



Department of
**Health, Social Services
and Public Safety**

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**PROPOSED TOBACCO CONTROL
REGULATIONS FOR
NORTHERN IRELAND
(UNDER THE HEALTH ACT 2009)**

CONSULTATION REPORT

AUGUST 2011

Contents	Page
1. Executive summary and introduction	3
2. Displays of tobacco products	6
3. Regulating display of prices of tobacco products	14
4. Specialist tobacconists	19
5. Preventing access to tobacco from vending machines	22
6. Timescale for implementation of the new regulations	25
7. Impact Assessment	28
Appendix A: Who responded to the consultation	29

1. EXECUTIVE SUMMARY AND INTRODUCTION

The consultation

On 1 October 2010, the Department of Health, Social Services and Public Safety launched a consultation exercise to seek views on four sets of draft tobacco control regulations for Northern Ireland (under the Health Act 2009). The regulations included in the consultation covered:

- Displays of tobacco products;
- Regulating display of prices of tobacco products;
- Specialist tobacconists; and
- Preventing access to tobacco from vending machines.

The consultation asked a number of specific questions on the regulatory proposals presented and also invited feedback from stakeholders on the consultation-stage impact assessments that were published as part of the consultation package.

The consultation closed on 24 December 2010.

The Department would like to thank all of the participants in the consultation process for their time and assistance.

Overview of responses received

This report provides an overview of the responses received to the consultation.

A total of 1013 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; small retailing companies; tobacco manufactures; vending machine operators; and individuals. Further details are provided in Appendix A.

There are a number of issues relevant to the interpretation of responses that DHSSPS wishes to highlight.

Collation, analysis and interpretation of consultation responses

Given the breadth of responses received to the consultation, this report should not be considered a comprehensive list of all comments made by respondents. Instead, it gives a summary of views on the proposed regulations and the key themes arising from the responses received.

Single versus group responses

It is acknowledged that, in some cases, respondents have consulted with colleagues or a wider audience prior to submitting a response and therefore aim to represent the view of a particular group.

Such responses may represent a team, department or entire organisation. They may also have sought and included the views of local stakeholders, concerned and interested parties, local community groups, members of the public, and other relevant parties. As such, consultation responses do not necessarily contain the views of one individual or group alone. It is possible that a broad summary of views is reflected within each response.

It is therefore not possible to make direct comparison across the numbers of respondents within certain categories, or between viewpoints, by the number of responses alone. The Department's consideration of consultation responses is mindful of this diversity in the nature of the response received.

Sample and population

The findings from this public consultation are from a consultation and not a survey. They cannot be used to generalise or extrapolate in the same way as representative quantitative research. A consultation seeks information and views relating to a specific proposal and is not intended to elicit representative samples of opinion.

Typically with consultations, responses come from those more likely to consider themselves affected and more motivated to express their views. The nature of consultations is that the respondents are self-selecting and therefore not representative of national opinion. The view of participants in the consultation cannot be regarded as a representative sample of all health bodies, retailers, or the general public.

Presentation and interpretation of qualitative data

Key findings from the consultation form the bulk of this report. Supporting verbatim comments have been used for illustrative purposes. It is worth remembering that these comments are not statistically representative of the views of all the consultation respondents. Such comments are provided to

illustrate the types of comments made, not the proportion of respondents holding those views.

Impact Assessments

The Department has considered feedback from stakeholders on the Impact Assessments that were included with the consultation. Finalised Impact Assessments that take stakeholder feedback into account will be published alongside regulations when they are laid before the Northern Ireland Assembly.

Report structure

The report will consider the responses received in relation to each section of the consultation document:

Section 2 - displays of tobacco products;

Section 3 - regulating display of prices of tobacco products;

Section 4 - specialist tobacconists; and

Section 5 - preventing access to tobacco from vending machines.

Section 6 - timescales

2. DISPLAYS OF TOBACCO PRODUCTS

This section refers to the proposed Tobacco Advertising and Promotion (Display) Regulations (Northern Ireland) 2011.

Question 1

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

Of the 1003 respondents who answered this question, 94% disagreed that the regulations set out an effective and workable approach to the removal of tobacco products from display. 4% agreed, while a small percentage (2%) either didn't know or had no opinion.

The majority of those who said the regulations were not effective or workable, represented tobacco manufacturers and retailers of tobacco products. General comments on this question from retailers centred on concerns about slower serving times and longer queues due to what they describe as the prescriptive nature of the regulations. They also expressed concern about increased black market activity and loss of sales to larger supermarkets.

A specific issue raised was the size of the area of permitted display:

*The proposal to restrict display to a size only 0.75 sq m in relation to requested display, so as to limit temporary display during sales, encompasses a highly prescriptive approach. Prescribing an area like this means solutions will inevitably be more constricted and make for less easy store operation and serving of customers with prolonged transaction times. **The Co-Operative Group***

This view was backed up by a number of respondents including the **Tobacco Retailers Alliance**:

Placing a limit of 0.75 sq m is not a workable solution in terms of ensuring a minimal burden on business.

