

Explanatory Memorandum to the Tobacco Advertising and Promotion (Specialist Tobacconist) (Wales) Regulations 2012

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Tobacco Advertising and Promotion (Specialist Tobacconist) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM
Minister for Health and Social Services
14 May 2012

1. Description

The Tobacco Advertising and Promotion (Specialist Tobacconist) (Wales) Regulations 2012 (“the Specialist Tobacconist Regulations”) are part of a wider package of measures aimed at removing the display and promotion of tobacco products. The Regulations make provisions for exemptions from these measures in relation to specialist tobacconists. The Regulations aim to allow specialist tobacconists to continue to display tobacco products within their shops, provided that the displays cannot be seen by the public from outside the shop. The Regulations also allows the advertisement of tobacco products (other than cigarettes and hand rolling tobacco) provided the advertisement is not visible from outside the premises and contains the required bilingual health warning.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations are being made as part of the package of measures aimed at removing the display and promotion of tobacco products. The following two Regulations are part of the same package:

- Tobacco Advertising and Promotion (Display of Prices) (Wales) Regulations 2011 (“the Display Regulations”), subject to the affirmative procedure;
- Tobacco Advertising and Promotion (Display) (Wales) Regulations 2011 (“the Specialist Tobacconist Regulations”), subject to the negative procedure.

The Specialist Tobacconist Regulations will come into force on 6 April 2015.

The Display of Prices Regulations will come into force on 3 December 2012 for large shops and 6 April 2015 for all other purposes including small shops and other businesses.

The Display Regulations will come into force on 3 December 2012 for the purpose of large shops other than bulk tobacconists, and on 6 April 2015 for all other purposes.

The Health Act 2009 (Commencement No.3) (Wales) Order 2012 is being made by Welsh Ministers in order to commence the relevant provisions in the Health Act 2009 on the appropriate dates.

3. Legislative background

The Welsh Ministers have the powers to make these Regulations under Section 6A(1) of the Tobacco Advertising and Promotion Act 2002 (TAPA). Section 20 of The Health Act 2009 inserts Section 6A(1) into TAPA which gives Welsh Ministers the power to make regulations to exempt specialist tobacconists from the ban on tobacco advertisements in Section 2 of TAPA. The Welsh Ministers rely on their powers in Section 7B(7) of TAPA (as inserted by Section 21(8) of The Health Act 2009) to provide exemptions for

specialist tobacconists from the prohibition on tobacco displays imposed by Section 7A of TAPA.

Section 26(3) of the Welsh Language Act 1993 gives the Welsh Ministers power in relation to the bi-lingual requirements set out in the Regulations.

This instrument is subject to the negative procedure.

4. Purpose & intended effect of the legislation

Smoking is the leading cause of premature death and illness in Wales, accounting for one in five deaths (around 5,650 people each year). It is also the primary reason for the gap in life expectancy between rich and poor.

Two thirds of adults who have ever smoked in the UK say that they started before they were 18. Evidence shows that since the Tobacco Advertising and Promotion Act 2002 (TAPA) banned tobacco advertising, the tobacco industry has put more focus on the display of tobacco in shops as a way of promoting its products. The industry has supplied shops with promotional cigarette packet displays, to draw the attention of shoppers to tobacco products. There is clear evidence that these promotional activities encourage children to start smoking^{1,2}. It is therefore important that tobacco displays, like tobacco advertising, are prohibited.

The Health Act 2009 provides regulation-making powers to the Welsh Ministers enabling them to make provision for exemptions from the prohibition on tobacco displays imposed by Section 7A(1) of TAPA.

Specialist tobacconists are defined as shops in which over 50 per cent of trade is in specialist tobacco products (i.e. cigars, snuff, pipe tobacco and smoking accessories). Specialist tobacconists are generally not used by children and so present a low risk of affecting young people's behaviour. In addition, the number of shops falling within the definition of 'specialist tobacconist' as set out in TAPA are very few: the Welsh Government understand from the Association of Independent Tobacco Specialists (AITS) that the number in Wales is less than six. The Welsh Government is mindful of the need to take a proportionate approach to the removal of all unsolicited promotion or advertising of tobacco. Given the nature of the trade and customers of specialist tobacconists and the number of shops in Wales, to restrict display of tobacco products within these shops would be a disproportionate burden on these businesses. The Welsh Government therefore considers that specialist tobacconist warrant particular treatment and this is provided for in the Specialist Tobacconist Regulations.

