoking are unlikely to go into a specialist tobacconist shop. Therefore, by ensuring adverts and displays are only visible to those people who have chosen to enter a specialist tobacconist, the regulations effectively prevent unsolicited tobacco promotion, whilst also allowing specialists to continue trading.
45. Given the high cost to specialist tobacconists of implementing a complete prohibition on the display of tobacco products and a complete prohibition on the advertising of specialist tobacco products, the proposed regulations would result in a saving.

Proposed Tobacco Advertising and Promotion (Display) (England) Regulations 2010. Regulation 5: requirements on bulk tobacconists (unquantifiable)

46. During consultation and the development of regulations, airport duty-free sales and cash-and-carry stores were identified as selling tobacco in a different way to high street shops. It was decided that bulk-tobacconists should receive different regulatory treatment taking account of the nature of their business.
47. The regulations define a bulk-tobacconist as only selling tobacco in minimum 200 cigarettes per carton or 250g of hand-rolling tobacco. They may also sell specialist tobacco product in non-bulk quantities.
48. The regulations would allow bulk tobacconists to have a tobacco display area, provided the area only contained tobacco and the tobacco was not visible outside the area. This limits the promotion of tobacco through display to those people who choose to enter a tobacco display area.
49. Compared to the cost of implementing a full prohibition on tobacco displays, these regulations result in savings, as the cost of removing displays altogether would be higher than having a tobacco display area.
50. Therefore, providing regulations that apply different requirements for bulk tobacconists results in further savings.

All regulations – annually recurring savings

51. The following points relate to recurring annual savings. The emboldened estimates relate to when the policy has reached full implementation, allowing for some non-compliance. They assume a compliance level of 90%.
 - a. Different methods of serving customers could result in additional time taken to serve. The CEBR reported study, detailed at paragraph 33(c) considers the time implication of an under the counter solution. Since the regulations will enable other solutions that include maintaining the existing gantry, there will be less extra time needed to serve customers and so less time

lost to customers. An average transaction time increase of 2 seconds compared to current serving time is considered acceptable. This is 2.4 fewer additional seconds than the under the counter solution would cause, resulting in a saving of **£6.75 million**¹⁶.

- b. Less additional time to serve customers is also a saving to the retailer, monetised at £9.15 wage rate. The 1.0 million hours less are therefore equivalent to a saving of **£12.0 million per annum**¹⁷.
- c. The increased stock-taking and restocking time will be less with the regulations than a complete display prohibition. Compared to the additional 2.5 hours per week estimated by the CEBR report, the alternative solutions are expected to result in less than one additional hour per week. The reduction of 1.5 hours compared to the complete prohibition results in a saving of **£39.9 million per annum**.

All regulations – annually recurring savings (unquantifiable)

- d. Enabling airport duty-free shops to have a tobacco display area would allow tobacco sales to continue at similar rates to now, avoiding the cost of loss of sales.

Cost/Benefit Analysis

- 52. The proposed draft regulations therefore have a total one-off cost of **£27.7 million** and **£42.1 million per annum** once the regulations are fully in force. Taking into account of the staggered commencement between large and small retailers there would be a 10-year discounted cost of £320 million.
- 53. The costs of the proposed draft regulations are compared to the cost of a complete prohibition on display to show the savings attributed to the proposed draft regulations.
- 54. The proposed draft regulations therefore have a total one-off saving of £266 million and £58.7 million per annum once the regulations are fully in force.
- 55. Once the staggered commencement between large and small retailers is taken into account the proposed draft regulations have a 10-year discounted saving of £659 million.

	Cost: complete prohibition	Cost: prohibition with regulations	Savings incurred: benefit of regulations
Average Annual	£ 86.7 million	£ 36.2 million	£ 50.5 million
One-off	£ 293 million	£ 27.7 million	£ 266 million
10-year Discounted Total	£ 979 million	£ 320 million	£ 659 million

16 See technical appendix for further information

17 See technical appendix for further information

TECHNICAL APPENDIX

1. The following paragraphs outline more specifically how certain calculations within this impact assessment were performed.

Number of cigarettes sold in shops in England

2. The Tobacco Manufacturers Association state that in 2007 47 billion duty-paid cigarettes were consumed in the UK¹⁸. Scaling this down into England only terms (using a scaling factor of 0.838) yields 39 billion cigarettes consumed in England. It is estimated that shop sold cigarettes represent 99% of the overall cigarette market, meaning sales would account for 1.95 billion packs of 20 cigarettes per annum. This figure is then combined with an estimation of the average wage of sales assistants (see below), a valuation of the customer's leisure time and the estimated additional time to serve a customer. With these inputs, we calculate the time-cost of the regulations on retailers and customers from additional time serving the customer.

Valuing time

Retailers:

3. The 2007 Annual Survey of Hours and Earnings (ASHE) quotes a wage rate of £7.04 per hour for "sales assistants and retail cashiers."¹⁹ Uplifting this figure by 30% to take account of other costs of employment yields a wage rate of £9.15 per hour.

Customers:

4. The Department of Transport 'Value of travel time savings' gives an indication of the value of leisure time of £4.46 per hour at end-2002 prices, or £5.13 per hour in 2008/09 prices²⁰.
5. These estimates feed into calculations regarding the time-cost of the regulations on retailers in terms of both additional time serving the customer and additional stock-taking and re-stocking time.

18 See <http://www.the-tma.org.uk/uk-cigarette-consumption.aspx>

19 Gross hourly pay, Table 14.5a, Annual Survey of Hours and Earnings (2007).
See <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15187>

20 Using Department for Transport "Transport Analysis Guidance" and supplementing with estimates for increases in nominal GDP. See http://www.dft.gov.uk/webtag/webdocuments/3_Expert/5_Economy_Objective/3.5.6.htm

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	No

Annexes

SPECIFIC IMPACT TESTS

Competition assessment

1. There are potential competition impacts on two markets: tobacco retailers and manufacturers; and suppliers of tobacco shelving and covers.
2. Prohibiting tobacco displays would not directly or indirectly limit the number or range of suppliers. The proposed regulations would enable all suppliers to develop innovative solutions, promoting competition and encouraging lower-cost solutions to be developed.
3. Prohibiting tobacco displays and the proposed regulations would apply to all tobacco retailers (specialist tobacconists excepted), therefore not significantly raising the cost of some existing suppliers relative to others. The regulations also lower the cost associated with removing tobacco displays, thereby ameliorating any effect of increasing the cost of entering the market.
4. Prohibiting tobacco displays reduces the ability of retailers and manufacturers to advertise or promote their products, and as such may have a marginal effect on competition. However, these regulations will permit plain price list informing customers as to the products and prices available in any retailer, and all products will be affected in the same way.
5. Neither prohibiting tobacco displays nor the proposed regulations are likely to reduce the incentive to compete vigorously.

Small firms impact test

Development of regulations

6. During passage of the Health Bill through Parliament and development of regulations on tobacco displays, the Government Ministers met the Association of Convenience Stores and the National Federation of Retail Newsagents. Both of these retail groups represent smaller retailers, including newsagents and convenience stores.
7. Retail groups have been fully involved in the development of draft regulations, supporting understanding of the retail environment and the particular context for smaller shops.

Costs

8. Prohibiting tobacco displays will impact on small businesses due to the costs of compliance. During the *Consultation on the future of tobacco control* the Government welcomed cost estimates from a number of retail groups, including those representing smaller shops. Officials have worked with these groups to develop regulations that will reduce costs associated with removing tobacco displays.
9. An evidence-gathering trip by officials to Canada in October 2008 found a cost of approximately £550 per store. This cost was for a permanent solution of magnetic flaps attached to existing tobacco shelving. The flaps can be opened when the shop assistant needs to retrieve a pack of cigarettes. Further consultation with a Canadian company indicated costs could be lower in England, since Canadian shops tend to have larger displays. Estimates range from £210 to £495 for a small shop.

