

Tobacco Advertising and Promotion (Display) (England) Regulations 2010

Department of Health and Social Care

RPC Rating: fit for purpose

The post-implementation review (PIR) is now fit for purpose as a result of the Department's response to the RPC's initial review notice (IRN). As first submitted, the PIR was not fit for purpose.

This PIR covers three separate but interconnected regulations covering the advertising and promotion of tobacco products in England:

- Tobacco Advertising and Promotion (Display) (England) Regulations 2010;
- Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010; and
- Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010.

Collectively, these regulations aim to dissuade younger people from taking up smoking, and support adults in smoking cessation, by prohibiting the display of tobacco products (with an exception for specialist stores) and restricting the display of tobacco product prices within retail locations.

The primary aim of these regulations is to improve public health through reduced consumption of tobacco products, with anticipated secondary effects of improving the supply of labour and reducing public sector healthcare costs associated with treating smoking-related conditions.

Impacts of proposal

The three regulations covered by this PIR aimed to achieve the Department's desired outcomes through restricting the visibility of tobacco products and their prices. In doing so the Department sought to lower the overall level of tobacco consumption in England to achieve benefits to overall public health and reduce the burden on the healthcare sector associated with smoking-related conditions.

Combined, the three regulations covered in this PIR were expected to achieve:

- Prevention of 6,000 young people from starting smoking, and 14,350 adult smokers quitting, per annual cohort;
- £1.6bn of discounted health benefits, equivalent to 27,000 Quality-Adjusted Life Years (QALYs);
- £28m in one-off costs to businesses, £42m in recurring annual costs to industry, and £5m annual cost to consumers; and
- A reduction of £117m in annual tobacco duty revenue.

Quality of submission

The PIR is now fit for purpose as result of the Department's response to the RPC's IRN. As first submitted, the PIR was not fit for purpose. The RPC is particularly pleased that the Department has considered and taken action where possible following the IRN. Following the IRN, the Department submitted a revised PIR covering responses raised on:

- evidence in support of retaining the regulations;
- evidence supporting the assertion that estimated costs to businesses were within the Department's initial assessment;
- quantitative evidence and analysis on the profit impacts associated with reduced demand for tobacco products;
- evidence on the distributional impacts across the tobacco supply chain, particularly on retailers, of complying with the regulations;
- quantitative evidence and analysis to support the assertion that costs to small and micro businesses (SMBs) were lower than expected due to support from the tobacco industry, and the costs to the tobacco industry of supplying products to these businesses; and
- showing evidence of costs associated with business disruption in implementing these regulations, both for one-off and ongoing costs.

The Department's responses to these points were:

Evidence in support for retaining the regulations

The RPC commends the Department for providing a robust and detailed methodology explaining how the data was collected, evaluated, and used to support the recommendation of retaining the regulations. The method of analysis and outcome of results, found in section 2 and 3 of the PIR, shows that the regulations have resulted in important reductions in smoking prevalence among both youths and adults and thereby justifying retention. The RPC notes that the PIR now provides statistical data and evidence in tables supported by graphic representations.

The PIR discusses sufficiently the options of either replacing, amending, removing or retaining the regulations. The PIR further states that there were no consultation responses received that provided a viable alternative to replace the regulations. The Department says that replacing the regulations would have resulted in a reversal of the health benefits while providing only minimal cost savings for businesses (in terms of serving and restocking time) because the costs of installation gantries were sunk¹ and could not be recovered. The PIR has also adequately discussed the option of relaxing the regulations and concluded that it would not have been proportionate because it would undermine the overall display ban legislation, while providing only a very minor reduction in the burden to businesses.

¹ A **sunk cost** refers to money that has already been spent and which cannot be recovered. A **sunk cost** differs from future **costs** that a business may face, such as decisions about inventory purchase **costs** or product pricing.

The PIR covers suggestions from various stakeholders to strengthen the regulations such as keeping tobacco products entirely out of sight (below the counter), the potential for tightening restrictions around the display of prices (e.g. one price list per shop) and further restrictions to bulk tobacconists, such as duty-free areas in airports. The Department explains that minor amendments can be discussed in the context of this PIR (and have done so), while more substantial changes would require new legislation, as well as a full review process, including an impact assessment. Regarding strengthening of the regulations, the Department believes that this would result in further costs to business, which would likely outweigh any further health benefits.

The RPC commends the Department for its transparency in acknowledging that while the data sources form a large evidence base, it is difficult to attribute changes in trends to any single event or intervention because there are many factors which may influence the achievement of the objectives.