Departmental response:

It has been decided that the area allowed for a temporary display will be increased to 1.5 sq m, in line with England and Wales. This should enable retailers to develop more flexible and cost-effective solutions, while still ensuring that health policy aims are met.

The response from the Co-operative Group also noted the more detailed exemption in the draft regulations for Scotland covering restocking, refitting, refurbishment, and cleaning of gantries and suggested that the Northern Ireland

Government follows this example in its final regulations. Similar concerns were expressed by other retailers:

If the current regulations remain it will effectively prevent retailers from restocking during opening hours, as they will not be able to gauge stock levels. NIIRTA and ACS

Departmental response:

DHSSPS proposes to amend the draft Display Regulations to add to the circumstances when temporary incidental displays can occur, e.g. while stocktaking, staff training, and refurbishment are taking place, for no longer than the time required to undertake these activities. The Department believes that these amendments will enable retailers to carry out necessary routine operations during opening hours without compromising the objectives of the legislation.

The respondents expressing agreement with the regulations in the main part were from local councils, health and social care organisations and charitable and professional bodies.

The councils were largely supportive of the aim of the draft regulations, agreeing that the removal of displays should reduce the attractiveness and availability of cigarettes to children and support those wanting to quit. They had some concerns over the meaning of certain expressions contained within the draft regulations, such as “no longer than is necessary” and “actively engaged”, and also about how the regulations will be applied to bulk tobacconists, and thus stressed the need for comprehensive guidance.

The Institute of Public Health Ireland welcomed the move to develop regulations to remove tobacco displays and also welcomed “the move to a more harmonised tobacco control policy across the island of Ireland”.

Both the BMA (NI) and the BHF (NI), while strongly supporting the regulations, suggested that they could be extended to prohibit the display of smoking accessories. The BMA (NI) also called for removal of the exemption to compel bulk tobacconists to have separate age restricted display areas.

Departmental response -

The new powers introduced by the Health Act 2009 apply to all products consisting wholly or partly of tobacco. The Department of Health, Social Services and Public Safety does not have powers to include other products associated with smoking, such as cigarette papers or lighters, in these regulations.

With regards to bulk tobacconists, the Department believes that the particular nature of bulk suppliers of tobacco warrants specific provisions around tobacco displays for these businesses.

Question 2

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

Of the 930 respondents who answered this question, 18% agreed that the proposed regulations were comprehensive and covered all types of sales of tobacco. A slightly larger percentage disagreed (25%), while over half of respondents (57%) either didn't know or had no opinion. As with question one, those who disagreed with the question tended to come from a retailer/tobacco industry background.

Failure to include smoking accessories, such as cigarette papers, filters and lighters in the regulations was raised again by several respondents. One respondent sought clarification on whether the regulations covered smokeless tobacco, while another commended the inclusion of mobile structures:

There is evidence that outlets such as ice cream/fish and chip vans and mobile grocers can be used extensively by children in vulnerable communities, and there may be a related remote and rural issue in Northern Ireland. **Royal College of Physicians, Edinburgh**

Departmental response –

Section 21 of the Health Act 2009, prohibiting tobacco displays, inserts four new sections (7A, 7B, 7C, 7D) into the Tobacco Advertising and Promotion Act 2002, and that Act applies to all tobacco products. The prohibition of displays therefore applies to all products containing tobacco including all smoked, non-smoked and smokeless tobacco products. Also, as stated in the draft regulations, the prohibition applies to all premises which includes “any place and any vehicle, vessel, hovercraft, stall or moveable structure”.

Several comments from the tobacco industry referred to the fact that the regulations cover all types of sales from the legal retail environment but fail to address the effect on illicit tobacco sales:

Inevitably, the proposed display ban will not cover the illegal tobacco market. In fact, it will add a burden to legitimate retailers in a manner that can only accelerate the growth of the illicit market for illegally imported and counterfeit cigarettes (which are already substantially cheaper than legitimate products). It is obvious that putting cigarettes "out of sight" will blur the distinction in consumers' minds between legal and illicit products... **Philip Morris Ltd**

Departmental response:

DHSSPS is not aware of any evidence of an increase in the illicit cigarette trade in other jurisdictions as a result of introducing display ban regulations. Ascertaining whether tobacco products are illicit can only be confirmed by close inspection of the products by enforcement officers. However, the Department notes the UK Government's commitment to continuing to take strong action to bear down on the availability of illicit tobacco, and is fully supportive of measures employed in this area.

Question 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?

Of the 1000 respondents who answered this question, 89% did not consider the regulations to be proportionate, while 6% said they were. 5% claimed not to know, or have no opinion.

The majority of respondents said they did not believe the regulations to be proportionate and that they imposed unnecessary burdens on businesses. These included tobacco manufacturers, retailers and individual respondents. These respondents were particularly concerned about the extra costs and inconvenience involved in introducing new storage units.

