EXPLANATORY MEMORANDUM TO

THE TOBACCO ADVERTISING AND PROMOTION (DISPLAY) (ENGLAND) REGULATIONS 2010

2010 No. 445

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 the instrument

2.1 These regulations provide exemptions to the general prohibition of the display of tobacco products set out in section 21 of the Health Act 2009. They are intended to allow trading to continue but to prevent tobacco products being used as promotional tools. The regulations come into force on 1 October 2011 for large shops other than duty free stores and on 1 October 2013 for all other retailers of tobacco.

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

3.1 None

4. Legislative Context

4.1 This instrument is the first use of the powers given to the Secretary of State by the new sections 7A and 7B of the Tobacco Advertising and Promotion Act 2002 (c.36), inserted by section 21 of the Health Act 2009 (c.21). Section 21 came into force for the purpose of making regulations on the day on which the Health Act 2009 obtained Royal Assent (12 November 2009). Section 7A(1) provides that a person who in the course of business displays tobacco products or causes them to be displayed in a place is guilty of an offence; section 7A(2) allows the appropriate Minister (in England, the Secretary of State) to make regulations providing for the meaning of "place". Section 7B(3) allows the appropriate Minister to provide in regulations that no offence is committed if the display complies with requirements specified in the regulations.

4.2 The Health Act 2009 contains a number of other new regulation-making powers in relation to tobacco (concerning specialist tobacconists, restrictions on the display of tobacco product price lists and the prohibition of tobacco sales from vending machines). The Secretary of State for Health intends to make regulations under these powers in early 2010; one other set of regulations (on Specialist Tobacconists) is also subject to the negative procedure. The remaining two on tobacco sales from vending machines and tobacco product price lists, are subject to the affirmative procedure and were laid before Parliament on the 27 January 2010.

4.3 These regulations have been notified to the European Commission under the Technical Standards and Regulations Directive .

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 The new power in the Tobacco Advertising and Promotion Act 2002 is applicable to England, Wales and Northern Ireland. All three countries have indicated intentions to regulate in a similar manner on tobacco product displays. Scotland is currently completing the parliamentary process with a Bill that contains similar provisions.

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

- ***What is being done and why***

7.1 The primary focus of the tobacco provisions in the Health Act 2009 is on protecting children and young people from the health harms of smoking. A consequential benefit of the policy will be to create a more supportive environment for adults who are trying to quit smoking.

7.2 The Department of Health has evidence that two thirds of smokers start smoking regularly before the age of 18. The Government wishes to take action to enable young people not to start smoking, and to support those people who want to give up smoking. It has extensive evidence that both tobacco advertising and tobacco promotion through displays of products encourages young people to start smoking, and that since the Tobacco Advertising and Promotion Act 2002 banned tobacco advertising, the tobacco industry has increasingly focused on the display of tobacco in shops as a way of promoting its products.

7.3 These regulations are intended to deal with implementing the prohibition of tobacco product displays under the Health Act 2009. The requirements for specialist tobacconists in relation to the prohibition of the display of tobacco products are set out in separate regulations (the Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010. .

7.4 These regulations recognise that retailers need to be able to serve customers, restock products, and staff need to know where products are kept. The regulations therefore give exemptions to temporary displays during serving a customer and restocking and they allow for labels on storage units, all subject to specified restrictions.

7.5 These regulations also recognise the particular circumstances of duty-free and other retailers only selling tobacco products to the public in bulk quantities, referred to in the regulations as "bulk tobacconists". They will be allowed to retain displays of tobacco products subject to the specified conditions.

8. Consultation outcome

8.1 A consultation on the draft regulations ran from 12 October 2009 to 4 January 2010. The consultation document also sought responses on the other sets of proposed regulations. The Department of Health received 544 responses from a range of stakeholders . The stakeholders primarily fell into two groups: retailers and health NGOs. These include:

- Retailers: Association of Convenience Stores, National Federation Retail Newsagents, British Retail Consortium and from retail companies such as the major supermarkets and convenience store chains.

- Health NGOs: Action Smoking and Health, British Heart Foundation, Cancer Research UK, British Medical Association, Royal College of Physicians and the Faculty of Public Health.

In addition there were responses from the tobacco industry, local government, the NHS and from individuals.

8.2 The Department of Health made a number of changes to the regulations in the light of suggestions made by stakeholders in their responses to the proposed regulations in the consultation, where the

suggestions were considered to strike the appropriate balance between business concerns and the health benefit aims of the regulations. The main changes were:

- the definition of "place" was amended to be consistent with the Price List regulations (affirmative);
- the commencement date extended to October 2013 for all duty free stores;
- an increase in the permitted size of temporary allowable display to 7500 square centimetres.
- an amended definition of bulk tobacconist to be consistent with the Price List regulations (affirmative), and based on suggestions made by the wholesale trade;
- an increase in the permitted point size on storage unit labels to be consistent with guidance from the Royal National Institute for Blind People, based on suggestions made by retailers;
- provision for the country of origin and dimension of cigars, and the cut and type of tobacco for pipe tobacco to be shown on storage unit labels to support retailers locate stock;
- the insertion of provisions to allow tobacco to be displayed for the purposes of enforcement officers carrying out their duties, based on a suggestion from a tobacco company (this will particularly support enforcement activity around illicit tobacco).

9. Guidance

9.1 We will work with stakeholders to produce guidance on compliance with the regulations for both businesses and relevant enforcement authorities.

10. Impact

10.1 The impact on business, charities or voluntary bodies is that all businesses that sell tobacco to the public will have to cover up their displays of tobacco products. All businesses will have a lead-in time to prepare; the regulations will commence for large stores, other than bulk tobacconists on 1 October 2011, and will commence for all other businesses on 1 October 2013. Large stores are defined by using the existing definition in the Sunday Trading Act 1994 (Schedule 1) of having a relevant floor area exceeding 280 square metres.

10.2 The policy is intended to have a positive impact on the NHS due to the improved health of the population as achieved by reducing smoking rates into the long term.

