



New Laws to Stub Out Tobacco Displays

BRIEFING

Introduction

Over the last decade or so, the Government has introduced numerous measures in an effort to stop people smoking. It has rolled out public health campaigns, tax increases on cigarettes, banned smoking in public places and introduced graphic warnings on cigarette packets.

However, it seems that these measures have not gone far enough and the Government has now introduced new laws which will regulate the way in which shops can display cigarettes to the public.

Tobacco Displays

Tobacco advertising was banned under the Tobacco Advertising and Promotion Act 2002 ('the 2002 Act'). More recently, the Health Act 2009 extended the scope of the 2002 Act to make it an offence for a business to display tobacco products.

The two main reasons why tobacco displays have been banned are as follows:

- 1) Evidence shows that tobacco displays encourage young people to start smoking; and
- 2) The Government believes that tobacco displays make it more difficult for adults to give up smoking by increasing the risk of an impulse purchase.

Following concerns raised by businesses about the cost and practicality of removing tobacco products from display, the Government has watered down the general ban on tobacco displays by introducing exemptions in the form of new regulations.

The Regulations

The Tobacco Advertising and Promotion (Display) (England) Regulations 2010 ("the 2010 Regulations") will apply to premises in England where tobacco products are offered for sale in the course of business (other than specialist tobacco shops) or, in other words, most supermarkets, convenience stores, petrol stations and newsagents.

Retailers will be allowed to make a temporary limited-sized display of tobacco products if the display:

- Is at the request of a customer aged 18 or over; and
- Lasts no longer than necessary to remove the requested product from the storage unit.

The area of the storage unit displayed during the course of the transaction must not exceed 0.75 square metres and must follow a particular request by a customer to purchase a tobacco product or for information about a tobacco product.



In addition, retailers will not commit an offence under the 2002 Act if their staff are in the process of restocking the storage unit. Once again, the display should be for no longer than necessary and the display area should not exceed 0.75 square metres.

The 2010 Regulations allow retailers to indicate the tobacco products which are stored in the storage unit to enable staff to serve customers. The content, size, font and colour of the indications are all controlled by the regulations. In addition, the indications must not include any logos, trademarks or pictures.

The display of the price of the tobacco products indicated on the storage unit will be controlled by separate regulations (see below).

Display of Prices of Tobacco Products

The Health Act 2009 also gives ministers the power to regulate the display of tobacco prices. Accordingly, draft regulations have been prepared - The Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010 - to stipulate how tobacco prices and price lists can be displayed to the public. These regulations will include restrictions on the content, format and size of the price display.

If these regulations are implemented as drafted, a retailer will be able to provide to customers aged 18 or over a price list which includes a picture of the packaged product (of no more than 50 square centimetres). Even so, the font cannot be more than 4mm high and only one price list will be

allowed for each till where the tobacco products are located.

Penalties

The regulations will be enforced by Local Authorities.

Those found guilty of an offence under the regulations could face imprisonment for up to 6 months and/or a fine of up to £5,000.

If proceedings are brought in a Crown Court, an offender could receive a prison sentence of up to 2 years and/or a fine.

How will the regulations work in practice?

As a result of the 2010 Regulations, retailers will not incur the expense of moving tobacco displays under the counter. Instead, retailers should be able to apply simple magnetic covers to existing tobacco shelving.

The 2010 Regulations apply to England, although it is anticipated that similar legislation will follow in the rest of the United Kingdom.

Retailers should make their staff aware that all aspects of tobacco displays will be regulated. A retailer could inadvertently breach the regulations if, for example, the price of tobacco products in the storage unit change (say, in future Budgets) and a member of staff creates a new price label which does not comply with the rules.



When will the regulations come into force?

The regulations will apply to “large shops” from 1 October 2011 and all other shops from 1 October 2013.

A “large shop” means a shop which has a ‘relevant floor area’ exceeding 280 square metres. This has the same meaning as the Sunday Trading Act 1994 to make it easier for retailers to know when the regulations will apply to them.

Separate regulations affecting specialist tobacconists will also come into force on 1 October 2013.

Will the regulations work?

The Government claims to have extensive evidence that tobacco displays encourage young people to start smoking and expects the NHS to benefit in the long term.

Since the advertising ban under the 2002 Act, tobacco firms have concentrated time and money on making tobacco displays more attractive to customers. Some experts see the cigarette packet as an effective advertising tool in its own right.

However, small businesses in particular are concerned that customers will go to larger shops under the belief that they will have a better product range. There is also concern that the regulations will lead to an increased use of black market cigarettes.

Conclusion

It might seem a long time until the 2010 Regulations come into force but they will introduce huge changes to the way in which cigarettes are sold in England.

Retailers need to act early to train their staff and ensure that they are ready to implement the changes. Retailers will also need to be aware of the minute details in the regulations which we have not bored you with in this briefing note!

For further information or advice about the regulations, please contact:

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