Guidance on the display and pricing of tobacco products in England, for tobacco retailers and regulatory officers

Introduction

1. The law on the display of all products containing tobacco and the display of tobacco prices in England is changing. [1]

2. From **6 April 2012**, new law will affect large shops selling tobacco products (other than specialist and bulk tobacconists). All other shops and businesses selling tobacco products (including bulk tobacconists and specialist tobacconists) will be affected from **6 April 2015**.

3. The new law applies to all businesses selling tobacco products to the public, not just shops but also, for example, "on-trade" licensed premises such as pubs and clubs (the start date for any businesses such as these that are not shops is 6 April 2015).

4. The law does not apply to wholesale businesses within the tobacco trade, in which –

   a. premises are accessible only to people engaged in, or employed by, a business which is part of the tobacco trade

   AND

   b. from which tobacco products and the prices of tobacco products are not visible to the public outside of the premises.

5. **From these dates it will be illegal to display tobacco products in the relevant shops and businesses in England, except to people over the age of 18 years in the limited circumstances set out in the new law. Where appropriate, age checks must be carried out before any tobacco product is shown to a customer who asks to buy tobacco or asks for information about a tobacco product.**

6. **From these dates, it will also be illegal to display the prices of tobacco products in the relevant shops and businesses in England, except in the formats set out in the new law.**

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[1] The legislation is set out in
(a) Sections 6(A1),7A, 7B and 7C of the Tobacco Advertising and Promotion Act, as inserted by sections 20 and 21 Health Act 2009
(b) The Tobacco Advertising and Promotion (Display)(England) Regulations 2010 (S.I.2010/445)
(c) The Tobacco Advertising and Promotion (Display of Prices)(England) Regulations 2010 (S.I.2010/863)
(d) The Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations 2010 (S.I.2010/446)
(e) The Tobacco Advertising and Promotion (Display and Specialist Tobacconists) (England) (Amendment) Regulations 2011 (S.I.2011/1256).
At the time of writing, further amending regulations have been notified to the European Commission and are still to be made and laid in Parliament.

7. The aim of this guidance is to explain the requirements of the new law so that both businesses and regulatory officers are helped to implement it successfully. It also suggests practical steps that retailers can take to prepare for the start of the new law. This guidance has been written by the Local Government Regulatory Support Unit with the Department of Health; the British Retail Consortium and the Association of Convenience Stores also contributed to its development.

8. In this guidance:

   a. 'retailer' refers to all businesses selling tobacco to the public, including, for example, "on-trade" licensed premises.

   b. 'regulatory officer' refers to officers who have been authorised by a local council to undertake the work of securing compliance with this law. In most cases, this will mean local Trading Standards Officers.

   c. 'tobacco product' means a product consisting wholly or partly of tobacco[2] but does not include smoking accessories.

   d. 'large shop' means a shop with a relevant floor area exceeding 280 square metres[3] (the definition used in the Sunday Trading Act 1994).

   e. 'bulk tobacconist' means a shop selling tobacco products in quantities that meet the definition in the regulations. The conditions are that at least 90% of cigarette sales are in pre-packed quantities of 200 or more cigarettes with the remainder in pre-packed quantities of 100 or more cigarettes (in their original packaging) and that at least 90% of hand-rolling tobacco sales are in pre-packed quantities of 250 grams or more, with the remainder in pre-packed quantities of 125 grams or more (in their original packaging).

   f. 'specialist tobacconist'[4] means a retailer selling tobacco products (whether or not also selling other things) more than half of whose sales are of cigars, snuff, pipe tobacco and smoking accessories.

   g. 'relevant date' means the date on which the law will change for different types of retailer – that is 6 April 2012 for large shops (other than bulk tobacconists and specialist tobacconists) and 6 April 2015 for all other businesses selling tobacco products.

   h. 'storage unit' means any gantry, cabinet, unit, tray, shelf or other construction in which a tobacco product is held before sale.

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[2] As defined in section 1 of the Tobacco Advertising and Promotion Act 2002.
[3] As a broad comparison, a doubles tennis court covers 260 square metres.
[4] As defined in section 6(2) of the Tobacco Advertising and Promotion Act 2002 - http://www.legislation.gov.uk/ukpga/2002/36/section/6).

9. This guidance is not intended to be definitive or a substitute for the relevant law and independent legal advice should be sought where appropriate. Only the courts can interpret legislation with any authority.