The impact of the proposed regulations will be not only to diminish the already limited rights of manufacturers and retailers to communicate effectively with customers about their products but will also impose considerable disproportionate and unnecessary financial burdens on retailers. **Tobacco Manufacturers Association**

There was general agreement from the health and voluntary sectors that the regulations were proportionate:

The Ulster Cancer Foundation believes that the proposed regulations are proportionate and avoid proposing unnecessary burdens on businesses. Those who oppose the legislation state it will have an adverse financial impact on retailers. However, the costs to retailers could be significantly less if money currently spent by the tobacco industry on in-store shelving and display was used to help retailers comply with any new regulations. **Ulster Cancer Foundation**

Compared with the lethal consequences of smoking and the huge cost to the Health and Social Care service of treating smoking-related ill health, the associated burden of the proposed regulations for businesses is a minor consideration and one that must be put in the context of these broader public health factors. **Royal College of Nursing NI**

Other comments on the proportionality of the regulations included:

- the view that guidance will need to be pragmatic to account for challenges faced by staff;
- the belief that there is no credible evidence to suggest that children are encouraged to start smoking by point of sale displays;
- the feeling that smaller businesses will be more disadvantaged by the new legislation than large businesses.

Departmental response:

The legal requirements for the removal of tobacco displays are included within the Health Act 2009, and the proposed regulations set out the detail of how the law will work. The regulations will be published and available for retailers (and the public in general) well in advance of the commencement date. DHSSPS is committed to working closely with stakeholders to produce guidance for both retailers and Environmental Health Officers to ensure that all relevant parties are fully informed and aware of what is expected of them with regards to the new regulations.

The Department is satisfied that there is good evidence that the legislation will achieve the policy objectives of reducing smoking uptake among children and supporting those people who smoke and want to quit. It does not believe there is any evidence to support the display ban directly resulting in trade moving from small retailers to large supermarkets. Adult smokers will still be able to purchase tobacco products from any tobacco retailer as before.

Question 4

Do you believe that these proposed regulations are enforceable?

Of the 993 respondents who answered this question, 19% agreed that the proposed regulations are enforceable, while 16% disagreed. The remaining 65% indicated that they either didn't know or had no opinion.

A number of points about enforcement made in responses to previous questions were repeated here, and there were some suggestions as to how respondents thought the regulations could be enforced or improved. One respondent referred to research carried out in the Republic of Ireland which demonstrated that retailers were quickly compliant with the regulations.

Responses from district councils indicated that while they believed the regulations to be enforceable in general, they had some concerns:

ODC believes that in general the regulations are enforceable, however, we would have concerns about the exemption for cigarettes to be displayed during a sale and restocking in what is termed as "no longer than is necessary". This may be difficult to enforce, as the burden of proof will be on the Council to prove that a

retailer is displaying tobacco for longer than is necessary. **Omagh District Council**

This view was also backed up by a number of retailers who considered the regulations too prescriptive and therefore likely to cause difficulties for both retailers and enforcement officers when they are introduced.

With a highly prescriptive approach, there may be some areas that may prove difficult to enforce depending on the interpretation of enforcers e.g. in relation to how 'no longer than necessary' is interpreted in relation to temporary display and restocking. This is where we would hope guidance would play a role. However, we would not want a time limit to be imposed as this would be even more difficult to enforce. **The Co-Operative Group**

Departmental response:

District councils will be responsible for monitoring and enforcing the new legislation as part of their tobacco control responsibilities. DHSSPS, in conjunction with the Public Health Agency, will work with District Councils to support them in this role, including through the development of enforcement guidance. We will encourage Environmental Health Officers to work with retailers to build compliance by ensuring understanding of the new law and to take enforcement action in cases where the law is deliberately broken.

The Department will also ensure that retailers are represented on a working group which will be established to develop guidance setting out how retailers can comply with the new legislation

Question 5

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

Of the 645 respondents who answered this question, 27% agreed that having separate tobacco display areas was an effective and workable approach for retailers of bulk tobacco products. Out of the remaining 73%, the majority had no opinion (63%) with 10% actively disagreeing with the question.

Those in agreement with the proposals largely felt that they were proportionate, and that having separate display areas was an effective means of preventing young people from having access to tobacco products. The proposals were particularly appreciated by the travel sector:

Belfast International Airport *welcomes the recognition by the Northern Irish Assembly Government of the special circumstances of airport duty-free shops. It therefore fully supports the proposal that they, along with other bulk tobacconists, should be able to display tobacco products in separate tobacco display areas*

(TDAs), provided that these displays are not visible to other customers or members of the public from outside the area.

A number of respondents who disagreed with the proposals for bulk tobacconists, felt that the regulations needed to be tighter, particularly in locations where bulk tobacco products would be accessed by families.

Allowing bulk tobacconists to have separate display areas will make tobacco more attractive by reinforcing its adult nature. Retailers of bulk tobacco are frequently used by individuals under 18 years and it is unlikely that age restriction notices will be effective in preventing them entering these areas. **British Medical Association NI**

Departmental response:

DHSSPS considers that the particular nature of bulk suppliers warrants the provision of specific provisions for the removal of tobacco displays in their businesses.

The regulations will allow bulk tobacconists (which includes duty free retailers who sell only bulk tobacco products) to have separate “tobacco areas”, in which displays of tobacco products would be allowed provided the displays are not visible to customers or members of the public from outside the area.

The Department does not believe that a prohibition on people under the age of 18 entering tobacco display areas (or specialist tobacconists) would be able to be easily enforced. We will encourage businesses that have these areas to consider adopting voluntary arrangements to dissuade young people from entering these areas.