10.3 An Impact Assessment is attached to this memorandum. The impact assessment covers the removal of the display of tobacco products, including the regulation of price lists and specialist tobacconists, which are subject to separate regulations. The impact assessment demonstrates the regulations result in a combined net benefit of £659 million.

11. Regulating small business

11.1 The legislation applies to small business, and creates an exemption from the general prohibition on the display of tobacco products for businesses, subject to conditions set out in the regulations.

11.2 To minimise the impact of the requirements on small firms, the approach taken is to give small businesses two years longer to comply with the legislation (1 October 2013 rather than 1 October 2011 for large stores). This will both give preparation time and allow small stores to benefit from the experiences of large stores in implementing these regulations. To further minimise the impact on businesses, the permitted area of temporary allowable display has been increased since

consultation to reduce the cost of refurbishment. We will be working with stakeholders to produce guidance on compliance with the regulations for both businesses and enforcement agencies.

11.3 Final decisions on what action to take to assist small business comply with the Government's principles and policy on better regulation .

12. Monitoring & review

12.1 The impact of the amendments made by these regulations will be kept under review by the Department of Health.

13. Contact

Andrew Black can answer any queries regarding the instrument.
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Summary: Intervention & Options		
Department /Agency: Department of Health	**Title:** Impact Assessment of regulations supporting the prohibition of the display of tobacco at point of sale	
Stage: Final	**Version:** 1	**Date:** 25th January 2010
Related Publications: Health Act 2009 (c.21), *Cancer Reform Strategy* (2007), *Consultation on the future of tobacco control* (2008), *Consultation on proposed tobacco control regulations for England (under the Health Bill 2009)* (2009)		

Available to view or download at: http://www.dh.gov.uk/tobacco

Contact for enquiries: Hannah Tait **Telephone:** 0207 9721322

What is the problem under consideration? Why is government intervention necessary?

Tobacco displays have been shown to increase the likelihood of children taking up smoking, and to undermine quit attempts among people who smoke. The Health Act 2009 brought in a prohibition on the display of tobacco products. These regulations are needed to enable delivery of this policy, support enforcement and to minimise costs of implementation for retailers.

What are the policy objectives and the intended effects?

The primary objective is to ensure the removal of tobacco displays could be achieved, thereby reducing smoking uptake among children and support those people who smoke and want to quit.

The secondary objective is to minimise costs and burdens to retailers of implementing this policy.

What policy options have been considered? Please justify any preferred option.

1. *Do nothing:* allow the complete display prohibition contained in the Health Act 2009 to commence without regulations, meaning any visibility of tobacco products at the point of sale would be an offence.

2. Preferred option: use the regulation-making powers in the Health Act 2009 to limit the general display prohibition, thereby allowing a more practical approach to the retail sale of tobacco, recognising the different ways in which tobacco can be sold in different retailing environments, and allowing display and advertising of specialist products to continue within specialist tobacco shops.

Option 2 is preferred because it will reduce the costs to business of covering tobacco displays.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Three years after the date of implementation of the policy, expected to be October 2014. Central funding is planned to be made available for the collection and evaluation of relevant data.

Ministerial Sign-off For final proposal Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: ***Gillian Merron***

Date: ***27 January 2010***

Summary: Analysis & Evidence	
Policy Option: 2	**Description: Regulations amended in response to the 'Consultation on tobacco displays and vending machines, 2009'**

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups' There are no costs as the regulations would reduce the cost of removing tobacco displays compared to the cost of removing tobacco displays without regulations.	
One-off (Transition)	**Yrs**		
£ 0			
Average Annual Cost (excluding one-off)			
£ 0		**Total Cost** (PV)	**£ 0**

Other **key non-monetised costs** by 'main affected groups' one-off: compliance costs for specialist tobacconists and bulk tobacconists (airside duty free shops and cash-and-carry stores)

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups' one-off: savings from lower compliance costs proposed regulations; annual: time savings of serving customers to both retailers and customers, and to retailer for stock-taking and re-stocking	
One-off	**Yrs**		
£ 187 to 266 million	3		
Average Annual Benefit (excluding one-off)			
£ 50.5 million		**Total Benefit** (PV)	**£ 579 to £659 million**

Other **key non-monetised benefits** by 'main affected groups' one-off: savings to specialist tobacconists with almost complete exemption from prohibition of tobacco displays, savings to bulk tobacconists and airside duty-free shops with tobacco display areas; annual: saved income by maintaining customer base

Key Assumptions/Sensitivities/Risks risk of increased theft due to distracted staff members retrieving tobacco items from covered displays; a reduction in health benefits due to some visibility of tobacco during sales

Price Base Year 2008	Time Period Years 10	**Net Benefit Range** (NPV) **£ N/A**	**NET BENEFIT** (NPV best estimate) **£ 659 million**

What is the geographic coverage of the policy/option?			England	
On what date will the policy be implemented?			October 2011 (for large stores), October 2013 (for all stores)	
Which organisation(s) will enforce the policy?			Local authorities	
What is the total annual cost of enforcement for these organisations?			£ N/A	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			Yes	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)					(Increase - Decrease)
Increase of	£	Decrease of	£	**Net Impact**	**£**

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

INTRODUCTION

Scope of this paper

1. This paper sets out the net positive economic impact of the regulations on tobacco displays in England, made under the regulation making powers in the Health Act 2009.

2. The original Impact Assessment for the Health Act (during the passage of the legislation through Parliament) considered the costs and benefits associated with removing tobacco displays and anticipated there would be regulations allowing cost-effective solutions which take account of different types of tobacco retailers. Since the Health Act contains a complete prohibition on display, this IA reviews only the impact of regulations, comparing the cost associated with removing tobacco displays with and without regulations. Costs are estimated with reference to responses received from stakeholders from two separate consultations, as well as information from those with experience in removing tobacco displays.

