EXPLANATORY MEMORANDUM TO

THE TOBACCO ADVERTISING AND PROMOTION (DISPLAY AND SPECIALIST TOBACCONISTS) (ENGLAND) (AMENDMENT) REGULATIONS 2011

2011 No. 1256

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of this instrument

2.1. These regulations amend the commencement dates of the Tobacco Advertising and Promotion (Display) (England) Regulations 2010 (the "Display Regulations") and the Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010 (the "Specialist Tobacconist Regulations").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Context

4.1. The Display Regulations provide for exemptions from the prohibition of tobacco displays imposed by section 7A(1) of the Tobacco Advertising and Promotion Act 2002 ("the Act")(section 7A was introduced by section 21 of the Health Act 2009). They were to come into force on 1st October 2011 for the purpose of large shops other than bulk tobacconists (as defined in the Display Regulations), and on 1st October 2013 for all other purposes. Regulation 2 substitutes in the Display Regulations new dates for their coming into force. By virtue of these Regulations, the Display Regulations will now come into force on 6th April 2012 for the purpose of large shops other than bulk tobacconists, and on 6th April 2015 for all other purposes.

4.2. The Specialist Tobacconist Regulations make provision for exemptions in relation to specialist tobacconists from the prohibition of tobacco advertising imposed by section 2 of the Act and from the prohibition of tobacco displays imposed by section 7A of the Act. They were to come into force on 1st October 2013. Regulation 3 substitutes in the Specialist Tobacconist Regulations a new date for their coming into force. By virtue of these Regulations, the Specialist Tobacconist Regulations will now come into force on 6th April 2015.

5. Territorial Extent and Application

5.1. This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1. Tobacco smoking is the leading cause of preventable morbidity and premature death, accounting for over 80,000 deaths in England in 2009. In England, deaths from smoking are more numerous than the next six most common causes of preventable death combined, that is drug use, road accidents, other accidents and falls, preventable diabetes, suicide and alcohol abuse. Smoking is also the single biggest cause of inequalities in death rates between the richest and the poorest in our communities. Tobacco displays are a form of tobacco promotion: evidence shows that they can encourage young people to start smoking and undermine efforts to quit by prompting impulse purchases

7.2. The policy objective of the legislation is to protect young people and adults quitting from the promotional effects of unsolicited displays of tobacco products. The Act excludes tobacco displays arising in the wholesale tobacco trade provided that these are made only to people engaged in the tobacco trade. The Act also makes limited provision for temporary displays which are "requested displays " to individuals makings such requests in order to purchase tobacco products, or asking for information about tobacco products. The Display Regulations provide exemptions and detail the circumstances in which temporary displays of tobacco products are lawful for retailers to be able to serve customers and restock shelves without breaching the prohibition. In recognition of the particular nature of the specialist tobacconist trade, the Specialist Tobacconist Regulations allow specialist tobacconists (of which there are only around 50 shops in England) to display and advertise tobacco products inside their shops, provided such products and advertisements are not visible to the public from outside the shops.

8. Consultation Outcome

8.1. The Display Regulations and the Specialist Tobacconist Regulations were subject to a full public consultation exercise from October 2009 to January 2010. They were made before the 2010 general election and have since been reviewed by the Coalition Government. The Government's review recognised the dual aims of reducing tobacco consumption and reducing burdens on businesses. The views of all parties with an interest in this legislation are well known to Government and have been fully taken into account. Information about stakeholders' views were available from a variety of sources, including through the two public consultations (prior to the Health Act 2009 and on the regulations), meetings, correspondence, press articles and extensive lobbying by public health groups, retailers and tobacco manufacturers.

9. Guidance

9.1. Department of Health officials are working with stakeholders on guidance for both retailers and for local authority trading standards officers who are responsible for the enforcement of the legislation.

10. Impact

10.1. An Impact Assessment was carried out for the provisions to end displays of tobacco products contained in the Health Act 2009, to inform consideration of those provisions by Parliament. A further Impact Assessment was carried out for the associated regulations and was published as an Annex to the Explanatory Memorandum to the Display Regulations and the Specialist Tobacconist Regulations.

11. Regulating Small Business

11.1. The legislation applies to small businesses. In November 2010 the Chancellor announced the Growth Review which is jointly led by the Treasury and Department for Business and aims to ensure all Government Departments are doing everything they can to help the country grow and recover from recession. The Government is clear that small and micro businesses have specific needs and can be particularly affected by regulation. Reducing the burdens of regulation for them is a particular priority for the Government. In keeping with the Growth Review the Government decided to defer the commencement of the legislation governing the display of tobacco products, in particular to provide small businesses until 6 April 2015 to prepare for implementation.

12. Monitoring and Review

12.1. The impact of the overall legislation governing the display of tobacco products will be kept under review by the Department of Health.

13. Contact

13.1. Fran Mente at the Department of Health can answer any queries about this instrument: e-mail Fran.Mente@dh.gsi.gov.uk or tel 020 7972 4872.