The Specialist Tobacconist Regulations set out arrangements to allow specialist tobacconists to display tobacco products within their shops, provided that the displays cannot be seen by the public from outside the shop. The Regulations also allow tobacco advertising provided the adverts comply with the requirements in the Regulations. At present, specialist tobacconists are allowed to advertise specialist tobacconist products and this provision will bring consistency to the requirements on advertising and display of tobacco

products across all shops. The Regulations provide at Regulation 2 that specialist tobacconists will not be permitted to advertise cigarettes or hand-rolling tobacco and that tobacco advertisements must not be visible from the outside of specialist tobacconists. Advertisements must also carry the health warning required by the Regulations.

Annex 1 summarises the Regulations.

A detailed explanation of the impact of the Regulations is at Part 2 of this Explanatory Memorandum. This Regulatory Impact Assessment (RIA) was included as part of the consultation on the draft Tobacco Control Regulations in April 2010. The Regulatory Impact Assessment (RIA) included as Part 2 of this Explanatory Memorandum has been amended post-consultation with more up to date assumptions.

5. Consultation

A formal consultation on the draft Tobacco Control Regulations, together with the draft Regulatory Impact Assessment, was undertaken between 12 April 2010 and 6 July 2010. This consultation included a draft version of the Specialist Tobacconist Regulations. Consultees included retail and business representative organisations, local authorities, Wales Heads of Trading Standards, Public Health Wales, NHS organisations, the Chartered Institute of Environmental Health, Professional organisations, the Welsh Local Government Association, Wales Tobacco Control Alliance and voluntary sector organisations. The consultation document is available at:

<http://wales.gov.uk/consultations/healthsocialcare/tobacco/?lang=en&status=closed>

244 responses to the consultation were received from a wide variety of stakeholders. In relation to comments received on the Specialist Tobacconist Regulations, several respondents commented that specialist tobacconists should not be given more leeway than other types of tobacco retailer, with some raising concerns that children are permitted to enter them and view the age-restricted products on sale. Some respondents felt that specialist tobacconists should be age-restricted premises. Some felt that the Regulations were disproportionate and costly for these small businesses to implement. There was broad agreement amongst respondents, however, that the approach for specialist tobacconists is effective, workable and enforceable.

For the reasons set out in section 4 above, the Welsh Government believes that specialist tobacconists warrant specific provisions to allow them to continue to display tobacco products. Given the very small number of specialist tobacconists in Wales, the Welsh Government does not believe that further restrictions need to be included in the Regulations at this stage, but will keep the operation of the Regulations under review. No changes have therefore been made to the Specialist Tobacconist Regulations as a result of the consultation.

A detailed analysis of the consultation responses is available on the Welsh Government website at:

<http://wales.gov.uk/consultations/healthsocialcare/tobacco/?lang=en&status=closed>

PART 2 – REGULATORY IMPACT ASSESSMENT– REGULATIONS SUPPORTING THE PROHIBITION OF THE DISPLAY OF TOBACCO PRODUCTS

This Regulatory Impact Assessment has been prepared in respect of the Tobacco Advertising and Promotion (Display) (Wales) Regulations 2012, the Tobacco Advertising and Promotion (Display of Prices) (Wales) Regulations 2012 and the Tobacco Advertising and Promotion (Specialist Tobacconists) (Wales) Regulations 2012. These three sets of Regulations taken together implement the Welsh Ministers' policy on the display of tobacco products.

Purpose and intended effect of the legislation

1. Tobacco smoking is proven to cause serious harm to the health of smokers and to non-smokers who are exposed to second-hand smoke. It is a major preventable cause of illness and premature death in Wales, accounting for one in five deaths each year. Smoking is also a leading cause of health inequalities, having been identified as the main cause for the gap in life expectancy between rich and poor. Smoking-related illness has been estimated to cost the NHS in Wales an estimated £386 million in 2007/08, equivalent to £129 per head and 7% of total healthcare expenditure in Wales.

2. Most smokers start smoking during adolescence. Two thirds of adults who have ever smoked in the UK say that they started before they were 18.

3. The Tobacco Advertising and Promotion Act (TAPA) 2003 introduced a ban on the publication of tobacco advertisements. Specifically, point of sale regulations that came into force in December 2004 limited tobacco advertising at the retail point of sale to a maximum space of A5. However, since the Tobacco Advertising and Promotion Act 2002 (TAPA) banned tobacco advertising, the tobacco industry has put more focus on the display of tobacco in shops as a way of promoting its products. A report by LACORS in 2006 identified a growing problem with the use of counter-top devices to draw attention to tobacco products in the retail environment. In addition, many retailers were found to have been stacking multi-packs of cigarettes in a way that created large virtual advertisements that contravene the spirit if not the letter of the point of sale restrictions. Cigarettes continue to be displayed on large, prominent gantries or shelving units behind the cash tills of retail outlets.

