EXPLANATORY MEMORANDUM TO

SR 2021 No. 326

THE TOBACCO RETAILER (FIXED PENALTY) (GENERAL) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2021

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health to accompany the above-named Statutory Rule which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under sections 12(7) and 24(3) of the Tobacco Retailers Act (Northern Ireland) 2014. It is subject to the negative resolution procedure.

1.3 The Rule is to come into operation on 1st February 2022.

2. Purpose

2.1 The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations (Northern Ireland) 2021 introduce a minimum age of sale of 18 years for nicotine inhaling products, commonly known as electronic cigarettes, and certain related parts of such devices, in order to protect children from the risk and associated harms of nicotine addiction. Furthermore, they make it an offence for an adult to purchase a nicotine inhaling product on behalf of a child.

2.2 This Rule is required as part of the enforcement regime to complement those Regulations and amends the form of a fixed penalty notice which may be issued in respect of particular offences listed under section 12(1) of the Tobacco Retailers Act (Northern Ireland) 2014, to include an offence under section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016.

3. Background

Legislative background

3.1 The Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 makes provision for the prohibition of the sale of nicotine products to those under eighteen as well as the proxy purchasing of such products.

3.2 This Rule amends the form of a fixed penalty notice to include an offence in relation to the underage sale, and proxy purchase of, nicotine inhaling products.

3.3 Two further Statutory Rules are to be made to facilitate the new legislative measures. These are:

- The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations (Northern Ireland) 2021; and
- The Tobacco Retailer (Fixed Penalty) (Amount) (Amendment) Regulations (Northern Ireland) 2021.

3.4 Both are subject to the draft affirmative resolution procedure in the Assembly. The first is detailed at paragraph 2.1 above. The second Rule replaces the Schedule to the Tobacco Retailer (Fixed Penalty) (Amount) Regulations (Northern Ireland) 2016 to include the amounts of fixed penalties applicable to offences relating to the sale or proxy purchase of nicotine inhaling products.

Policy Background

3.5 Since 2011, the popularity of nicotine inhaling products, the most popular of which are e-cigarettes, has grown exponentially. A survey carried out in 2019/20 showed that 19% of adults in Northern Ireland[1] had tried e-cigarettes at least once and that 6% of the population were current users.

3.6 Questions on e-cigarette use were included in the Young Persons' Behaviour and Attitude Survey (YPBAS) for the first time in 2016. The results from the 2019 survey[2] reveal that awareness of e-cigarette use amongst adolescents in Northern Ireland is very high, with 95% of 11-16 years reported to have heard of them. In terms of use, 20% of children surveyed had used an e-cigarette at least once, with 3% claiming to use them on a regular basis (at least once a week).

4. Need for legislative measures

4.1 While e-cigarettes do not contain many of the harmful components of tobacco, they do contain nicotine. Nicotine is highly addictive and according to the World Health Organisation, exposure to nicotine whilst still in adolescence can lead to long-term consequences for brain development[3]. As a result, the WHO recommends that the sale and/or distribution of e-cigarettes to minors is banned.

4.2 In addition to the potential long-term health implications of e-cigarette use by teenagers, there are also concerns that they may act a gateway into smoking. Youth smoking prevalence in Northern Ireland has been steadily decreasing in recent years, from 14% in 2000 to 4% since 2016. The Department does not wish to see this trend reversed by young people, who may not have been induced initially to smoke tobacco, becoming addicted to nicotine through e-cigarettes. While the current research regarding the existence of a gateway from vaping to smoking tobacco is inconclusive, e-cigarettes are a relatively new product, and the age of sale regulations are aimed at preventing this from happening.

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[1] Northern Ireland Health Survey 2019/20 - NISRA
[2] Department of Health – September 2020 - Young Persons' Behaviour and Attitude Survey 2019 – Substance Use (Smoking, Alcohol & Drugs)
[3] Document FCTC/COP/7/11 (available at www.who.int/fctc/publications).

5. Consultation

5.1 A consultation on the drafts of the regulations listed at paragraph 3.3, ran from 4 September to 27 October 2017. A total of 28 responses were received from a wide variety of stakeholders including: local government; the voluntary and community sector; professional bodies; and tobacco and e-cigarette manufacturers. However, given the technical nature of these amendment regulations, they were not consulted on.

5.2 No changes were made to the regulations following consideration of the consultation responses.

6. Equality Impact

6.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, 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.

7. Regulatory Impact

7.1 A regulatory impact assessment was carried out to assess the impact of the legislation on business, charities or the voluntary sector. The RIA concluded that there will be direct costs to retailers, manufacturers and distributors of nicotine inhaling products as a result of not being able to sell to under 18s, however, these will be somewhat offset by redirected spending on other goods or services.

7.2 The impact on the public sector will fall on the enforcement agency, in this case, District Councils, and the justice system. There will be health benefits to individuals prevented from developing an addiction to nicotine and potentially, tobacco use.

8. Financial implications

8.1 Minimal financial implications. The new legislation will be enforced by environmental health staff in District Councils. It is not anticipated that further funding will be required beyond that which is already provided through the Public Health Agency in Northern Ireland for the enforcement of tobacco control legislation.

9. Section 24 of the Northern Ireland Act

9.1 The Department believes that the regulations are compatible with Section 24 of the Northern Ireland Act 1998.

10. EU implications

10.1 Not applicable.

11. Parity or Replicatory Measure

11.1 This Statutory Rule applies only to Northern Ireland. Similar legislation is already in force in the rest of the UK.

11.2 England and Wales were granted regulation-making powers under the Children and Families Act 2014 relating to the sale and proxy purchase of nicotine inhaling products to over eighteens and both countries commenced regulations from 1 October 2015. In Scotland, similar provisions under the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act were commenced from 1 April 2017.

12. Additional Information

12.1 Not applicable.