EXPLANATORY MEMORANDUM TO

THE TOBOACCO ADVERTISING AND PROMOTION (DISPLAY OF PRICES) REGULATIONS (NORTHERN IRELAND) 2012

SR 2012 No. 341

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 under Sections 7C and 19(2) of the Tobacco Advertising and Promotion Act 2002 and is subject to the affirmative resolution procedure.

1.3 The Rule is to come into operation on 31 October 2012 for large shops and 6 April 2015 for all other purposes.

2. Purpose of the Rule

2.1 The Rule imposes requirements for the display of tobacco product prices. These requirements are intended to ensure that tobacco product price lists do not become a promotional tool, but do allow shops and businesses to display necessary information on what tobacco products they sell and for what price, in compliance with European and domestic consumer protection legislation. The regulations come into operation on 31 October 2012 for large shops and on 6 April 2015 for all other purposes.

3. Territorial extent and application

3.1 This Statutory Rule applies only to Northern Ireland.

4. Legislative Background

4.1 This Rule uses the power given to the Department of Health, Social Services and Public Safety by the new section 7C of the Tobacco Advertising and Promotion Act (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). The new section 7C of the 2002 Act allows the appropriate Minister (in Northern Ireland, the Department of Health, Social Services and Public Safety) to make provision imposing requirements in relation to the display in a place in Northern Ireland or England and Wales in the course of a business of tobacco products.

4.2 The Health Act 2009 contains a number of other new regulation-making powers in relation to tobacco (concerning the display of tobacco products, specialist tobacconists and the prohibition of tobacco sales from vending machines). The Department of Health, Social Services and Public Safety intends to make four sets of regulations in total under these powers during the course of 2012; one other set of regulations (prohibiting tobacco sales from vending machines) is also subject to the draft affirmative procedure. The remaining two (on prohibition of tobacco displays and special provision for specialist tobacconists) are subject to the negative procedure. The vending machines regulations were made on 19 January 2012.

5. Policy Background

5.1 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.

5.2 The Department of Health, Social Services and Public Safety has evidence that approximately four-fifths of adults start smoking regularly whilst in their teens. It wishes to take action to prevent young people from starting to smoke, and to support those people who want to give up smoking. There is extensive evidence to show 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 put more focus on the display of tobacco in shops as a way of promoting its products.

5.3 These regulations are intended to deal with implementing one particular aspect of the prohibition of tobacco displays under the Health Act. They relate to the display of price lists in shops and businesses. The regulations recognise that retailers need to be able to communicate with customers about tobacco product prices, and therefore allow shops to display a price list of the tobacco products they stock as well as shelf labels. In order to ensure that price lists and shelf labels do not become advertisements or promotional tools, the regulations include stipulations on size and design.

6. Consultation Outcome

6.1 A consultation on the draft regulations ran from 1 October 2010 to 24 December 2010. The consultation document also sought responses on three other sets of proposed regulations. A total of 1013 responses were received from a wide variety of stakeholders including: local councils; health and social care organisations; the voluntary and community sector; professional bodies; retail representative bodies; small retailing companies; tobacco manufacturers; vending machine operators; and individuals.

6.2 No changes were required to be made to the Display of Prices Regulations following consideration of the consultation responses.

7. Position in Great Britain

7.1 This Rule replicates The Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010 (S.I. 2010 No. 863) which commenced on 6 April 2012 for large shops and will commence on 6 April 2015 for all other purposes. It is also similar to The Tobacco Advertising and Promotion (Display of Prices) (Wales) Regulations 2012 (S.I. 2012 No. 1911 (W.233)), which will commence on 3 December 2012 for large shops and 6 April 2015 for all other purposes.

7.2 Scotland is also expected to introduce similar legislation.

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 The impact on business, charities or voluntary bodies is that all businesses that sell tobacco to the public will have to amend their price lists to conform to the regulations. All businesses will have

lead-in time to prepare. Large stores will need to comply by 31 October 2012, while smaller stores will have until 6 April 2015.

9.2 To minimise the impact on businesses, the regulations allow a variety of price displays to assist in communicating with customers and locating products: permanent price list on display, price list with pictures on request and shelf labels. These regulations will ensure that small businesses can continue to be compliant with European legislation on the display of product prices. Guidance on compliance with the regulations for both businesses and enforcement agencies will be made available in advance of the regulations being introduced.

9.3 The policy is intended to have a positive impact on the HSC due to the improved health of the population as achieved by reduced smoking rates.

9.3 A Regulatory Impact Assessment (RIA) is available on the Department's website (www.dhsspsni.gov.uk). The RIA covers the removal of the display of tobacco products, including price lists and specialist tobacconists, which are subject to separate regulations. The RIA demonstrates the regulations result in a combined net benefit of £41.32 million.

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