



**Isle of Man
Government**

Reiltys Ellan Vannin



DRAFT TOBACCO CONTROL REGULATIONS 2015 Public Consultation

Department of Health and Social Care
Slaynt as Kiarail y Theay

1. Foreword by the Minister for Health and Social Care



The Public Health (Tobacco) (Amendment) Bill, which amends the Public Health (Tobacco) Act 2006, successfully completed its passage through the Branches of Tynwald at the end of June 2015 and Royal Assent is now in the process of being obtained. It is hoped that the Amendment Act will be announced before the end of this year.

The Bill includes further restrictions on tobacco advertising and the display of tobacco products, bans the sale of tobacco from vending machines, and introduces fixed penalty notices for smoking offences.

The Bill is part of the latest drive by the Department of Health and Social Care towards its aim of decreasing the number of young people taking up smoking, and creating a supportive environment for those wishing to quit smoking.

The Regulations we are currently consulting on relate to Part 1 of the 2006 Act (as it will be amended by the 2015 Amendment Act), and provide further detail about the changes to displays of tobacco products, displays of price lists, and brandsharing.

The Department would appreciate your comments on the draft regulations.

Thank you.

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

Hon. Howard Quayle MHK

Minister for Health and Social Care

2. About the Consultation

The purpose of this consultation exercise is to invite comments on the proposed provisions of the draft Tobacco Control Regulations 2015 (attached to this document).

It is not a referendum but is an exercise for gathering information, views and evidence to allow the Department to take an informed decision on the final content of the proposed Regulations. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

Comments should be submitted by Monday 28th September 2015 in writing, by post to:

Tobacco Control Regulations 2015 Consultation
Department of Health and Social Care Crookall House,
Demesne Road,
Douglas
IMI 3QA

or by email to: colin.brew@gov.im

Paper copies of this consultation document are available, if required, via the above contact methods or by telephoning (01624) 642627.

Electronic copies of this document are also available at:

<http://www.gov.im/about-the-government/government/government-consultations/>

Or

<http://www.gov.im/consultations.gov>

To ensure that the process is open and honest, responses can only be accepted if you provide your name with your response.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety. Please mark your response clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of the comments received.

When submitting your views please indicate whether you are responding on behalf of an organisation.

Who is being consulted

A press release will be issued seeking the views of the general public, and letters or emails will be sent to selected stakeholders.

2. About the Consultation (Continued)

The timetable following this consultation

Following this consultation, the timetable for the progression of these regulations is anticipated to be as follows:

STAGE	DATE (Estimated)
DHSC to review comments received and, if necessary, to amend the Regulations accordingly	October 2015
Royal Assent to the Public Health (Tobacco) (Amendment) Act announced in Tynwald	November 2015
Final Regulations approved by Tynwald	December 2015
Relevant parts of Act and Regulations come into effect	6 months after date of approval (for tobacco displays only) to allow retailers lead in time

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way the consultation has been carried out please write to:

Chief Executive's Office
Department of Health and Social Care
Crookall House
Demesne Road
Douglas
IM1 3QA

3. Background

The Isle of Man Tobacco Strategy states that everything possible should be done to prevent young people from easily accessing cigarettes. One of the key policy drivers of the Public Health (Tobacco) Act 2006 ("the Act") was to reduce the visibility of tobacco products and protect people from exposure to secondhand smoke.

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 brandsharing 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 was pleased to note that the additional controls were supported by the majority of responders.

4. Outline of the Content of the Regulations

The new Regulations can essentially be broken down into 3 parts:

1. **Displays of tobacco products** under sections 3, 4A and 4B of the Act,
2. **Displays of price lists** under section 4C of the Act, and
3. **Brandsharing** under section 8 of the Act.

Under the proposed regulations, any business which sells tobacco products will need to ensure that these are not on display to the public (ie are covered up), and that tobacco prices and labels are only displayed in the formats allowed.

The regulations recognise that retailers need to be able to serve customers, restock products, and undertake training and maintenance. Exemptions are therefore given to temporary displays for these purposes.

There are some additional exemptions for bulk tobacconists where the regulations may apply differently.

A more detailed summary of the content of the Regulations is included as Appendix 1 to this document.

Displays of tobacco products

The new regulations will list the circumstances under which it would **not** be an offence to openly display tobacco products as follows:

- a) (Regulation 5) as a consequence of a display requested by a person over the age of 18 where-
 - i) the display lasts no longer than is necessary to remove the product from a storage unit, or to otherwise display the product, and
 - ii) in the case of a storage unit, the display area does not exceed 1.5m²,
- b) (Regulation 7) as a consequence of an incidental display during stock control, staff training, maintenance etc.,
- c) (Regulation 8) in order to display to an authorised person on request,
- d) (Regulation 9) on an indication (sticker, label etc.) on a storage unit which meets certain specifications.

