



Tobacco display and pricing up in smoke!

BRIEFING

Introduction

On 6 April 2012, the law relating to the display of all products containing tobacco and the presentation of tobacco prices in England will change.

The immediate impact will be on shops with a relevant floor area exceeding 280 square metres, known as 'large shops' under the Sunday Trading Act 1994. However, from 6 April 2015 the new law will affect all other businesses selling tobacco, including "on-trade" licensed premises such as pubs and clubs, hotels, petrol stations, small supermarkets and newsagents.

This Briefing Note explores the key elements of the change to the law.

The display of tobacco products

Under The Tobacco Advertising and Promotion (Display) (England) Regulations 2010, it will be illegal for shops and businesses to display tobacco products, except to those over the age of 18 years.

From the relevant date, tobacco can no longer be openly displayed on public view in either permanent or temporary displays. Instead, all products which contain tobacco must be out of public sight.

The regulations do not specify how tobacco products must be stored. Instead, it will be for the

retailer to decide how it will comply with the new law. However, guidance issued by the Department of Health ("the Guidance"), draws attention to the use of covers, sliding doors, or curtains to cover gantries, cabinets and humidors. Alternatively, loose tobacco can be stored in opaque containers, or tobacco products stored on shelving under the counter where they are only visible to members of staff.

The law does however, allow for circumstances where tobacco products can still be temporarily displayed, including the following scenarios:

- When tobacco requested by a customer over the age of 18 years is consequently seen by other customers, including children.
- Incidental displays of tobacco, for example when members of staff are assessing stock, cleaning the storage unit, or providing staff training on tobacco sales.

For these exemptions to apply, the display of tobacco must last only as long as is necessary for the activity in question and the tobacco storage unit must not exceed 1.5 square metres.

Note that tobacco accessories, such as pipes, lighters and tobacco papers do not fall within the catchment of the new law and can continue to be displayed in public sight.



Display of Prices of Tobacco Products

The Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010 makes it illegal to display the price of tobacco products, other than in specific formats.

The price of tobacco must be displayed in one of three ways:

- **Poster style lists**

This can be up to A3 in size, but must not exceed 1,250 square centimetres. A poster list must be headed "Tobacco products price list" and can only include the following subheadings: "cigarettes", "hand rolling tobacco", "cigars", "pipe tobacco" or "other tobacco".

The wording character cannot be higher than 7 millimetres, roughly 30 point font. In addition, only one poster list is permitted for each area tobacco is sold from.

- **Picture Price List**

This cannot be on permanent or general display. Instead, a picture price list can only be shown to a customer over the age of 18 years, on request. It can only be displayed for as long as is necessary for information on the tobacco product to be obtained.

The list can include colour pictures of packaged tobacco, but pictures of individual cigarettes or unpackaged tobacco is prohibited. Each picture is limited to 50 square

centimetres in size and the wording character for the list cannot exceed a height of 4 millimetres, roughly 14 point font. Again, only one picture price list is permitted for each area tobacco is sold from.

- Price labels on tobacco storage units or tobacco jars.

These must not exceed 9 square centimetres and cannot use wording with characters which exceed a height of 4 millimetres, roughly 14 point font.

The general requirements for all price lists and labels are as follows:

- They must use black Helvetica plain font against a white background, use the same size of text in lower case except for first letters and contain no distinguishing emphasis such as coloured text or background, italics, underlining or bold type.
- They can only provide the brand name, price, the number of units in the packet (if pre-packed) or the net weight of the product (if sold by weight).

The new law will also apply to the pricing display of cigars, which can only contain the dimensions and country of origin. In addition, pipe tobacco information is restricted to the cut and type of tobacco used.

Note that the Price Marking Order, which establishes the legal requirements in the display of



the price of goods, will not be affected by the new law. However, tobacco prices must be displayed in one of the three formats outlined above.

Furthermore, the new law will not affect websites and as a result, businesses can continue to display tobacco products and their prices to their online customers.

Exemptions

The following businesses are exempt from the new law:

- Wholesale businesses in the tobacco trade will not be affected, providing the premises is accessible only to those engaged in or employed by the business and that the tobacco products and prices are not visible from outside the premises.

The Guidance states that wholesale businesses accessible to people outside the tobacco trade, must comply with the new law. However, these businesses may be exempt if they have a separate 'tobacco room' only accessible to those in the tobacco trade, or if they are covered under the bulk tobacconist exemption (see below).

- Bulk tobacconists can display tobacco products, providing they are contained in a separate 'tobacco area' and are not visible from outside this area, that a notice in the prescribed size and font is displayed at the entrance of the area stating that "it is illegal to sell tobacco products to anyone under the age

of 18" and that customers do not have to pass through the 'tobacco area' to purchase any other products sold by the shop.

In addition, bulk tobacconists can continue to display the price of tobacco, provided this cannot be seen from outside the tobacco area.

- Specialist tobacconists can continue to display and advertise the price of specialist tobacco products, provided neither the product or the price is visible from outside the premises.

Penalties

Any person failing to comply with the new law, including shop managers and assistants, can be liable for an offence.

Those found guilty of an offence under either the regulation 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.



Conclusion

The new law will change the way tobacco products are sold in England. Retailers will need to ensure that staff are trained and measures implemented to ensure there are no unlawful displays of tobacco products or pricing after the relevant date. Retailers will also need to be aware of the specific details in the regulations.

For further information or advice about the new law, please contact:

Robert Botkai
Partner: Winckworth Sherwood Solicitors

DT: 020 7593 5004
E: rbotkai@wslaw.co.uk