

Reprint
as at 14 March 2018



Smoke-free Environments Amendment Regulations 2012 (SR 2012/164)

Smoke-free Environments Amendment Regulations 2012: revoked, on 14 March 2018, pursuant to regulation 64 of the Smoke-free Environments Regulations 2017 (LI 2017/123).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 2nd day of July 2012

Present:

His Excellency the Governor-General in Council

Pursuant to section 39 of the Smoke-free Environments Act 1990 and section 11 of the Interpretation Act 1999, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Health.

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Regulations

1 Title

These regulations are the Smoke-free Environments Amendment Regulations 2012.

2 Commencement

- (1) These regulations (other than regulation 6) come into force on 23 July 2012.
- (2) Regulation 6 comes into force on 23 January 2013.

3 Principal regulations

These regulations amend the Smoke-free Environments Regulations 2007 (the **principal regulations**).

Provisions coming into force on 23 July 2012

4 New Parts 2A and 2B inserted

After regulation 26, insert:

Part 2A

Provision of information about tobacco products

26A Display of information inside retailer's place of business about availability of tobacco products

- (1) This regulation specifies, for the purposes of section 23(1)(b)(ii) of the Act, requirements in relation to displaying a printed or handwritten notice inside a retailer's place of business for the public about the location or locations where tobacco products in general are available for purchase in that place of business.
- (2) The notice must not be larger than A4 size.
- (3) The information in the notice must be printed or handwritten in black on a white background.
- (4) The notice must contain only the following information:
 - (a) the words "TOBACCO AVAILABLE HERE", in lettering not larger than the typeface known as Helvetica 70 pt; and
 - (b) the words "No sales to persons under the age of 18", in lettering not smaller than the typeface known as Helvetica 40 pt.
- (5) The notice—
 - (a) may be displayed only where the tobacco is stored or where the tobacco can be purchased; and
 - (b) must be displayed together with a pictorial health warning (of the same size as the notice) of one of the warnings set out in Part 1 of Schedule 2; and
 - (c) must not be displayed so as to be visible from outside the retailer's place of business.
- (6) The number of notices that may be displayed inside a retailer's place of business is as follows:
 - (a) only 1 notice if the retailer's place of business is less than 200 m²;
 - (b) not more than 2 notices if the retailer's place of business is 200 m² or more but not more than 500 m²;
 - (c) not more than 3 notices if the retailer's place of business is more than 500 m².
- (7) For the purposes of subclause (6), the size of a retailer's place of business is the area within the place of business to which, generally, members of the public have access.

26B Provision of information about tobacco products offered for Internet sale

- (1) This regulation specifies, for the purposes of section 23(3)(b) of the Act, requirements in relation to the offer of a tobacco product for Internet sale.

- (2) The information, which is limited by section 23(3)(a) of the Act to identifying the tobacco product and indicating its price, must—
 - (a) be provided in a way that is printable and not editable; and
 - (b) when displayed, comply with the requirements of subclauses (3) to (6).
- (3) The information must be printed or handwritten in black on a white background.
- (4) The information must be—
 - (a) limited to the brand of tobacco product, the variant, the amount or quantity or size, and the price; and
 - (b) printed or handwritten in black lettering that is not larger than the typeface known as Helvetica 16 pt.
- (5) At the top and bottom of each page containing the product and price information, there must be a health warning—
 - (a) that says—

“SMOKING KILLS
Ka mate koe i te kai hikareti”:
 - (b) the first line of which must not be smaller than the typeface known as Helvetica 70 pt:
 - (c) the second line of which must not be smaller than the typeface known as Helvetica 40 pt.
- (6) At the bottom of each page, below the health warning, there must be the following information, which must not be smaller than the typeface known as Helvetica 22 pt:

“No sales to persons under the age of 18”.

Part 2B

Infringement offences

26C Infringement fees for infringement offences

The infringement fee for an infringement offence is the fee specified in relation to the offence in the third column of Schedule 4A.

26D Infringement and reminder notices

- (1) An infringement notice in relation to an infringement offence must be in form 1 set out in Schedule 4B.
- (2) A reminder notice in relation to an infringement offence must be in form 2 set out in Schedule 4B.

5 New Schedules 4A and 4B inserted

After Schedule 4, insert the Schedules 4A and 4B set out in the Schedule of these regulations.

