



**Isle of Man
Government**

Reiltys Ellan Vannin



Tobacco Control Regulations 2015 Report on Public Consultation

Department of Health and Social Care
Slaynt as Kiarail y Theay

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1. Foreword by the Minister for Health and Social Care



The public consultation on the Tobacco Control Regulations 2015 has now finished and I am pleased to publish the Department's analysis of the responses received. This new legislation sets out the supporting detail for the additional controls which will be included in the Public Health (Tobacco) Act 2006 when the Public Health (Tobacco) (Amendment) Bill receives Royal Assent later this year. It is pleasing to note that the new legislation is generally supported as a necessary next step in the Department's drive

towards decreasing the number of young people taking up smoking and creating a supportive environment for those wishing to quit smoking.

The Regulations mostly deal with managing the proposed ban on tobacco displays and the majority of the responses commented on specific details of how the new legislation should be implemented so as to not cause too much disruption for local retailers and their customers.

Officers of the Department will now proceed with finalising the regulations for submission for approval by Tynwald and will continue to engage with the local retailers to make the transition as smooth as possible.

Thank you to everyone who responded to the consultation. Your contributions are valued and will be taken into consideration.

A handwritten signature in black ink, which reads "Howard Quayle". The signature is written in a cursive style with a long horizontal line extending from the end.

Hon. Howard Quayle MHK

Minister for Health and Social Care

2. Background

The purpose of this consultation was to invite comments on the proposed provisions of the draft Tobacco Control Regulations 2015.

These Regulations are to be made under the Public Health (Tobacco) Act 2006 ("the Act") as it will be amended when the Public Health (Tobacco) (Amendment) Bill receives Royal Assent later this year.

One of the key policy drivers of the Act was to reduce the visibility of tobacco products and protect people from exposure to secondhand smoke. The Isle of Man Tobacco Strategy also states that everything possible should be done to prevent young people from easily accessing cigarettes.

The Department of Health and Social Care ("DHSC") has recognised the success of the Act in reducing the use of tobacco products on the Island and, as a consequence, in reducing the burden of ill health. However, it is apparent that more needs to be done to shield people, and particularly young people, from the influence of tobacco product promotion in order to achieve a further reduction in the numbers taking up smoking, and to provide a supportive environment to existing consumers trying to quit smoking.

There is good evidence that tobacco advertisements and 'cool, fun and attractive' displays influence young people to take up smoking. Studies have also shown that impulse buying of tobacco products as a result of seeing a display remains high, especially amongst young people and those trying to quit smoking.

Additional controls have already been established in English legislation to further restrict tobacco displays and the DHSC has taken the view that similar controls are appropriate for the Isle of Man.

In October 2012 the DHSC held a comprehensive public consultation exercise, which included proposals to further control tobacco displays, and the additional controls were supported by the majority of responders.

3. Summary of Responses

This consultation was publicised by way of a press release to the local media and emails and/or letters to the following persons and organisations

- Tynwald Members
- Acting Attorney General
- Chief Officers of Government Departments, Statutory Boards and Offices
- Local Authorities
- Isle of Man Chamber of Commerce
- Isle of Man Trade Union Council
- Isle of Man Law Society
- Health Services Consultative Committee
- Douglas Development Partnership
- Relevant local retailers

14 responses to the consultation were received; from one Tynwald Member, four Government Departments, six local authorities and three local retailer representatives.

The contributions from the retailers (Manx Co-operative Society, Mannin Retail and Shoprite) have been particularly helpful, with some comprehensive responses raising very useful points.

Extracts from and comments on responses

"I ...can in principle support what is being proposed by the Department, especially in the pursuance of protecting young people, and promoting better health, and awareness of smoking tobacco products.

We do need to consult with retail outlets... (on) how they are going to manage the changes.... They will need some 'transitional time' and there may well be costs involved in compliance." (Tynwald Member)

Retailer Comments

"I am grateful for the time you have taken and the detail you have gone into in covering the matters (previously) raised. Given the clarity that you have provided...I would have no further comments to make..."

Comments re: Timescales

"We are very grateful that the Department...has engaged specifically...regarding the need for a lead-in implementation period. We believe that...six months will be ample time to achieve compliance."

