

# Business and Regulatory Impact Assessment

## Title of Proposal

Tobacco and Primary Medical Services (Scotland) Act 2010 (Display of Tobacco and Prices) Regulations 2012

## 1. Purpose and intended effect

### Background

- 1.2 These regulations follow from the Tobacco and Primary Medical Services (Scotland) Act 2010 which set out a number of measures to reduce the attractiveness, availability and consumption of tobacco products among young people under the age of 18 leading to a reduction in smoking prevalence. That includes a ban on the display of tobacco products or smoking related products in places where tobacco products are for sale with the exception of specialist tobacconists (except for hand-rolling tobacco and cigarettes) and trade tobacconists who have a complete exemption. The Act received overwhelming support from the Scottish Parliament and delivers the legislative controls set out in the wider Scottish Government 2008 smoking prevention action plan, *Scotland's Future is Smoke Free*.

### Objective

- 1.3 The policy objective is to protect children and young people from the promotion of tobacco where tobacco and smoking related products are offered for sale whilst minimising the impact on businesses.
- 1.4 It is believed that the main direct impact of introducing regulations to cover the display of tobacco and smoking related products will be on children and young adolescents. Research has found that 90% of smokers know what brand of cigarettes they are going to purchase before going into a shop and less than 10% change the brand they smoke annually.

### Rationale for Government intervention

- 1.5 Tobacco is a uniquely dangerous product and smoking is one of the most damaging factors in Scotland's poor health record. A generation after the health risks associated with smoking were demonstrated beyond dispute; smoking remains one of the principle causes of illness and premature death in Scotland and is estimated to be responsible for around 13,000 deaths each year.
- 1.6 Around 15,000 young people start to smoke each year in Scotland. The younger people start to smoke the more likely they are to smoke longer and die early as a result of smoking.
- 1.7 Discouraging young people from starting to smoke would reduce their chance of becoming addicted adult smokers, resulting in increased life expectancy and lead to a reduction in smoking prevalence rates.
- 1.8 The Purpose of the Scottish Government is to focus Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. This is underpinned by five strategic objectives. These regulations, as part of the wider Tobacco and Primary Medical Services (Scotland) Act 2010, are pivotal to

achieving these objectives:

- **WEALTHIER & FAIRER** - Enable businesses and people to increase their wealth and more people to share fairly in that wealth.

Discouraging young people from starting to smoke and reducing smoking prevalence rates in Scotland will reduce the burden of tobacco use on business, public services and our most deprived communities, and thus contribute to a Wealthier and Fairer Scotland.

- **SAFER & STRONGER** - Help local communities to flourish, becoming stronger, safer places to live, offering improved opportunities and a better quality of life.

Discouraging young people from starting to smoke and reducing smoking prevalence rates in the long term could reduce demand for illicit tobacco and help support the development of more resilient, cohesive and successful communities.

- **HEALTHIER** - Help people to sustain and improve their health, especially in disadvantaged communities, ensuring better, local and faster access to health care.

Discouraging young people from starting to smoke and reducing smoking prevalence rates will contribute to increased wellbeing and increased life expectancy amongst Scots, especially in our most disadvantaged communities.

- **SMARTER** - Expand opportunities for people in Scotland to succeed from nurture through to life long learning, ensuring higher and more widely shared achievements.

Discouraging young people from starting to smoke will support them to make positive choices and fulfil their potential.

1.9 The Strategic Objectives themselves are supported by 15 national outcomes which describe in more detail what the Scottish Government wants to achieve over the next ten years. Policies to tackle smoking will make a positive contribution to delivering over half of our published national outcomes:

- we live longer and healthier lives;
- we have tackled the significant inequalities in Scottish life;
- we have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others;
- we live our lives safe from crime, disorder and danger;
- we realise our full economic potential with more and better employment opportunities for our people;
- our young people are more successful learners, confident individuals, effective contributors and responsible citizens;
- we have improved the life chances for children, young people and families at risk; and
- our children have the best start in life and are ready to succeed.

1.10 In addition, in recognition of the need to reduce smoking prevalence amongst adults in pursuit of our objectives. Whilst these regulations are directly aimed at stopping young people from starting to smoke, the long term aim is that they will

have an impact on adult smoking rates.