10. The Association of Convenience Stores raised the concern that smaller businesses would lose out to larger stores despite identical restrictions on display. They argue that customers would assume larger stores are more likely to carry their particular brand. Although there is no evidence of customer migration in Canada, the Government recognises that implementing new legislation may be harder for small shops. This is why smaller shops will be given an additional two years to comply with the regulations on tobacco displays. This will also enable more opportunity for advice, guidance and support to be given to smaller businesses.
11. Furthermore, due to the large potential demand, there is an economic incentive for manufacturers to innovate and develop solutions that are both attractive and cost-efficient. We would expect cheaper alternatives to be developed over time as happened in Canada and since small businesses will have a longer lead-in time they will have more opportunity to take advantage of these improvements.
12. In drafting regulations, we have attempted to enable cost-effective solutions, like those seen in Canada, to be developed. That is why regulations would allow a small area of display to be visible when serving a customer. This would enable shopkeepers to keep their existing tobacco shelving and apply simple covers that can be lifted when serving a customer, and avoids the need for under the counter or overhead solutions to be installed. In addition, specialist tobacconists, which tend to be small shops, will still be able to display their tobacco products, as long as they are not visible from outside the shop. This means changes to specialist shops will be minimal, limiting the cost of compliance to small businesses.

Timing

13. It is important to ensure a sufficient lead-in time for compliance. It is proposed that regulations would come into effect on 1 October 2011 for larger businesses, and 1 October 2013 for smaller ones. The distinction between large and small shops is based on the existing definition in the Sunday Trading Act 1994. Small shops that have no restrictions on Sunday opening hours are defined as those under 280 sq m/3,000 sq ft. Using this existing definition of small shops means shopkeepers already know when the legislation on tobacco displays will apply to them and minimises potential confusion.
14. Guidance would be made available well in advance following the example set by smokefree legislation, where we provided an online repository for all guidance and advice as well as sending packs of information to all relevant businesses. The DH will work with retail organisations and the Local Authorities Coordinators of Regulatory Services (LACORS) to develop guidance for enforcement officers and businesses. Guidance will also be made available through the businesslink website.
15. It will be important to provide support through Trading Standards, in terms of training and resources to support compliance, particularly for smaller businesses. As with smokefree legislation, we will fund this centrally during transition prior to the intended commencement dates to enable all businesses to implement any new obligations while minimising any associated burdens.

Health

16. It is not expected that a full prohibition without any regulations would incur any additional health benefits. Displays encourage children to take up smoking and undermine efforts of adults to quit because they encourage purchase of tobacco. They attract interest from customers, making them aware of a particular brand of product and suggesting emotional benefits from use of that product. They provide information through packaging of the product and price labels. Placing

displays at the point of sale further increases the likelihood of purchase. Finally, they suggest that smoking is a normal activity enjoyed by a majority of adults, whereas in fact only about 1 in 5 adults in England smoke regularly.

17. The proposed regulations would allow small, plain and temporary limited displays when a retailer serves a customer. It is not thought that this temporary view would not have the promotional power of a permanent, large and brightly lit display. However, no research has been conducted in Canada, where such small temporary displays are allowed despite a general display prohibition. It therefore remains a risk of the policy and will be assessed as part of the evaluation of impact to ensure maximum health benefits are achieved.
18. Tobacco display areas in bulk tobacconists will not have the same promotional power as existing displays because they will be seen by far fewer people, will be closed off from other products and will only contain bulk products, which are less appealing to children or those adults who are trying to quit.
19. Furthermore, although imposing a complete prohibition on tobacco displays could involve loss of tobacco sales to bulk tobacconists, it is anticipated most customers would simply purchase their tobacco elsewhere, leading to no additional health benefits. The majority of customers of cash-and-carry stores are retailers looking to sell the tobacco to customers, or individual adult customers who purchase in bulk for the saving. Cigarettes are now widely available online, meaning that many of these customers would likely turn to wholesale price cigarettes available on the internet, or to cheaper, illicit tobacco. For duty-free sales, customers may only purchase this tobacco if they are flying out of the EU, so these shops compete in an international market with many fewer restrictions on displays and advertising of tobacco. This means that any customers deterred from buying tobacco by the lack of display in English airports would simply buy the product from their destination airport instead.
20. Therefore, the health benefits associated with a prohibition on tobacco displays will remain the same with or without the proposed regulations. This is set out in detail in the Impact Assessment that accompanied the Health Bill. The total benefits for a 10-year horizon were based on a reduction of between 579 and 2,786 fewer people smoking per year, giving £400m to £1.93bn total benefit.

Age

21. The proposed policy is likely to impact differently on people on grounds of their age. Although the proposed policy is a population-wide policy, there is evidence that point of sale displays of tobacco have a particularly strong influence on children and young people. The proposed policy would also impact on adults and people of all ages who are trying to quit.
22. The differential impact of the proposed policy on children and young people would be a positive impact because it would help to reduce the uptake of smoking and smoking rates amongst this age group.

Race and ethnicity

23. The proposed policy is not likely to impact differently on people on grounds of their race or ethnicity. The proposed policy is a population-wide policy that will affect all people equally and does not differentiate on the grounds of race or ethnicity.
24. Some ethnic and racial groups have higher smoking rates than the general adult population, but the DH is not aware of any evidence that a tobacco display prohibition would impact differently on certain ethnic or racial groups.

Disability

25. The proposed policy is not likely to impact differently on people on grounds of disability. The proposed policy is a population-wide policy that affects all people equally and does not differentiate on grounds of disability.

Religion or belief

26. The proposed policy is not likely to impact differently on people on grounds of their religion or belief. The proposed policy is a population-wide policy that affects all people equally and does not differentiate on grounds of religion or belief.

Sexual orientation

27. The proposed policy is not likely to impact differently on people on grounds of their sexual orientation. The proposed policy is a population-wide policy that affects all people equally and does not differentiate on grounds of sexual orientation.
28. Smoking rates tend to be higher in among gay men and lesbians. However, the DH is not aware of any evidence that a tobacco display prohibition would impact differently on people of different sexual orientation. The policy may have a positive impact on young people who are homosexual, since the policy is expected to have a positive effect on younger people and young people who are homosexual may have higher smoking rates.

Gender, transgender

29. The proposed policy is not likely to impact differently on people on grounds of their gender or transgender. The proposed policy is a population-wide policy that will affect all people equally and does not differentiate on the grounds of gender or transgender.
30. Smoking rates tend to be higher among men and among people who are transgender. However, the DH is not aware of any evidence that a tobacco display prohibition would impact differently on people of different genders.

Human Rights

31. The proposed regulations allow the implementation of a prohibition on the display of tobacco in shops, whilst minimising the cost of implementation for this policy. We do not expect there to be any significant human rights impacts. There may be concern that prohibiting the display of tobacco at point of sale is a limit on freedom of commercial expression under Article 10 of the ECHR. However, freedom of commercial expression is treated as less significant than freedom of political expression and the protection of public health is a very important counter balance to unrestricted commercial expression. Member states have a certain margin of appreciation in assessing the necessity of an interference with commercial freedom of expression. The national authorities of member states are best placed to determine the right balance between the competing interests of freedom of expression and public health.
32. Furthermore, the regulations will permit a full plain price list allowing manufacturers and retailers to inform customers as to the products available and their prices.