10. Every effort will be made to ensure that regulatory officers across England treat businesses fairly and in a consistent manner. However, as with all legislation, there may be occasions when local interpretation and application are appropriate, in order to reflect individual local circumstances.

What are the changes?

11. From the relevant date, tobacco products must be stored out of public sight except in the limited circumstances listed in paragraph 29. The size of each temporary display allowed must not exceed 1.5 square metres. It will be illegal to show, as well as to sell, tobacco products to a customer under the age of 18 years who asks to see or to buy tobacco.

12. From the same dates, price lists and price labels for tobacco products must *only* be displayed in the specific formats set out in the new law. The requirements of the new law are explained in paragraph 48 and following.

Why is this legislation being introduced?

13. Removing permanent tobacco displays is one initiative among many being delivered to help to reduce smoking uptake by young people and to support adult smokers who want to quit. The Government's commitment to these aims is set out in *Healthy Lives, Healthy People: A Tobacco Control Plan for England*[5] on 9 March 2011.

Who is responsible for compliance?

14. Anyone who in the course of a business displays tobacco products, or causes tobacco products to be displayed, or displays the prices of tobacco products in a way that does not meet the requirements of the legislation, will be guilty of an offence unless an exemption applies.

15. As customers are not involved or responsible for carrying out a business, they cannot be held responsible for any display of tobacco products and cannot commit an offence.

[5] A copy can be found at www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_124960.pdf

Who can I ask if I need further advice?

16. Regulatory officers in your local council will be able to provide advice about the introduction of this law.

Retailers need to prepare in advance

17. Retail business proprietors and managers are responsible for making sure that by the relevant date, all areas in which tobacco products are on sale comply with the new law. Also, that all price lists and price labels for tobacco products are in the required formats.

18. **These changes are likely to take time and could involve changes to tobacco gantries, so business proprietors and managers will need to plan well in advance in order to ensure compliance by the time the law is introduced.**

19. Where tobacco gantries are owned by tobacco manufacturers, proprietors or managers should consider contacting the owner of the gantry to discuss the changes that will be needed to comply with the new law. **It is the retailer's responsibility to ensure that the correct changes are made by the date the law comes into effect.**

Securing compliance – the role of regulatory officers

20. Local councils are encouraged to adopt a risk-based approach to compliance. Their regulatory officers already work closely with businesses to build and maintain compliance across a wide range of laws, for example age restricted products, food safety and product safety. It is recommended that councils adopt the same risk-based approach to the monitoring and enforcement of compliance with the new laws on tobacco display and pricing.

21. Each local council should already have in place an appropriate enforcement policy for their area. The following approach may be helpful to use as the basis of such a policy to build maximum compliance.

Step 1

22. An educational and advisory approach should be taken both before, and for a period of time after, the new law comes into force. It will soon become apparent which businesses are making efforts to comply and which are not.

Step 2

23. Non-compliance may be due to misunderstandings or a lack of diligence and may be remedied by providing further information, advice and guidance with clear deadlines to achieve full compliance.

Step 3

24. Where it is evident that no serious efforts are being made to comply, then it may be appropriate to take enforcement action. This will need to be fully and properly considered and will need clear justification. In general, except in cases of blatant refusal to comply, it may be desirable to have evidence of the fact that earlier advice and support was given and that the business has had reasonable opportunity to comply.

25. As with all council enforcement measures, any action taken should be fair, proportionate, consistent and decided upon with reference to the Regulators' Compliance Code: www.bis.gov.uk/files/file45019.pdf and the enforcement policy statement of the individual council.

What happens if the law is broken?

26. Non-compliance with the new law is a criminal offence. Any person, including shop managers and shop assistants, found guilty of these offences is liable:

    - on summary conviction in a magistrates' court to a fine not exceeding level 5 (£5,000 at the time of publication) on the standard scale, or imprisonment for a term not exceeding six months, or both

    OR

    - on conviction on indictment in the Crown Court to imprisonment for a term not exceeding 2 years, a fine or both.

Display of tobacco products

What will the new law on tobacco displays mean in practice?

27. The new law applies to all tobacco products whenever and however they are displayed, in both permanent and temporary displays. It means that after the relevant date, retailers will no longer be able to have the tobacco products they sell on permanent, open display, for example on public view on gantries behind the counter. It means that retailers will have to make sure that tobacco products are out of public sight and cannot be seen, even for a short time, unless one of the specific exemptions in the law applies. It will be an offence to display tobacco products in any way that is not set out in the new law.