## **2. Consultation**

### **Within Government**

- 2.1 Directorate of Business were engaged in the early stages of development. We have also maintained contact with the Department of Health, the Health and Social Services Directorate General (Wales) and the Department of Health, Social Services and Public Safety (Northern Ireland) who are implementing similar measures.

### **Public Consultation**

- 2.2 Public Consultation on the Tobacco and Primary Medical Services (Scotland) Act 2010 draft regulations ran from 27 April 2010 to 20 July 2010. An analysis of responses on the Display and Price regulations can be accessed here:

<http://www.scotland.gov.uk/Topics/Health/health/Tobacco/draftregulationssection1>

- 2.3 A total of 497 responses were received including responses from business bodies (retailers / retailer bodies, tobacco manufacturers), health bodies, local authorities, third sector and individuals. The largest number of responses was from tobacco retailers (416).
- 2.4 In light of concerns raised by retailers about the practicalities of implementing the ban, Ministers have made a number of changes to the final regulations including:
- Increased the display area from 120 sq cm to a maximum of 1,000 sq cm.
  - Amendment to the definition of bulk tobacconist.
  - Further clarification of the requested and incidental display exemptions.
  - Inclusion of Arial as an alternative price label / list font.
  - Deferred the implementation date for large stores from April 2012 until a date to be determined in due course.

### **Business**

- 2.5 As well as the formal consultation period, we have been in regular contact with several retail umbrella groups both pre-consultation and post consultation when we held a further engagement period to talk through the issues raised during consultation. Officials have also visited a range of retailers on a number of occasions to discuss in greater detail what the regulations would mean at the point of sale.

## **3. Options**

- 3.1 Option 1. Do Nothing
- 3.2 Option 2. Exemption for incidental display, requested display and the display within a tobacco area for bulk tobacconists and duty free shops

### **Sectors and groups affected**

- 3.3 Businesses that retail tobacco will be affected, with the exception of trade tobacconists who have a complete exemption under section 1(3) of the Tobacco and Primary Medical Services (Scotland) Act 2010.

### **Benefits**

### Option 1. Do Nothing

- 3.4 Banning displays would help de-normalise smoking as an activity and reduce the appeal and awareness of tobacco products amongst young people. It is also assumed that completely concealing the display of tobacco would reduce the uptake of smoking in under 18s. This would reduce the chance of becoming addicted adult smokers and result in increased life expectancy.
- 3.5 The potential impact of banning displays was calculated assuming that the existence of displays at point of sale increases the odds of ever smoking by 10%. This means that if the current display of tobacco products resulted in a 10% increase in 'ever smokers', the rate of 11-15 year old 'ever smokers' would be 43% (instead of the current 47%) if these were prohibited.
- 3.6 The 4 percentage point gap between these two figures - the implied effect of existing advertising and display - may be associated with  $(4 * 0.27) = 1.14\%$  of the 13-15 year old sample being regular smokers. Using a birth cohort size of 60,000 births per annum, a 1.1% percentage point reduction in the number of regular smokers aged 11-15 would result in 690 fewer smokers in each annual cohort. If the reduction persists into adulthood (which is likely, as the reduction in display will persist), the estimates equate this to 1,140 discounted years of life saved in each annual cohort (monetised as £57m per annual cohort). When summed across 30 years and discounted the figure equals £1.08bn. Again if a more conservative assumption were made that, in line with the sales data analysis, prevalence decreased by 0.8% this would still lead to 560 fewer smokers per annual birth cohort resulting in an additional 930 life yrs (monetised as £4.7m per annum or £884m over 30 yrs).
- 3.7 Even if the impact were much smaller still - say a 2% reduction rather than 10%, (a 0.2% reduction in the number of smokers) the impact per annum would still be 148 fewer smokers per annual birth cohort resulting in an additional 246 life years. This goes to show that even if the display ban only has a relatively restricted effect, the difference in even a few percentages of people not smoking will have major health benefits.