4. There is ample and rigorous evidence that tobacco displays increase the likelihood of children taking up smoking, and undermine quit attempts by smokers who are trying to give up^{1,2}.

5. Following a consultation on future tobacco control measures in 2008, the UK Government announced that it would be seeking a prohibition on tobacco displays. The general prohibition and accompanying regulation-making powers were laid before Parliament in the Health Bill 2009, which received

Royal Assent in November 2009. Section 20 of the Health Act 2009 provides regulation-making powers to the Welsh Ministers to make an exclusion for specialist tobacconists in respect of the prohibition on advertising of tobacco products in section 6 of the Tobacco Advertising and Promotion Act 2002. Section 21 of the Health Act 2009 provides regulation-making powers to the Welsh Ministers to prohibit or regulate the display of tobacco products at the point of sale, and to regulate the display of prices of tobacco products.

Policy options

6. The policy options under consideration are:

A: Do nothing: allow the complete prohibition on tobacco displays contained in the Health Act 2009 to commence without regulations, meaning that any visibility of tobacco products, including at the point of sale, would be an offence.

B: Preferred option: use the regulation-making powers in the Health Act 2009 to limit the general display prohibition, thereby allowing the practical selling of tobacco, recognising the different ways in which tobacco can be sold in different retail environments, and allowing display and advertising of specialist products to continue within specialist tobacco shops.

Costs and Benefits

7. Option B has no costs, as the regulations would reduce the cost of compliance when compared with the cost of the complete prohibition of tobacco displays required by the Health Act 2009.

8. This Regulatory Impact Assessment considers the likely cost to retailers of a general prohibition of tobacco displays, and then considers the benefit of each of the regulations in terms of lowering the cost implications. Each regulation produces a 'saving' to retailers compared to having no regulations at all, and this is counted as a benefit of the proposed regulations. The health benefits are discussed separately in paras 45-54.

Cost of a complete prohibition on tobacco displays

Complete prohibition on display – one-off costs

9. The original cost benefit analysis for removing tobacco displays was based on an estimate of £1,000 per store, average, to remove tobacco displays. There was a great deal of debate during passage of the Health Bill about the actual cost of removing tobacco displays. Evidence from the Canadian experience of removing tobacco displays indicates the costs could be much lower than £1,000 for small retailers, whilst larger stores will have larger displays and other shops may choose more expensive solutions that better suit their retailing environment.

10. The estimate of £1,000 per store was based on the assumption that shops would be able to choose their own solution and that low-cost solutions that used existing gantries and allowed limited, temporary displays when serving customers would be permitted by regulations.

11. Assuming no regulations were introduced alongside the commencement of the general prohibition on tobacco displays, the cost of removing displays would be much higher than £1,000. 'Under the counter' or overhead solutions would be appropriate solutions, allowing sales assistants to select products for a customer without revealing any tobacco to the public at all. Under the counter solutions, or placing tobacco in drawers, could cost as much as £4,965 per shop, according to the Association of Convenience Stores (ACS)⁴. This takes into account the cost of the unit, fitting, and installation. The British Retail Consortium estimate removing displays with an 'under the counter' solution could cost between £2,500 and £10,000 per store depending on the size of display. In this Regulatory Impact Assessment, we therefore will estimate the cost of a complete prohibition of tobacco displays as £4,965 average per small store, and £7,500 average per larger store.

12. The convenience store magazine published data on the grocery retail structure in May 2009⁵. These data indicate that there are 66,732 shops selling tobacco in the UK, including convenience stores, petrol forecourts, supermarkets and superstores. Applying a population factor of 0.05 for Wales (derived from ONS mid-08 estimates), this scales down to 3,337 shops selling tobacco in Wales.

13. To avoid confusion, the Welsh Assembly Government, in line with the UK Government, has committed to defining small and large stores by the existing Sunday Trading Act 2004 definition, that is, those stores greater than 280 square metres are considered large. This means shops will already know whether they would need to comply with the display prohibition by 2012 or 2015.

14. According to the grocery retail structure article, and applying the population scaling factor for Wales, the small/large distinction applies as follows:

- 2,091 convenience stores – small
- 432 petrol forecourts – small
- 448 traditional retail and developing convenience stores – small
- 366 supermarkets and superstores – large

15. This results in an estimated 366 larger stores and 2971 small stores in Wales.

16. Taking the average cost per store as detailed at paragraph 11 and the estimated number of stores detailed at paragraph 15, and allowing larger retailers 18 months to comply, and smaller retailers 3.5 years to comply, this results in a potential one-off cost to put tobacco under the counter in shops in Wales of **£17.6 million**.