Measuring the impact of the policy

33. The annual 'Smoking drinking and drug use among young people in England' survey (*The Information Centre*) measures smoking prevalence of young people aged 11 to 15. The General Household Survey measures the smoking prevalence of people aged 16 upwards.
34. From the results of these two surveys, it will be possible to measure the trends in smoking rates of children and young people, as well as the trends in smoking prevalence of the general adult population.
35. However, a multi-faceted response is necessary to effectively tackle tobacco use and a number of policies and initiatives to help reduce smoking prevalence will be active at any one time. Therefore, trends in smoking rates amongst young people and the adult population generally cannot be solely attributed to any one policy.

The DH is committed to implementing a full evaluation of the impact of removing tobacco displays, including: a measure on the smoking prevalence and associated health benefits; a measure of the impact on business, including costs of compliance; and an assessment of the overall contribution of the policy to future tobacco control.

Appendix B: Consultation-stage impact assessment of regulations restricting the sale of tobacco through vending machines

Summary: Intervention & Options

Department /Agency: Department of Health	Title: Impact Assessment of regulations restricting the sale of tobacco through vending machines	
Stage: Consultation	Version: Completed	Date: 29 September 2009
Related Publications: Consultation on the future of tobacco control 2008; the Health Bill 2009; Consultation on proposed tobacco control regulations in England under the Health Bill 2009		

Available to view or download at:

<http://www.dh.gov.uk/tobacco>

Contact for enquiries: Hannah Tait

Telephone: 020 7972 1322

What is the problem under consideration? Why is government intervention necessary?

Selling tobacco to people under the age of 18 has been against the law since October 2007, when the age of sale for tobacco was raised from 16 to 18. Latest available data show that 7.5% of children who smoke aged 11 to 15 usually purchase tobacco from vending machines, which are easily accessible to children because they are self-service meaning there are no age checks in place.

The Health Bill 2009 provides regulation-making powers to restrict or prohibit the sale of tobacco through vending machines. During passage of the Bill through Parliament, the Government committed to introducing requirements on vending machines by October 2011.

What are the policy objectives and the intended effects?

The primary objective is to prevent sales of tobacco from vending machines to people under the legal age of 18.

The intended effect is to reduce smoking uptake, prevalence and consumption among children and young people.

What policy options have been considered? Please justify any preferred option.

1. Do nothing: retain the status quo including the voluntary NACMO guidance on siting of vending machines.

2. Preferred option: introduce age restrictions mechanisms onto all tobacco vending machines.

Option two is preferred because it is considered the most likely to be effective in preventing underage sales and is favoured by vending machine operators.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Two years after the date of implementation of the policy, expected to be October 2013. Central funding would be made available for the collection and evaluation of relevant data.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Gillian Merron
Minister of State for Public Health

Date: 5 October 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Draft regulations as detailed in the 'Consultation on tobacco displays and vending machines, 2009'

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' one-off: costs of installing the age-restriction unit, including staff training costs; cost of implementing plan decals onto vending machines; annual: increased cost of machine servicing, cost of increased time to serve to staff and customers each year, lost duty revenue through reduced tobacco consumption
	One-off (Transition)	Yrs	
	£ 11.6m		
	Average Annual Cost (excluding one-off)		
	£ 5.6m to £ 20.1m		Total Cost (PV) £ 56.9 m to £ 176m
Other key non-monetised costs by 'main affected groups' Any increase in the cost of enforcement visits and/or guidance provided to local businesses by trading standards officers. The Government has committed to providing central funds to cover these costs.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' life years gained by each annual cohort of underage people who smoke due to a reduction in the number of cigarettes smoked per year of between 1.25 million to 5.25 million
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 8.5m to £ 42.9m		Total Benefit (PV) £ 70.4m to £352m
Other key non-monetised benefits by 'main affected groups' reduced morbidity arising from reduced cigarette smoking			

Key Assumptions/Sensitivities/Risks enforcement is 90% effective; firms given 18 months to comply; benefits range is due to uncertainty on exactly how many young people would be affected given that some may choose to acquire tobacco from other sources

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ 24.0m to £228m	NET BENEFIT (NPV Best estimate) £ 126 million
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What is the geographic coverage of the policy/option?		England	
On what date will the policy be implemented?		October 2011	
Which organisation(s) will enforce the policy?		Trading Standards	
What is the total annual cost of enforcement for these organisations?		£ N/A	
Does enforcement comply with Hampton principles?		Yes	
Will implementation go beyond minimum EU requirements?		Yes	
What is the value of the proposed offsetting measure per year?		£ N/A	
What is the value of changes in greenhouse gas emissions?		£ N/A	
Will the proposal have a significant impact on competition?		No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium Large
Are any of these organisations exempt?	No	No	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£	Decrease of	£
		Net Impact £	

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

INTRODUCTION

Scope of this paper

1. This paper sets out the net positive economic impact of the draft regulations on tobacco vending machines in England, under the Health Bill 2009, which are being published for consultation. This Impact Assessment is an updated version of that which accompanied the Health Bill.

Summary

2. These draft regulations would require tobacco vending machines to be operated in a manner that reduces the likelihood of underage sales. In particular, they would:
 - Require tobacco vending machines to be under the supervision of the premises staff and located so that this supervision can be achieved;
 - Require such machines to be fitted with a device that requires activation by premises staff, cannot be activated by a member of the public, and allows the sale of only a single cigarette packet per activation;
 - Clarify liability for breaches of regulations on tobacco vending machines; and
 - Remove all advertising and display of tobacco product on vending machines.
3. Consequently, the impact assessment demonstrates that vending machine regulations have a positive net benefit range of **£50.0 million to £358 million**, with a central estimate of **£204 million**, discounted over 10 years.

Summation of the paper

4. This paper sets out briefly;
 - The relevant background to the tobacco vending machine provisions in the Health Bill 2009;
 - A short narrative describing the consultation process for the proposed regulations;
 - A detailed economic assessment of the draft regulations' cost and benefits assessment;
 - Further specific impact assessments undertaken; and
 - A technical appendix providing further details of the economic analysis undertaken.

Background to the tobacco vending machines provisions

5. It is illegal to sell tobacco products to those under the age of 18; the age of sale for tobacco products was increased from 16 to 18 on 1 October 2007. Tobacco smoking is the leading cause of preventable morbidity and mortality in England and is the leading cause of health inequalities. Young teenagers are at a stage in their lives when they are particularly susceptible to trying new experiences while ignoring long-term risks, even when there is clear evidence of the dangers. It is therefore important to ensure the age of sale law is enforced in all places where tobacco is sold.
6. Tobacco vending machines are self-service meaning there is often no opportunity for anyone to check the age of customers. Although they represent only 1% of the overall tobacco market, a survey from 2008 found that vending machines were the usual source of cigarettes for 10% of children who smoked regularly¹.