3. The Department of Health is of the opinion that that ending tobacco displays based on these regulations would not incur any fewer health benefits than a complete prohibition on tobacco displays, and that the regulations create a proportionate approach to the implementation of the relevant provisions in the Health Act. This is discussed more fully in the specific Health Impact Assessment later in this document.

Summary

4. These draft regulations would secure the delivery of a prohibition on tobacco displays, whilst enabling retailers to continue selling tobacco to adults and taking account of different retailing environments. Specifically, the regulations would:

   - Enable retailers to make temporary, limited-size displays when selling tobacco to customers, providing for low cost solutions to be used in covering tobacco displays;
   - Enable specialist tobacconists (those whose sales comprise at least 50% specialist tobacco products, such as pipe tobacco and cigars) to continue advertising specialist tobacco products, and displaying all tobacco products inside their shops, provided neither are visible from outside the shop;
   - Enable bulk-tobacconists to display tobacco in designated tobacco display areas; and
   - Allow plain price lists for tobacco to be visible to all customers and a price list with images available to persons over the age of 18 on request.

5. This IA compares the high cost of implementing a complete prohibition with the savings incurred by the proposed regulations. It therefore demonstrates a net saving of **£579 million to £659 million** discounted over 10 years. A summary table is provided below:

	Cost: complete prohibition	Cost: prohibition with regulations	Savings incurred: benefit of regulations
Average Annual	**£ 86.7 million**	**£ 36.2 million**	**£ 50.5 million**
One-off	**£ 293 million**	**£ 27.7 million to £106million**	**£187 million to £266 million**
10-year Discounted Total	**£ 979 million**	**£ 319 million**	**£ 579million to £659 million**

Summary

6. This impact assessment sets out briefly:

   - The relevant background to the tobacco display provisions in the Health Act 2009;
   - A short narrative describing the consultation process for the proposed regulations;
   - A detailed economic assessment of the costs and benefits of the draft regulations;
   - Further specific impact assessments undertaken; and
   - A technical appendix providing further details on the economic analysis undertaken.

Background to the tobacco display provisions

7. Tobacco smoking is the leading cause of preventable morbidity and mortality in England and is the leading cause of health inequalities. 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.[1]

8. The 2008 *Consultation on the future of tobacco control*[2] considered whether there should be further controls on the display of tobacco to reduce unsolicited tobacco promotion to children and people trying to quit smoking. Three options were presented: to retain the status quo; to place some restrictions on displays such as limiting size or ways in which tobacco may be displayed; or to remove tobacco displays altogether.

9. The report of the 2008 consultation[3] shows that there were 95,488 responses to the question on tobacco displays, with around 84% of respondents favouring stricter controls. The vast majority of respondents expressed a preference for option 3: the complete removal of tobacco displays.

10. Many stakeholders and individuals involved in the tobacco retailing trade (particularly smaller retailers and their representatives) were against further restrictions at all. Many retailers expressed concern about the cost of removing tobacco displays. Specialist tobacconists, in particular, felt they were likely to go out of business altogether if they were not allowed to display specialist tobacco products. Under definitions contained in the Tobacco Advertising and Promotion Act 2002, 50% of the sales of specialist tobacconists must be in specialist tobacco products.

11. On 9 December 2008, the Government announced they would be seeking a prohibition on tobacco displays.[4] The proposed general prohibition and accompanying regulation-making powers was set out in the Health Act 2009, which was introduced in the House of Lords on 15 January 2009.

12. During the passage of the Health Act through Parliament, the Government committed to delaying commencement of the prohibition on tobacco displays until October 2011 for larger stores, and until October 2013 for smaller stores.

13. The Department of Health has been working with trade representatives across the retail trade as well as enforcement officers to develop draft regulations for consultation on tobacco displays. Key stakeholders include: the Association of Convenience Stores (ACS); the British Retail Consortium (BRC); the National Federation of Retail Newsagents (NFRN); the Association of Independent Tobacco Specialists (AITS); the Imported Tobacco Products Advisory Council (ITPAC); World Duty-Free; Airport Operators Association (AOA); the UK Travel Retail Forum (UKTRF); Federation of Wholesale Distributors; a number of retail and wholesale businesses; and the Local Authorities Coordinators of Regulatory Services (LACORS).

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1 For a review of the evidence, see the Health Bill Impact Assessment, available at: www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_093305 and the Cancer Research UK report, available at: info.cancerresearchuk.org/images/pdfs/tobcon_pointofsalereport

2 Department of Health (2008). *Consultation of the future of tobacco control.* Department of Health, London. Available at: www.dh.gov.uk/tobacco

3 Department of Health (2008). *Consultation on the future of tobacco control: consultation report*, Department of Health, London. Available at: www.dh.gov.uk/tobacco

4 Available at: www.publications.parliament.uk/pa/cm200809/cmhansrd/cm081209/wmstext/81209m0001.htm#08120943000015

The consultation process for these proposed regulations

14. A consultation on the draft regulations ran from 12 October 2009 to 4 January 2010 (the consultation document also sought feedback on the other sets of proposed regulations to be made under powers in the Health Act). The consultation responses received have contributed to the development the regulations, taking account of the health objectives, needs of business and enforcement officers and to ensure regulations are practical, enforceable, avoid undue burdens on business or enforcement authorities and meet the five principles of good regulation:

    - transparency
    - accountability
    - proportionality
    - consistency
    - targeted only at cases where action is needed

15. Some 544 responses were received to the consultation on these regulations from a range of stakeholders. The stakeholders are primarily from two groups: retailers and health NGOs. These include:

    - *Retailers:* Association of Convenience Stores, National Federation Retail Newsagents, the British Retail Consortium, several retail companies and from small businesses.

    - *Health stakeholders:* Action Smoking and Health, British Heart Foundation, Cancer Research UK, Royal College of Physicians and the British Medical Association.

    - In addition there were responses from the tobacco industry, local government, the NHS and from individuals.

