

EXPLANATORY MEMORANDUM
THE TOBACCO RETAILER (FIXED PENALTY) (GENERAL)
REGULATIONS (NORTHERN IRELAND) 2016

SR 2016 No. 98

1. Introduction

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

1.2 The Statutory Rule is made under section 12(7) of the Tobacco Retailers Act (Northern Ireland) 2014 and is subject to the negative resolution procedure.

1.3 The Rule is to come into operation on 1 July 2016.

2. Purpose

2.1 The regulations prescribe the form of a fixed penalty notice which may be issued for certain tobacco-related offences as set out in Section 12 of the Tobacco Retailers Act (Northern Ireland) 2014.

3. Territorial extent and application

3.1 This Statutory Rule applies only to Northern Ireland.

4. Legislative Background

4.1 This Rule uses the powers given to the Department of Health, Social Services and Public Safety under section 12(7) of the Tobacco Retailers Act (Northern Ireland) 2014. This section came into force for the purpose of making regulations on 29 April 2014.

4.2 The Tobacco Retailers Act (Northern Ireland) 2014 was granted Royal Assent on 25 March 2014. The Act allows for an authorised officer of a district council to issue a fixed penalty notice for a number of tobacco-control offences as listed in Section 12(1) of the Act. The Act provides for the Department to provide the form of a fixed penalty notice in regulations. The above Statutory Rule outlines that form.

5. Policy Background

5.1 Preventing children and young people from starting to smoke is key to achieving the Department's long-term aim of a tobacco-free society. Recent evidence shows that, in Northern Ireland, 78% of adult smokers took up the habit before the age of 19 and that 5% of 11-16 year olds in Northern Ireland are current smokers. Despite there being a legal minimum age for the purchasing of cigarettes (this was changed from 16 to 18 in September 2008), children and young people have continued to find ways of obtaining cigarettes. Shops are a regular source of tobacco for underage smokers, with 45% of 11-16 year old smokers claiming they purchase their cigarettes from newsagents, garages or sweet shops.

5.2 The Tobacco Retailers Act strengthens enforcement of tobacco control legislation by requiring all tobacco retailers in Northern Ireland to register with a central Registration Authority. It also introduces tougher sanctions against retailers who regularly sell tobacco to

minors, including powers for authorised officers of district councils to issue fixed penalty notices for a number of tobacco-related offences.

6. Consultation Outcome

6.1 A consultation on the draft regulations ran from 9 July to 4 September 2015. The consultation document also sought responses on two other sets of proposed regulations. A total of 24 responses were received from a wide variety of stakeholders including: local councils; health and social care organisations; the voluntary and community sector; professional bodies; retail representative bodies; and tobacco manufacturers.

6.2 No changes were required to be made to the Tobacco Retailer (Fixed Penalty) (General) Regulations following consideration of the consultation responses.

7. Position in Great Britain

7.1 Similar legislation, with regards to the introduction of fixed penalty notices for a number of tobacco-related offences, was introduced in Scotland through the Tobacco and Primary Medical Services (Scotland) Act 2010. The Public Health (Wales) Bill, which was introduced in the Welsh Assembly Government on 8 June 2015, also contains provisions concerning fixed penalty notices for offences relating to the Welsh tobacco retailer register. Both pieces of legislation include regulation-making powers around the form of fixed penalty notices for tobacco-related offences.

8. Equality Impact

8.1 In accordance with its duty under section 75 of the Northern Ireland Act 1988, the Department conducted a screening exercise on the proposals which formed the basis of the Tobacco Retailers Act (Northern Ireland) 2014. It concluded that they do not have any significant implications for equality of opportunity. The measures will not affect any of the section 75 groups disproportionately. In light of this, the Department considers that an equality impact assessment is not necessary.

9. Regulatory Impact

9.1 A regulatory impact assessment was carried out when making the Tobacco Retailers Act (Northern Ireland) 2014 and it concluded that the measures would not have a significant financial impact on tobacco retailers, nor would enforcing the legislation add a significant financial burden on district councils. There were no responses to the consultation on the draft regulations which indicated that the measures would represent an undue burden on business.

10. Financial implications

10.1 The measures being proposed in the regulations do not have any significant additional costs to the Department or tobacco retailers and the enforcement would not have any significant additional costs for local district councils.

11. Section 24 of the Northern Ireland Act

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

12. EU implications

12.1 The Tobacco Retailers Act (Northern Ireland) 2014 was notified to the EU under the Services Directive. No responses were received from Member States.