Do I have to fit new covers to my gantry?

28. The legislation does not set out *how* tobacco products must be stored or covered. Retailers are free to choose for themselves the most appropriate and efficient means of removing tobacco products from sight. This may be, for example, by fitting covers, sliding doors or curtains to an existing gantry, by covering displays of cigars in cabinets and humidors, or by placing loose tobacco in opaque containers. Tobacco products can also be kept on open shelves under, over, or beside the counter, provided they face the staff and are only open to view by staff, so that the products cannot be seen by the public.

29. Where tobacco gantries are owned by tobacco manufacturers, retailers should consider contacting the owner of the gantry in advance to discuss the changes that will be needed to comply with the new law.

When can tobacco products be displayed after the relevant date?

30. The law will allow temporary displays of tobacco products in some limited circumstances after the relevant date:

    a) following requests to buy or see tobacco products by customers over 18 years old (described as a "requested display" in the legislation)
    b) incidental displays while staff are actively –
        - assessing stock levels for the purposes of stock control
        - restocking
        - undertaking staff training
        - cleaning the storage unit
        - maintaining the storage unit
        - refurbishing the storage unit
    c) in specified circumstances by bulk tobacconists
    d) in specified circumstances by specialist tobacconists.
    e) following a request by an enforcement officer

In all cases under (b) above, the temporary incidental display must arise as a direct consequence of the activity in question being actively carried out and must only last as long as is necessary for that activity to be completed. The display must end if the relevant task is interrupted for any reason and is no longer actively being carried out. More than one temporary display may take place at a time, provided that the tasks being carried out are totally independent of each other and last only as long as is necessary to complete each task.

To a customer aged 18 years or over who asks to buy or see tobacco products

31. It is not an offence to show a tobacco product to a person aged 18 or over who asks to buy a tobacco product or who has asked for information about a tobacco product. This display is described in the legislation as a "requested display".

32. Retailers must take appropriate steps to satisfy themselves that the customer is in fact aged 18 before displaying a product to them.

33. It is not an offence if other people in the shop (including children) see a tobacco product as a consequence of a "requested display", while a customer is being served, or for other tobacco products in a storage unit to be visible (for example through an open cupboard door) *provided* that the display is only a result of the requested display by a customer AND lasts for no longer than is necessary to remove the requested product from the storage unit AND provided the area of tobacco storage unit opened in order to serve the customer **does not exceed 1.5 square metres**.

34. The important point to bear in mind is that the law defines a "requested display" as being " …*to an individual following a particular request by the individual to purchase a tobacco product, or for information about a tobacco product*[6]". If a customer makes a more general enquiry about the range of tobacco products on offer, it may be appropriate to show them a pictorial price list.

Assessing stock levels and during restocking

35. It is not an offence to display tobacco products when, in the normal course of business, a member of staff is actively engaged in assessing stock levels for the purpose of stock control, or is actively placing a tobacco product in a storage unit. In both cases the area of tobacco storage unit on open display **must not exceed 1.5 square metres**.

36. Displays during restocking must only last for as long as needed to place the product in the storage unit. It is an offence for tobacco products to be visible while they are being moved around the shop, for example, while being taken from the stock room to the storage unit to restock.

[6] See section 7B(8) TAPA as inserted by s.21 Health Act 2009.

Staff training

37. While staff training is actively being carried out, it is not an offence to display a tobacco product provided that the display lasts no longer than is necessary to complete the training and the area of the tobacco storage unit on open display **does not exceed 1.5 square metres**.

Cleaning, maintaining and refurbishing the storage unit

38. While cleaning, maintaining or the refurbishment of a tobacco storage unit is actively being carried out, it is not an offence to display tobacco products provided that the display last no longer than is necessary to complete the task and the area of the tobacco storage unit on open display **does not exceed 1.5 square metres**. The temporary display must end if the relevant task is interrupted for any reason and is no longer being actively carried out, for example, to collect cleaning products from a store room, or to get new equipment.