1 Fuller, E. (2009). *Smoking, drinking and drug use among young people in England 2008*. NHS Information Centre, Leeds.

7. Of course children procure their cigarettes from a variety of sources and these are being addressed by other policies, such as the retailer sanctions for underage sales that came into force 1 April 2009.
8. The *Consultation on the future of tobacco control*² considered whether there should be further controls on the sale of tobacco from vending machines to restrict access by young people. Three options were presented: to retain the status quo; to place restrictions on machines to prevent underage access; or to remove tobacco vending machines altogether.
9. The consultation report³ shows that there were 82,722 responses to the question on vending machines, with over 90% expressing a preference for option 3: an outright ban of tobacco vending machines. Many in the vending machine trade, including the National Association of Cigarette Machine Operators (NACMO), were against any restrictions, but favoured some level of restriction over an outright ban.
10. Several local authorities provided evidence of underage sales from vending machines. Local authorities routinely use 'test purchasing' to ensure businesses do not sell age-restricted products, such as alcohol and tobacco, to children. Children attempt to buy an age-restricted product under the supervision of enforcement officers. Under LACORS guidance they should not lie or use fake identification so even basic practices of asking the age of customers would be effective in avoiding failure of a test purchase. The Local Authorities Coordinators of Regulatory Services (LACORS) conducted test purchases between October 2007 and April 2008. They found a failure rate (i.e. sales were made to children under 18) in 41% of test purchases on vending machines, with several councils reporting 100% failure rate.
11. On 9 December 2008, the Government announced they would be seeking powers to remove vending machines or require age restrictions to limit the easy access young people have to this source of tobacco⁴. These provisions have been laid before Parliament in the Health Bill 2009, which was introduced to the House of Lords 15 January.
12. The previous Impact Assessment, which accompanied the consultation paper and the Health Bill demonstrates that introducing requirements on vending machines is a more cost effective option than an outright ban, provided the requirements are at least 90% effective in preventing underage sales.
13. During passage of the Health Bill through Parliament, the Government committed to introducing requirements on vending machines by October 2011, and assessing their effectiveness over a period of two years. If underage sales from vending machines remain a problem, the Government is committed to using the power to ban them outright. The funding for this evaluation would be made available from central Departmental funds.
14. The Department of Health has been working with NACMO, LACORS, and trading standards officers to develop draft regulations for consultation on tobacco vending machines.

2 Department of Health (2008). *Consultation of the future of tobacco control*. Department of Health, London. Available at: www.dh.gov.uk/tobacco

3 Department of Health (2008). *Consultation on the future of tobacco control: consultation report*, Department of Health, London. Available at: www.dh.gov.uk/tobacco

4 <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm081209/wmstext/81209m0001.htm#08120943000015>

The consultation process for these draft regulations

15. Informal consultation with key stakeholders, including NACMO and LACORS, has helped to develop draft regulations taking account of the needs of business and enforcement officers and to ensure regulations are practical, enforceable, avoid undue burdens on business or enforcement authorities and meet the five principles of good regulation:
 - transparency
 - accountability
 - proportionality
 - consistency
 - targeted only at cases where action is needed
16. This Impact Assessment is published alongside a consultation paper detailing the draft regulations and consultation questions. The consultation will run from 12 October 2009 until 4 January 2010 and respondents will need to use the response proforma provided either in hard copy or online.
17. Following the consultation, the Department of Health will publish a report summarising responses and will consider whether any changes to the regulations are necessary. Regulations would be laid before Parliament as early as possible in 2010, allowing a long lead-in time for businesses to prepare before the anticipated commencement date of 1 October 2011. For the purpose of calculations in this document, a lead-in time of 18 months is assumed.
18. The Department will work with key stakeholders such as LACORS and NACMO to develop guidance for enforcement officers and businesses. This guidance will be available in 2010 to support preparation for implementation and compliance.

COSTS AND BENEFITS

Costs

19. According to NACMO data, there are around 57,934 cigarette vending machines in England, Wales and Northern Ireland. This Impact Assessment covers only England, so a population-based scaling factor derived from ONS mid-2007 estimates of 0.915 has been applied. This yields an estimate of 53,016 cigarette vending machines in England.
20. This Impact Assessment calculates the one-off costs associated with achieving compliance with each of the regulations. It then considers any annual recurring costs in terms of increased time serving customers and lost tax duty. Finally, it calculates the overall cost, assuming a compliance level of 90%, see the table below. Taking into account imperfect compliance and an 18 month lead-in time, a 10-year discounted cost of **£56.8 million to £176 million** is obtained.

Cost Description	Cost (fully incurred), £	Cost (adjusted for imperfect compliance), £
<i>One-Off:</i>		
Moving machines	39,750	35,800
Applying restriction units to machines (cost of unit, fitting and training)	11.9m	10.7m
Fitting plain decals	928,000	835,000
TOTAL	12.9m	11.6m
<i>Annual:</i>		
Additional maintenance for restriction units	994,000	895,000
Longer time to serve (customers and staff)	1.33m	1.20m
Lost tax duty (not including VAT)	4.3m – 21.6m	3.9m – 19.4m
TOTAL	6.6mn – 23.9m	6.0mn – 21.5m

Proposed Protection from Tobacco (Vending Machines) (England) Regulations 2010. Regulation 3: location of vending machine – one-off costs

21. The regulations require vending machines to be located in a position where staff are able to supervise the machine during premises hours.
22. NACMO have already produced guidance requiring all machines to be placed in sight of premises staff. They assert that their members do not supply machines to those premises that do not comply with this guidance. Sinclair Collis, a major vending machine operator in the UK, have replicated this guidance. However, some businesses still have machines out of sight of staff. Based on discussion with NACMO, it is estimated that 1% of machines would need to be moved to comply with regulations and that it would cost on average £75 per machine.
23. Moving machines results in a one-off cost of **£39,750**.

Proposed Regulations 4 and 5: age-restriction mechanism – one-off costs

24. Regulations require tobacco vending machines to be fitted with a device that meets the following requirements:
 - Requires activation for use by a member of staff;
 - Cannot be activated for use by a member of the public;
 - Automatically switches off if unused; and
 - Allows the sale of only a single packet per activation.
25. NACMO have developed a radio-frequency remote controlled system that can be applied to existing vending machines and that will satisfy the requirements of the regulations as drafted. The system operates as follows:
 - The vending machine is on standby but cannot be used until a member of staff activates it using a remote system;
 - The customer must ask to use the machine providing an opportunity for staff to request proof of age if needed;
 - Once staff are satisfied the customer is over 18, the machine is activated remotely;
 - The machine remains active until a sale is made or it “times out” after 4/5 minutes, allowing the customer to purchase only a single packet of cigarettes;
 - After selling a single packet of cigarettes the machine automatically switches off.

26. The system has a number of safe-guards to ensure underage sales are minimised:
 - The machine itself is located within sight of the staff allowing them to ensure it is the particular customer who requested to purchase tobacco who uses the machine, and to ensure no tampering occurs;
 - The radio-frequency code associates a single machine with a single remote control meaning each remote control cannot activate more than one machine;
 - The radio-frequency code is randomised and changes each time the machine is used, meaning it cannot be replicated;
 - Once the machine is activated, it can only be used for the next 4/5 minutes, after which time it switches off automatically, meaning it cannot be left on either purposely (to avoid staff needing to check ID) or mistakenly.
27. According to NACMO the cost of this system is approximately £150 per machine, taking account of the unit, delivery and fitting in each location. There is also a cost of £75 for training of staff to use the system.
28. Sinclair Collis, a large cigarette machine operator responsible for approximately 19,000 machines in England or 36% of the market, have also developed their own system and suggest a cost of £70 per unit plus labour costs per machine.
29. Both NACMO and Sinclair Collis have confirmed these devices can be fitted to existing machines, avoiding the need to replace all vending machines in England. They also confirm that this is their favoured approach to restricting vending machines. For the purpose of this document, the cost per existing machine has been estimated at £225 taking account of the comprehensive NACMO estimate and erring on the side of conservative caution.
30. Companies would have flexibility to choose or design their own system, provided they complied with regulations, as set out in the consultation document.
31. Using the figure of 53,016 tobacco vending machines in England, and a cost of £225 per machine, this would result in a one-off cost of **£11.9 million**.