16. The Department of Health made changes to the draft regulations in the light of many of the suggestions made by stakeholders in their responses, where these were considered to contribute to striking the appropriate balance between reducing business concerns and maximising the health objectives of the regulations

17. The Department of Health will publish a report summarising responses received, in accordance with Cabinet Office *Code of Practice on Consultation.* The Government has committed that regulations will be laid before Parliament as early as possible in 2010, allowing a long lead-in time for businesses to prepare before the anticipated commencement date of 1 October 2011. For the purpose of calculations in this document, a lead-in time of 18 months is assumed.

18. The Department of Health will seek to work with key stakeholders across the retail trade, local government and trading standards to develop guidance for enforcement officers and businesses. This guidance will be available in 2010 to support preparation for implementation and compliance.

COSTS AND BENEFITS

19. The Impact Assessment that accompanied the Health Act during its passage through Parliament detailed the benefits of removing tobacco displays in terms of life years saved from a reduction in smoking prevalence. This results in a net benefit of £520m (range £45m to £975m), based on the lifetime health benefits arising from fewer young people starting to smoke over a ten year period.

20. This Impact Assessment considers the likely cost to retailers of a general prohibition of tobacco displays and then considers the benefit of each of the regulations in terms of lowering the cost implications. Each regulation produces a ‘saving’ to retailers compared to having no regulations at all, and this is counted as a benefit of the proposed regulations. The health benefits are not discussed until the specific health impact assessment.

Cost of a complete prohibition on tobacco displays

Complete prohibition on display – one-off costs

21. The original cost benefit analysis for removing tobacco displays was based on an estimate of £1,000 per store, average, to remove tobacco displays. There was a great deal of debate during passage of the Health Act through Parliament of the actual cost of removing tobacco displays. Evidence from the Canadian experience of removing tobacco displays indicates the costs could be much lower than £1,000 for small retailers, whilst larger stores that have larger displays and other shops may choose more expensive solutions that better suit their retailing environment.

22. The estimate of £1,000 per store was based on the assumption that shops would be able to choose their own solution and that low-cost solutions that used existing gantries and allowed limited, temporary displays when serving customers would be permitted by regulations.

23. Assuming no regulations were introduced alongside the commencement of the general prohibition on tobacco displays, the cost of removing displays would be much higher than £1,000. Under the counter or overhead solutions would be the only appropriate solutions, allowing sales assistants to select products for a customer without revealing any tobacco to the public at all. Under the counter solutions, or placing tobacco in drawers could cost as much as £4,965 per shop according to the Association of Convenience Stores (ACS).[5] This takes into account the cost of the unit, fitting, and installation. The British Retail Consortium (BRC) estimate removing displays through the installation of below the counter solutions could cost between £2,500 and £10,000 per store depending on the size of unit.

24. In this Impact Assessment, we therefore will estimate the cost of a complete prohibition of tobacco displays as £4,965 average per small store, and £7,500 average per larger store.

25. *Convenience Store* magazine published the "grocery retail structure" on 29 May 2009.[6] This data indicates there are 66,732 shops selling tobacco in the UK, including convenience stores, petrol forecourts, supermarkets and superstores. With a population factor of 0.838, this scales down to 55,921 shops selling tobacco in England.

26. To avoid confusion, the Government has committed to defining small and large stores through the existing definitions in the Sunday Trading Act 2004. That means that stores greater than 280 square metres are considered large, and through the Government setting out intentions for the implementation of legislation, shops will already know whether they would need to comply with the display prohibition in 2011 or in 2013.

27. According to the "grocery retail structure" article, and applying the population scaling factor for England, the small/large distinction applies as follows:

    - 35,035 convenience stores (small shops)
    - 7,241 petrol forecourts (small shops)
    - 7,515 convenience stores (small shops)
    - 6,130 supermarkets and superstores (large shops)

28. This results in an estimated 6,130 large stores and 49,791 small stores in England according to proposed definitions in the regulations.

29. Taking the average cost per store as detailed at paragraph 21 and the estimated number of stores detailed at paragraph 25, and allowing larger retailers 18 months to comply, and smaller retailers 3.5 years to comply, this results in a potential one-off cost to remove tobacco displays in shops of **£293 million**.

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5 Association of Convenience Stores response to *Consultation on the future of tobacco control* (2008).

6 The Convenience Stores *Grocery Retail Structure 2009*, 29 May 2009, pg.32.

Complete prohibition on display – unquantifiable one-off costs

30. There are groups of retailers who sell tobacco in ways that are different to conventional retail stores. Removing tobacco displays in, for example, specialist tobacconists and bulk tobacconists, could be much more costly than in a high street shop, although exact costs are not known.

31. According to the Association of Independent Tobacco Specialists (AITS),[7] removing tobacco displays in specialist tobacconists would result in closure of 95% of specialist businesses, which equates to approximately 45 shops in England. This is due to their estimated costs of between £1,000 and £200,000 per store. Although individuals who would lose their trade may retrain and contribute to the economy in other ways, the retraining of staff and the removal of businesses would incur costs over the ten year period.

32. There are regulation-making powers in the Health Act that allow Health Ministers to make exemptions to the tobacco advertising ban set out in the Tobacco Advertising and Promotion Act 2002 for specialist tobacconists to advertise specialist tobacco products. At present, advertising of specialist tobacco products (e.g., pipe tobacco and cigars) is permitted anywhere on the premises of a specialist tobacconists, including advertisements affixed to the outside of the premises. This would be inconsistent with removing all promotion of tobacco through displays in other retail premises. If no regulations were used, specialist tobacconists would become subject to the comprehensive advertising ban meaning they would have to remove all adverts for specialist tobacco products, which would also incur some costs.

33. Finally, during consultation and the development of regulations, bulk tobacconists were identified as a group that would incur very high costs if they had to remove tobacco displays completely. Bulk tobacconists include airport duty-free sales and cash-and-carry stores. Such shops sell bulk tobacco products (predominantly in pre-packaged sizes of 200 cigarettes, or 125g of hand-rolling tobacco).

