



Working for a tobacco-free Scotland

ASH Scotland

Briefing on Tobacco and Primary Medical Services (Scotland) Act 2010 Consultation on Draft Regulations

June 2010

1. Why are the Tobacco Act and regulations important?

Tobacco remains the largest single cause of death and ill-health in Scotland, causing nearly 13,500 deaths each year¹. All of these early deaths are entirely preventable - progress can be made in reducing the toll smoking takes in Scotland by encouraging existing smokers to quit and preventing the 15,000 young people in Scotland who start each year² from taking it up in the first place.

Experts in tobacco and health have identified some of the reasons why young people take up smoking³, concluding that there are a variety of influential factors including price, availability, peer and family attitudes and behaviours, and promotion. As part of the Government's larger Smoking Prevention Action Plan, *Scotland's Future is Smoke Free*⁴, the Tobacco and Primary Medical Services (Scotland) Act⁵ was passed by the Scottish Parliament in January, 2010. The Act reforms significantly the way tobacco products are sold in Scotland, by introducing the following measures:

- *prohibiting the display of tobacco products at the point of sale*
- *banning the sale of tobacco products through vending machines*
- *creating a register for tobacco retailers*
- *giving enforcement officers the power to issue fixed penalty notices for those who break tobacco sales law*
- *fining up to £20,000 for unregistered tobacco retailers to assist in tackling the illicit trade*
- *criminalising proxy-purchase of tobacco (an adult who buys for an under-18) and underage purchase of tobacco.*

A ban on the display of tobacco products is important because there is robust evidence to demonstrate that large and elaborate tobacco gantries are a form of tobacco promotion and that prohibiting them will reduce recruitment to smoking while helping existing smokers to cut down and quit⁶. As around 10% of children who smoke regularly in Scotland report obtaining their cigarettes from vending machines⁷, an outright ban on the sale of tobacco products from them is the clearest way to reduce this readily accessible source of tobacco to young people. The creation of a registration system and fixed penalty notices for tobacco retailers will aid enforcement agencies to crack down on rogue retailers who sell to children, and to more effectively tackle the illicit tobacco trade.

This briefing sets out the key issues in the regulations underpinning the new Act. These regulations are out for consultation until 20 July 2010. We would encourage all those with an interest in public health to respond in support of the regulations. There is likely to be organised and sustained opposition seeking to weaken these regulations, and from a health perspective, it is vital they remain strong.

2. What are the key issues contained in the regulations?

The regulations set out significant practical details for several aspects of the Tobacco Act (the figures in *[square brackets]* refer to page number and regulation number in the consultation document):

- **Commencement dates:** When the measures in the Act come into force - this is October 2011 for large shops (a floor area of over 280 square meters) and October 2013 for all others for the regulations relating to the display ban and the display of prices *[p.14, r.1(1)]*, and spring 2011 for the regulations governing the registration scheme.
- **Display ban:** The Act itself prohibits the display of tobacco; the regulations allow exemptions so that retailers can carry out their trade without undue difficulty while restocking, cleaning, training staff and so on *[p.15, r.4(1)-(2)]*. An area of 120 square centimetres (approximately the size of one tobacco product) is allowed to be shown while retrieving products for sale. Specialist tobacconists are exempt, provided the display is not of cigarettes or hand-rolling tobacco, or visible from outside the shop *[p.15, r.3(4)]*. Bulk (e.g. cash and carry) or duty-free retailers are permitted to display tobacco provided it is done in a dedicated tobacco area *[p.15, r.4(1)(c)]*.
- **Display of prices:** The size, number, and format of price lists are set out in regulation to allow retailers to communicate their stock to customers. One A3 price list (text only) is allowed per tobacco area (or if there is more than one till at each area, one per till) *[p.17, r.9(1)-(2)]* with an on-request price list that may feature a 50 square centimetres image of the tobacco product in addition to name and price *[p.17, r.10(1)-(2)]*. Small (9 square centimetres) price labels are permitted on tobacco storage units to allow staff to locate stock *[p.17, r.11(1)-(2)]*.
- **Details to be contained within the regulation scheme:** Several details in addition to name and address will be required in order to allow effective enforcement of the Act *[p.31, r.3(a)-(d)]*. Retailers who are banned from selling tobacco due to breaches of the law will be required to display an A3 banning order notice stating they are banned from selling tobacco *[p.32, r.5(1)-(4)]*. 'Moveable structures' (e.g. vans and stalls) that sell tobacco will also have to be registered, providing information that will allow them to be effectively located and subject to the same enforcement as shops in a fixed location *[p.24, r.2-5]*.
- **Level of fixed penalty notices:** Underage purchase and refusal to comply with a confiscation request is liable for a £50 penalty notice (with a discounted amount of £30). An individual must be 16 or over to be served a fixed penalty notice. For all other offences under the Act the fixed penalty is £200 (discounted to £150). If repeated offences are made, the fixed penalty escalates by £200 for each previous enforcement action within a year. All fixed penalty notices must be issued within seven days of the offence being committed *[p.25, r.6-8]*.
- **Acceptable proof of age:** The regulations allow a photographic identity card bearing the national Proof of Age Standards Scheme (PASS) hologram such as the Young Scot card to be used for the purpose of proving age when buying tobacco products, in addition to a valid passport or driving licence *[p.37, r.2]*.

