

TOBACCO RETAILERS ACT (NORTHERN IRELAND) 2014

CONSULTATION ON DRAFT PROPOSED REGULATIONS

- **TOBACCO RETAILER (REGISTRATION AND DISPLAY OF NOTICES) REGULATIONS**
- **TOBACCO RETAILER (FIXED PENALTY) (AMOUNT) REGULATIONS**
- **TOBACCO RETAILER (FIXED PENALTY) (GENERAL) REGULATIONS**

July 2015

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Annex C Tobacco Retailer (Fixed Penalty) (Amount) Regulations (NI)

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PURPOSE

1. The purpose of this consultation is to seek the views of stakeholders and the general public on three sets of draft regulations coming out of the Tobacco Retailers Act (Northern Ireland) 2014.
2. The Tobacco Retailers Act completed its passage through the Northern Ireland Assembly in March 2014. A full copy of the Act can be found at <http://www.legislation.gov.uk/nia/2014/4/enacted>. In summary, the main provisions of the Act:-
 - require all tobacco retailers to register;
 - prohibit registration for 5 years following a conviction for a serious illicit tobacco offence;
 - allow for the application of tobacco banning orders by enforcement officers following 3 relevant tobacco offences within 5 years;
 - allow the period for a banning order to range from 28 days to 3 years;
 - create a number of new offences, including those relating to the register and the offence of proxy purchasing; and
 - allow for the application of fixed penalty notices for a number of offences.
3. The Department aims to have the main provisions of the Act, including the establishment of the tobacco retailer register, commenced by the end of 2015.
4. **The consultation will run from 9 July 2015 for 8 weeks. Information about how to respond is set out on page 7.** All responses received by 5pm on 4 September 2015 will be considered carefully and used to assist in finalising the regulations before they are made.

BACKGROUND INFORMATION

5. Smoking is the single greatest cause of preventable illness and premature death in Northern Ireland, killing around 2,300 people each year. In addition, a strong relationship exists between smoking and inequalities, with more people dying of smoking related illnesses in disadvantaged areas of Northern Ireland than in more affluent areas.
6. Preventing children from adopting the smoking habit is key to achieving the long-term aim of a tobacco-free society. Recent evidence shows that, in Northern Ireland, 71% of adult smokers took up the habit before the age of 18 and that 5% of children aged 11 to 16 years are current smokers. In order to help reduce youth smoking, DHSSPS introduced the Children and Young Persons (Sale of Tobacco etc) Regulations (Northern Ireland), from 1st September 2008, to increase the minimum age of sale for tobacco products from 16 to 18.
7. In 2012, the Department introduced further measures aimed at preventing children and young people from starting to smoke. They included banning the sale of tobacco from vending machines and banning the display of tobacco products at point of sale in large shops. This was extended to apply to all retail outlets from April 2015.

8. District Council Environmental Health Tobacco Control Officers carry out test purchasing exercises at various times to see whether children and young people under 18 are able to purchase cigarettes. In 2013/14, across many Councils, there were a substantial number of cases recorded where young people succeeded in buying cigarettes in this manner.
9. The primary policy objective which underpins the Tobacco Retailers Act is to prevent young people from taking up smoking by making it more difficult for those under the age of 18 to access tobacco products. The Act is also intended to assist authorised officers of district councils in carrying out their duties with regards to tobacco control by providing them with a central register of tobacco retailers in Northern Ireland.

REGULATIONS

10. This consultation document invites your comments on three sets of draft regulations which can be found at **Annexes B, C and D**. These are:
 - The Tobacco Retailer (Registration and Display of Notices) Regulations
 - The Tobacco Retailer (Fixed Penalty) (Amount) Regulations
 - The Tobacco Retailer (Fixed Penalty) (General) Regulations
11. The Registration and Display of Notices Regulations (**Annex B**) prescribe Belfast City Council as the Registration Authority for the purposes of the Tobacco Retailers Act. In effect, this means that Belfast City Council will maintain a register of all persons carrying on a tobacco business in Northern Ireland. The regulations also provide details of the information to be provided on an application to the register and the wording and dimensions of a statement to be displayed in premises which are subject to a restricted premises order (sections 5 and 8 of the Tobacco Retailers Act).
12. The second set of regulations (**Annex C**) prescribe the fixed penalty amounts that can be applied to allow a person to discharge their liability of offence in relation to: section 10 of the Tobacco Retailers Act (NI) 2014; Articles 3, 4 or 4A of the Health and Personal Social Services (NI) Order 1978; and Articles 4, 4A and 5 of the Children and Young Persons (Protection from Tobacco) (NI) Order 1991.
13. The schedule to the draft regulations proposes that the amounts of fixed penalties for the relevant tobacco control offences are as shown on page 5 overleaf. In accordance with the Act, the notice must be paid within 28 days if the person wishes to discharge any liability for the offence. A reduction of 25% will be applied if payment is made within 14 days.
14. The third set of regulations (**Annex D**) propose a form for District Councils to use for fixed penalty notices in relation to tobacco offences. Although not specified in the draft regulations, District Councils will be able to:
 - use a form in a different size or design, provided that the content of the notice is not changed;
 - include additional information about how payments can be made; and

- include coats of arms, logos or other devices, or any illustration to assist with the completion of the notice.