Provision coming into force on 23 January 2013

6 New regulations 26BA and 26BB inserted

After regulation 26B, insert:

26BA Provision of information inside retailer's place of business in response to request

- (1) This regulation specifies, for the purposes of section 23(1)(a)(ii) of the Act, requirements in relation to product and price information provided in printed or handwritten form inside a retailer's place of business to a person who has asked to purchase a specified tobacco product or any available tobacco product.
- (2) The information must be printed or handwritten in black on 1 or more sheets of plain white paper that are no larger than A4 size.
- (3) The information must be—
 - (a) limited to the brand of tobacco product, the variant, the amount or quantity or size, and the price; and
 - (b) printed or handwritten in black lettering that is not larger than the typeface known as Helvetica 16 pt.
- (4) At the top and bottom of each page on the same side as the product and price information appears, there must be a health warning—
 - (a) that says—

“SMOKING KILLS
Ka mate koe i te kai hikareti”:
 - (b) the first line of which must not be smaller than the typeface known as Helvetica 70 pt:
 - (c) the second line of which must not be smaller than the typeface known as Helvetica 40 pt.
- (5) At the bottom of each page, below the health warning, there must be the following information, which must not be smaller than the typeface known as Helvetica 22 pt:

“No sales to persons under the age of 18”.
- (6) Each page on which the product and price information appears must have a continuous solid black border along each edge of the page.

26BB Provision of information about tobacco products offered by way of automatic vending machine

- (1) This regulation specifies, for the purposes of section 23(2) of the Act, requirements in relation to a notice for the public that is limited to identifying tobacco products and their prices and that may be displayed on the outside of an automatic vending machine that offers tobacco products for sale.
- (2) A notice must—
- (a) contain information about tobacco products that are available only from the automatic vending machine; and
 - (b) otherwise comply with the requirements set out in regulation 26BA(2) to (6).

Schedule
New Schedules 4A and 4B inserted

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Schedule 4A
Infringement fees for infringement offences

| Section of Act | Description of offence | Fee (\$) |
|----------------|---|--|
| 36(5) | Contravening section 29(1) (publishing an advertisement for a tobacco product that directly or indirectly states or suggests that the product is suitable for chewing or for any other oral use (other than smoking)) or section 29(2) (importing for sale, selling, packing, or distributing a tobacco product labelled or otherwise described as suitable for chewing, or for any other oral use (other than smoking)) | 1,000 (in the case of a manufacturer, importer, or distributor) 500 (in any other case) |
| 36(5A) | Contravening section 29A(2), which relates to distributing a tobacco product to which section 29A(1) applies, or supplying a tobacco product to which section 29A(1) applies to another person for later distribution, or, in the case of a retailer, supplying a tobacco product to which section 29A(1) applies to another person for the purpose of that retailer's business | 1,000 (in the case of a manufacturer, importer, or distributor) 500 (in any other case) |
| 36(5B) | Contravening section 29B, which relates to permitting an automatic vending machine that dispenses or is capable of dispensing tobacco products or herbal smoking products to be located in a place to which members of the public have access, and also to permitting a tobacco product or herbal smoking product to be sold by way of an automatic vending machine in a place to which members of the public have access | 200 |
| 36(6) | Contravening section 30(1) by selling, or after selling them delivering or arranging for the delivery of, tobacco products to people younger than 18 years | 1,000 (in the case of a body corporate) 500 (in any other case) |

r 26C

| Section of Act | Description of offence | Fee (\$) |
|-----------------------|---|-----------------|
| 36(6A) | Contravening section 30(1) by selling, or after selling them delivering or arranging for the delivery of, herbal smoking products to people younger than 18 years | 200 |
| 36(7A) | Contravening section 30A(2) or (3), both of which impose restrictions on the sale of certain tobacco products in small quantities | 200 |
| 36A(2) | Contravening section 36A(1), which prohibits sale of a toy tobacco product to a person younger than 18 years | 200 |

Schedule 4B
Forms of infringement notice and reminder notice

r 26D

Form 1
Infringement notice*Section 38C(1), Smoke-free Environments Act 1990*

Infringement notice number:

Date of notice:

Name of enforcement officer issuing the notice:

Person served

Full name:

Full address:

Date of birth:

Gender:

Occupation:

Telephone number(s):

Details of alleged infringement offence

Date:

Time:

Place:

Details of offence:

which is in breach of section [36(5), 36(5A), 36(5B), 36(6), 36(6A), 36(7A), 36A(2)*] of the Smoke-free Environments Act 1990.

*Select one.

The infringement fee is \$[*amount*]The infringement fee is payable within 28 days after [*earliest date notice delivered personally or posted*].The infringement fee is payable to the Director-General, Ministry of Health, at [*address where fee payable*].

IMPORTANT: Please read the summary of rights printed on the following pages.

Summary of rights

- 1 If you do not understand anything in this summary you should consult a lawyer immediately.

Payments

- 2 If you pay the infringement fee within 28 days after the service on you of this notice, no further action will be taken for that offence. Payment must be made at the place indicated on the first page of this notice.

