



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

www.dhsspsni.gov.uk

**PROPOSED REGULATIONS
UNDER THE TOBACCO RETAILERS ACT
(NORTHERN IRELAND) 2014**

CONSULTATION REPORT

NOVEMBER 2015

Contents	Page
1. Executive summary and introduction	3
2. Registration and display of notices	4
3. Fixed penalty amounts	5
4. Fixed penalty forms	6
5. Further comments	7

Appendix A: Who responded to the consultation

1. EXECUTIVE SUMMARY AND INTRODUCTION

The consultation

On 9 July 2015, the Department of Health, Social Services and Public Safety launched a consultation exercise to seek views on three sets of draft tobacco control regulations for Northern Ireland (under the Tobacco Retailers Act (Northern Ireland) 2014). The regulations included in the consultation were:

- The Tobacco Retailer (Registration and Display of Notices) Regulations;
- The Tobacco Retailer (Fixed Penalty) (Amount) Regulations; and
- The Tobacco Retailer (Fixed Penalty) (General) Regulations.

The consultation invited respondents to comment on particular aspects of the draft regulations as well as to provide further comments or evidence about possible health, economic or social impacts of the regulations.

The consultation closed on 4 September 2015.

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 24 detailed responses were received from a variety of stakeholders including: local councils; health and social care organisations; the voluntary and community sector; professional bodies; and retail representative bodies. Further details are provided in Appendix A.

2. REGISTRATION AND DISPLAY OF NOTICES

This section refers to the proposed Tobacco Retailer (Registration and Display of Notices) Regulations (Northern Ireland) 2015.

Question 1

Are you content with the level of information to be requested in the application for registration, as set out in Schedule 1 of the draft regulations in Annex B? If not, please say why and provide details of any changes that you wish to see.

Of the 19 respondents who answered this question, all agreed that the information requested in the application form seemed appropriate for the purpose intended.

Question 2

Are you content with the proposed wording and dimensions of the notice to be displayed by retailers in the event of a restricted premises order as set out in Schedule 2 of the draft regulations in Annex B? If not, please say why and provide details of any changes that you wish to see.

16 of the 19 respondents to this question indicated that they were content with the proposed wording and dimensions of the notice to be displayed in the event of a restricted premises order. Three respondents stated that they would like to see the wording in Schedule 2 expanded to include the words “name and address of premises” - to be inserted following the words “on these premises”.

Departmental response –

Requiring the notice to include the name and address of the premises subject to the order will offer greater clarity for customers, therefore, the Department agrees to amend Schedule 2 to include the words “name and address of premises”.

3. FIXED PENALTY AMOUNTS

Question 3

Are you content with the proposed amounts of fixed penalties as set out in Schedule 1 of the draft regulations in Annex C? If not, please say why and provide details of any changes you wish to see?

Of the 19 respondents who answered this question, 12 agreed with the level of fines proposed. Amongst those, 2 respondents stated that the levels should be reviewed in future to ensure they are still a deterrent.

Those respondents who did not agree with the level of the fixed penalty amounts argued that, either for some or all of the offences, the fixed penalty notices should be higher. In particular, the penalties applied for not being registered as a tobacco retailer and for selling tobacco to a person under the age of 18, were highlighted by a few respondents as being too low.

One respondent highlighted the fact that no fixed penalty notices had been set for non-UK duty paid offences and asked the Department to consider whether it could incorporate penalties to address this.

Departmental response: The Department agrees with the majority of respondents that the proposed amounts of fixed penalties are appropriate. The purpose behind setting fixed penalty notices is to provide enforcement officers with an additional enforcement tool and also to lessen the burden on the NI Courts Service by reducing the number of prosecutions taken for tobacco-related offences. The amount of a fixed penalty notice therefore needs to be set at a level which will encourage the person served with it to pay it within the required period. If the amount is too high, there is a greater likelihood that the person who has committed the offence would choose to contest the case through the Courts system.

In response to the comment about the potential for fixed penalties to apply to non-UK duty paid offences, this falls outside the remit of the Department of Health, Social Services and Public Safety and would be a matter for HMRC to consider.