By a bulk tobacconist

39. It is not an offence for a bulk tobacconist to display tobacco products *provided* that the display is –

    - in a separate "tobacco area" containing only tobacco products and smoking accessories

    AND

    - is not visible from outside that area

    AND

    - that a notice is displayed at the entrance to the tobacco area saying *"It is illegal to sell tobacco products to anyone under the age of 18*". The notice must be not less than 297 millimetres by 420 millimetres (A3) and the size of the wording on the notice must use type no smaller than 36 millimetres high (roughly 155 point font).

    AND

    - the shop is designed so that customers who wish to buy other goods are not required, or encouraged, to pass through the tobacco area.

By a specialist tobacconist

40. It is not an offence for a specialist tobacconist to display tobacco products inside their shop provided that tobacco products are not visible from outside the premises.

On request by an enforcement officer

41. It is not an offence to display tobacco products if that display is requested by a regulatory officer, a police officer or an officer of HM Revenue and Customs who is acting in the course of their duty. It does not matter how large a display is made for this purpose, or how long it lasts.

How should I go about ensuring compliance?

42. The law will prohibit both permanent and temporary displays of tobacco products and retailers will not only need to cover their displays, they will also need to make sure that staff are trained in the changes, so that there are no unlawful displays of tobacco products after the relevant date, especially to customers aged under 18 years of age.

43. It is not illegal for children and young people under age 18 to see tobacco products if they happen to be in a shop while a customer is being served, or while other activities are being carried out which involve a legal display, but it will be illegal to show, as well as to sell, tobacco products to any customer under the age of 18 years of age who asks to see or buy tobacco. It is possible to commit two separate offences by showing and then selling tobacco products to someone under the age of 18. Staff must be satisfied that all customers asking to see or to buy tobacco are aged 18 or over *before* showing them any tobacco product.

44. This means retailers must make sure that all staff are trained and understand that age checks must be carried out *before* displaying any tobacco products to customers asking to see or buy them. The training should include the action that staff should take if they are not satisfied that a customer is aged 18.

45. Retailers will wish to consider the best way to adapt their existing age of sale policies, for example, Challenge 21 or Challenge 25 must be adapted to take into account the required change in timing.

46. Staff will also need to understand that tobacco products must not be left on display after any request to see them has been met, or after any other activity involving a legal display has been completed.

47. All tobacco price lists and price labels must comply with the new law (see the guidance on price lists to be found in paragraph 49 and following). Apart from tobacco price lists and labels (that comply with the law), customers must not be

able to see any reference to a specific tobacco product, or tobacco brand, unless they have asked to view them. Requests from children under 18 years of age must be refused.

48. Unbranded generic signs, such as, “Tobacco sold here” are allowed in any format. There is no change to the law that requires retailers to display a sign stating that it is illegal to make tobacco sales to people under the age of 18. These signs must continue to be displayed.

49. Tobacco accessories, for example tobacco papers, pipes and lighters, can continue to be displayed and kept in public view. Retailers will need to consider new arrangements if accessories (or any other non-tobacco products) are currently kept in a tobacco gantry or tobacco storage unit that will, in future, need to be covered. **It will be an offence to open a tobacco storage unit and to display tobacco products when serving customers with non-tobacco products such as accessories.**

Displaying prices of tobacco products

50. From the relevant date all price lists and labels for tobacco products, must be in the formats set out in the new law. It will be an offence to label tobacco products or display their prices in any other way.

51. The aim is to ensure that price lists and labels cannot be exploited as forms of tobacco promotion. The intention is that there should be no public display of tobacco branding on price lists and labels, whether through the use of wording, colours, or any other feature that may be associated with an individual brand. The requirements of the legislation are, therefore, very detailed and specific, to make sure that the price lists and labels only provide unbranded information.

52. Only three types of tobacco price display will be permitted from the relevant dates:

    a) Poster style lists (up to A3 in size) which can be permanently on show. The law sets out that these must not exceed 1250 square centimetres; A3 sized paper falls within the legal size limit.[7]

    b) A list including pictures of products, which must not be left on permanent show but which can be shown to any customer aged 18 or over who asks for information about tobacco products sold.

    c) Price labels, which can be placed on shelving, storage units or tobacco jars. One price label is permitted for each product *either* on the covered shelf where the product is stored *or* on the front of the storage unit.

53. The Price Marking Order (PMO) sets out the general legal requirements in respect of the display of the price of goods offered for sale and the new tobacco pricing law does not alter, change or interfere with the PMO in any way. The new law simply means that when tobacco prices are displayed, they must be in one of the new legal formats. Retailers will need to consider which type or types of tobacco price list or label they wish to use to fulfil the requirements of the PMO.