Payment by instalments

- 3 The Director-General, Ministry of Health, may, but is not required to, enter into an agreement allowing you to pay the infringement fee by instalments (*see* sub-sections (3A) to (3D) of section 21 of the Summary Proceedings Act 1957).
- 4 If you wish to pay the infringement fee by instalments, you should ask the Director-General, Ministry of Health, by letter whether the Ministry of Health will agree to payment by instalments.
- 5 If, under section 21(3A) or (3C)(a) of the Summary Proceedings Act 1957, you arrange with the Director-General, Ministry of Health, to pay the infringement fee by instalments, you will not be entitled to request a hearing in respect of the offence and paragraphs 7(b), 7(c), 8, 9, and 10 below will not apply.

Defence

- 6 You have a complete defence against proceedings for the alleged infringement offence if you prove that the infringement fee has been paid to the Director-General, Ministry of Health, at the address shown on the first page of this notice within 28 days after service on you of a reminder notice in respect of the offence.

Note: Late payment or payment at any other place will not be a defence.

Further action

- 7 You must write to the Director-General, Ministry of Health, if you wish to do any of the following things:
- (a) raise any matter relating to the alleged offence for consideration by the Director-General, Ministry of Health; or
 - (b) deny liability for the offence and request a District Court hearing (refer to paragraphs 8, 9, and 13 below); or
 - (c) admit liability for the offence, but have a District Court consider written submissions as to penalty or otherwise (refer to paragraphs 10 and 13 below), you should write to the Director-General, Ministry of Health, at the address shown on the first page of this notice. Any such letter should be personally signed.

Court hearing

- 8 You have a right to a District Court hearing. If you deny liability for the offence and request a hearing in respect of the alleged offence, the Director-General, Ministry of Health, will (unless the Ministry of Health decides not to

commence court proceedings) serve you with a notice of hearing setting out the place and time at which the matter will be heard by a District Court.

Note: If the court finds you guilty of the offence, costs will be imposed in addition to any penalty.

- 9 A request for a hearing must—
- (a) be in writing signed by you; and
 - (b) be delivered to the Director-General, Ministry of Health, at the address shown on the first page of this notice; and
 - (c) be so delivered before or within 28 days after service on you of a reminder notice.
- 10 If you admit liability in respect of the offence but want the court to consider your submissions as to penalty or otherwise, you should, in your letter,—
- (a) request a hearing; and
 - (b) admit liability for the offence; and
 - (c) set out the written submissions you wish to be considered by the court.

The Ministry of Health will then file your letter with the court (unless the Ministry of Health decides not to commence court proceedings). There will be no oral hearing before the court if you follow this course of action.

Note: Costs will be imposed in addition to any penalty.

Reminder notice

- 11 If, at the end of 28 days after the date of service of this notice, the infringement fee has not been paid to the Ministry of Health at the address shown on the first page of this notice and the Director-General, Ministry of Health, has not received at that address a notice requesting a hearing in respect of the offence, you will be served with a reminder notice (unless the Ministry of Health decides otherwise).
- 12 If, at the end of 28 days after the date of service of the reminder notice, the infringement fee has not been paid to the Director-General, Ministry of Health, at the address shown on the first page of this notice and the Director-General, Ministry of Health, has not received at that address a notice requesting a hearing,—
- (a) the Ministry of Health may provide particulars of the reminder notice for filing in a District Court; and
 - (b) you will, under section 21(5) of the Summary Proceedings Act 1957, become liable to pay **costs in addition to the infringement fee**.

Queries and other correspondence

- 13 When writing or making payment, please include—
- (a) the date of the infringement; and

- (b) the infringement notice number; and
- (c) the identifying number of the alleged offence; and
- (d) the course of action you are taking in respect of the alleged offence; and
- (e) your address for replies.

Notes

Further details of your rights and obligations are in section 38C of the Smoke-free Environments Act 1990 and section 21 of the Summary Proceedings Act 1957.

All queries and all correspondence regarding this infringement notice must be directed to the Director-General, Ministry of Health, at the address shown on the first page of this notice.

Form 2
Reminder notice

Section 38C(1), Smoke-free Environments Act 1990

Reminder notice number:

Date of notice:

Name of enforcement officer issuing the notice:

Person served

Full name:

Full address:

Date of birth:

Gender:

Occupation:

Telephone number(s):

Details of alleged infringement offence

Date:

Time:

Place:

Details of offence:

which is in breach of section [36(5), 36(5A), 36(5B), 36(6), 36(6A), 36(7A), 36A(2)*] of the Smoke-free Environments Act 1990.

*Select one.

Infringement notice number [*number*].

The infringement notice served by personal service/prepaid post* on [*date*].

This reminder notice served by personal service/prepaid post* on [*date*].

*Select one.

The infringement fee was \$[*amount*] payable within 28 days after [*earliest date notice delivered personally or posted*].

The last day for payment is [*date*].

No fee has been received.

The infringement fee remains payable to the Director-General, Ministry of Health, at [*address where fee payable*].