### Option 2. Exemption for incidental display, requested display and the display within a tobacco area for bulk tobacconists and duty free shops

- 3.8 We assume that the greater the area of display of tobacco products the lesser the health benefits realised. The impact assessment for the Tobacco and Primary Medical Services (Scotland) Act 2010 considered the impact of restricting the display of tobacco products. In the case of the size - and therefore altering the size of - displays we have assumed 5%. (We have assumed 10% in option 1). This means that if current advertising and display of tobacco products resulted in a 5% increase in the odds of 'ever smoking', the rate of 11-15 year old 'ever smokers' would be 45% (instead of the current 47%) if these were restricted.
- 3.9 We assume that the greater the area of display of tobacco products the lesser the health benefits realised. These regulations allow retailers to display an area no greater than 1,000 square centimetres, which equates to an area of storage unit holding around 8-12 packets of cigarettes. Under Option 1 children and young people would be able to see products being passed to customers on sale. These regulations allow slightly more products to be displayed than Option 1 but we do not think this is so great as to undermine the health benefits outlined in Option 1.

### **Costs**

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

Option 1. Do Nothing

3.11 Costs to retailers: Under this option it would be necessary for retailers to change the storage and possible placement of cigarettes within their shops. Costs to individual retailers will vary according to the size of the premises, the nature of the new sales unit / alterations made and the extent of the shop refitting.

3.12 To estimate costs, data was obtained from a number of sources. Industry responses included those from Scottish Grocers Federation (SGF), the National Federation of Retail Newsagents (NFRN) and the Scottish Retailers Consortium (SRC). Estimates used by the Department of Health (DoH) in their consultation document are also available. In general the costs provided were based on the assumption that some form of "under the counter" storage unit would be required.

3.13 Cost estimates to individual retailers ranged from a minimum of £900 to £25,000. For small shops (local newsagents, small convenience stores etc) the NFRN estimates a cost of between £900 and £1,400. The SGF estimate that for their members the costs could range from £5,000 to £10,000. The SRC estimate that for shops at the top of the range the level of shop fitting required by their members could cost up to £25,000. This would apply to large supermarkets requiring a major refit.

3.14 The number of affected premises in Scotland was originally estimated from aggregated Scottish SIC classifications for retail, wholesale and pubs and clubs involved in the sale of tobacco, excluding hotels and restaurants and trading standards data. The estimate was 11,000 outlets. The latest data available from the Tobacco register shows 10,901 registered premises. This includes supermarkets, convenience stores, newsagents, off licences and also other premises such as mobile shops, pubs, clubs, hotels and restaurants. Therefore continuing to use an estimate of 11,000 retail outlets seems prudent, although it seems likely that more retailers fall into the smallest size of retail unit than previously assumed.

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

**Table 1: Cost of refitting for display ban**

Size of retail unit	Low: e.g corner shop / newsagent	Mid range: e.g grocers shops	High: e.g large supermarkets	Total	Discounted
Cost to individual outlet	£900-£1,400 (NFRN)	£2,000-£10,000 (SGF)	Up to £25,000 (SRC response)		

<b>No of premises</b>	6,270	4,000	730	11,000	
<b>Low estimate</b>	£6m	£8m	£7m	£21m	£20m
<b>High estimate</b>	£9m	£40m	£18m	£67m	£64m
<b>Mid point</b>	£7m	£24m	£13m	£44m	£42m

3.16 Assuming large shops and 50% of medium sized shops implement within the following year, and a lead in time to 2015 for the remaining small and medium sized premises this gives a range of discounted total cost of £20m - £64m (mid point £42m).<sup>1</sup>

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

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

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

3.20 It is understood that the changes made may increase retailers' transaction times with products no longer on display, reducing the number of transactions per hour that a retailer can handle. However, as the Scottish Government is not specifying where and how tobacco products are stored, it is not known how significant a factor this may be. Furthermore, the experience in Saskatchewan has shown no negative economic consequence on retailers due to the ban on tobacco displays.

3.21 Costs to Scottish Government: There will be initial costs associated with providing information to retailers about the necessity to comply with new regulations, including their extent and the timing involved.

3.22 Costs to the UK exchequer: A complete display ban at all times will help reduce consumption levels. Any reduction in consumption of cigarettes will have an effect on tax revenue to the Exchequer. In line with government guidance it is assumed that any reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly similar macroeconomic effects.

3.23 Costs to Local Authorities: Trading Standards Officers would have an essential role in advising businesses on how to comply with the legislation and would be responsible for enforcing the legislation. Trading Standards Services visit 10% of tobacco retailers for test purchasing purposes, a further 10% for business advice

and an estimated further 10% for other Trading Standards duties. The Scottish Government has agreed to provide information about the regulations to help Trading Standards Officers inform tobacco retailers of the implementation of this new legislation and avoid costs falling on local government. Nevertheless there would be an increase in demand for advice to businesses from trading standards in the run up to introduction which may come at some cost to local authorities.