4. FIXED PENALTY FORMS

Question 4

Are you content with the proposed form for issuing fixed penalties by District Councils as set out in the Schedule of the draft regulations in Annex D? If not, please say why and provide details of any changes you wish to see.

16 of the 19 responses to question 4 indicated general contentment with the proposed form for issuing fixed penalties, stating that it appeared to be fit for purpose.

The remaining 3 respondents raised concerns that the form did not allow for the recipient of the fixed penalty to request a court hearing in lieu of paying the stipulated amount. This option is available on fixed penalty notice forms for other offences and it was stated that such an inconsistency has the potential to create queries and challenges against enforcement action.

Departmental response:

The primary legislation, the Tobacco Retailers Act (Northern Ireland) 2014 does not contain the necessary powers which would allow for the fixed penalty form to include the option of the recipient requesting a court hearing. However, if the recipient decides not to pay the fixed penalty, the District Council may take the case to court.

If District Councils indicate, in due course, that the lack of an option to request a court hearing has caused enforcement difficulties, the Department will, at that stage, consider an amendment to the primary legislation.

5. FURTHER COMMENTS

Question 5

Do you wish to make any other comments or provide other evidence about possible health, economic or social impacts of the regulations, whether adverse or beneficial?

A total of 18 respondents provided further comments on the consultation. The majority expressed support for the new measures stating that it would reduce the number of children and young people from being recruited into smoking.

Some concerns were raised around the possibility of the Department introducing a registration fee for retailers. Comments were also made about an omission in the regulations in relation to online registration. One respondent requested that the Department ensures that measures are thoroughly monitored and evaluated following implementation to assess efficacy and to inform future policy developments.

Other comments made were outside the scope of the consultation including calls for the Department to ban smoking in cars carrying children; e-cigarettes to be age-restricted products; and for illegal sales of e-cigarettes to be included in these regulations.

Departmental response –

The Department can confirm that, while the Tobacco Retailers Act (Northern Ireland) 2014 contains regulation-making powers to allow the Department to charge a fee for registration, there are no plans at present to use this power. Retailers will be able to register either online or by completing a paper form and sending it to the Registration Authority. Registration will be one-off, i.e. there will be no need for retailers to re-register after the initial registration. Detailed guidance for retailers will be made available by the Department in advance of the commencement date for the register.

Implementation of the provisions in the Tobacco Retailers Act will be monitored on an ongoing basis and an evaluation will be carried out in due course.

The Health (Miscellaneous Provisions) Bill contains provisions which will provide the Department with regulation-making powers to restrict the age of sale of e-cigarettes to persons over the age of 18. This Bill also amends the Tobacco Retailers Act to allow for offences in relation to the underage sale of nicotine-containing products to be included as an offence which could lead to an application for a restricted sale order or restricted premises order. In addition, it will allow for fixed penalty notices to be applied for e-cigarette offences. With regards to measures to restrict smoking in vehicles when children are present, the Department will monitor the implementation and impact of this legislation in other jurisdictions with a view to considering how similar measures can be introduced in Northern Ireland.

Appendix A: Who responded to the consultation?

A total of 24 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	1
District Councils	3
Organisations representing tobacco industry or retailers	3
Health bodies	3
Tobacco manufacturers	1
Professional bodies	4
Voluntary organisations	7
Others	2
TOTAL	24

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 on Smoking and Health (ASH) UK
Action Cancer
ASDA
Association of Directors of Public Health
Armagh City, Banbridge and Craigavon Borough Council
British Heart Foundation NI
British Medical Association (NI)
Cancer Focus Northern Ireland
Cancer Research UK
Fermanagh and Omagh District Council
HMRC
Japan Tobacco International (JTI)
Mid and East Antrim Council
National Federation of Retail Newsagents (NFRN)
NI Cancer Registry
NI Chest, Heart and Stroke
NI Local Government Association
Public Health Agency
Royal College of Midwives
South Eastern Health and Social Care Trust
Southern Health and Social Care Trust
Tobacco Manufacturers Association
Tobacco Retailers Alliance