Question 6

Do you have any others comments on the proposed regulations?

38% of respondents provided further comments on the proposed regulations, many of which reiterated comments made in answers to questions 1-5.

An issue raised by the tobacco industry was that the display ban would remove the ability of tobacco manufacturers to communicate with their customers:

Product display is one of the sole remaining means by which tobacco manufacturers can communicate with their customers in Northern Ireland. Moreover, in-store display is widely recognised as a critical form of competition among consumer goods manufacturers. The proposed display ban will make it virtually impossible to launch new products (whether new brands or brand extensions). It will give a huge advantage to brands (and manufacturers) that

are already well established, and create a tremendous and unfair disadvantage for manufacturers seeking to enter the Northern Ireland market for the first time.

Philip Morris Ltd

Departmental response:

DHSSPS contends that the availability of various price lists, in line with the relevant provisions of the draft Tobacco Advertising and Promotion (Display of Prices) Regulations (Northern Ireland), will enable retailers to list all the tobacco products which they stock, including where appropriate, new entrants to the market and those from other Member States.

Other comments offered which have not previously been addressed included:

- That the effectiveness of the policy should be reviewed after a three-year period;
- Recommendation that the regulations prohibit the use of any device which gives added prominence to products in storage units including lighting, sound, colour or motion;
- Concerns over “grey areas” which cannot stand up to enforcement of the regulations as suggested without more specific clarification;
- Regulations are an unnecessary and expensive burden on retailers.

Departmental response:

DHSSPS fully intends to carry out a review of the effectiveness of the regulations three years after they have been introduced.

The Department considers that the provisions in the Tobacco Advertising and Promotion Act 2002 are sufficient to prevent the further promotion of tobacco products through storage units. However, DHSSPS will monitor the legislation and will make decisions on further regulatory measures in the future if need be.

Comprehensive guidance will be produced in conjunction with representatives from both the retail sector and enforcement officers to ensure that both parties are fully aware of their responsibilities with regards to complying with the new legislation.

The Department considers that the display provisions in the Health Act 2009 are based on good evidence and the proposals for regulations are warranted and set out a proportionate approach to delivering the public health aims of the legislation.

3. REGULATING DISPLAY OF PRICES OF TOBACCO PRODUCTS

This section refers to the proposed Tobacco Advertising and Promotion (Display of Prices) Regulations (Northern Ireland) 2011.

Question 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?

Of the 988 respondents that answered this question, 69% did not agree that the approach set out in the regulations is effective and workable. This group included both those who disagreed with the regulations as they felt they do not go far enough, as well as those who disagreed because they felt the regulations went too far.

Both sets of arguments are illustrated by the comments below:

The number of ways consumers can view price should be reduced to ensure that these regulations are effective in protecting children and young people. The regulations also allow for product name and price to be advertised on storage units. This should be removed as it is not permitted in Ireland. **The British Heart Foundation NI**

Proposed price lists are completely inadequate and ineffective in providing information required by customers on what products are available, what brand variants are stocked and the characteristics of those different brands. The pictorial lists will be nearly impossible for small retailers to produce (and reproduce every time a price changes) by virtue of having to acquire specifically sized images of tobacco products no larger than the designated size. **National Federation of Retail Newsagents**

Other comments included:

- Size limits for price lists seem reasonable;
- Should be a single standard price list that uses a uniform font size;
- Restriction should be placed on retailers to allow only current price and do not draw attention to price promotions or reductions;
- Regulations could adversely affect those with sight problems as well as other groups;
- Over-prescriptive. Don't understand why the regulations need to specify font and size of type;
- No room on A3 page for all the tobacco products therefore retailers will be forced to select products for inclusion;

- Should only be one price list per store on display. 90% of adult smokers know what brand they will buy before entering a shop, therefore only a small amount of information is required.

Departmental response:

Retailers must be able to communicate with customers about which products they have available for sale and at what price but in the case of tobacco, such communications should not provide a means for the promotion or advertising of tobacco products. We believe the proposed regulations strike the right balance between the legitimate needs of businesses and the promotion of public health.

Question 8

Do you have any comments on the proposed requirements for the design of price lists?

Almost one quarter of respondents (23%) had some comments to make on the proposed requirements for the design of price lists. These varied with respondents from the retail sector and the tobacco industry stating that the regulations are too prescriptive and will be burdensome, particularly for small retailers:

Price list specification is unworkably small for the typical range of products stocked by retailers and prohibitively prescriptive for independent retailers to be able to reasonably comprehend, implement and regularly update. **National Federation of Retail Newsagents**

On the other hand, respondents from the health side were calling for price lists to be plain and designed in a manner which would not promote tobacco products:

Restriction should be placed on retailers to ensure that price lists only show the current price and do not draw attention to price promotions or reductions. Again, it is important to ensure that opportunities for indirect advertising, such as leaving blank spaces that can clearly be identified as a particular product, are avoided. **Northern Health and Social Care Trust**

To reduce opportunity for brand promotion, all price lists should have a uniform font size of 14 point (as recommended by RNIB), have all the products listed in alphabetical order, and not be permitted to include pictures of the products. **British Medical Association NI**

Other suggestions included:

- Logos should be allowed otherwise we will be discriminating against those with learning/reading/sight difficulties;
- Increase the overall size of the price list;
- Should be price lists at each till;
- Do not see justification for having prescriptive requirements relating to the price list on request – will not be on general display;

- Price list requirements are likely to deprive customers of the cost benefits associated with “price marked” packs.
- Only one standardised price list should be available. Having a variety of price lists for tobacco products is unnecessary.