One retailer noted that it is anticipated that standardised packaging for tobacco products will come into effect in the UK on 20th May 2016, which will coincide with the expected coming into force of the regulations, and stated:

"Even without the introduction of a display ban this will pose operational issues...as...the vast majority of products will be in packaging of an identical size, shape and appearance...we expect the time taken to find and retrieve tobacco...to increase."
"...this difficulty is likely to be compounded by the layout being hidden behind sliding doors." "...any increase in transaction times...will not just affect smokers."

Concerns about display bans increasing serving times were also voiced prior to legislation being introduced in Ireland and England. However, trials showed that although serving times tended to increase at the start, once staff became accustomed to the modified units, they reduced. It is also noted that many of the studies citing concerns about increased serving times both for display bans and plain packaging were funded by the Tobacco Industry.

The Department acknowledges that there will be training required for retail staff and that initially these changes may increase serving times slightly, however as one retailer stated in their response, *"we doubt that this level of increase would be sustained long term"*.

"Our concern is that store staff will have to gain familiarity with unbranded products and then – very soon afterwards – have to gain familiarity with a gantry which is hidden from sight"

3. Summary of responses contd.

Although retailers will be provided with a 6-month lead in time following the approval of the Regulations, retailers can choose to introduce the changes any time prior to this if this assists with other changes in store.

When the Department visited some local retailers, many highlighted that there were already plans to update their tobacco gantries (some funded by the Tobacco Industry) to fit new minimum tobacco package sizes and that this would also incorporate the new Regulation changes. This suggests that there is an option to incorporate training on both changes to tobacco packaging and tobacco displays at the same time if this facilitates the process.

Comment re: standardised packaging removing need for tobacco display bans

One retailer referred back to a response which they submitted to the consultation on the Public Health (Tobacco) (Amendment) Bill in January 2015 and stated:

"We still believe that the introduction of standardised packaging removes the rationale for introducing a formal display ban. The Department addressed our points...stating that the display ban would address the fact that displays could still be made "eye-catching with lighting, towers, specific shelving etc." "On balance we would have preferred it if specific regulations were developed to address specific identified abuses – the cost burden in this case would fall only on those retailers using such methods. We regard the display ban as a blunter tool which will burden all retailers, responsible and irresponsible."

This point of view is noted but a tobacco display is still a tobacco display irrespective of what it looks like, and this legislation is trying to ensure that even the presence of tobacco products is not obvious, particularly to young people.

As noted in our previous consultation report, the Department believes that plain packaging does not negate all the reasons for banning

point of sale displays. Although there would not be specific advertising or promotion on each packet, large displays still normalise tobacco use for children, and create a perception that tobacco is easily obtainable. They are still considered a 'power wall' by the size of the display, which can draw attention, stimulate sales, and be a trigger for impulse buying when people are trying to quit.

Comment re: Details of display ban regulations

One retailer suggested that there were many benefits from following the English regulations, including that they were more economical to implement than, for example, the Scottish regulations. Also, for those companies with links to the UK many of the system and training developments already in place could most likely be transposed to the Isle of Man stores.

The retailer did, however, identify one negative from following England as follows:

"...by sticking so closely to the English regulations...the Department has missed an opportunity to learn from those retailers who trade in England." "...we believe that there are improvements the Isle of Man Government could make to reduce the burden of compliance upon retailers without undermining its policy aims."

In noting the potential for local stores to use existing till technology the retailer noted a difference in the Scottish regulations which they felt could be beneficial here. In Scotland the age of the purchaser does not have to, legally, be ascertained until the point of sale.

The retailer advised that their tilling system has an automatic flag which asks staff to check a customer's age and, if necessary to ask for ID, when the bar code of a tobacco product is scanned. The retailer suggested that checking the age before the product was obtained from the display cabinet was therefore an unnecessary duplication.

3. Summary of responses contd.

The main difference between the Isle of Man and Scottish regulations, however, is that in the Isle of Man and England, the offence is to display a tobacco product to a person under 18, whereas in Scotland it is an offence to sell a tobacco product to a person under 18 (but not an offence to display it).

The Department has noted that in the guidance which accompanies the Scottish regulations, there is still a recommendation that age is checked before the product is obtained from the display gantry, so if best practice is followed, the end result is actually the same.

The Department is still of the firm view that the age question should be asked before the gantry is opened so that there is as little risk of a young person viewing tobacco products as possible. The tilling approach by the retailer who wrote this response is admirable as a back up.

Comment re: 'Restocking– Regulation 7'

One retailer queried the wording in regulation 7 (Incidental displays) which they felt *"...effectively means that stock must be covered when it is transported across the shop floor between warehouse and gantry."*

They suggested that this was unnecessary and would become even more so when there was standardised packaging.