#### Unintended Consequences

- 3.24 Loss in sales: Any losses in tobacco sales may be replaced by an increase in sales of non-tobacco products such as magazines and confectionery. The legislative options apply equally to all retail outlets. While there are different implementation dates for large and small stores they are unlikely to have any significant competition implications.
- 3.25 Increased theft of stock: It has been argued that shop assistants may be distracted when retrieving tobacco products, making casual theft easier (particularly on petrol retailer forecourts). It has also been suggested that new storage solutions could 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. There seems little basis to assume that any solution implemented by retailers would, intrinsically, be less secure.
- 3.26 Increased use of black market cigarettes: Identification of counterfeit cigarettes requires handling and close examination by enforcement officers so whether or not cigarettes are on display seems largely irrelevant to illicit trade and does not conclusively indicate that illicit trade will benefit from the display ban.

#### Option 2. Exemption for incidental display, requested display and the display within a tobacco area for bulk tobacconists and duty free shops

- 3.27 Costs to retailers: These regulations do not prevent retailers from modifying current gantries. We recognise that there are a wide range of solutions that could be available to retailers, from basic gantry adaptations to a complete refit of the gantry or replacement with a different type of storage unit. We recognise that retailers will want to find a solution that is aesthetically pleasing, robust, secure and easy to operate. As such it is difficult to estimate costs. It also appears likely that different models of ownership of gantries exist within the retail sector; as such it is unclear who would be responsible for the cost of making any necessary alterations to existing gantries. This is an additional barrier to estimating the costs for which retailers may be liable as a result of the regulations.
- 3.28 The lowest cost solution presented to the Scottish Government involves covering each row of tobacco on the gantry with an opaque plastic fronting. This solution has been costed at £20 per row on a gantry for materials alone. This costing was based on a small gantry. For the purposes of the impact assessment we have assumed that a small shop would have eight rows per gantry, a medium sized shop two gantries of eight rows and a large shop four gantries of eight rows.
- 3.29 Alternative solutions have also been presented to the Scottish Government which would incur greater costs. A moderately more expensive option involves flaps which comply with the maximum 1,000 sq cm display area. This solution has been costed at around £25 per flap for materials alone. Another option at the higher end of the scale involves a Tobacco Retail Sales Unit behind the counter. These units could either be leased or purchased.

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

	Small shops	Medium sized	Large shops	Total	Discounted Total
					(NPV)
<b>No of premises</b>	6,270	4,000	730	11,000	
<b>Cost to individual outlet (per refit)</b>	£160	£320	£640		
<b>Total cost</b>	£1.00m	£1.28m	£0.47m	£2.75m	£2.64m

3.30 Assuming large shops and 50% of medium sized shops implement within the next year, and a lead in time to 2015 for the remaining small and medium sized premises this gives a discounted value of **£2.64m**.

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

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

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

3.34 Costs to Scottish Government: As with Option 1, there will be initial costs associated with providing information to retailers around the necessity to comply with new regulations including their extent and the timing involved.

3.35 Costs to the UK Exchequer: A display ban of this nature is aimed at reducing consumption levels. This in turn will have an associated effect on tax revenue to the Exchequer. In line with government guidance it is assumed that any reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly similar macroeconomic effects.

3.36 Costs to Local Authorities: Trading Standards Officers will still have an essential role in advising businesses on how to comply with legislation and would be responsible for enforcing the legislation. As stated previously, the Scottish Government has agreed to provide information about the regulations to help

Trading Standards Officers inform tobacco retailers of the implementation of this new legislation and avoid costs falling on local government. Nevertheless there would be an increase in demand for advice to businesses from trading standards in the run up to introduction which may not lead to a need for additional resources but would cause a reprioritisation of duties and resources. Whichever option is chosen, Trading Standards and local authorities will still have to play a significant role in the execution of the ban. Therefore, the cost, while varying slightly, will remain an issue whether a full ban is decided upon or a restricted ban.