IMPORTANT: Please read the summary of rights printed on the following pages.

Summary of rights

- 1 If you do not understand anything in this summary you should consult a lawyer immediately.

Payments

- 2 If you pay the infringement fee within 28 days after the service on you of this notice, no further action will be taken for that offence. Payment must be made at the place indicated on the first page of this notice.

Payment by instalments

- 3 The Director-General, Ministry of Health, may, but is not required to, enter into an agreement allowing you to pay the infringement fee by instalments (*see* subsections (3A) to (3D) of section 21 of the Summary Proceedings Act 1957).
- 4 If you wish to pay the infringement fee by instalments, you should ask the Director-General, Ministry of Health, by letter whether the Ministry of Health will agree to payment by instalments.
- 5 If, under section 21(3A) or (3C)(a) of the Summary Proceedings Act 1957, you arrange with the Director-General, Ministry of Health, to pay the infringement fee by instalments, you will not be entitled to request a hearing in respect of the offence and paragraphs 7(b), 7(c), 8, 9, and 10 below will not apply.

Defence

- 6 You have a complete defence against proceedings for the alleged infringement offence if you prove that the infringement fee has been paid to the Director-General, Ministry of Health, at the address shown on the first page of this notice within 28 days after service on you of this notice in respect of the offence.
- Note:** Late payment or payment at any other place will not be a defence.

Further action

- 7 You must write to the Director-General, Ministry of Health, if you wish to do any of the following things:
- (a) raise any matter relating to the alleged offence for consideration by the Director-General, Ministry of Health; or
 - (b) deny liability for the offence and request a District Court hearing (refer to paragraphs 8, 9, and 12 below); or
 - (c) admit liability for the offence, but have a District Court consider written submissions as to penalty or otherwise (refer to paragraphs 10 and 12 below), you should write to the Director-General, Ministry of Health, at the address shown on the first page of this notice. Any such letter should be personally signed.

Court hearing

8 You have a right to a District Court hearing. If you deny liability for the offence and request a hearing in respect of the alleged offence, the Director-General, Ministry of Health, will (unless the Ministry of Health decides not to commence court proceedings) serve you with a notice of hearing setting out the place and time at which the matter will be heard by a District Court.

Note: If the court finds you guilty of the offence, costs will be imposed in addition to any penalty.

9 A request for a hearing must—

- (a) be in writing signed by you; and
- (b) be delivered to the Director-General, Ministry of Health, at the address shown on the first page of this notice; and
- (c) be so delivered within 28 days after service on you of this notice.

10 If you admit liability in respect of the offence but want the court to consider your submissions as to penalty or otherwise, you should, in your letter,—

- (a) request a hearing; and
- (b) admit liability for the offence; and
- (c) set out the written submissions you wish to be considered by the court.

The Ministry of Health will then file your letter with the court (unless the Ministry of Health decides not to commence court proceedings). There will be no oral hearing before the court if you follow this course of action.

Note: Costs will be imposed in addition to any penalty.

Next steps

11 If you do not request a hearing and you do not pay the infringement fee or the amount of the infringement fee remaining within 28 days after service on you of this notice,—

- (a) the Ministry of Health may provide particulars of the reminder notice for filing in a District Court; and
- (b) you will, under section 21(5) of the Summary Proceedings Act 1957, become liable to pay **costs in addition to the infringement fee**.

Queries and other correspondence

12 When writing or making payment, please include—

- (a) the date of the infringement; and
- (b) the infringement notice number; and
- (c) the identifying number of the alleged offence; and
- (d) the course of action you are taking in respect of the alleged offence; and
- (e) your address for replies.

Notes

Further details of your rights and obligations are in section 38C of the Smoke-free Environments Act 1990 and section 21 of the Summary Proceedings Act 1957.

All queries and all correspondence regarding this reminder notice must be directed to the Director-General, Ministry of Health, at the address shown on the first page of this notice.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations amend the Smoke-free Environments Regulations 2007.

The amendments that come into force on 23 July 2012—

- insert *new regulations 26A and 26B*, which prescribe requirements relating to the availability of tobacco products in a retailer's place of business and to the provision of product and price information for the purposes of Internet sales:
- insert *new regulations 26C and 26D*, which prescribe infringement fees for infringement offences and the forms to be used for infringement offences.

The amendment that comes into force on 23 January 2013—

- inserts *new regulation 26BA*, which prescribes requirements about the provision of information inside a retailer's place of business in response to a request to purchase tobacco products:
- inserts *new regulation 26BB*, which prescribes requirements relating to the provision of product and price information on automatic vending machines.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 5 July 2012.

Reprints notes

1 *General*

This is a reprint of the Smoke-free Environments Amendment Regulations 2012 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Smoke-free Environments Regulations 2017 (LI 2017/123): regulation 64