3. Should I respond to the consultation on the draft regulations?

If you are an individual or representative of an organisation involved in tobacco control, youth work, public health or any area that is affected by the harm that tobacco continues to cause in Scotland, **ASH Scotland urges you to respond to the draft consultation on these important**

regulations, underlining the health reasons for these measures to keep political resolve firm against attempts to weaken them, and emphasising the points below:

- **Your support for these strong regulations:** Cigarettes are highly addictive and kill half their long term users⁸. These robust regulations will effectively limit the visibility and availability to children of this lethal product in Scotland's shops and are to be supported, **with no weakening**.
- **The need to stick to the commencement timetable:** The longer it takes til the measures are enacted means more time for the tobacco industry to continue to advertise its products in shops throughout Scotland. **The timetable contained in the draft regulations allows sufficient time for both large and small retailers to adapt to the changes in law, and should be maintained.**
- **Prevent tobacco industry abuse of loopholes:** Historically, the tobacco industry has exploited any room for manoeuvre given to it in regulation. To avoid loopholes in tobacco display ban legislation as seen in other countries such as Ireland it is important that the regulations are as tight as possible and supported by effective guidance. **An area of allowable display set at approximately the size of one tobacco product should [p.16, r.4(2)(h)] be maintained, as should the stipulation that displays in specialist tobacconists should not be visible from outside the premises [p.15, r.3(4)] - abuse of any loopholes should be avoided through strong guidance and enforcement.**
- **Display of prices:** While price lists in some form are necessary, only **one list per tobacco area is required [p.15, r.9(2)] and on-request price lists [p.17, r.10] should only be available to over-18s.**
- **Bulk and duty free tobacconists:** While bulk and duty-free tobacconists will continue to display tobacco products in a separate area [p.15, r.4(c)], **individuals who do not wish to buy tobacco products should not be forced or encouraged to walk through the tobacco area by store design or layout. Any breaches of the spirit of the law by bulk or duty-free tobacconists should result in them having to comply with the same regulations as other retailers.**

4. How do I respond?

The consultation is open till **20 July 2010**. Copies of the draft regulation and instructions on how to respond can be obtained at:

- www.scotland.gov.uk/Publications/2010/04/27151930/0
Responses should be emailed to: TobaccoDisplayandSaleRegulations@scotland.gsi.gov.uk

More information on the draft regulations, the Act, and other tobacco control issues in Scotland is available from the ASH Scotland website, below. We are also happy to discuss any aspect of the regulations further via enquiries@ashscotland.org.uk

- <http://www.ashscotland.org.uk/ash/6545.html>

¹ Health Scotland, ISD Scotland and ASH Scotland. An atlas of tobacco smoking in Scotland: A report presenting estimated smoking prevalence and smoking-attributable deaths within Scotland. [Online]. NHS Scotland/Scottish Public Health Observatory. 2007. Available from: <http://www.scotpho.org.uk/nmsruntime/saveasdialog.asp?IID=3907&SID=3256> [Accessed 1 June 2010]

² Taulbut, M. Gordon, D and McKenzie, K. Tobacco smoking in Scotland: an epidemiology briefing. [Online]. Edinburgh: NHS Health Scotland and Scottish Public Health Observatory. 2008. Available from: <http://www.scotpho.org.uk/nmsruntime/saveasdialog.asp?IID=4210&SID=3590> [Accessed 1 June 2010]

³ The Smoking Prevention Working Group. Towards a future without tobacco. [Online]. Scottish Executive. 2006. Available from: <http://www.scotland.gov.uk/Publications/2006/11/21155256/0> [Accessed 1 June 2010]

⁴ Scottish Government Scotland's future is smoke-free: a smoking prevention action plan [Online] Edinburgh: The Stationary Office 2008. Available from: <http://www.scotland.gov.uk/Publications/2008/05/19144342/13> [Accessed 1 June 2010]

⁵ Office of Public Sector Information. Tobacco and Primary Medical Services (Scotland) Act 2010. [Online]. 2010. Available from: http://www.opsi.gov.uk/legislation/scotland/acts2010/pdf/asp_20100003_en.pdf [Accessed 1 June 2010]

⁶ Hastings G, MacKintosh AM, Holme I, Davies K, Angus K, Moodie C. Point of Sale Display of Tobacco Products. Centre for Tobacco Control Research [online]. August 2008. Available from: http://info.cancerresearchuk.org/prod_consump/groups/sr_common/@nre/@pol/documents/generalcontent/crukmiq_1000ast-3338.pdf [Accessed 1 June 2010]

⁷ Scottish Schools Adolescent Lifestyle and Substance use Survey (SALSUS) National Report: Smoking, Drinking and Drug Use among 13 and 15 year olds in Scotland in 2008. [Online]. Edinburgh: Drug Misuse Information Scotland. Available from: www.drugmisuse.isdscotland.org/publications/abstracts/salsus.htm [Accessed 1 June 2010]

⁸ Doll R, Peto R, Wheatley K, Gray R, Sutherland I. Mortality in relation to smoking: 40 years' observations on male British doctors. *BMJ*. 1994 Oct 8;309(6959):901-11.