Evidence supporting the assertion that estimated costs to businesses were within the Department's initial assessment

The PIR has provided evidence and analysis to show that one off costs were in line with those estimated in the impact assessment for these measures, with some indication that the burden on small business was alleviated by tobacco companies paying for gantry installation in some cases.

Ongoing costs are estimated to have been slightly higher than expected, but within what the Department considers acceptable proportionate limits.

Recurring costs were slightly higher than those estimated in the original IA, but within £5m of the IA figures in each year from 2015. The estimated effect on small businesses in terms of loss of profits was found to be negligible.

Quantitative evidence and analysis on the profit impacts associated with reduced demand for tobacco

The Department has provided sufficient evidence and analysis concerning the profit impacts associated with reduced demand for tobacco products, as illustrated in table B, on page 25 of the PIR. Further evidence from Chartered Trading Standards Institute (CTSI) and the calculations also indicates that small retailers will only have experienced a negligible loss of profit as a result of fewer sales.

Evidence on the distributional impacts across the tobacco supply chain, particularly on retailers, of complying with the regulations

The RPC accepts the Department's explanation that they were unable to source any quantitative data or evidence on the distributional impacts across the supply chain when complying with the display exemption regulations. Therefore, it was not possible to make an estimate of the costs.

Quantitative evidence and analysis to support the assertion that costs to SMBs were lower than expected due to support from the tobacco industry, and the costs to the tobacco industry of supplying these businesses

The PIR now includes evidence to show that the one-off costs of implementing the point of sale display ban exemptions were found to be broadly in line with those anticipated in the IA, with some evidence to suggest that the costs incurred by small retailers may have been lower than expected due to support from the tobacco manufacturers.

The Department further advises that the trade body for convenience stores and a public health charity confirms that tobacco manufacturers assisted smaller businesses with cost of the installation of a gantry². Details of evidence of support from the Tobacco Industry can be found on pages.18 - 20 of the revised PIR. Overall, there is no indication that the costs of the gantry installation were any higher than indicated in the IA was provided. This conclusion is supported by high rates of uptake, indicating that costs of installation were not an issue for retailers.

Evidence of costs associated with business disruption in implementing these regulations, both for one-off and ongoing costs

The Department has now provided a detailed explanation and evidence of both one-off and ongoing costs during the implementation of the legislation. The IA estimated costs of £450 for small shops, and £850 for large shops for installing and modifying existing tobacco displays to be compliant with the regulations. The PIR states that there has been no new evidence to suggest these figures were inaccurate, so these figures remain the same in the updated estimates (details on page 18 – 20 of the PIR) despite the assertion by the PIR that in 2015 when the regulations were implemented, there were slightly more small shops according to the Association of Convenience Stores (ACS) Local Shop Report at 51,524 compared to 49,099. The number of large shops has been assumed to stay the same. Considering this increase, the one-off installation costs may have been slightly higher at £29m compared to the impact assessment estimate of £28m.

Recurring Costs

The recurring costs associated with the display ban were for increases in service, stocking, and maintenance time. The IA calculations were based on an increase in serving time of 2 seconds. This assumption was then applied to the number of cigarette packs sold per year and an hourly wage (the average for sales assistants and cashiers) plus 30% overhead. The analysis evidenced by the PIR demonstrates that, actual costs estimated are slightly higher than the original estimate of costs made in the IA, however the estimates remain within £5m from 2015 to 2018. This increase was mainly driven by the increase in stocking time and price list maintenance, with costs associated with an increase in serving time estimated to be lower than estimated by 2018.

² [Tobacco companies' use of retailer incentives after a ban on point-of-sale tobacco displays in Scotland](#)

Unintended consequences

The PIR now states that there were no unintended consequences, with respondents reporting only minor disruption associated with waiting times and restocking as assessed in the IA. Levels of compliance indicate widespread acceptance of the display exemption regulations. This observation is supported by a survey by Chartered Trading Standards Institute (CTSI) which showed high levels of compliance implying that there were no unattended consequences.

Areas of improvement

- The Department is advised to put in place plans for robust monitoring and data collection when designing major regulatory reform in order to track the monetised regulatory impacts on business as far as possible as part of the PIR.
- The Department has provided narrative on the issue of counterfeiting and on the lack of evidence for distributional impacts across the tobacco supply chain which appears proportionate for this PIR. However, the RPC recommends more detail on this area be provided within the forthcoming Tobacco Products Directive PIR.
- The Department has carried out research on small retailers and small businesses but not clearly explained what these are. The PIR should explain what these are and whether they are covered within the definition of small and micro businesses.

Department assessment

Departmental recommendation	Keep
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RPC assessment

Is the evidence in the PIR sufficiently robust to support the departmental recommendation?	Yes
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Regulatory Policy Committee