Complete prohibition of display – annual recurring costs

34. The following points relate to recurring annual costs. The cost estimates in bold relate to when the policy is fully in force:

    a. Different methods of serving customers could result in additional time taken to serve. A report by the Centre for Economics and Business Research (CEBR)[8] cites a small study from *Convenience Store* magazine[9], finding that serving a product from under the counter took 8.8 seconds (versus 4.37 seconds when serving from a gantry), citing a calculation of an additional 230 minutes per week per store. Given the number of cigarettes estimated to be sold in shops in England is 39 billion, this leads to 4.8 million hours lost to the customer per annum. Using a value of £5.13 per hour of leisure time, the gives a time-loss value to the customer of **£12.3 million per annum**.[10]

    b. Additional time to serve customers is also a cost to the retailer, monetised at £9.15 wage rate. The 4.8 million hours are therefore equivalent to a cost of **£22.0 million per annum**.[11]

    c. There may be increased stock-taking and restocking time. The Convenience Store magazine article referenced in the CEBR report argues that a move to under the counter could add around 2.5 hours per week in stock-taking and restocking time. This is equivalent to a cost of **£66.5 million per annum**.

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7 Association of Independent Tobacco Specialists response to *Consultation on the future of tobacco control* (2008).

8 Centre for Economics and Business Research (2008), *A review of the Department of Health's regulatory impact assessment on banning point of sale display of tobacco undertaken by CEBR on behalf of the Tobacco Retailers Alliance.*

9 '£100m staff costs for gantry changes' in *Convenience Store*, 22 August 2008, pp 4.

10 See technical appendix for further information.

11 See technical appendix for further information.

Complete prohibition of display – unquantifiable annual recurring costs

35. A number of issues raised by respondents to the *Consultation on the future of tobacco control* could give rise to an economic cost. For those issues listed below, no quantified evidence is available to estimate the impact on cost.

    a. *Increased theft of stock:* shop assistants may be distracted when retrieving tobacco products making casual theft easier, (particularly on petrol retailer forecourts), or new storage solutions may be less secure than lockable gantries making burglary easier. There is no evidence that crime in shops has increased as a result of covering up tobacco displays in Iceland or Canada. The extent of any such effects that might occur is not quantifiable.

    b. *Customer migration to larger stores:* customers might believe that larger stores have a bigger product range. A price and availability list will be visible in every shop detailing what products are sold. Furthermore, the legislation will come into force in large shops first, meaning customers will be familiar with the concept of choosing from a list rather than a display when the legislation comes into force in smaller shops.

    c. *Increased use of black market cigarettes:* counterfeit cigarettes increasingly expertly made, requiring handling and close examination by enforcement officers, so whether or not they are on display is largely irrelevant to illicit trade.

    d. *Cost of replacement 'focal point' stock:* this was also discussed but not quantified in the CEBR report. However, if a retailer chooses a solution that frees up the space that a tobacco gantry used to occupy, they may rearrange existing stock or purchase new stock to occupy that space. New stock will turn a profit when it is sold, otherwise the retailer would not choose to purchase it. The solution used in Canada provided new advertising space at the shop counter that could be sold to promote other products on sale (many of which have higher mark-ups than tobacco).

    e. *Reduction in sales in airports:* if airport duty-free sales were subject to a complete tobacco display prohibition, it is predicted that fewer customers would purchase tobacco resulting in losses to the income of regional airports. It is expected that these customers would purchase duty-free tobacco at the arrival airport resulting in a displacement of trade from English regional airports to airports in other, non-EU countries.

    f. *Any increase in the cost of enforcement visits:* it may be that trading standards officers need to provide guidance to businesses to explain the new regulations, for example. The Government has committed to providing local authorities with support for the implementation and monitoring of the new regulations.

Summary of costs

36. In summary, we would have **one-off costs of £293 million** and annual costs of **£100.7 million per annum**, once the display prohibition was fully in force. Taking account of the staggered commencement between large and small retailers, there would be a 10-year discounted cost of **£979 million**.

Benefits of proposed regulations limiting the general prohibition on tobacco displays

Tobacco Advertising and Promotion (Display) (England) Regulations 2010: permitting limited, temporary displays to serve customers

37. The regulations that accompany this Impact Assessment permit a temporary display that is limited in size. This means that retailers can show a small amount of display when they are serving a customer. In practice, retailers should be able to keep their existing tobacco shelving and use simple, low-cost covers, avoiding the need for under the counter or overhead solutions.

38. Many shops in Canada took this approach by applying simple magnetic covers to existing tobacco shelving. This would allow solutions modelled on the Canadian approach to be used in England. Estimates from a company that supplied 85% of the Canadian market vary depending on the size of the gantry, the number of stores making a purchase and the quality of the installation. The estimates vary from £210 to £450 for an individual store with 25 square feet of display area, and £850 for a store with twice that display space.[12]

39. A report by ASH on point of sale displays of tobacco[13] used 153 visits by trading standards to tobacco retailers across seven of the government office regions found that the smallest tobacco display area was 1 metre by 1.3 metres (approximately 18.17 sq ft). The largest display area was 1.9 metres by 3.6 metres (approximately 73.59 sq ft). However, over 90% of retailers visited had displays of less than 50 sq ft, and 65% had displays of less than 25 sq ft. It is therefore considered that small stores, on average, display at most 25 sq ft (approximately 2.25 sq metres) of tobacco and large stores, on average, display 50 sq ft (approximately 4.5 sq metres) of tobacco.

40. Combining the estimate of size based on the ASH report and the quotes obtained by DH for the cost of the magnetic covers gives an estimate of £450 per small store, and £850 per large store. Compared to the cost of implementing a complete prohibition with no regulations, this results in a one-off benefit of **£266 million**.

41. There is some uncertainty over the cost of the changes to the display. The ACS provide a maximum estimate of approximately £1900. This provides a lower bound for the one-off benefit of £187m.

42. The one-off benefits of the regulations are therefore likely to lie in a range from £187million to £266 million.

Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010: requirements on specialist tobacconists (unquantifiable)

43. A complete tobacco display prohibition is estimated to result in the closure of almost all specialist tobacconists. The Health Act provides regulation-making powers to control both advertising of specialist products and display of all tobacco products in specialist tobacconists.