The Department is of the view that there would be too many opportunities for tobacco products, perhaps inadvertently, to be left in view of young people if this regulation was relaxed.

Comment re: Fonts and sizes (Regulations 9 & 11)

One retailer asked for consideration to be given to referencing a more commonly available font than Helvetica in the Regulations. This has been accepted and Arial has been added as an alternative.

The retailer also suggested that font sizes be written as '14 point' for example, rather than '4mm' maximum size of letter height.

However, because of adding the extra font option, it is not practical to change the references to font sizes. We are confident however, that enforcement officers will exercise discretion regarding tolerance levels for acceptability.

Comments re: Size of display allowed

One retailer initially submitted the comment that *"The gantry/kiosk size is...too small. The ...cost...to replace...would put further financial pressure on a lot of independent retailers..."*.

However, during a subsequent telephone conversation with the respondent, it transpired that there was some confusion over what the Regulations allowed. For example, what does an area of 1.5m² actually mean, and what is meant by a 'display' of tobacco products.

Upon explaining to the retailer that the gantry itself could be larger than 1.5m² as long as there were doors that reduced the size of the open tobacco display to the specified measurements, the retailer was happy to confirm their support for the proposed regulations.

Since the consultation closed, officers of the Department have had further discussions with local retail representatives and have made visits to selected outlets to assess the potential impact of the new legislation.

It has transpired that a slight adjustment to the size of the display area allowed would actually significantly reduce the amount of outlay which some retailers will be required to make to comply with the regulations.

The Department has, therefore, agreed to adjust the Regulations to state that the tobacco display area must not exceed 1.5m by 1.5m.

3. Summary of responses contd.

Further support and guidance for retailers

If the regulations are approved by Tynwald, further meetings with representatives are planned to offer support and guidance during the 6 month period before the regulations come into force. The Department is also planning to produce a guidance document on the regulations in plain language to support retailers in making the changes.

Government

"Whilst it is not anticipated that there will be any significant resource issues if the Proposed Regulations do come into force, the Department needs to be aware that the OFT will generally continue to be reactive rather than proactive when enforcing Part 1 of the 2006 Act as amended and regulations made under that part. Notwithstanding this, a significant proportion of the premises that will be affected will be visited in due course as part of a rolling programme of advisory visits to businesses selling cigarettes." (Office of Fair Trading)

This position is acknowledged and accepted.

Local Authorities

"Whilst (the Board) appreciate the underlying rationale and the need to discourage smoking for a whole raft of social and health reasons, particularly to the young, cigarette sales are not prohibited, and it is considered that the new regulations are overly complicated, and would disadvantage small retailers in particular."

"The Commissioners feel that proper guidance and training should be provided to retailers to ensure that the provisions are understood and staff properly briefed."

"The Commissioners are fully in support of the proposals however...". "The Commissioners feel that tobacco products should be removed to a distinct and ideally separate sale area..."

This response went on to note that some larger retailers already do this. However, it should also be acknowledged that, for smaller

retailers, this would very difficult to practically achieve.

"...the proposals do not go far enough...would like to see the UK policy of prohibiting smoking in private vehicles when children are carried being considered." "...if Government is serious about controlling tobacco, the wholesale banning of cigarettes should be considered and proposed."

It should be noted that, in association with the Department of Environment, Food and Agriculture, Regulations are currently being prepared which would, if supported, implement a ban on smoking in cars with children present.

"There is also an anomaly in that sale of alcohol, which has it's own serious health and social implications, will not be subject to such stringent measures, and young people can view all matters of alcohol sales and be the subject of advertising without restriction."

This comment is outside of the scope of this consultation but has been noted and forwarded for the attention of the Public Health Directorate and the Drug and Alcohol Steering Group.

Conclusion

After considering the responses to this consultation the Department will now:

a) finalise the Regulations for submission for approval by Tynwald by-

(i) increasing the display sizes to 1.5m by 1.5m to reduce the costs to retailers of adjusting their tobacco gantires, and

(ii) adding the additional Arial font to make the production of signs, labels etc. easier for retailers, and

b) continue to engage with local retailers to make the transition as smooth as possible over the 6 month lead in time from when the Regulations are approved by Tynwald, as previously agreed.

The information in this booklet can be provided in large print or audio format upon request.

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