Departmental response:

The Department believes that the requirements set out in the proposed regulations strike the right balance between communication with customers while preventing the promotion or advertising of tobacco products.

Some flexibility in the design of price lists is fair, and imposing requirements that price lists should be arranged alphabetically or further restrictions on design are not warranted at this point. The allowance for the “on request” price list to include colour pictures of tobacco products is intended to assist product recognition by customers, such as tourists or those with reading difficulties.

The Department wishes to make it clear that while the regulations set out what will be allowable in terms of price lists, they do not compel retailers to make price lists available. These regulations do not replace the requirements that retailers have under the Price Marking Order 2004.

Question 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?

Of the 987 respondents who answered this question, the majority (62%) disagreed that the proposals for labels on storage units will meet the need for the efficient operation of shops.

There was once again a split of opinion with respondents from the health sector argued that labels on storage units should not be allowed at all:

BMA(NI) believes that there should be a single standard price list and that the pricing and product names should not be displayed on storage units. This would be in line with the regulations in the Republic of Ireland. **British Medical Association (NI)**

Whilst retailers and those from the tobacco industry shared the view that the “prescriptive” nature of the proposals would lead to increased transaction times, and loss of business:

9sqcm labels with characters limited to 3mm in height are completely inadequate for the efficient operation of shops. Finding the product within prohibitively labeled storage units will slow down trade which essentially makes shop operation less efficient. **National Federation of Retail Newsagents**

Other comments included:

- Enforcement needs to be strictly adhered to, to ensure the tobacco industry does not utilise this as a marketing tool;
- Unclear whether the price labels should be on the inside or outside of display cabinets; and
- The maximum size stipulated, would, if implemented, be too small to allow either retail assistants or customers to read the labels properly.

Departmental response:

The Department believes that allowing retailers the option of using labels on storage units is necessary for staff to be able to locate tobacco products for sale. Therefore, labels need to be visible on the outside of the storage unit.

With regards to the font size allowed on the labels, DHSSPS is content that the proposal is in accordance with RNIB guidance, and therefore will not be amending the regulations to permit a larger font size.

Question 10

Do you believe that the proposed regulations are enforceable?

Of the 985 people who responded to this question, the majority stated that they didn't know or had no views (74%). Of those who did express an opinion, 14% believed the proposed regulations to be enforceable while 12% disagreed.

Amongst those who agreed, several commented that there would be resource implications to ensure effective enforcement:

*Continued funding by the Department of the Tobacco Control Officer posts is essential to ensure comprehensive enforcement of the regulations. **Antrim Borough Council***

Another respondent commented on the need for co-ordinated working between retailers and enforcement officers:

*Workshops involving the retailers and the Tobacco Control Officers would help greatly to reduce anomalies in the proposed regulations. **Ulster Chemists Association***

Those who disagreed that the regulations were enforceable tended to repeat previous comments made around the complexity of the regulations:

*The exceedingly high degree of prescription does not make for good enforcement. There is the danger that prosecution could result from some minor indiscretion relating to the size of a character on a price list when overall the ban is being complied with. **The Co-Operative Group***

Departmental response:

The Department will work with all relevant stakeholders, including District Councils and retail associations to support their efforts to prepare for the implementation of the new legislation.

Question 11

Do you have any other comments on the proposed regulations on the display of tobacco prices?

Of the 985 respondents, 18% indicated that they had further comments on the proposed display of tobacco prices regulations. Those opposed to the regulations used this opportunity to reiterate their objections:

Regulations do not provide an alternative means of communication between tobacco manufacturers, tobacco retailers and adult tobacco consumers about a lawful product. They will impose a disproportionate burden on legitimate businesses and result in a number of additional perverse consequences. **British American Tobacco**

Both those representing the health sector, and the retail sector stressed again the need for clear guidance:

Clear guidance for vendors is essential to ensure there is no ambiguity or confusion in regard to legislative requirements. **Belfast Health and Social Care Trust**

Departmental response:

DHSSPS believes that the correct balance has been struck between ensuring that businesses can communicate with their customers and ensuring that tobacco price lists are not used as a promotional tool. Comprehensive guidance will be provided for retailers and enforcement officers well in advance of the introduction date for the new provisions.

4. SPECIALIST TOBACCONISTS

This section refers to the proposed Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations (Northern Ireland) 2011.

Question 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?

Of the 613 people who responded to this question, 27% agreed that they should be allowed to display and advertise tobacco products in the ways set out in the regulations. 13% disagreed, and 60% stated that they either didn't know or had no views.