44. At present, advertising of specialist tobacco products (e.g., pipe tobacco and cigars) is permitted anywhere on the premises of a specialist tobacconists, including affixed to the outside of the premises. This would be inconsistent with removing all promotion of tobacco through displays in every other shop.

45. The proposed regulations would limit advertising of specialist products to specialist tobacconists where the adverts were not visible outside the shop. The regulations would also allow specialist tobacconists to continue displaying all tobacco products provided these displays were not visible outside the shop.

46. The effect of these regulations would therefore mean promotion of tobacco, through advertising and display, would only be visible to those people who have chosen to enter a specialist tobacconist.

47. There are approximately 50 specialist tobacconists in England and many have a voluntary entry restriction to stop children from entering the shop unaccompanied. We believe that those people trying to quit smoking are unlikely to go into a specialist tobacconist shop. Therefore, by ensuring adverts and displays are only visible to those people who have chosen to enter a specialist tobacconist, the regulations effectively prevent unsolicited tobacco promotion, whilst also allowing specialist tobacconists to continue trading as they currently do.

48. Given the high cost to specialist tobacconists of implementing a complete prohibition on the display of tobacco products and a complete prohibition on the advertising of specialist tobacco products, the proposed regulations would result in a saving.

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12 Emails from 4 Solutions Display to the Department of Health and ASH. Available at: www.dh.gov.uk

13 MacGregor Consulting Ltd. *Tobacco Advertising at Point of Sale – report to ASH.* Available at: www.ash.org.uk/ash_3xe9h0zo.htm

Tobacco Advertising and Promotion (Display) (England) Regulations 2010: requirements on bulk tobacconists (unquantifiable)

49. During consultation and the development of regulations, airport duty-free sales and cash-and-carry stores were identified as selling tobacco in a different ways to high street retail shops. It was decided that bulk-tobacconists should receive different regulatory treatment taking account of the specific nature of their businesses.

50. The regulations define a bulk-tobacconist as selling at least 90% of tobacco in minimum 200 cigarettes per carton or 250g of hand-rolling tobacco and the remainder in minimum of 100 cigarettes or 125g hand-rolling tobacco.

51. The regulations would allow bulk tobacconists to have a tobacco display area, provided the area only contained tobacco and the tobacco was not visible outside the area. This limits the promotion of tobacco through display to those people who choose to enter a tobacco display area.

52. Compared to the cost of implementing a full prohibition on tobacco displays, these regulations result in savings, as the cost of removing displays altogether would be higher than having a tobacco display area.

53. Therefore, providing regulations that apply different requirements for bulk tobacconists results in further savings.

All regulations – annually recurring savings

54. The following points relate to recurring annual savings. The estimates in bold relate to when the policy has reached full implementation, allowing for some non-compliance. They assume a compliance level of 90%.

    a. Different methods of serving customers could result in additional time taken to serve. The CEBR reported study, detailed above considers the time implication of an under the counter solution. Since the regulations will enable other solutions that include maintaining the existing gantry, there will be less extra time needed to serve customers and so less time lost to customers. An average transaction time increase of 2 seconds compared to current serving time is considered acceptable. This is 2.4 fewer additional seconds than the under the counter solution would cause, resulting in a saving of **£6.75 million**.[14]

    b. Less additional time to serve customers is also a saving to the retailer, monetised at £9.15 wage rate. The 1.0 million hours less are therefore equivalent to a saving of **£12.0 million per annum**.[15]

    c. The increased stock-taking and restocking time will be less with the regulations than a complete display prohibition. Compared to the additional 2.5 hours per week estimated by the CEBR report, the alternative solutions are expected to result in less than one additional hour per week. The reduction of 1.5 hours compared to the complete prohibition results in a saving of **£39.9 million per annum**.

All regulations – annually recurring savings (unquantifiable)

    d. Enabling airport duty-free shops to have a tobacco display area would allow tobacco sales to continue at similar rates to now, avoiding the cost of loss of sales.

[14] See technical appendix for further information

[15] See technical appendix for further information

Cost/Benefit Analysis

55. The proposed draft regulations therefore have a total one-off cost of **£27.7 million** and **£42.1 million per annum** once the regulations are fully in force. Taking into account of the staggered commencement between large and small retailers there would be a 10-year discounted cost of **£320 million**.

56. The costs of the proposed regulations are compared to the cost of a complete prohibition on display to show the savings attributed to the proposed regulations.

57. The proposed regulations therefore have a total one-off saving of **£266 million** and **£58.7 million per annum** once the regulations are fully in force.

58. Once the staggered commencement between large and small retailers is taken into account the proposed draft regulations have a 10-year discounted saving of between £579 million and **£659 million.**

	Cost: complete prohibition	Cost: prohibition with regulations	Savings incurred: benefit of regulations
Average Annual	**£ 86.7 million**	**£ 36.2 million**	**£ 50.5 million**
One-off	**£ 293 million**	**£ 27.7 million to £106million**	**£187 million to £266 million**
10-year Discounted Total	**£ 979 million**	**£ 319 million to £397 million**	**£ 579million to £659 million**

TECHNICAL APPENDIX

1. The following paragraphs outline more specifically how certain calculations within this impact assessment were performed.

Number of cigarettes sold in shops in England

2. The Tobacco Manufacturers Association state that in 2007, 47 billion duty-paid cigarettes were consumed in the UK.[16] Scaling this down into England only terms (using a scaling factor of 0.838) yields 39 billion cigarettes consumed in England. It is estimated that shop sold cigarettes represent 99% of the overall cigarette market, meaning sales would account for 1.95 billion packs of 20 cigarettes per annum. This figure is then combined with an estimation of the average wage of sales assistants (see below), a valuation of the customer's leisure time and the estimated additional time to serve a customer. With these inputs, we calculate the time-cost of the regulations on retailers and customers from additional time serving the customer.