Complete prohibition on display – unquantifiable one-off costs

17. There are groups of retailers who sell tobacco in ways that are different to the high-street store. Removing tobacco displays in, for example, specialist tobacconists and bulk tobacconists, could be much more costly than in a high street shop, although exact costs are not known.

18. According to the Association of Independent Tobacco Specialists (AITS)⁶, removing tobacco displays in specialist tobacconists would result in the closure of 95% of specialist businesses (this would equate to approximately 5 shops in Wales). This is due to their estimated costs of between £1,000 and £200,000 per store. Although individuals who would lose their trade might retrain and contribute to the economy in other ways, the retraining of staff and the removal of businesses would incur costs over the ten year period.

19. The Health Act 2009 replaces the 'blanket' exemption for specialist tobacconists from the general prohibition on tobacco advertising with a power to provide for exemption by regulation. At present, advertising of specialist tobacco products (e.g. pipe tobacco and cigars) is permitted anywhere on the premises of a specialist tobacconist, including affixed to the outside of the premises. This would be inconsistent with removing all promotion of tobacco through displays in every other shop. If no regulations were used, specialist tobacconists would become subject to the comprehensive advertising ban meaning they would have to remove all advertisements for specialist tobacco products, which would also incur some costs.

20. Finally, during consultation and the development of regulations, bulk tobacconists were identified as a group that would incur very high costs if they had to remove tobacco displays completely. Bulk tobacconists include airport duty-free sales and cash-and-carry stores. Such shops sell only bulk tobacco products, defined as a minimum carton of 200 cigarettes, and a minimum size of 250g of hand-rolling tobacco.

Complete prohibition of display – annual recurring costs

21. The following points relate to recurring annual costs. The emboldened cost estimates relate to when the policy is fully in force:

a. Different methods of serving customers could result in additional time taken to serve. A report by the Centre for Economics and Business Research (CEBR)⁷ cites a small study from Convenience Store magazine⁸ which found that serving a product from under the counter took 8.8 seconds (versus 4.37 seconds when serving from a gantry), citing a calculation of an additional 230 minutes per week per store. Given the number of cigarettes estimated to be sold in shops in Wales is 2.3 billion, this leads to 141,514 additional hours lost to the customer per annum. Using a value of £5.13 per hour of leisure time, the gives a time-loss value to the customer of £0.73 million per annum [see Technical Appendix for further information].

b. Additional time to serve customers is also a cost to the retailer, monetised at £9.15 wage rate. The 141,514 additional hours are therefore equivalent to a cost of £1.3 million per annum [see technical appendix for further information].

c. There may be increased stock-taking and restocking time. The Convenience Store magazine article referenced in the CEBR report argues that a move to under the counter could add around 2.5 hours per week in stock-taking and restocking time. This is equivalent to a cost of £4.0 million per annum.

Complete prohibition of display – unquantifiable annual recurring costs

22. A number of issues raised by respondents to the Department of Health's 2008 consultation on the future of tobacco control could give rise to an economic cost. For those issues listed below, no quantified evidence is available to estimate the impact on cost.

a. Increased theft of stock: shop assistants may be distracted when retrieving tobacco products, making casual theft easier (particularly on petrol retailer forecourts). New storage solutions may 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. The extent of any such effects that might occur is not quantifiable.

b. Customer migration to larger stores: customers might believe that larger stores have a bigger product range. A full price and availability list will be visible in every shop detailing which products are sold. The legislation will come into force in large shops first, meaning customers will be familiar with the concept of choosing from a list rather than a display when the legislation comes into force in smaller shops. It is anticipated that most people who smoke will continue to buy their tobacco at the same shop that they are accustomed to.

c. Increased use of black market cigarettes: identification of counterfeit cigarettes requires handling and close examination by enforcement officers, so whether or not they are on display is largely irrelevant to illicit trade.

d. Cost of replacement 'focal point' stock: this was also discussed but not quantified in the CEBR report. However, if a retailer chooses a solution that frees up the space that a tobacco gantry used to occupy, they may rearrange existing stock or purchase new stock to occupy that space. New stock will turn a profit when it is sold, otherwise the retailer would not choose to purchase it. The solution used in Canada provided new advertising space at the shop counter that could be sold, for instance to promote food products.

e. Reduction in sales in airports: if airport duty-free sales were subject to a complete tobacco display prohibition, it is predicted that fewer customers would purchase tobacco, resulting in losses to the income of regional airports. It is expected that these customers would purchase duty-free tobacco at the

arrival airport, resulting in a displacement of trade from UK regional airports to airports in other, non-EU countries.

f. Any increase in the cost of enforcement visits: trading standards officers may need to provide guidance to businesses to explain the new regulations. The Welsh Government has committed to providing £25,000 for a retailer information campaign and training for local authority enforcement officers.