The health and voluntary organisations were split, with on one hand, a large number agreeing with the regulations as long as there are no tobacco advertisements visible from outside the premises, while on the other hand, some feeling that there should be little or no exemptions for specialist tobacconists. The fact that specialist tobacconists are not age-restricted premises was also raised by some respondents as a reason for not allowing them an exemption from the display ban:

*It would be desirable that specialist tobacconists are not exempt from the regulations given that they are not age restricted premises. However, as the regulations stand, it is essential that, as the regulations stipulate, displays of tobacco are not seen from outside of the shop. **Cancer Research UK***

Departmental response:

The Department considers that the particular nature of specialist tobacconists warrants the provision of specific provisions for the removal of tobacco displays in their businesses. To be a specialist tobacconist, a shop must meet the conditions set out in section 6 of the Tobacco Advertising and Promotion Act 2002, including the requirement for more than 50% of sales to be from specialist tobacco products: cigars, snuff, pipe tobacco and smoking accessories. We understand there are no more than 3 shops in Northern Ireland that might qualify to be a specialist tobacconist at the present time.

DHSSPS understands that some specialist tobacconists already operate voluntary age restriction policies and does not consider that legislation to require age restriction for these shops is needed at present.

Question 13

Do you believe these proposed regulations set out an effective and workable approach for specialist tobacconist?

Of the 609 respondents to this question, only 6% agreed, while 31% indicated that the proposed regulations did not set out an effective and workable approach.

Amongst those who disagreed, opinion varied between those representing the specialist tobacco market who felt that the requirement to have no visibility from outside of the premises would present problems and may lead to inconsistent interpretation by enforcement officials, to those who felt that there should be no exemptions from the display ban regulations for these premises at all.

Departmental response:

The Department believes that a fair balance is achieved through the regulations between preventing children from being exposed to tobacco promotion and ensuring that specialist tobacconists are not unduly burdened by having to significantly adapt their premises. The display of tobacco advertisements (excluding cigarettes or hand-rolled tobacco) is permitted, provided that tobacco products are not visible from outside the shop, and that the advertisement complies with the requirements set out in the Specialist Tobacconist regulations.

Question 14

Do you believe that these proposed regulations are enforceable?

Of the 102 respondents who provided a “yes” or “no” response to this question, 45% answered in the affirmative. From the small majority who answered “no”, very few comments were received as to why this would be the case. One respondent stated that multiple exemptions to the legislation would overcomplicate enforcement procedures.

The view from those who agreed that the regulations were enforceable was that the numbers of these premises are limited and therefore the enforcement of these regulations should be achievable.

Departmental response:

The Department will work with all relevant stakeholders in the development of specific guidance for specialist tobacconists and enforcement officers, in order to support implementation of the Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations (Northern Ireland) 2011.

Question 15**Do you have any other comments on the proposed specialist tobacconists' regulations?**

Only 8% of the 624 respondents had any further comments. Several of the district councils commented that they were concerned about the potential for retailers to claim bogusly to be specialist tobacconists and the efforts that might be involved in verifying this. Other comments repeated arguments for and against exemptions for specialist tobacconists.

Departmental response:

The Department believes that the definition of a specialist tobacconist is set out clearly in section 6 of the Tobacco Advertising and Promotion Act 2002. The onus will be on the business to provide evidence to enforcement officers that more than 50% of total sales derive from specialist tobacco products.

5. VENDING MACHINES

This section refers to the proposed Protection from Tobacco (Sales from Vending Machines) Regulations (Northern Ireland) 2011.

Question 16

Do you think the intended effect of prohibiting the sale of tobacco products from vending machines will be achieved by the proposed regulations?

Of the 628 people who responded to question 16, the majority didn't know or had no views (61%), 29% disagreed, and 10% agreed that the intended effect of prohibiting the sale of tobacco products would be achieved by the proposed regulations.

There was strong support for the draft proposals from health stakeholders including: district councils; HSC Trusts, the Public Health Agency; professional organisations; and a number of voluntary organisations. The general feeling was that the regulations would help to prevent children and young people from easily accessing tobacco products.

*Currently 22 countries in Europe ban or have never allowed sales from vending machines of tobacco. Prohibiting the sale of tobacco products from vending machines would bring us in line with the majority of European nations and would reduce children's access to tobacco. **Public Health Agency***

*Test purchasing by young people found that buying from vending machines was the most successful way for children to get hold of cigarettes – twice as successful as going to newsagents, off-licences or petrol station kiosks. **Cancer Research UK***

The majority of those who did not support the proposals were from the tobacco or vending machine industry, or individuals from the retail sector. Respondents argued that introducing a full prohibition was a disproportionate measure and that regulations placing restrictions on vending machines should be introduced instead. It was also suggested that removing vending machines would lead to an increased trade in illegal cigarettes.

*Support aim to restrict access to and discourage the use of tobacco products by those under 18, but prohibiting the sale of tobacco through vending machines is a disproportionate and unjustified way of seeking to achieve this aim. Consultation document wholly ignores the potential impact of the proposed regulations on the trade in illicit tobacco and that access to control methods such as radio frequency...would best address the stated aims of the proposed regulations. **Sinclair Collis Ltd***

Departmental response:

The Department remains concerned about the ease of access that under-18s have to tobacco from vending machines.