54. There are special rules for bulk tobacconists and specialist tobacconists, explained in paragraphs 60 to 62.

*General requirements for **all** tobacco price list and labels*

55. All types of price list or label must use black Helvetica plain font, in the same size throughout the text, see page 14 for examples of Helvetica in the relevant font sizes. In many cases, Helvetica is available on computers when manually typed into the font options box. Access to computers is available at many public libraries and often at no cost, although the printing of documents may incur a small cost.

[7] A3 is 29.7 centimetres x 42 centimetres which equals 1247.4 square centimetres.

56. All letters must be in lower case, except for first letters of words where appropriate. No underlining, italics, bold type or any other distinguishing emphasis is allowed. The background must be white. No other colours for the either the wording or the background are allowed.

57. The only information that can be given about tobacco products is:

- the brand name of the product
- the price of the product
- if pre-packed, the number of units in the packet, or if sold by weight, the net weight of the product
- for cigars only, the country of origin and dimensions (eg length and ring gauge)
- for pipe tobaccos only, the cut and type of tobacco used.

Poster style list

58. A poster style price list must comply with the general requirements set out in paragraphs 54 to 56 above and cannot include any other information about the individual tobacco products themselves or the prices of any other, non-tobacco, products. In addition it -

- Must be entitled “Tobacco products price list”.
- May include any of these sub-headings “cigarettes”, “hand rolling tobacco”, “cigars”, “pipe tobacco” or “other tobacco”. No other headings can be used.
- Must not exceed 1,250 square centimetres, which roughly equates to an A3 size poster.
- Must use wording with characters which are no higher than 7 millimetres, which roughly equates to 30 point font.
- Must be limited to one list for each separate area where tobacco products are both located and can be paid for. More than one copy will only be allowed if there are two separate areas within a shop that contain both a tobacco gantry and a till.

The Picture Price List

59. A picture price list must comply with the general requirements set out in paragraphs 54 to 56. It is not restricted by size but it -

    - Must not be on general or permanent display to customers. It can only be shown if a customer aged 18 or over asks for information about tobacco products for sale in the place where this request takes place. All reasonable steps must be taken to ensure that the individual making the request is aged 18 or over before the list is shown to them.

    - Can only be displayed for as long as is necessary for the customer requesting the information to obtain the information they need.

    - Must use wording with characters which are no higher than 4mm, which roughly equates to a 14 point font.

    - May contain colour pictures of the actual tobacco product as packaged for sale, as long as each picture does not exceed 50 square centimetres in size.

    - Must not contain pictures of individual cigarettes or other any other unpackaged tobacco products.

    - Must be limited in number to one copy for each separate area where tobacco products are located and sold, unless there is more than one till in an area where a gantry is found, in which case one copy for each till is allowed.

Price labels on tobacco storage units or tobacco jars

60. Price labels must comply with the general requirements set out in paragraphs 54 to 56. In addition they -

    - Must not be larger than nine square centimetres.

    - Must use wording with characters which are no higher than 4mm, which roughly equates to a 14 point font.

    - Must be limited in number to one display for each separate location in a storage unit where a particular tobacco product is kept.

This is an example of Helvetica text in 30 point font (characters not exceeding 7mm high) which is the maximum size of wording on a "poster" style tobacco price list

This is an example of Helvetica text in 14 point font (characters not exceeding 4mm high) which is the maximum size of wording on a tobacco price label on a storage unit or in a picture list

Special rules on tobacco prices for bulk tobacconists and specialist tobacconists

61. Bulk tobacconists and specialist tobacconists do not generally have to comply with the requirements on the display of prices of tobacco products in the new law.

62. Requirements only apply to specialist tobacconists if tobacco prices are visible from outside their premises and to bulk tobacconists if tobacco prices are visible from outside the tobacco area (as defined in paragraph 38 above).

63. If any bulk or specialist tobacconists do have tobacco prices displayed where the public can see them from outside the relevant area or shop, then they must comply with the requirements listed in paragraph 57 above for poster style price lists and tobacco labels and there can only be one poster style price list for each specialist tobacconist or tobacco area.

A5 Advertisements

64. From the relevant date the Tobacco Advertising and Promotion (Point of Sale) Regulations 2004 will be revoked. These regulations allow for a single A5 advertisement to be displayed at each point of sale for tobacco products. Once tobacco displays are removed from sight these A5 adverts will no longer be permitted.