Proposed regulation 9: Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010

32. Currently each vending machine displays a limited size image (known as 'decals') of each of the cigarette packs it contains for sale. This is provided for by regulation 5 of the Tobacco Advertising and Promotion Act 2004 (Point of Sale) Regulations 2004.
33. In line with the tobacco display regulations, detailed in the consultation document, these regulations would require the existing images of cigarette packs to be replaced with plain black and white decals displaying only the name of the brand and the number of cigarettes in a pack in a prescribed typeface and size.
34. NACMO have confirmed that the decals can be easily replaced as this is needed anyway to update machines when brands change. It is anticipated that operators will replace the decals when they fit the remote-controlled unit. This would result in additional time spent at each site, replacing decals, which has been estimated to cost £17.50 per machine.
35. This results in a one-off cost of **£928,000**.

All regulations: annual recurring costs

36. The following points relate to recurring annual costs. The emboldened estimates relate to when the policy has reached full implementation, allowing for some non-compliance.
- Fitting new equipment to existing vending machines will induce an additional maintenance cost per machine. NACMO estimate that each machine will require one service call every four years costing £75.00. The annual cost per machine therefore is £18.75. Using the figure of 53,016 tobacco vending machines in England, this would result in a cost of **£994,000 per annum**.
 - The regulations will impose a time cost on staff, who will now have to check identification for younger customers who wish to use the machine. It will also impose a time cost on customers themselves. Consider an average time cost of 15 seconds per transaction to both the staff member and the consumer. It is estimated that around 24.6 million packets of 16 cigarettes are sold from vending machines per annum. The additional time spent serving customers is therefore approximately 102,000 hours. Combining values for leisure time of consumers (£5.13 per hour) and working time of bar staff (£7.83 per hour)⁵, the time cost is valued at **£1.33 million per annum**.
 - There is some lost tax revenue associated with the reduced consumption set out in the benefits section, and the following calculations are consistent with it⁶. However, lost VAT is not considered, as would be transferred to spend on other products. Using current HMRC tax rates⁷ gives a figure of £3.77 taken as tax revenue per 16-pack sold. Using calculations from the benefits section, this is equivalent to £766 in tax revenue lost for each daily cigarette not smoked by a person who has started smoking. The benefits section is based on a total reduction of between 1.03 million and 5.2 million cigarettes per annum amongst the 60,000 young people who smoke. After allowing for the assumptions of efficacy of Government health expenditure this is equivalent to a tax shortfall of **£4.3 million – £21.6 million per annual cohort**.
 - Any losses resulting from lost sales to under-18s are excluded, since sales to these individuals are already illegal.
37. The following costs are not quantified; they are most unlikely to be significant enough to affect the overall cost/benefit analysis.
- Any increase in the cost of enforcement visits. It may be that trading standards officers need to provide guidance to businesses to explain the new regulations, for example. The Government has committed to providing local authorities with ample funds to support implementation and evaluation of the new regulations.
 - The regulations on liability clarify who is responsible for underage sales from vending machines resulting from breaches of the regulations, depending on why the sale was made. For those sales made as a result of a faulty machine or mechanism, the supplier would be responsible. For the location of the machine, the manager (or proprietor) of the premises would be responsible. All of these costs have been accounted for under one-off costs. For failure to carry out effective age checks either the member of staff, the manager or both, would be liable. Depending on staff turnover, there could be a need for ongoing training of staff to ensure appropriate age-checks are conducted on people wanting to buy tobacco.

⁵ See 'Technical Appendix' paragraph 3 for a full discussion.

⁶ See 'Technical Appendix' paragraphs 4, 5 & 6 for a full discussion.

⁷ HMRC Budget 2009 notes, BN85. See <http://www.hmrc.gov.uk/budget2009/notes-pdf.htm>

However, this training should already be in place since it is already illegal to sell tobacco to people under 18 and the additional time for serving is accounted for above.

Overall costs

38. The calculation of overall costs assumes that implementation increases linearly over time, from 0% at the beginning of the 18 months lead-in time to 100% at the end. Furthermore the cost calculation needs to take into account imperfect compliance and enforcement so the 100% implementation figure corresponds to only 90% compliance.
39. Overall, these regulations result in a one-off cost of £11.6 million (spread over 18 months), and an annual cost of £6.0 million to £21.5 million, once the regulations are fully in force.
40. The time loss and duty loss costs will not be fully incurred in the first 18 months because not all vending machines will be compliant, due to lead-in time. Taking this into account, a 10-year discounted cost of **£56.9 million to £176 million** is obtained.

Benefits

41. Restricting vending machines will reduce children's access to tobacco. While some children will continue to access tobacco from other sources, it is expected that making it harder to acquire cigarettes will result in some children not starting at all, and other reducing the amount they smoke.
42. The approach taken to measure the expected benefit of increasing the price of cigarettes is to estimate the corresponding fall in consumption, which gives an average benefit across all people who smoke. This Impact Assessment therefore starts by estimating the benefit of consuming one fewer cigarette per day.
43. The IA then considers the number fewer cigarettes consumed by young people if they no longer had access to tobacco through vending machines, assuming a compliance rate of only 90%. This gives an average benefit across all children, recognising that some children may not smoke at all whereas other may continue to smoke as much as before, simply buying cigarettes from another source. Finally, because we know some children will turn to other sources to acquire tobacco, the final benefits are given as a range between 10% and 50% of the total expected benefit.

Quantifying the monetised benefit of smoking one fewer cigarette per day

44. To calculate the benefit of a reduction in consumption among young people, it is first necessary to establish the benefit of smoking one fewer cigarette per day. First, the benefit calculations state the known benefit in discounted saved life-years for each young person who does not start smoking. The estimates are adjusted for the fact that people who smoke may quit the habit in the future anyway.
45. Assuming the mortality impact of smoking increases linearly from zero with each cigarette smoked per day, it is then possible to establish the benefit of smoking one fewer cigarette per day. *Smoking and drinking among adults, 2007* finds that the average number of cigarettes smoked per day is 14 for men and 13 for women. Using these values it is possible to calculate the number of life-years saved by smoking one fewer cigarette per day from a young age, taking into account the fact that the individual may quit in the future.

46. The male and female results are averaged to give an overall value. Smoking one fewer cigarette per day from a young age therefore gives a benefit of 0.12 life years gained, monetised at £5,800.
47. A detailed description of the calculations involved in reaching this value is provided in the Annex, including references for all sources of data. The values are discounted in line with Green Book principles and a standard £50,000 value per life year is applied to each.
48. The above calculations are argued to be conservative. For example, improvements in the quality of life from quitting smoking (or never starting to smoke) – such as avoiding the morbidity associated with various smoking-related diseases – are not taken account of in the above calculations. Other limitations of the analysis are also discussed in the appendix⁸.