Summary of costs

23. In summary, we would have one-off costs of £17.6 million and annual costs of £6.0 million per annum, once the display prohibition was fully in force. Assuming that all stores comply immediately, there would be a 10-year discounted cost of £68 million.

This is an upper estimate of the costs since for the sake of the discounting, it has been assumed that all changes have taken place immediately and therefore full costs have been incurred from the point of implementation, rather than these costs being incurred gradually over the flexible period allowed for full implementation.

Benefits of proposed regulations limiting the general prohibition on tobacco displays

Proposed Tobacco Advertising and Promotion (Display) (Wales) Regulations 2010. Regulation 4: permitting limited, temporary displays to serve customers

24. The proposed regulations that accompany this Impact Assessment permit a temporary display that is limited to 1,500 sq cm. This means that retailers can make a limited display of tobacco products when they are serving a customer. In practice, retailers would be able to keep their existing tobacco shelving and use simple, low-cost covers, avoiding the need for under the counter or overhead solutions.

25. Many shops in Canada took this approach by applying simple magnetic covers to existing tobacco shelving. This would allow solutions modelled on the Canadian approach to be used in Wales. Estimates from a company that supplied 85% of the Canadian market vary depending on the size of the gantry, the number of stores making a purchase and the quality of the installation. The estimates vary from £210 to £450 for an individual store with 25 square feet of display area, and £850 for a store with twice that display space⁹.

26. A report by ASH¹⁰ on point of sale displays of tobacco, based on 153 visits by trading standards officers to tobacco retailers across seven UK regions found that the smallest tobacco display area was 1 metre by 1.3 metres (approximately 18.17 sq ft). The largest display area was 1.9 metres by 3.6 metres (approximately 73.59 sq ft). However, over 90% of retailers visited had displays of less than 50 sq ft, and 65% had displays of less than 25 sq ft. It is therefore considered that small stores, on average, display at most 25 sq ft

(approximately 2.25 sq metres) of tobacco, and that large stores, on average, display 50 sq ft (approximately 4.5 sq metres) of tobacco.

27. To ensure estimates of cost take into account all possible costs, we will use an estimate of £450 per small store, and £850 per large store. Compared to the cost of implementing a complete prohibition with no regulations, this results in a one-off benefit (cost saving) of £16.0 million.

Proposed Tobacco Advertising and Promotion (Specialist Tobacconists) (Wales) Regulations 2010 (unquantifiable)

28. A complete tobacco display prohibition would be likely to result in the closure of almost all specialist tobacconists. The Health Act 2009 provides regulation-making powers to control both advertising of specialist products and display of all tobacco products in specialist tobacconists.

29. At present, advertising of specialist tobacco products (e.g. pipe tobacco and cigars) is permitted anywhere on the premises of a specialist tobacconist shop, including affixed to the outside of the premises. This would be inconsistent with removing all promotion of tobacco through displays in every other shop.

30. The proposed regulations would limit advertising of specialist products to specialist tobacconists where the adverts were not visible outside the shop. The regulations would also allow specialist tobacconists to continue displaying all tobacco products, provided these displays were not visible outside the shop.

31. The effect of these regulations would therefore be that promotion of tobacco, through advertising and display, would only be visible to those people who have chosen to enter a specialist tobacconist shop.

32. There are fewer than 6 specialist tobacconists in Wales, and some have a voluntary entry restriction preventing children from entering the shop unaccompanied. Those people who are trying to quit smoking are unlikely to go into a specialist tobacconist shop. Therefore, by ensuring adverts and displays are only visible to those people who have chosen to enter a specialist tobacconist, the regulations effectively prevent unsolicited tobacco promotion, whilst also allowing specialists to continue trading.

33. Given the high cost to specialist tobacconists of implementing a complete prohibition on the display of tobacco products and a complete prohibition on the advertising of specialist tobacco products, the proposed regulations would result in a saving.

Proposed Tobacco Advertising and Promotion (Display) (Wales) Regulations 2010. Regulation 5: requirements on bulk tobacconists (unquantifiable)

34. During consultation and the development of regulations, airport duty-free sales and cash-and carry stores were identified as selling tobacco in a

different way to high street shops. It was decided that bulk-tobacconists should receive different regulatory treatment, in view of the nature of their business.