#### Unintended Consequences

- 3.37 Loss in Sales: Any losses in tobacco sales may be replaced by an increase in sales of non-tobacco products such as magazines and confectionery. The legislative options apply equally to all retail outlets. While there are different implementation dates for large and small stores they are unlikely to have any significant competition implications.
- 3.38 Increased theft of stock: It has been argued that shop assistants may be distracted when retrieving tobacco products making casual theft easier. There is no evidence that crime in shops has increased as a result of covering up tobacco displays in Iceland or Canada. The extent of any such effects that might occur is not quantifiable.
- 3.39 Increased use of black market cigarettes: Identification of counterfeit cigarettes requires handling and close examination by enforcement officers so whether or not cigarettes are on display seems largely irrelevant to illicit trade and does not conclusively indicate that illicit trade will benefit from the display ban.

#### **4. Scottish Firms Impact Test**

- 4.1 As mentioned in paragraph 2.5 a range of retail umbrella groups were consulted both pre-consultation and post consultation when we held a further engagement period to talk through the issues raised during consultation. This included correspondence and face to face meetings with the Scottish Retail Consortium, Scottish Grocers Federation, the National Federation of Retail Newsagents, the Scottish Wholesalers Association and the Independent Scottish Specialist Tobacconists' Association.
- 4.2 These groups also helped facilitate many of the 8 visits we made to a range of small, medium and large retailers including independent and national retailers, wholesale, specialist and sub-specialist tobacconists throughout the second half of 2011 to give us the opportunity to discuss in greater detail what the regulations would mean at the point of sale. Face to face discussions (and 1 visit) were also held with 2 independent providers about potential solutions to cover the display of tobacco.
- 4.3 The largest area of concern for retailers was the size of the allowable display area under option 2, to allow for incidental and requested displays. The initial regulations, which were consulted on in 2010, allowed for an area of storage unit no bigger than 120 sq cm (roughly the size of 1 packet of cigarettes) to be displayed. In response to the concerns raised by retailers about the practicalities of implementing this solution, the final regulations have been amended to increase the display area to 1,000 sq cm (roughly the size of 8-12 packets of cigarettes).

- 4.4 A number of other changes were also made to the final regulations in response to retailer's concerns as set out in paragraph 2.4.

**Competition Assessment**

- 4.5 No significant competition issues have been identified with any of the options. Apart from staggered implementation dates from large stores and all remaining stores, the legislative options apply equally to all retail outlets and therefore are unlikely to have any significant competition implications.

**Test run of business forms**

- 4.6 These regulations do not introduce any new business forms.

**5. Legal Aid Impact Test**

- 5.1 There are no legal aid impact test issues to consider.

**6. Enforcement, sanctions and monitoring**

- 6.1 The principle enforcement role will lie with Local Authority Trading Standards Officers.
- 6.2 Retailers found in breach of the ban can be prosecuted in court or attract a fixed penalty which is currently £200 rising in increments of £200 for every offence under the Act committed within a two year period.

**7. Implementation and delivery plan**

- 7.1 The regulations do not specify how they should be implemented to allow flexibility for retailers to devise their own solutions as long as they comply with the regulations.
- 7.2 The implementation date for large stores has been deferred to a date yet to be announced though we would aim to implement them as soon as possible. The implementation date for all remaining stores is April 2015.

**Post-implementation review**

- 7.3 NHS Health Scotland will take forward an overarching evaluation of the Tobacco and Primary Medical Services (Scotland) Act 2010.

**8. Summary and recommendation**

- 8.1 It is recommended that the Scottish Government implement Option 2, make limited exemptions to the display ban, as set out in the Tobacco and Primary Medical Services (Scotland) Act 2010 (Display of Tobacco and Prices) Regulations 2012.
- 8.2 Limited exemptions to the display ban as set out in the Tobacco and Primary Medical Services (Scotland) Act 2010 (Display of Tobacco and Prices) Regulations 2012 considerably reduces burdens on business without undermining the health benefits realised from a display ban.

**Summary costs and benefits table**

	Costs	Benefits

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

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

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

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

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

## **9. Declaration and publication**

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed**

**Date February 2012**

**Michael Matheson, Minister for Public Health**

### **Contact for enquiries and comments:**

**Name:** Siobhan Mackay

**Address:** Tobacco Control Team

Public Health Division

Scottish Government

Area 3E, St Andrew's House

Regent Road

Edinburgh

EH1 3DG

**Telephone:** 0131 244 2576

**E-mail:** [tobaccocontrolteam@scotland.gsi.gov.uk](mailto:tobaccocontrolteam@scotland.gsi.gov.uk)