Quantifying the benefits of regulations

49. The data presented in *Smoking, drinking and drug use among young people in England in 2008*⁹ states that for 12% of 11-15 year olds who smoke regularly, a vending machine is a usual source of tobacco products. However, respondents were allowed to specify more than one 'usual source', meaning that the responses sum to 218% (instead of 100%). Adjusting all responses proportionately, the 12% estimate is therefore adjusted downwards to 5.5%.
50. The health implications of a 5.5% average reduction in under-18s' cigarette consumption are now considered. *Smoking, drinking and drug use among young people in England in 2008*¹⁰ finds that 11-15 year olds who smoke regularly, smoke an average of 5.6 cigarettes per day. A 5.5% reduction in this figure would yield, on average, 0.31 fewer cigarettes per day. Note that this figure is an average; some children may completely stop smoking, whereas others may not reduce their smoking at all.
51. Consider the scenario in which this average reduction in daily cigarette consumption persists throughout the cohort's life. Using the estimates provided in the previous section, 0.31 fewer cigarettes per day can be quantified as 0.03 life years saved per person (monetised as £1,700).
52. Using a birth cohort size of 640,700 per annum and a smoking prevalence of 9.3% for 11-17 year olds (combining Information Centre and General Household survey data), 60,000 young people who smoke per year would be affected by the proposed policy. 2,000 life years would be saved per annum (i.e. per cohort), monetised at a total of **£102 million per annum**.
53. The final benefits are presented as a range of 10% to 50% of the figure presented in paragraph 51. This is because the valuation assumes that the reduction in the number of cigarettes consumed continues throughout the affected cohort's lifetime. It is likely that this will be the case for some individuals, particularly those who do not start smoking as a result of the difficulty of buying from vending machines. Other young people, though, may be very effective at finding alternative sources of cigarettes, reducing the policy benefits. It is important to note that other tobacco control policies aimed at young persons (for example retailer sanctions for underage sales and raising the age of sale) will limit this effect.
54. Of the 60,000 young people who smoke, this range implies a total annual reduction in cigarettes smoked by young people of between 670,000 and 3.4 million.

⁸ See 'Technical Appendix' paragraphs 11 & 12.

⁹ Fuller, E. (2009). *Drug use, smoking and drinking among young people 2008*, Information Centre, Leeds.

¹⁰ Fuller, E. (2008). *Drug use, smoking and drinking among young people 2007*, Information Centre, Leeds.

55. Overall, the estimated health benefits range £10.2 million to £51.0 million per annum. However, with the assumption of 90% compliance the above benefits are scaled down, yielding estimated **annual benefits of £9.2 million to £45.9 million** once the regulations are fully in force.
56. This is equivalent to **£70.5 million to £352 million** when discounted over ten years. These figures have been adjusted to take account of the fact that the policy is not fully in force until October 2011.

Cost/Benefit Analysis

57. Age restriction mechanisms therefore have a net benefit of **£24.0 million to £228 million**.
58. To take account of the likelihood that some of the children affected by this policy will find tobacco from other sources, the estimated health benefits of this policy were presented as a range of 10 to 50% of the possible benefits (see paragraphs 51 and 52). The central net benefit, calculated below, uses the midpoint of this range, 30%, to give a conservative estimate of the expected net benefit. This equates to a reduction in consumption of 0.092 cigarettes per day, compared to the possible impact of 0.31 cigarettes per day. This reduction is then scaled down to account for non-compliance and lead-in time. This gives a benefit value of £211 million discounted over 10 years.
59. The central cost estimate is consistent with those costs set out above, but uses a cigarette consumption reduction of 0.14 per day when calculating tax lost. This ensures consistency with the central benefit estimation.
60. The central net benefit estimate is therefore **£126 million** discounted over 10 years.

TECHNICAL APPENDIX

1. This Technical Appendix describes the method and data sources behind the estimation of:
 - a. Annual recurring costs, in particular:
 - Additional time cost to staff and consumers of vending machine regulations
 - Tax loss as a result of reduced cigarette consumption
 - b. The discounted number of life years saved for each young person who does not take up smoking. This is integral to the benefits calculation of this Impact Assessment.
2. To convert the above figures into a monetary value, a standard value of £50,000 per life year is applied. Both estimates take account of the fact that many people who smoke quit during their lifetime, reducing the expected number of life years lost from starting to smoke in the first place and reducing the expected number of life years gained by quitting today.

Costs – Annual recurring costs

3. **Time cost:** The regulations will impose a time cost on staff, who will now have to check identification for younger customers who wish to use the machine. It will also impose a time cost on customers themselves. Consider an average time cost of 15 seconds per transaction to both the staff member and the consumer. The Tobacco Manufacturers Association state that in 2007, 47 billion duty-paid cigarettes were consumed in the UK¹¹. Scaling this down into England only (using a population-scaling factor of 0.838) yields 39 billion cigarettes consumed in England. As vending machines account for 1% of the cigarette market, 393 million cigarettes, equivalent to 24.6 million packets of 16 cigarettes, would be sold from vending machines per annum. The additional time spent serving customers is therefore approximately 102,000 hours.

11 See <http://www.the-tma.org.uk/uk-cigarette-consumption.aspx>

The Department of Transport 'Value of non-working time' gives an indication of the value of leisure time of £4.46 per hour at end-2002 prices, or £5.13 per hour in 2008/09 prices¹². The Annual Survey of Hours and Earnings (ASHE) states that in 2007, the mean wage of bar staff was £6.02¹³, or £7.83 when uplifted by 30% to include other costs of employment. Combining these rates to value the additional time cost produces a figure of **£1.32 million per annum**.

4. **Duty loss:** There is some lost tax revenue associated with the reduced consumption set out in this Impact Assessment. Tax revenue is a transfer of benefit from people who use tobacco to the community (the Exchequer). To the extent that people who smoke may no longer buy as much tobacco, part of this transfer ceases – there is no offsetting gain to the consumer themselves or to the Exchequer, so the lost duty represents an economic cost. Lost VAT is not considered, as this will likely be offset by increase expenditure on other VAT eligible products.
5. The tax lost calculation for costs is consistent with the benefits calculation, adjusting for the fact that some people who smoke quit during their lifetime. This reduces the estimated tax loss associated with having fewer people taking up smoking. An average price of £6.20 per 16-pack is used alongside the current specific duty rate of £114.31 per 1,000 cigarettes, and the current ad valorem rate of 24%. This gives a figure of £3.77 per 16-pack sold. As in the benefits section, the calculation is based on an average consumption of 14 cigarettes per day for men and 13 per day for women¹⁴. The same quit age bands are used, including the band of 'under 35'. In each quit age band, people who smoke are modelled to quit in the middle of the age band (for example, those quitting between the ages of 35 and 44 are modelled to no longer smoke when they reach age 40). Those quitting in the 'under 35' band are modelled to no longer smoke when they reach the age of 26 (a middle figure that is based on starting at age 16), and those in the 'over 65' quite age band are modelled to smoke until death. Tax revenues for each quit age band are then weighted by the estimated percentage that quits in that age band (see technical appendix table 1). The result is a loss of £10,300 per person who does not start smoking, averaged across the sexes. Given an average consumption of 13.5 cigarettes per day across men and women, this is equivalent to £766 per daily cigarette not smoked by a person who has started smoking. The benefits section is based on a reduction of 0.047-0.236 (10-50% of 0.47) cigarettes per day amongst the 60,000 young people who smoke. The total reduction in cigarettes per day in this group is therefore estimated at being between 2800 and 14,000, and up to between 1.03 million and 5.2 million fewer cigarettes per annum. After allowing for the assumption that regulations will yield only 90% of these benefits, due to imperfect compliance and enforcement, this is equivalent to a tax shortfall of £2.0 million to £9.8 million per annual cohort.
6. It is noted that whilst the NICE budget threshold is £20,000 to £30,000, recent literature suggests a value per life year of £50,000. At the margin, one pound of extra Government health expenditure therefore gives two pounds of benefit. Reductions in tax revenue are therefore doubled in the net benefit calculation, to take account of the monetised gains that could have been achieved with that revenue. The tax revenue loss is therefore equal to **£4.3 million – £21.6 million** per annual cohort in opportunity cost terms.