The Health Act 2009 was amended during its passage through Parliament to remove the power for regulations to impose restriction requirements on purchases from vending machines, therefore this no longer remains an option.

DHSSPS does not believe there is any evidence to suggest that by prohibiting sales of tobacco from vending machines, sales of illegal cigarettes will increase as a result.

Question 17

Do you think the proposed vending machine regulations will be enforceable?

The majority of respondents (78%) indicated that they didn't know/had no views as to whether the proposed vending machine regulations were enforceable. Of the remaining 22%, 8% agreed that they were enforceable.

*Proposed regulations are entirely enforceable as they require one-off action to remove vending machines. Compliance with these regulations should be easy to achieve as they are simple to communicate and require a single action from businesses rather than partial measures which would need to be assessed with the possibility of further measures at a later date. **British Heart Foundation NI***

However, the few comments received by those who answered "no" to this question tended to repeat previous arguments regarding their opposition to the regulations rather than explain their views for why the legislation is not enforceable.

Departmental response:

The Department will work with District Councils in order to produce guidance on the removal of tobacco vending machines from premises throughout Northern Ireland. While the sale of tobacco products from such machines will be banned from the introduction date of the regulations, it will not be unlawful for vending machines to remain on premises until owners have a chance to remove them.

Question 18

Do you have any other comments on the proposed regulations on vending machines?

A total of 65 respondents had further comments to offer on the draft vending machine regulations. While these tended to reiterate earlier comments made,

both supporting and objecting to the regulations, there were some original comments. One was the suggestion that vending machines could be modified for the sale of healthier products, such as nicotine replacement therapies, to cater for the 70% or so of smokers who want to quit.

Those who disagreed with the proposed regulations used this opportunity to call again for restrictions to be placed on vending machines rather than a full-on ban. Some comments were also made with regards to possible job losses as a result of the regulations, as well as a suggestion that the proposed measures disproportionately interfere with the rights and freedoms guaranteed by the Treaty on the Functioning of the European Union (TFEU) and the European Court of Human Rights (ECHR).

Departmental response:

The Department believes that banning the sale of tobacco from vending machines will contribute to one of its key tobacco control objectives which is to prevent children and young people from starting to smoke. The measure will also support adult smokers in their quit attempts.

The contention that the proposed measures disproportionately interfere with the rights and freedoms guaranteed by TFEU and ECHR are disputed by the Department which submits that any restrictions are justified in order to protect the health of people of Northern Ireland, particularly its children and young people.

6. TIMESCALES

This section refers to comments received on the proposed timescales for implementation of the new regulations.

Question 19

Do you have any views or comments on the proposed timescale for introducing the new tobacco control regulations in respect of tobacco displays, price displays, and advertising and display of tobacco products in specialist tobacconists, which it is intended will come into effect in Northern Ireland on 1 July 2011?

The majority (69% of 994 respondents) had views on the proposed timescales for introducing the display ban regulations.

Those representing the health sector strongly believed that the regulations should be brought in on 1 July 2011 and that the Department should resist calls from the tobacco/retail lobby to extend the deadlines.

Comments from those working in the retail sector, or representing the tobacco industry, felt equally as strongly that NI should not be introducing its legislation ahead of the UK.

We are disappointed with the lack of recognition of the concerns expressed by duty free operators on the feasibility of a short programme of implementation, given the costs and complexity of creating new tobacco display areas. **Belfast International Airport**

The timescale proposed by the DHSSPS is wholly inadequate and puts all retailers at serious risk of breaching the proposed Regulations simply for the fact that they will have inadequate time to achieve compliance. **British American Tobacco**

Departmental response:

The Department has carefully considered all the arguments made in relation to the timescales for introduction of the display ban in Northern Ireland. The Department has also noted the ongoing legal challenges in other UK jurisdictions and the resulting delays these have caused to the implementation dates in the rest of the UK.

While DHSSPS remains committed to the making of the regulations in respect of tobacco displays, price displays, and advertising and display of tobacco products in specialist tobacconists, the commencement date for these regulations will be determined only once the legal position is clear. The Department will ensure that the new commencement date takes into account the need for retailers to have a reasonable period of notice in which to make the necessary adaptations to their premises.

Question 20

Do you have any views or comments on the proposed timescale for introducing regulations to prohibit the sale of tobacco products from vending machines which it is intended will come into effect in Northern Ireland on 1 October 2011?

Of the 628 respondents to this question, 24% had some views or comments on the proposed timescale for the prohibition of the sale of tobacco products from vending machines.

Once again, the comments were split down the middle, with those from the Health Sector believing that there should be no delay in introducing the regulations:

*There is an urgent need for action to prevent young people from obtaining cigarettes from vending machines and so the regulations to prohibit the sale of tobacco products from vending machines should come into effect no later than the 1st October 2011. **NI Cancer Registry***

*This ban must be implemented as soon as possible. The consensus about the need for action and the ease of implementation mean that there is no need to wait until October 2011. **British Heart Foundation NI***

There was some confusion from individuals who mistakenly believed that the regulations in the rest of the UK were allowing the sale of tobacco from vending machines until much later than in Northern Ireland. This resulted in several calls for NI to fall into line with the rest of the UK.