Advertisements in specialist tobacconists

65. From 6 April 2015, the existing tobacco advertising regulations which provide exemptions for specialist tobacconists will be repealed and will be replaced by The Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010[8].

66. From 6 April 2015, the only advertisements allowed will be those within specialist tobacconist premises and must not be visible from outside the shop. This means that any current advertisements outside specialist shops must be removed. There cannot be any advertisements in the shop window. If the specialist is a "shop within a shop", that is inside a larger store, advertisements must not be visible to members of the public in the wider store, outside the specialist tobacconist shop.

67. All advertisements within specialist shops must continue to include health warnings and health information to comply with the specifications laid out in the relevant regulations[9].

Conclusion

68. This guidance is not intended to be definitive or a substitute for the relevant law and independent legal advice should be sought where appropriate. Only the courts can interpret statutory legislation with any authority.

69. Every effort will be made to ensure that businesses across England are treated fairly and in a consistent manner. However, as with all legislation, there may be occasions when local interpretation and application are appropriate in order to reflect individual local circumstances.

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[8] The Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010 (these can be found at www.legislation.gov.uk/uksi/2010/446/contents/made).
[9] The Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010 (these can be found at www.legislation.gov.uk/uksi/2010/446/contents/made).

Frequently Asked Questions

1) What is a large shop?

The definition of large shop is based on the existing definition in the Sunday Trading Act 1994. It means a shop with a relevant floor area exceeding 280 square metres.

"Relevant floor area" is defined in that Act as, "…in relation to a shop, means the internal floor area of so much of the shop as consists of or is comprised in a building, but excluding any part of the shop which…is used neither for the serving of customers in connection with the sale of goods nor for the display of goods, …".

For example, the relevant area for a shop at a garage excludes the area of the petrol forecourt outside the shop building.

The definition of "large shop" is not relevant to businesses that are not shops, for example, "on-trade" licensed premises who sell tobacco products from behind the bar. The start date for any business that is not a shop is 6 April 2015.

If any retailer is unsure about how the law will apply to their business, they should contact their local trading standards authority for advice.

2) When do other businesses start, such as "on-trade" licensed premises?

The start date for any businesses that are not shops, such as "on-trade" licensed pubs and clubs, is 6 April 2015.

3) Which form of price lists are mandatory?

None. However, retailers must continue to comply with the Price Marking Order (PMO). The PMO sets out the general legal requirements in relation to the display of the price of goods offered for sale and the new tobacco pricing law does not alter, change or interfere with the PMO in any way. The new law simply means that when tobacco prices are displayed, they must be in one of the new legal formats. Retailers will need to consider which type or types of tobacco price list or label they wish to use in order to fulfil the requirements of the PMO.

4) How do the regulations affect cash and carry businesses?

This would depend on what type of business the "cash and carry" business is. If a proprietor or manager of a cash and carry business has a query about how the law will apply to their business, they should contact their local trading standards authority for advice.

Various scenarios could arise -

a) Tobacco Trade Exemption

If the cash and carry is a wholesale business catering solely for those engaged in the tobacco trade, and the premises are *only* open to people who are either engaged in, or employed by, the tobacco trade, then the cash and carry is exempt from the display law. Tobacco products and tobacco prices may be freely displayed within the premises, provided the tobacco prices cannot be seen from outside the premises.

b) "Bulk tobacconist" tobacco area

If the cash and carry premises is open to people outside the tobacco trade, then the new law on displaying tobacco products and prices applies. A cash and carry type business may meet the definition of a "bulk tobacconists" and be able to display products in a separate tobacco area.

c) Separate tobacco room

Some cash and carry premises may have a separate "tobacco room" to which only those in the tobacco trade have access. Where regulatory officers are satisfied that the business can guarantee that the tobacco room is only accessible to people who are either engaged in, or employed by, the tobacco trade, the exemption for the tobacco trade may apply to that room and tobacco products may be openly displayed in that room.

Where there is a separate tobacco area or tobacco room, retailers must bear in mind that the display law will apply to the rest of the cash and carry premises outside of the separate tobacco area or room. This means that all tobacco products being conveyed through the main premises on their way to or from the tobacco area/room, whether by staff or customers, must be covered.