12 Using Department for Transport "Transport Analysis Guidance" and supplementing with estimates for increases in nominal GDP. See http://www.dft.gov.uk/webtag/webdocuments/3_Expert/5_Economy_Objective/3.5.6.htm

13 Gross hourly pay, Table 14.5a, Annual Survey of Hours and Earnings (2007). See <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15187>

14 ONS (2008), "Smoking and drinking amongst adults, 2007". Available at <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=5756>

Benefits – Quantifying life years saved from each young person who does not take up smoking

7. The following main sources of data are used:
 - a. General Household Survey (2006) source data; Used to identify the age distribution of people who smoke and the relationship between age and the percentage of people who smoke who have quit.
 - b. Doll, Peto, Boreham and Sutherland (2004), 'Mortality in relation to smoking: 50 years' observations on male British doctors' (*BMJ* 2004;328;1519); Reports the impact of smoking on mortality, split by age of quitting smoking (if applicable).
 - c. Office for National Statistics (ONS) period life tables, United Kingdom, 2005-07¹⁵; Reports population mortality estimates; used to transform the outputs of the doctors' study into life years saved.

8. The steps involved in the estimation are listed below:
 - a. **Identify an estimate of the percentage of people who have quit by each year of age.** Data from GHS (2006)¹⁶ is used here. The percentage who have quit increases at a fairly steady and constant rate as age increases. A linear relationship was therefore identified between age and the percentage of people who have quit. The results imply that 18.2% of 'people who have ever smoked' have already quit by age 16, with 1.05% quitting in each year thereafter up to age 94.

 - b. **Identify an estimate of the prevalence of smoking at each year of age.** Data from GHS (2006) is used here¹⁷.

 - c. **Identify an age distribution for the smoking population.** Again, data from GHS (2006) is used here¹⁸.

 - d. **Identify mortality data (by year of age) for people who do not smoke and for four categories of people who do smoke (as defined by quit age).** Mortality data are taken from Doll, Peto, Boreham and Sutherland (Table 5, 2004), which lists number of deaths per 1,000 people at ages 34-44, 45-54, 55-64, 65-74 and 75-84. (These are referred to below as the five age bands). This information is presented at each age band for lifelong people who do not smoke, as well as
 - (i) those who have quit between age 35-44,
 - (ii) those who have quit between age 45-54,
 - (iii) those who have quit between age 55-64, and
 - (iv) those who continue to smoke beyond age 65
 These categories of people who smoke are used throughout the calculations, and are referred to as quit age bands (alongside an 'age under 35' band). The data are converted into relative risks by dividing the number of deaths per 1,000 in each of these four categories by the equivalent number of deaths (i.e. the number of deaths in the same age band) for the lifelong people who do not smoke. The following formulae are then applied, which calculate mortality rates at each year of age (from 0 to 100) for people who do and do not smoke respectively.
 - Mortality of people who smoke at age $x = M (r / (pr + 1 - p))$
 - Mortality of people who do not smoke at age $x = M (1 / (pr + 1 - p))$
 - Where M is the mortality estimate from the ONS life tables for age x , r is the relative risk at age x , and p is the prevalence (expressed as a proportion) at age x .

15 Available at <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=14459&Pos=&ColRank=>

16 Variables 'age' and 'cigsmk1' were used – the latter identifies 'people who used to smoke', 'people who currently smoke' and 'people who have never smoked'. For each year of age, the percentage of people who smoke who have quit equals the number of 'people who used to smoke' divided by the sum of 'people who used to smoke' and 'people who currently smoke'.

17 Prevalence at each year of age was defined as the number of current people who smoke (as indicated by the variable 'cigsmk1') at each age, divided by the total number of individuals of that age in the sample.

18 The variable 'age' was used on the subset of respondents who currently smoke (as indicated by the variable 'cigsmk1').

- The above formulae are calculated for each year of age, for each sex and for each of the four categories of people who smoke, as the relative risks differ between quit age categories and population mortality differs between the sexes.
- e. Identify the number of life years lost (by year of age) for each combination of sex and the four categories of people who smoke. For each combination of quit age band and sex¹⁹, two life tables are calculated following the method of Chiang (1984)²⁰. One of the two life tables starts with the mortality figures for people who smoke and the other starts with the mortality figures for people who do not smoke (both for each year of age, and as calculated above). Each life table models a birth cohort of 100,000 children; one column in particular measures the total number of life years lived by the cohort for each year of age. For each year of age, the difference in this column between the two life tables is calculated and divided by 100,000 to convert the value into the expected number of life years lost per capita (for that age). The sum of these values across all years of age (from 0 to 100) equals the number of life years lost by the specified combination of quit age band and sex.
 - f. Discount the numbers of life years lost, as calculated in the previous step. As the life years lost occur in future years of the cohort's life, they should be discounted appropriately. The discount rates used are equal to Green Book rates minus 2%. The 'minus 2%' takes account of the fact that the monetary value per life-year (which is applied later on) can be expected to grow at the same rate as real economic growth. The 2% figure for this is taken from the Social Rate of Time Preference assumptions underlying the Green Book discount rates. The sum of the discounted numbers of life years lost at each year of age equals the discounted number of life years lost by the specified combination of quit age band and sex.
9. The results of these calculations are presented in the following table. The identified relationship between age and the percentage of people who smoke who have quit is used to calculate the percentages in the second column.

Table 1 – Results of benefit estimation

Quit age band	Percentage of smokers in this band	Change in life years lived for this band (discounted, male)	Change in life years lived for this band (discounted, female)
Under 35	38.2%	0.00	0.00
35 to 44	10.5%	-0.85	-0.66
45 to 54	10.5%	-2.75	-2.34
55 to 64	10.5%	-3.48	-3.03
65 or over	30.2%	-4.49	-4.15

10. The benefit (in discounted life-years) for each child who does not take up smoking is estimated as follows:
- a. A weighted average of the number of life-years saved for male children is calculated, with the percentage of people who smoke who quit in each quit age band being used to weight the life expectancy penalties for those bands.
 - b. A similar weighted average is calculated for female children.
 - c. The resulting male and female estimates are then downscaled to 78% and 72% of their calculated value respectively. This reflects the fact that the median doctor from the doctors' study smoked 18 cigarettes per day, whereas current averages for men and women are

19 For example, one combination considers male people who smoke who quit between the ages of 35-44.

20 Chiang CL (1984), "The Life Table and its Applications", Malabar (FL): Robert E Krieger Publ Co

lower:14 and 13 respectively (GHS 2007²¹). People who smoke currently can therefore be expected to experience less harm.

d. The resulting downscaled estimates are then monetised with a value of £50,000 per life year.

11. **Therefore: Benefit for each child who does not take up smoking:**

- a. Males: 1.63 life years, i.e. £81,623
- b. Females: 1.36 life years, i.e. £67,879

12. Subsequently, dividing by the average number of cigarettes smoked each day for men and women, the benefit of one fewer cigarette per day is:

- a. Males: 0.12 life years, i.e. £5,830
- b. Females: 0.10 life years, i.e. £5,221

13. For the following reasons, the benefit estimates described above are conservative:

- a. They do not take account of the improved quality of life that results from quitting smoking. For example, a person who stops smoking may escape diseases that reduce their quality of life as well as reduce their life expectancy (such as chronic obstructive pulmonary disease).
- b. It is assumed that no harm is incurred by smoking over the age of 84. There is likely to be some harm here (which would increase the measured benefits if counted), but there is a lack of precise data. In any case, as the cohort is fairly small by this age, the results are not particularly sensitive to this assumption. Even assuming that the relative risk for those aged 84 also holds for those who are aged 84 and over, the discounted 'child who does not start smoking' benefits only increase by less than 5%.
- c. It is assumed that no harm is incurred by smoking under the age of 35. Again, there is likely to be a benefit from not smoking at this age, but there is a lack of precise data.
- d. It is assumed that quitting after the age of 65 yields no health benefit. There is also likely to be a small benefit here, but again, there is a lack of precise data.
- e. The estimates do not take account of the fact that the resulting reduced smoking prevalence would reduce demand for stop-smoking goods and services. The economic resources saved could be used for other purposes.