15. Following the closing date, all responses will be analysed and considered before the regulations are finalised and presented to the Assembly. The Department will publish a report on the Departmental website to inform respondents about the outcome of the consultation.

Summary of offences and fixed penalties

Offence	Fixed Penalty
Carrying on a tobacco business without being registered.	£500.00
Carrying on a tobacco business at premises other than those noted in a person's entry in the Register	£500.00
Failing to notify of changes to the Register.	£50.00
Failing to display a notice while subject to a restricted premises order.	£100.00
Failing to remove tobacco or cigarette papers from the retail area in premises where a restricted premises order has effect.	£500.00
Selling tobacco or cigarette papers to a person under the age of 18.	£250.00
Failing to comply with a court order made in relation to underage sales of tobacco from a vending machine.	£250.00
Proxy purchasing, i.e. buying or attempting to buy tobacco or cigarette papers on behalf of a person under the age of 18.	£250.00
Selling cigarettes to any person other than pre-packed cigarettes in their original package e.g. singles	£250.00
Failing to comply with the prohibition of the sale of tobacco from a vending machine.	£250.00
Failing to display a notice stating "It is illegal to sell tobacco products to anyone under the age of 18" in retail premises where tobacco is sold.	£100.00

IMPACT ASSESSMENTS

Equality Impact Assessment and Human Rights

16. The aim of the measures within the Tobacco Retailers Act is to protect the public's health by making it more difficult for persons under the age of 18 to access tobacco products. The Department carried out a preliminary screening of the policy proposals and, as part of the screening process, concluded that an Equality Impact Assessment was not necessary. The Department is content that there will be no adverse impact on any of the groups listed under section 75 of the Northern Ireland Act 1998.

Regulatory Impact Assessment

17. The Department carried out a Regulatory Impact Assessment (RIA) covering the various options for increasing sanctions against retailers when developing the measures within the Act. The RIA also examined the potential impacts on business and sought to quantify the possible health impact of the options considered. A copy of the final RIA is available on request.

CONSULTATION QUESTIONS

18. The Department is now inviting your views on the proposed regulations as set out in **Annex B, Annex C and Annex D**. The consultation questions are set out overleaf and a template for responses is provided in the questionnaire booklet in **Annex A** of this document.

Question 1: Are you content with the level of information to be requested in the application for registration, as set out in Schedule 1 of the draft regulations in **Annex B**? If not, please say why and provide details of any changes that you wish to see.

Question 2: Are you content with the proposed wording and dimensions of the notice to be displayed by retailers in the event of a restricted premises order as set out in Schedule 2 of the draft regulations in **Annex B**? If not, please say why and provide details of any changes that you wish to see.

Question 3: Are you content with the proposed amounts of fixed penalties as set out in the schedule of the draft regulations in **Annex C**? If not, please say why and provide details of any changes that you wish to see.

Question 4: Are you content with the proposed form for issuing Fixed Penalties by District Councils as set out in the Schedule of the draft regulations in **Annex D**? If not, please say why and provide details of any changes that you wish to see.

Question 5: Do you wish to make any other comments or provide other evidence about possible health, economic or social impacts of the regulations, whether adverse or beneficial?

HOW TO RESPOND

19. If you wish to respond to this consultation, please do so by completing and returning the response questionnaire at **Annex A**. The questionnaire may also be downloaded from the e-consultation section of the Department's website: (http://www.dhsspsni.gov.uk/index/consultations/current_consultations.htm).
20. Additional copies of the consultation document can be obtained by contacting the Department's Population Health Administration Team (contact details below).
21. If you require any of these documents in another format or language, please contact the Department's Population Health Administration Team.
22. The closing date for responses is **4 September 2015**. Responses received after this date will only be considered in exceptional circumstances and with prior agreement from the Department.
23. The completed response questionnaire can be returned by e-mail or post and all queries you may have regarding this consultation should be addressed to Department's Population Health Administration Team.

Phone: 028 9052 8385 or 028 9052 2059
E-mail: phdadmin@dhsspsni.gov.uk
Address: Population Health Directorate Administration Team
Department of Health, Social Services and Public Safety
Room C4.22
Castle Buildings
Belfast BT4 3SQ

24. Please ensure that the completed response questionnaire includes: your name, organisation (if relevant), address, telephone number and email (if applicable), and whether your comments represent your own view or the corporate view of your organisation.