Representatives from the retail/vending and tobacco industries used this opportunity to restate their arguments for not introducing a full ban on tobacco vending machines:

*The TMA can see no proper justification for denying adults access to tobacco vending machines, provided such machines have strict controls to prevent under-age access. We therefore cannot accept that regulations should be introduced to prohibit the sale of tobacco products from such machines nor that such a prohibition should be introduced from as soon as 1 October 2011. **Tobacco Manufacturers Association***

There were also some concerns expressed about the decommissioning process and the associated costs of this:

The consultation fails to mention who might take responsibility for the likely costs of disposal of tobacco vending machines made obsolete by the prohibition. It is likely that the machines would have to be decommissioned within a short space

of time. This, in turn, further inflates the costs of disposals/recycling. **Sinclair Collis Ltd**

Departmental response:

The Department remains committed to introducing regulations banning the sale of tobacco from vending machines. While the coming into force date of 1 October 2011 may now be delayed, DHSSPS intends to introduce the regulations as soon as possible thereafter, most likely early in 2012.

There are no plans by the Department to introduce compensation payments to vending machine businesses to cover costs of disposal/recycling. As stated in an earlier response, while the sale of tobacco products from such machines will be banned from the introduction date of the regulations, it will not be unlawful for vending machines to remain on premises until owners have an opportunity to remove them.

7. IMPACT ASSESSMENT

Question 21

Do you have any views on the conclusions reached by the Department to screen out from further assessment the implications of the proposals in respect of:- (a) economic impacts; (b) social impacts; (c) rural impacts; (d) environmental impacts; (e) human rights; (f) victims; (g) community safety; and (h) others.

There were only a handful of relevant comments provided by respondents with regards to question 21. These comments included the view that the economic impacts on tobacco retailers had not been properly addressed and that interference with constitutional rights had not been taken into account. Another respondent was concerned that evidence of no reduction in youth smoking prevalence in countries that had already introduced a display ban, was ignored.

Departmental response:

The Department is committed to reducing smoking prevalence in Northern Ireland and a key means of achieving this is by preventing children and young people from adopting the smoking habit. Introducing a tobacco display ban, and prohibiting the sale of tobacco from vending machines, are two measures amongst many others to be implemented by the Department in a bid to denormalise smoking as an activity.

The partial Regulatory Impact Assessments which accompanied the draft regulations, examined the costs to the retail and vending machine industries of introducing the new measures. With regards to constitutional rights, DHSSPS believes that the protection of public health is an important counter-balance to unrestricted commercial expression.

Appendix A: Who responded to the consultation?

A total of 1013 responses to the consultation were received. The table below shows the broad category of respondent by organisation or occupation type.

Category of respondent	Number
Retailers	661
Individuals	291
District Councils	17
Organisations representing tobacco industry or retailers	9
Health bodies	8
Tobacco manufacturers	8
Professional bodies	6
Voluntary organisations	5
Vending machine companies	2
Others	6
TOTAL	1013

The following is a list of organisations that responded to the consultation (the list does not include individual respondents):

Action on Smoking and Health (ASH) Northern Ireland
Action Cancer
Antrim Borough Council
Ards Borough Council
Armagh City and District Council
Association of Convenience Stores
Association of Independent Tobacco Specialists
Ballymena Borough Council
Banbridge District Council
Belfast City Council
Belfast International Airport
Belfast Health and Social Care Trust
British American Tobacco (BAT)
British Heart Foundation NI
British Medical Association (NI)
British Retail Consortium
Cancer Research UK
Chief Environmental Health Officers' Group
Coleraine Borough Council
Cookstown District Council
Co-operative Group
Fermanagh District Council

Freedom Organisation for the Right to Enjoy Smoking (FOREST)
Hunters & Frankau Ltd
Imperial Tobacco Ltd
Imported Tobacco Products Advisory Council (ITPAC)
Institute of Public Health in Ireland
Japan Tobacco International (JTI)
JTI Lisnafillan
Larne Borough Council
Limavady Borough Council
Magherafelt District Council
McNabb Vending
National Federation of Retail Newsagents (NFRN)
Newry & Mourne District Council
Newtownabbey Borough Council
NI Cancer Registry
Northern Ireland Independent Retail Trade Association (NIIRTA)
North Down Borough Council
Northern Ireland Tourist Board
Northern Health and Social Care Trust
Omagh District Council
Philip Morris Ltd
Police Service Northern Ireland (PSNI)
Public Health Agency
Royal College of General Practitioners (NI)
Royal College of Nursing
Royal College of Physicians
Royal College of Physicians Edinburgh
Scandinavian Tobacco Group
Sinclair Collis Ltd
South Eastern Health and Social Care Trust
Southern Health and Social Care Trust
SPAR UK
Tobacco Manufacturers Association
Tobacco Retailers Alliance
TOR Imports Ltd
UK Travel Retail Forum
Ulster Cancer Foundation
Ulster Chemist's Association
UNITE (Lisnafillan)
Western Health and Social Care Trust