35. The regulations define a bulk-tobacconist as a shop where at least 90% of its cigarette sales are in pre-packed quantities of 200 or more cigarettes in their original package and the remainder in pre-packed quantities of 100 or more cigarettes in their original package; and at least 90% of its hand rolling tobacco sales are in pre-packed quantities of 250 grams or more in their original package and the remainder in pre-packed quantities with a weight of 125 grams or more in their original package. They may also sell specialist tobacco products in non-bulk quantities.

36. The regulations would allow bulk tobacconists to have a tobacco display area, provided the area only contained tobacco and that the tobacco was not visible outside the area. This means that the promotion of tobacco through display is limited to those people who choose to enter a tobacco display area.

37. Compared to the cost of implementing a full prohibition on tobacco displays, these regulations result in savings, as the cost of removing displays altogether would be higher than the cost of having a tobacco display area.

38. Therefore, providing regulations that apply different requirements for bulk tobacconists results in further savings.

All regulations – annually recurring savings

39. The following points relate to recurring annual savings. The emboldened estimates relate to when the policy has reached full implementation, allowing for some non-compliance. They assume a compliance level of 90%.

a. Different methods of serving customers could result in additional time taken to serve. The CEBR study⁷ focuses on the time implication of an under the counter solution. Since the regulations will enable other solutions that include maintaining the existing gantry, there will be less extra time needed to serve customers and so less time lost to customers. An average transaction time increase of 2 seconds compared to current serving time is considered acceptable. This is 2.4 fewer additional seconds than the under the counter solution would cause, resulting in a saving of £0.4 million [See technical appendix for further information].

b. Less additional time to serve customers is also a saving to the retailer, monetised at £9.15 wage rate. The 77,000 hours less are equivalent to a saving of £0.7 million per annum [Ref: See technical appendix for further information].

c. The increased stock-taking and restocking time will be less with the regulations than with a complete display prohibition. Compared to the additional 2.5 hours per week estimated by the CEBR report, the alternative solutions are expected to result in less than one additional hour per week. The

reduction of 1.5 hours compared to the complete prohibition results in a saving of £2.4 million per annum.

All regulations – annually recurring savings (unquantifiable)

d. Enabling airport duty-free shops to have a tobacco display area would allow tobacco sales to continue at similar rates to now, avoiding the cost of loss of sales.

Cost/Benefit analysis

40. The proposed draft Display, Display of Prices and Specialist Tobacconists Regulations therefore have a total one-off cost of £1.6 million and a cost of £2.5 million per annum once the regulations are fully in force. Assuming that all stores comply immediately, there would be a 10-year discounted cost of £22 million.

As before, this is an upper estimate of the costs since for the sake of the discounting, it has been assumed that all changes have taken place immediately and therefore full costs have been incurred from the point of implementation, rather than these costs being incurred gradually over the flexible period allowed for full implementation.

41. The costs of the proposed draft regulations are compared to the cost of a complete prohibition on display to show the savings attributed to the proposed draft regulations.

42. The proposed draft regulations therefore have a total one-off saving of £16.0 million and £3.5 million per annum once the regulations are fully in force.

43. Assuming that all stores comply immediately, the proposed draft regulations have a 10-year discounted saving of £46 million. In terms of the sensitivity of the analysis, the magnitude of differences in annual and one-off costs between the two options is sufficient to suggest that changing the assumptions used would not have an impact on the overall outcome.

	Cost: complete prohibition	Cost: prohibition with regulations	Savings incurred: benefit of regulations
Average annual	£6.0 million	£2.5 million	£3.5 million
One-off	£17.6 million	£1.6 million	£16.0 million
10-year discounted total	£68 million	£22 million	£46 million

44. No calculations have been included in this analysis on the implications of changes in tax revenues. This has not been considered here as there are no implications for the budget of the Welsh Government. For a consideration of

the implications for the UK Treasury see the Impact Analysis undertaken by the UK Department of Health May 2011.

Health Benefits

45. The Impact Assessments that accompanied the UK Department of Health consultation on the future of tobacco control (May 2008)³ and the Health Bill 2009 (May 2009)¹ detailed the benefits of removing tobacco displays in terms of life years saved from a reduction in smoking. The Net Benefit Range calculated for the UK (excluding Scotland) was £45 million to £975 million, and the Net Benefit (NPV best estimate) was £520 million, based on the lifetime health benefits arising from fewer young people starting to smoke over a ten year period. Full details of the calculations can be accessed at http://www.dh.gov.uk/dr_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_085651.pdf (pp67-86) and http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_093305 (pp 136-163).

