**EXPLANATORY MEMORANDUM TO**

**THE PROTECTION FROM TOBACCO (SALES FROM VENDING MACHINES) REGULATIONS (NORTHERN IRELAND) 2012**

**SR 2012 No. 15**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health, Social Services and Public Safety to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made in exercise of the powers conferred by Article 4A of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991[1] and is subject to the affirmative resolution procedure.

## 2. Purpose of the Rule

2.1 To prohibit the sale of tobacco from vending machines. The Regulations are part of ongoing work to reduce access to tobacco by children and young people under 18 years of age. The Regulations specify who would be responsible for a breach of the regulations and that the Regulations will come into operation on 1st March 2012.

2.2 The penalty for breaching the Regulations is set out in Article 4A of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991. It states that a person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500 at the time of printing).

## 3. Territorial extent and application

3.1 This Statutory Rule applies only to Northern Ireland.

## 4. Legislative context

4.1 The new section 4A of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 was inserted by section 23 of the Health Act 2009 (c.21). Section 23 came into force for the purpose of making regulations on the day on which the Health Act 2009 obtained Royal Assent at Westminster (12 November 2009).

4.2 The Health Act 2009 created a number of other new regulation-making powers in relation to tobacco (concerning prohibition of tobacco displays, special provisions for specialist tobacconists, and provisions for restricting the display of tobacco product price

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**1** S.I 1991/2872 (N.I.25), Article 4A was inserted by the Health Act 2009 (c. 21) section 23

lists). The Department of Health, Social Services and Public Safety intends to make regulations under these powers in 2012; one of these other sets of regulations (on restricting the display of tobacco product price lists) is also subject to the affirmative procedure. The remaining two (on prohibition of tobacco displays and special provisions for specialist tobacconists) are subject to the negative procedure.

4.3 The Health Bill, as introduced into the Westminster Parliament, contained a version of section 4A of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 which provided for regulations to impose restrictions on the sale of tobacco from vending machines or to prohibit the sale of tobacco from vending machines. During Report Stage in the House of Commons, an amendment was passed which narrowed the power so that the only possible exercise of the power is to prohibit the sale of tobacco from vending machines. The debate relating to the amendment can be found in Hansard at: http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm091012/debtext/91012-0016.htm.

## 5. Policy background

5.1 Preventing children and young people from adopting the smoking habit is key to achieving the Department's long-term aim of a tobacco-free society. Recent evidence shows that, in Northern Ireland, 82% of adult smokers took up the habit while in their teens, and that 8% of children aged 11 to 16 years are regular smokers.

5.2 Since tobacco vending machines are self service, they provide easy access to tobacco - including for children and young people under the legal age of 18. Although sales of tobacco products from vending machines represent only a small percentage of the overall tobacco market, a disproportionate number of sales to under 18 year olds are made from vending machines. A 2010 survey[2] found that 14% of 11-16 year olds in Northern Ireland who regularly smoke bought their cigarettes from vending machines. The proposed regulations will make provision prohibiting the sale of tobacco products from vending machines outright.

## 6. Consultation outcome

6.1 The Department published a consultation document on 1 October 2010, seeking views on four sets of proposed regulations on tobacco control, including proposed regulations on tobacco vending machines. The consultation lasted for 12 weeks and closed on 24 December 2010.

6.2 Responses to the consultation were received from the tobacco vending machine industry, the wider tobacco industry, retailers and health and voluntary bodies. There were also some responses from individuals. No changes were made to the Regulations on tobacco vending machines, in response to consultation, as there were no comments on the drafting of the Regulations. The only feedback from stakeholders was on the

**2** Young Persons Behaviour and Attitudes Survey (YPBAS) 2010

principle of stopping the sale of tobacco from vending machines. This feedback was considered carefully by the Department of Health, Social Services and Public Safety.

## 7. Position in Great Britain

7.1 The Rule replicates the following Statutory Instrument:

S.I. 2010 No. 864 The Protection from Tobacco (Sales from Vending Machines) (England) Regulations 2010

7.2 The corresponding Statutory Instrument was commenced in England on 1 October 2011. The Health Department in Wales made similar regulations on 18 October 2011, which will be commenced from 1 February 2012. Scotland also intends to commence a ban on the sale of tobacco from vending machines in 2012.

## 8. Equality impact

8.1 In accordance with its duty under section 75 of the Northern Ireland Act 1988, the Department conducted a screening exercise on the proposals and concluded that they do not have any significant implications for equality of opportunity. The measures will not affect any of the section 75 groups disproportionately. In light of this, the Department considers that an equality impact assessment is not necessary.

## 9. Regulatory impact

9.1 These Regulations will impact on independent tobacco vending machine businesses as once the Regulations are in force, these businesses will no longer be able to carry out what is now their principal or only business, or use their machines in the same way as present. It is unlikely to have a significant impact on the tobacco manufacturing and/or supply industry as sales from vending machines represent approximately only 1% of tobacco sales in Northern Ireland.

9.2 The impact of the Regulations on the public sector is expected to be positive in that the Health and Social Care services should benefit from improved health in the population due to reduced smoking rates.

## 10. Financial implications

10.1 Minimal financial implications. The new legislation will be enforced by Environmental Health Officers in District Councils. It is not anticipated that there will be additional funding required to that which has already been provided by the Department for compliance with the Smoking (Northern Ireland) Order 2006.

## 11. Section 24 of the Northern Ireland Act

11.1 The Department believes that the Regulations are compatible with Section 24 of the Northern Ireland Act 1988.

## 12. EU implications

12.1 A draft of the Regulations was notified to the European Commission under the Technical Standards and Regulations Directive 98/34/EC. A total of three member states responded with detailed opinions, to which the Department provided comprehensive responses.