Valuing time

Retailers:

3. The 2007 Annual Survey of Hours and Earnings (ASHE) quotes a wage rate of £7.04 per hour for "sales assistants and retail cashiers".[17] Uplifting this figure by 30% to take account of other costs of employment yields a wage rate of £9.15 per hour.

Customers:

4. The Department of Transport 'Value of travel time savings' gives an indication of the value of leisure time of £4.46 per hour at end-2002 prices, or £5.13 per hour in 2008/09 prices.[18]

5. These estimates feed into calculations regarding the time-cost of the regulations on retailers in terms of both additional time serving the customer and additional stock-taking and re-stocking time.

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16 Available at: www.the-tma.org.uk/uk-cigarette-consumption.aspx

17 Gross hourly pay, Table 14.5a, Annual Survey of Hours and Earnings (2007). Available at: www.statistics.gov.uk/StatBase/Product.asp?vlnk=15187

18 Using Department for Transport "Transport Analysis Guidance" and supplementing with estimates for increases in nominal GDP. Available at: www.dft.gov.uk/webtag/webdocuments/3_Expert/5_Economy_Objective/3.5.6.htm

Specific Impact Tests: Checklist

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	No

Annexes

SPECIFIC IMPACT TESTS

Competition assessment

1. There are potential competition impacts on two markets: tobacco retailers and manufacturers; and suppliers of tobacco shelving and covers.

2. Prohibiting tobacco displays would not directly or indirectly limit the number or range of suppliers. The proposed regulations would enable all suppliers to develop innovative solutions, promoting competition and encouraging lower-cost solutions to be developed.

3. Prohibiting tobacco displays and the proposed regulations would apply to all tobacco retailers (specialist tobacconists excepted), therefore not significantly raising the cost of some existing suppliers relative to others. The regulations also lower the cost associated with removing tobacco displays, thereby ameliorating any effect of increasing the cost of entering the market.

4. Prohibiting tobacco displays reduces the ability of retailers and manufacturers to advertise or promote their products, and as such may have a marginal effect on competition. However, these regulations will permit plain price lists informing customers as to the products and prices available in any retailer, and all products will be affected in the same way.

5. Neither prohibiting tobacco displays nor the proposed regulations are likely to reduce the incentive to compete vigorously.

Small firms impact test

Development of regulations

6. During passage of the Health Act through Parliament and development of regulations on tobacco displays, the Department of Health and other government departments met with interested stakeholders include the Association of Convenience Stores, British Retail Consortium and the National Federation of Retail Newsagents. Both of these retail groups represent smaller retailers, including newsagents and convenience stores. Stakeholders representing the health community were also met.

7. Retail groups were fully involved in the development of draft regulations, supporting understanding of the retail environment and the particular context for smaller shops.

8. Retail groups responded to the consultation on the regulations and their suggestions have been considered and have helped shape the final proposed regulations and this analysis.

Costs

9. Prohibiting tobacco displays will impact on small businesses due to the costs of compliance. During the 2008 *Consultation on the future of tobacco control* the Government welcomed cost estimates from a number of retail groups, including those representing smaller shops. Officials have worked with these groups to develop regulations that will reduce costs associated with removing tobacco displays.

10. An evidence-gathering trip by officials to Canada in October 2008 found a cost of approximately £550 per store. This cost was for a permanent solution of magnetic flaps attached to existing tobacco shelving. The flaps can be opened when the shop assistant needs to retrieve a pack of cigarettes. Further consultation with a Canadian company indicated costs could be lower in England, since Canadian shops tend to have larger displays. Estimates range from £210 to £450 for a small shop.

11. The Association of Convenience Stores raised the concern that smaller businesses would lose out to larger stores despite identical restrictions on display. They argue that customers would assume

larger stores are more likely to carry their particular brand. Although there is no evidence of customer migration in Canada, the Government recognises that implementing new legislation may be harder for small shops. This is why smaller shops will be given an additional two years to comply with the regulations on tobacco displays. This will also enable more opportunity for advice, guidance and support to be given to smaller businesses.

12. Furthermore, due to the large potential demand, there is an economic incentive for manufacturers to innovate and develop solutions that are both attractive and cost-efficient. We would expect cheaper alternatives to be developed over time as happened in Canada and since small businesses will have a longer lead-in time they will have more opportunity to take advantage of these innovations.

13. In drafting regulations, we have attempted to enable cost-effective solutions, like those seen in Canada, to be developed. That is why regulations would allow a small area of display to be visible when serving a customer. This would enable shopkeepers to keep their existing tobacco shelving and apply simple covers that can be lifted when serving a customer, and avoids the need for under the counter or overhead solutions to be installed. In addition, specialist tobacconists, which tend to be small shops, will still be able to display their tobacco products, as long as they are not visible from outside the shop. This means changes to specialist shops will be minimal, limiting the cost of compliance to small businesses.

Timing

14. It is important to ensure a sufficient lead-in time for compliance. The proposed regulations should come into effect on 1 October 2011 for larger businesses, and 1 October 2013 for smaller ones. The distinction between large and small shops is based on the existing definition in the Sunday Trading Act 1994. Small shops that have no restrictions on Sunday opening hours are defined as those under 280 sq m/3,000 sq ft. Using this existing definition of small shops means shopkeepers already know when the legislation on tobacco displays will apply to them and minimises potential confusion.

15. Guidance would be made available well in advance following the example set by smokefree legislation, where we provided an online repository for guidance and advice as well as sending information to relevant businesses. The Department of Health will work with retail organisations and the Local Authorities Coordinators of Regulatory Services (LACORS) to develop guidance for enforcement officers and businesses. Guidance will also be made available through businesslink channels.

16. It will be important to provide transitional support through Trading Standards, in terms of training and guidance to support compliance building, particularly for smaller businesses. As with smokefree legislation, we will look to provide support during transition prior to the intended commencement dates to enable all businesses to be aware of new legal responsibilities, and implement any new obligations while minimising any associated burdens.