14. Other limitations of the estimate include:

- a. It is assumed that the same smoking mortality impacts hold for both men and women. The Doll, Peto, Boreham and Sutherland (2004) study only covers male doctors.
- b. It is assumed that the average daily number of cigarettes smoked throughout life is linearly related to the number of life years lost. The relationship is unlikely to be perfectly linear in practice.
- c. The Doll, Peto, Boreham and Sutherland (2004) study does not explicitly adjust for confounding factors, although it does control for social class, given that its sample consists only of doctors. For example, if people who smoke are also more likely to drink heavily, this may exaggerate the mortality impact of smoking. However, a similar cohort study (based in The Netherlands)²² does adjust for a long list of confounding factors, including socioeconomic status, alcohol use and body mass index. The authors conclude that adjusting for confounding factors reduces the estimated number of (undiscounted) life-years lost due to smoking by half a year. This is a fairly small effect given that the estimated life expectancy

21 ONS (2008), "Smoking and drinking amongst adults, 2007", Page 9.
Available at <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=5756>

22 Streppel, Boshuizen, Ocke, Kok and Kromhout (2007), "Mortality and life expectancy in relation to long-term cigarette, cigar and pipe smoking: the Zutphen Study", *Tobacco Control* 2007;16:107-113. The Zutphen Study, based in Zutphen, The Netherlands, covers 1,373 men born between 1900 and 1920 and studied between 1960 and 2000.

loss to people who smoke (including the adjustment for potential confounders) is still equal to seven years. Given that the estimates presented in this annex are discounted and take account of future quit propensities, any reduction to take account of confounding factors would be considerably less than half a life year.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	Yes	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	No

Annexes

SPECIFIC IMPACT TESTS

Competition assessment

1. The draft regulations would not directly limit the number or range of suppliers for units that would comply.
2. However, the draft regulations may indirectly limit the number or range of suppliers because they would increase the cost of entering the market, due to the need to purchase age restriction hardware for each vending machine that the proposed entrant plans to operate.
3. The regulations would not limit the ability of suppliers to compete.
4. The regulations would not limit the incentive for suppliers to compete vigorously.

Small firms impact test

Consultation

5. The proposed options are likely to impact upon small businesses as there would be costs in complying with the regulations. Throughout development of the proposal, the consultation and development of the regulations, the Government has engaged with, and received cost estimates from, the National Association of Cigarette Machine Operators (NACMO), which represents small vending machine operators.
6. During the *Consultation on the future of tobacco control*, consultation responses were received from NACMO, Sinclair Collis and from a small number of individual vending machine operators.

Timing

7. The Government's aim is to lay final regulations before Parliament in early 2010 to give a long lead-in time for businesses to prepare, ideally a minimum of 18 months, before the commencement date of 1 October 2011.
8. The Department of Health will continue to work with NACMO and other interested stakeholders such as the Local Authorities Coordinators of Regulatory Services (LACORS) to develop guidance for enforcement and to support compliance by business. Guidance will be made available through trading standards officers, NACMO and through the businesslink website.
9. It will be important to provide transitional support through Trading Standards, in terms of training and resources to support compliance, particularly for smaller businesses. As with smokefree legislation, we intend to fund this centrally during transition to enable all businesses to implement any new obligations while minimising any associated burdens. Restrictions on vending machines will help businesses to avoid selling cigarettes illegally to people under 18.

Health

10. The proposed policy may result in a reduction in the number of cigarettes smoked by under-18s. As stated (and quantified) in the cost-benefit analysis above, this reduction would have a beneficial impact on the health of the population by reducing the incidence of smoking related mortality. It may also have a wider impact on the general well-being of the population by

children taking less time off school and adults taking less time of work due to smoking-related illness.

Age

The proposed policy is likely to impact differently on people on grounds of their age.

Age restriction mechanisms should prevent children and young people under the legal age of sale of tobacco (i.e. under 18 years old) from accessing tobacco from vending machines. This age restriction will not affect adult smokers who will still be able to access tobacco from this source.

The differential impact of the proposal policy on young people under the age of 18 years would be a positive impact because it would help to reduce smoking levels amongst this age group. Furthermore, in the future, fewer young people taking up smoking will result in improved health for older people.

Race and ethnicity

The proposed policy is not likely to impact differently on people on grounds of their race or ethnicity. Age restricting tobacco vending machines would not have a differential impact on people aged 18 and over on the grounds of their race or ethnicity because adults would still be able to purchase tobacco from vending machines. The policy is population-wide and will affect all people who smoke equally; it does not differentiate on the grounds of race or ethnicity.

Some ethnic and racial groups have higher smoking rates than the general adult population. However, there is no evidence of certain ethnic or racial groups purchasing their tobacco from vending machines more frequently than the population as a whole.

The survey used for establishing the smoking prevalence of young people aged between 11 and 15 years (the 'Smoking, drinking and drug use in England' survey – The Information Centre) does not collect data on the smoking rates of various ethnic and racial groups. It is therefore not possible to assess whether the proposed policy of either prohibiting or restricting the sale of tobacco from vending machines will impact differently on people under the age of 18 years on grounds of race or ethnicity.

There is also no evidence available on whether smokers in certain ethnic or racial groups under the age of 18 years access vending machines more frequently than other ethnic or racial groups. In any event, any impact will be a beneficial impact by reducing the rates of smoking and the uptake of smoking within that racial or ethnic group.

Gender, transgender

The proposed policy is not likely to impact differently on people over the age of 18 years on grounds of their gender or transgender for the same reasons set out in more detail above in relation to age, ethnicity and race. Briefly, there is no evidence of one gender or transgender purchasing tobacco from vending machines more frequently than another gender or transgender. Age restriction mechanisms on tobacco vending machines would not affect adults who smoke. If there were a prohibition on the sale of tobacco from vending machines, people who smoke could purchase their tobacco from alternative sources.

However, the proposed policy is likely to impact differently on people under the age of 18 years on grounds of their gender. Girls aged 11 to 15 years are more likely to be regular smokers than boys in the same age group. Therefore, a proposed policy that restricts access to tobacco for people under

the age of 18 may affect more girls than boys. However, this differential impact will be a beneficial one in helping to reduce smoking levels amongst young people, in particular young females.

Disability

The proposed policy is not likely to impact differently on people on grounds of disability. The proposed policy is population-wide affecting all adults who smoke equally and does not differentiate on grounds of disability.

Religion or belief

The proposed policy is not likely to impact differently on people on grounds of their religion or belief. The proposed policy is population-wide affecting all adults who smoke equally and does not differentiate on grounds of religion or belief.

Sexual orientation

The proposed policy is not likely to impact differently on people on grounds of their sexual orientation. The proposed policy is population-wide affecting all adults who smoke equally and does not differentiate on grounds of sexual orientation.

Smoking rates tend to be higher in among gay men and lesbians. The policy may therefore have a positive impact on young people who are homosexual, since the policy is expected to have a positive effect on younger people and young people who are homosexual may have higher smoking rates.

Human Rights

We do not expect there to be any significant human rights impacts.



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