The above circumstances are relaxed in relation to bulk tobacconists as long as the products are in a specific tobacco area and cannot be seen from outside of the area, customers not wishing to buy tobacco products do not have to pass through the area, and there is a notice stating that it is illegal to sell tobacco products to under 18s (Regulation 6).

4. Outline of the Content of the Regulations (Continued)

Displays of prices

The new regulations will also list requirements for the display of prices of tobacco products (Regulations 10, 11 and 12) and price lists (Regulation 13), such as size, content, positioning, number of displays etc.

Where the display is on request only the requirements will also include age restrictions and restrictions on how long the display may be made for (Regulation 14).

Some of the above requirements are relaxed for bulk tobacconists (Regulation 15).

Brandsharing

The new regulations will also confirm the offence of brandsharing which, for the purposes of these regulations, is the use of a feature (name, logo, emblem etc.) which is the same or so similar to a feature used in respect of a tobacco product as to have the effect of promoting a tobacco product (Regulations 16 and 18).

The regulations also list a number of exceptions such as where the use of the feature could not have been reasonably foreseen as promoting a tobacco product, and where the feature is used by someone totally unconnected with the tobacco industry for a purpose other than the promotion of a tobacco product (Regulation 17).

Appendix 1

Summary of Content of Regulations

The Tobacco Control Regulations 2015 are to be made under sections 3(3), 4B(3), 4C(1) and 8 (1) of the Public Health (Tobacco) Act 2006. Some references in the Regulations will be to sections of the Act and some definitions will be in the Act and not repeated in the Regulations.

Regulations 1 and 2 are introductory. Regulation 3 contains the interpretation for the Regulations.

Regulation 4 essentially excludes premises which are not accessible to the general public from the provisions relating to the prohibition of tobacco displays and to the restrictions relating to price lists.

Regulation 5 allows tobacco products in a storage unit of no more than 1.5m² to be displayed to over 18s as long as the display is requested by them and the display is only for the time it takes to remove the product from the unit. Products which are not kept in a storage unit may only be displayed for as long as is required to display them to a person, aged over 18, who has requested the display. Regulation 5 also makes it clear that as long as the requirements of this regulation are met no offence is committed if tobacco products are displayed to persons under 18.

Regulation 6 relates to displays in premises which may be defined as a bulk tobacconist but which may be used for other purposes and states that:

- the products must be in a specific tobacco area and must not be visible from outside of the area,
- customers not wishing to buy tobacco products must not be required or encouraged to pass through this area, and
- a notice stating that it is illegal to sell tobacco products to under 18s must be displayed which is not less than 297mm by 420mm in size with characters no less than 36mm high.

Regulation 7 lists the circumstances under which a display of tobacco products will not be treated as an offence, such as during stock control, restocking, staff training and the maintenance of a storage unit.

Regulation 8 states that no offence of displaying a tobacco product is committed if the display is requested by an enforcement officer (defined in the Act as an officer of the Office of Fair Trading), a constable or a customs and excise officer.

Regulation 9, in particular paragraph (3), lists the requirements which must be met in respect of indications (stickers, labels etc.) on storage units.

Regulation 10 introduces the subsequent regulations 11 to 14 regarding the display of prices of tobacco products and confirms that a display of prices which is also an advertisement must comply with these regulations.

Appendix 1 (Continued)

Regulation 11 lists the general requirements for the display of prices as to size and content.

Regulation 12 gives further requirements as to the display of prices on storage units in respect of size and number.

Regulation 13 gives further requirements as to size and content where prices are displayed in the form of a price list, and limits the number of lists which may be displayed.

Regulation 14 gives further requirements as to the size, content, availability and display of price lists to persons over 18 on request, and gives some defences in respect of the steps which should be taken to check the person's age.

Regulation 15 states that regulations 10 to 14 do not apply to bulk tobacconists except where a display of prices is visible from outside of a tobacco area, in which case the general requirements in regulation 11 and certain requirements from regulation 12 (relating to size and content) must be complied with, and only one such display is permitted.

Regulation 16 prohibits brandsharing between tobacco and non-tobacco products in the Isle of Man where the purpose or effect is to promote a tobacco product. Brandsharing is the use of any name, emblem or other feature on a product which is the same as, or similar to, another product.

Regulation 17 gives various exceptions to the offence of brandsharing including where the purpose was not to promote a tobacco product or the person could not reasonably have foreseen that this would be its effect, and where the feature is used by someone totally unconnected with the tobacco industry for a purpose other than the promotion of a tobacco product.

Regulation 18 prescribes that the exceptions apply where a person uses a brandshared feature in respect of tobacco products and prices under the following sections of the Act:

- sections 1, 2 and 2A (tobacco advertising),
- sections 4A, 4C and 4D (tobacco displays),
- section 6 (prohibition of free distribution) and
- section 7 (prohibition of sponsorship).

Regulation 18 also states that it is for the person who wishes to rely on the exception to provide the evidence to support his claim and for the prosecution to prove beyond reasonable doubt that an exception does not apply.

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

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