Health

17. It is not expected that a full prohibition without any regulations would incur any additional health benefits. Displays encourage children to take up smoking and undermine efforts of adults to quit because they encourage purchase of tobacco. They attract interest from customers, making them aware of a particular brand of product and suggesting emotional benefits from use of that product. They provide information through packaging of the product and price labels. Placing displays at the point of sale further increases the likelihood of purchase. Finally, they suggest that smoking is a normal activity enjoyed by a majority of adults, whereas in fact only about 1 in 5 adults in England smoke regularly.

18. The proposed regulations would allow small, plain and temporary limited displays when a retailer serves a customer. It is not thought that this temporary view will have the promotional power of a permanent, large and brightly lit display. However, no research has been conducted in Canada, where such small temporary displays are allowed despite a general display prohibition. It therefore remains a risk of the policy and will be assessed as part of the evaluation of impact to ensure maximum health benefits are achieved.

19. Tobacco display areas in bulk tobacconists will not have the same promotional power as existing displays because they will be seen by far fewer people, will be closed off from other products and will only contain bulk products, which are less appealing to children or those adults who are trying to quit.

20. Furthermore, although imposing a complete prohibition on tobacco displays could involve loss of tobacco sales to bulk tobacconists, it is anticipated most customers would simply purchase their tobacco elsewhere, leading to no additional health benefits. The majority of customers of cash-and-carry stores are retailers involved in the tobacco trade (looking to sell the tobacco to customers) or individual adult customers who purchase in bulk for the saving. Cigarettes are now widely available online, meaning that many of these customers could likely turn to wholesale price cigarettes available on the internet, or to cheaper, illicit tobacco. For duty-free sales, customers may only purchase this duty-free tobacco if they are flying out of the EU, so these shops compete in an international market with many fewer restrictions on displays and advertising of tobacco. This means that any customers deterred from buying tobacco by the lack of display in English airports would simply buy the product from their destination airport instead.

21. Therefore, the health benefits associated with a prohibition on tobacco displays will remain the same with or without the proposed regulations. This is set out in detail in the Impact Assessment that accompanied the Health Bill. The total benefits for a 10-year horizon were based on a reduction of between 579 and 2,786 fewer people smoking per year, giving £400m to £1.93bn total benefit.

Age

22. The proposed policy is likely to impact differently on people on grounds of their age. Although the proposed policy is a population-wide policy, there is evidence that point of sale displays of tobacco have a particularly strong influence on children and young people. The proposed policy would also impact on adults and people of all ages who are trying to quit.

23. The differential impact of the proposed policy on children and young people would be a positive impact because it would help to reduce the uptake of smoking and smoking rates amongst this age group.

Race and ethnicity

24. The proposed policy is not likely to impact differently on people on grounds of their race or ethnicity. The proposed policy is a population-wide policy that will affect all people equally and does not differentiate on the grounds of race or ethnicity.

25. Some ethnic and racial groups have higher smoking rates than the general adult population, but the DH is not aware of any evidence that a tobacco display prohibition would impact differently on certain ethnic or racial groups.

Disability

26. The proposed policy is not likely to impact differently on people on grounds of disability. The proposed policy is a population-wide policy that affects all people equally and does not differentiate on grounds of disability.

Religion or belief

27. The proposed policy is not likely to impact differently on people on grounds of their religion or belief. The proposed policy is a population-wide policy that affects all people equally and does not differentiate on grounds of religion or belief.

Sexual orientation

28. The proposed policy is not likely to impact differently on people on grounds of their sexual orientation. The proposed policy is a population-wide policy that affects all people equally and does not differentiate on grounds of sexual orientation.

29. Smoking rates tend to be higher in among persons from GLBT communities. However, the DH is not aware of any evidence that a tobacco display prohibition would impact differently on people of different sexual orientation. The policy may have a positive impact on young people who are from GLBT communities, since the policy is expected to have a positive effect on younger people and young GLBT people may have higher smoking rates.

Gender, transgender

30. The proposed policy is not likely to impact differently on people on grounds of their gender or transgender. The proposed policy is a population-wide policy that will affect all people equally and does not differentiate on the grounds of gender or transgender.

31. Smoking rates tend to be higher among men and among people who are transgender. However, the DH is not aware of any evidence that a tobacco display prohibition would impact differently on people of different genders.

Human Rights

32. The proposed regulations allow the implementation of a prohibition on the display of tobacco in shops, whilst minimising the cost of implementation for this policy. We do not expect there to be any significant human rights impacts. There may be concern that prohibiting the display of tobacco at point of sale is a limit on freedom of commercial expression under Article 10 of the ECHR. However, freedom of commercial expression is treated as less significant than freedom of political expression and the protection of public health is a very important counter balance to unrestricted commercial expression. Member states have a certain margin of appreciation in assessing the necessity of an interference with commercial freedom of expression. The national authorities of member states are best placed to determine the right balance between the competing interests of freedom of expression and public health.

33. Furthermore, the regulations will permit a full plain price list allowing manufacturers and retailers to inform customers as to the products available and their prices.

Measuring the impact of the policy

34. The annual ‘Smoking drinking and drug use among young people in England’ survey carried out by the NHS Information Centre measures smoking prevalence of young people aged 11 to 15 in England. The General Household Survey carried out by the Office for National Statistics measures the smoking prevalence of people aged 16 upwards.

35. From the results of these two surveys, it will be possible to measure the trends in smoking rates of children and young people, as well as the trends in smoking prevalence of the general adult population in England.

36. However, a multi-faceted response is necessary to effectively tackle tobacco use and a number of policies and initiatives to help reduce smoking prevalence will be will be active at any one time. Therefore, trends in smoking rates amongst young people and the adult population generally cannot be solely attributed to any one policy.

37. The Department of Health is committed to monitoring and evaluating the impact of removing tobacco displays, including: a measure on the smoking prevalence and associated health benefits; a measure of the impact on business, including costs of compliance; and an assessment of the overall contribution of the policy to future tobacco control.