46. In the UK Department of Health Final Impact Assessment (May 2011) amendments were made to allow for a possible reduction in the achieved health benefits as a result of the small temporary displays that would occur under the proposed regulations. This resulted in a move from an estimate of minimum benefits, to a central estimate of benefits of £3.1 billion over the ten year period. In addition, a central estimate of the health benefits created by an increase in successful quit attempts and reduction of smoking prevalence among the adult smoking population was provided. The central estimate of health benefits from an increased number of quitters is given as £8.9 billion over the ten year period. The total central estimate of health benefits from full prohibition of display is therefore estimated to be £12 billion over the ten year period. It is estimated that the introduction of the proposed regulations will reduce these health benefits by 1%, i.e. £120 million. Full details of the calculations can be accessed at: <http://www.dh.gov.uk/health/2012/03/tobacco-displays-key-info/>

47. The proposed regulations would allow small, plain and temporary limited displays when a retailer serves a customer. It is unlikely that this temporary view would have the promotional power of a permanent, large and brightly lit display. However, no research has been conducted in Canada, where such small temporary displays are allowed despite a general display prohibition. It therefore remains a risk of the policy and the assumption of a 1% reduction in achieved health benefits as used in the UK Department of Health Impact Assessment will be adopted here..

48. The proposed regulations provide for tobacco display areas in bulk tobacconists, subject to certain conditions. These are not expected to have the same promotional power as existing displays, because they will be seen by far fewer people, will be closed off from other products and will only contain bulk products, which are less appealing to children or to those adults who are trying to quit.

49. A complete prohibition on tobacco displays could involve loss of tobacco sales to bulk tobacconists, but would be unlikely to lead to any additional health benefits, as it is anticipated that most customers would simply purchase their tobacco elsewhere. The majority of customers of cash-and-carry stores are retailers looking to sell the tobacco to customers, or individual adult customers who purchase in bulk for the saving. Cigarettes are now widely available online, meaning that many of these customers would be likely to turn to wholesale price cigarettes available on the internet, or to cheaper, illicit tobacco. For duty-free sales, customers may only purchase this tobacco if they are flying out of the EU, so these shops compete in an international market with many fewer restrictions on displays and advertising of tobacco. This means that any customers deterred from buying tobacco by the lack of display in English airports would simply buy the product from their destination airport instead.

50. The health benefits associated with a prohibition on tobacco displays comprise two types of health outcome:

- a. Each child that the policy deters from taking up smoking (1.56 discounted life years at a monetary value of £93,600)
- b. Each adult that the policy induces to quit smoking (1.26 discounted life years at a monetary value of £74,400).

This is set out in detail in the Department of Health Impact Assessment May 2011.

51. Assuming a birth cohort of 35,000 people and using 2006 Health Behaviour in School-aged Children (HBSC) survey data showing that 32% and 9% of 11-16 year-olds report ever having smoked and being regular (weekly) smokers, respectively. Adopting the approach used in the UK Department of Health Impact Assessment, a prohibition on display would result in a 1.3 percentage point reduction in the number of regular smokers aged 11-15. If this reduction persists into adulthood, this yields 714 discounted years of life saved per annual cohort. The estimate for the benefit from a reduction in young people starting to smoke is £66.8 million per annum once the regulations are fully in force. The discounted benefit over 10 years from a reduction in young people taking up smoking is estimated to be £464 million.

52. Following the UK Department of Health Impact Assessment for estimating the impact of the proposals to restrict display in England on adult smoking rates an impact of an annual reduction in smoking prevalence of 0.04 percentage points is assumed here. The Welsh Health Survey 2010 shows a smoking prevalence amongst those aged 16+ of 23%. This equates to approximately 568,000 smokers. This implies that there will be an additional 998 net quitters per year (for ten years). The monetized value of a quitter per gain of 1.26 discounted life years is valued at £74,400. This equates to a total annual health benefit of £92.6 million. The discounted benefit over 10 years from a reduction in adults smoking is estimated to be £643 million.

53. In summary, the total central estimate of benefits arising from the prohibition of display is £1,107 million. **The loss of health benefits arising**

from the proposed easing of regulations is estimated to lie in the region of £11 million (a 1% reduction in health benefits as outlined in the UK Department of Health Impact Assessment).

54. Overall, the proposed easing of the regulations is estimated to result in a 10 year discounted saving of £46 million in the costs of the regulations, with an estimated loss of £11 million in health benefits.