An important provision in the law is that it is an offence for a person in the course of a business *to cause* tobacco products to be displayed. This means for example, that if the till point is outside the tobacco area/room, tobacco products must be covered while being conveyed through the main premises to the till point (whether carried by staff or customer).

Retailers may also wish to consider whether to put other arrangements in place to avoid the risk of causing further displays by customers buying tobacco which could be interpreted as illegal.

5) How many temporary displays can be made at a time – by one member of staff or in one shop?

The new law sets out *when* temporary displays of tobacco products can be made, *which* activities can give rise to a display and states that a temporary display must not last for any longer than necessary to complete the activity.

There is no limit on how many activities can be carried out at the same time and it is possible, therefore, to have more than one display at any one time provided that different tasks are being undertaken.

It is not an offence to open the wrong tobacco unit when looking for a product, but it should be closed immediately.

Regulatory officers will, however, need to consider the particular circumstances of individual cases and may decide that enforcement action is appropriate if a retailer is found to be deliberately circumventing the law by, for example, leaving displays open unnecessarily while several activities are carried out.

6) When a delivery is made to a store, when do the display regulations take effect?

The new tobacco display law only applies in premises selling tobacco products. The aim is to end the permanent open display of tobacco products and to limit the duration and circumstances of temporary displays.

While deliveries are often made "behind the scenes" with products being unloaded directly into storage areas that are not generally in public view, in many small shops deliveries have to be taken through the public area of the shop. Depending on the nature of the outer packaging, it is possible that a technical breach of the display law may be made if deliveries can be seen by customers while they are being taken through the public area of a shop. Retailers must take steps to keep any such display to a minimum. Tobacco products should be removed from sight as soon as possible and deliveries should not be left on open view for any longer than is necessary to move them to a storage area.

Regulatory officers will need to consider the particular circumstances of individual cases and may decide that enforcement action is not warranted. However, if such displays can be avoided, or a retailer is found to be deliberately circumventing the law, then enforcement action may be appropriate.

7) When a member of staff is undertaking an online shop for a customer, and has tobacco in a crate or trolley, does this constitute a display?

The law limiting tobacco displays includes staff members collecting goods to make up orders on behalf of online customers. Staff members collecting goods to make up online orders should only display tobacco products for as long as is necessary to take the items out of the gantry and add them to the order. Tobacco products must not be visible to customers while being carried around the shop after being placed in a crate or trolley.

As tobacco products are generally sold from a separate counter, best practice would be for tobacco products to be covered in a bag, or added to an order as the final item so that staff members avoid the risk of displaying them while other goods are being collected to make up the online order.

The law doesn't apply where online orders are made up in a separate premises or depot, which is not open to the public; this would not constitute a "place" where tobacco products are offered for sale to the public for the purposes of the legislation.

8) Would showing a tobacco product in an open crate when delivering an online order to a customer be a "display"?

No. The new tobacco display law only applies to the place where tobacco products are offered for sale.

9) What are the rules regarding electronic price lists and displays?

There are no special allowances for electronic price lists and displays. Any electronic display of tobacco products or logos will result in a breach of the law if it is visible to the pubic. Similarly, electronic price lists visible to the public, must comply with the requirements of the legislation as set out above.

10) What is a tobacco accessory?

A tobacco accessory is any product associated with smoking that does not contain tobacco. Examples include, matches, lighters and cigarette rolling papers.

11) Are till keypads with illustrations of cigarette packets legal?

Keypads on cash tills that display pictures of tobacco products are legal *provided* that the display cannot be seen by customers.

12) Will retailers be able to show pictures and prices on their online shopping websites?

There is no new law relating to websites, the Tobacco Advertising and Promotion Act 2002 etc. (Amendment) Regulations 2006 continue to apply. Businesses will still be able to show tobacco products and their prices on their online shopping websites.

13) Does the new law apply to sales in staff canteens that are not open to the public?

Yes. The new tobacco display law applies to all premises selling tobacco products. The only exemption is for displays made in the course of a business which is part of the tobacco trade. In most circumstances a display in a staff canteen of tobacco products on sale to staff would not fall within this exemption.

14) How does the Disability Discrimination Act and other equality legislation affect the tobacco legislation in respect of disabled staff or customers?

The current legislation on tobacco complies with current equality and disability law. Shopkeepers are already required to make reasonable adjustments for staff members and to the way that they serve their disabled customers and the new tobacco display legislation will not change this.

December 2011