Competition Assessment

55. The competition filter test has been applied and is provided at Annex 2.

56. There are potential competition impacts on two markets: tobacco retailers and manufacturers; and suppliers of tobacco shelving and covers.

57. Prohibiting tobacco displays would not directly or indirectly limit the number or range of suppliers. The proposed regulations would enable all suppliers to develop innovative solutions, promoting competition and encouraging lower-cost solutions to be developed.

58. Prohibiting tobacco displays and the proposed regulations would apply to all tobacco retailers (specialist tobacconists excepted), therefore not significantly raising the cost of some existing suppliers relative to others. The regulations also lower the cost associated with removing tobacco displays, thereby ameliorating any effect of increasing the cost of entering the market.

59. Prohibiting tobacco displays reduces the ability of retailers and manufacturers to advertise or promote their products, and as such may have a marginal effect on competition. However, these regulations will permit plain price lists informing customers as to the products and prices available in any retailer, and all products will be affected in the same way.

60. Neither prohibiting tobacco displays nor the proposed regulations are likely to reduce the incentive to compete vigorously.

Post implementation review

61. The effect of the Regulations will be monitored by local authority enforcement teams within their remit to monitor and enforce other tobacco control regulations.

62. The annual Welsh Health Survey (WHS)¹⁴ asks adults (aged 16 and over) in Wales whether they smoke. The four-yearly Health Behaviour in School-aged Children (HBSC) survey¹⁵ asks children aged 11-15 in Wales about their tobacco use. From the results of these two surveys, it will be possible to measure the trends in smoking rates of children and young people, as well as the trends in smoking prevalence of the general adult population in Wales.

63. However, a multi-faceted response is necessary to effectively tackle tobacco use and a number of policies and initiatives to help reduce smoking prevalence will be active at any one time. Therefore, trends in smoking rates amongst young people and the adult population generally cannot be solely attributed to any one policy.

ANNEX 1 – SUMMARY OF THE SPECIALIST TOBACCONIST REGULATIONS

These Regulations make provision for exemptions in relation to specialist tobacconists from the prohibition of tobacco advertisements imposed by section 2 of the Tobacco Advertising and Promotion Act 2002 (“the Act”) and the prohibition of tobacco displays imposed by section 7A of the Act. Specialist tobacconists are shops that sell tobacco products by retail more than half of whose sales derive from the sale of cigars, snuff, pipe tobacco and smoking accessories.

Regulation 2 allows the publication of advertisements for tobacco products, other than cigarettes or hand-rolling tobacco, in specialist tobacconists provided that the advertisement is not visible from outside of the premises and contains the required bilingual health warning and health information, in the required form. The requirement for a bilingual health warning and health information applies to the advertisement and not to the tobacco products themselves.

Regulation 3 allows the display of tobacco products, including cigarettes and hand-rolling tobacco, in specialist tobacconists if the tobacco products are not visible from outside of the premises.

The Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations 2004 are revoked in relation to Wales by regulation 4.

ANNEX 2 – THE COMPETITION ASSESSMENT

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Yes
Q4: Would the costs of the regulation affect some firms substantially more than others?	Yes
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

TECHNICAL APPENDIX TO THE IMPACT ASSESSMENT

1. The following paragraphs outline more specifically how certain calculations within this impact assessment were performed.

Number of cigarettes sold in shops in Wales

2. The Tobacco Manufacturers Association state that in 2007, 47 billion duty-paid cigarettes were consumed in the UK¹¹. Scaling this down into Wales-only terms (using a scaling factor of 0.05) yields 2.3 billion cigarettes consumed in Wales. It is estimated that shop-sold cigarettes represent 99% of the overall cigarette market, meaning that sales would account for 115 million packs of 20 cigarettes per annum. This figure is then combined with an estimation of the average wage of sales assistants (see below), a valuation of the customer's leisure time and the estimated additional time to serve a customer. With these inputs, we calculate the time-cost of the regulations on retailers and customers from additional time serving the customer.

Valuing time

Retailers:

3. The 2007 Annual Survey of Hours and Earnings (ASHE)¹² quotes a wage rate of £7.04 per hour for "sales assistants and retail cashiers." Uplifting this figure by 30% to take account of other costs of employment yields a wage rate of £9.15 per hour.

Customers:

4. The Department of Transport 'Value of travel time savings'¹³ gives an indication of the value of leisure time of £4.46 per hour at end-2002 prices, or £5.13 per hour in 2008/09 prices.

5. These estimates feed into calculations regarding the time-cost of the regulations on retailers in terms of both additional time serving the customer and additional stock-taking and re-stocking time.

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