

Guidance on the display and pricing of tobacco products and smoking related products in Scotland, for tobacco retailers and Local Authority Trading Standards Officers

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

In this guidance "Enforcement officer" refers to officers who have been authorised by a local council to undertake the work of securing compliance with this legislation. In most cases, this will mean local Trading Standards Officers.

Introduction

1. The legislation in Scotland on the display of all tobacco products and smoking related products and the display of prices of tobacco products and smoking related products (in places where tobacco products are also offered for sale) is changing.
2. Retailers who wish to sell tobacco products must be registered on the Scottish Tobacco Retailer Register which is held by the Scottish Government www.tobaccoregisterscotland.org and which became operational on 1 April 2011. From **29 April 2013**, the new legislation on tobacco products and prices will affect large shops (including bulk tobacconists) selling tobacco products. All other premises and businesses selling tobacco products will be affected from **6 April 2015**.
3. The new legislation 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 premise that is not a large shop is 6 April 2015).
4. The restrictions on the display of tobacco products and smoking related products do not apply to trade tobacconists such as cash and carries who sell tobacco products *only* to people who retail tobacco products and are registered on the Scottish Tobacco retailers register. As regards the display of prices of tobacco products or smoking related products in wholesale trade tobacconist premises the only requirement is that the display of prices is not visible from outside of the premises.
5. **From these dates it will be illegal to display tobacco products and smoking related products in the relevant premises in Scotland, except in the limited circumstances set out in the new legislation.**
6. **From these dates, it will also be illegal to display the prices of tobacco products and smoking related products in the relevant premises in Scotland, except in the formats set out in the new legislation.**

The legislation is set out in Tobacco and Primary Medical Services (Scotland) Act 2010 and The Sale of Tobacco (Display of Tobacco Products and Prices) (Scotland) Regulations 2013

7. The aim of this guidance is to explain the requirements of the new law so that both businesses and enforcement 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 Tobacco Control Branch, Public Health Division of the Scottish Government. Scottish Retail Organisations and Trading Standards 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. "Enforcement officer" refers to officers who have been authorised by a local council to undertake the work of securing compliance with this legislation. In most cases, this will mean local Trading Standards Officers.

c. "tobacco product" means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.

d. "smoking related product" currently means cigarette papers, cigarette tubes, cigarette filters, apparatus for making cigarettes, cigarette holders, pipes for smoking tobacco products. The Scottish Ministers can modify the list if they consider it appropriate to do so.

e. "large shop" means a shop with a relevant floor area exceeding 280 square metres; and "relevant floor area", 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 not used for the serving of customers in connection with the sale of goods or used for the display of goods.

f. "trade tobacconist" means premises where tobacco products are offered for sale in the course of business involving the sale of such products *only* to people who retail tobacco products and are registered on the Scottish Tobacco retailers register.

g. "bulk tobacconist" means a premise which is not a trade tobacconist, selling tobacco products (whether or not it also sells other products) whose sales of cigarettes or hand rolling tobacco measured in accordance with the criteria below meet the following conditions -

(i) at least 90% of its cigarette sales are in pre-packed quantities of 200 or more cigarettes in their original package, and the remainder in pre-packed quantities of 100 or more cigarettes in their original package;

(ii) at least 90% of its hand rolling tobacco sales are in pre-packed quantities with a weight of 125 grams or more in their original package.

The sales referred to in the definition of “bulk tobacconist” are to be measured by sale price –

(i) during the most recent period of twelve months for which accounts are available, or

(ii) during the period for which the premise has been established, if it has not been established long enough for twelve months’ accounts to be available.

h. “specialist tobacconist” 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.

i. “duty free shop” means an export shop as defined in regulation 3 of the Excise Goods (Export Shops) Regulations 2000.

j. “relevant date” means the date on which the legislation will change for different types of retailer – that is April 2013 for large premises and 6 April 2015 for all other businesses selling tobacco products.

k. “storage unit” means a gantry, cabinet, unit, tray, shelf or other product in which a tobacco product or smoking related product is held pending sale.

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

9. Every effort will be made to ensure that enforcement officers across Scotland 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?

10. From the relevant date, tobacco products and smoking related products (in places where tobacco products are offered for sale) must be stored out of public sight except in the limited circumstances listed in this guidance. The size of each temporary display allowed must not exceed 1000 square centimetres (see *paragraph 24 for further information on temporary displays*).

11. 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 legislation. The requirements of the new legislation are explained on pages 10-14 of this guidance. Retailers should note that they remain bound by the requirements of the Price Marking Order 2004 which sets out requirements as to how the price of a product has to be indicated. Compliance with the requirements of the new legislation regarding display of prices must be done in such a way that the requirements of the Price Marking Order are still met. This is discussed further on page 14.

Why is this legislation being introduced?

12. 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.

Who is responsible for compliance?

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

Who can I ask if I need further advice?

14. Retailers can ask enforcement officers for advice on the introduction of this legislation or contact their representative trade organisation. Contact details for representative trade organisations are provided at the rear of the guidance. The Scottish Wholesale association and the Scottish Grocers' Federation are also developing a iphone app which will be available free of charge.

Retailers need to prepare in advance

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

16. These changes are likely to take time, could involve changes to tobacco gantries and may be costly. Business proprietors and managers will need to plan well in advance in order to ensure compliance by the time the legislation is introduced.

17. 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 legislation. **It is the retailer's responsibility to ensure that the correct changes are made by the date the legislation comes into effect.**

Securing compliance – the role of enforcement officers

18. Local councils are encouraged to adopt a risk-based approach to compliance. Their 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 legislation on tobacco display and pricing.

19. Each local council will already have in place an appropriate enforcement policy for their area. This will set out a stepped approach before considering enforcement action. As with all council enforcement measures, any action taken should be fair, proportionate and consistent.

What happens if the legislation is broken?

20. Non-compliance with the new legislation is a criminal offence. Any person, including shop managers and shop assistants, found guilty of these offences is liable: There are serious consequences for retailers who are not in compliance with the new smoking legislation. The Tobacco and Primary Medical Services (Scotland) Act 2010 gives powers to Trading Standard Officers to issue fixed penalty notices for offences, including selling tobacco to under 18s and not being on the Retailer Register. If a retailer is found to be in breach of tobacco sales legislation three times within a two year period, a Local Authority can apply to the courts to have the retailer banned from selling tobacco. Section 27 of and schedule 1 to the 2010 Act and the Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Regulations 2011 set out the Fixed Penalty Notice (FPN) scheme that applies to offences. Provision is also made for the level of fine to be escalated for second and subsequent offences committed within a 2 year period.

Amount of fixed penalty applying to offences under the 2010 Act

Offence to which the FPN is issued	Amount	Discounted (if paid within 14 days)
Section 5: underage purchase of tobacco products or cigarette papers	£50	£30
Section 7: refusal by under 18s in a public place to surrender tobacco products or cigarette papers or to provide name and address to a constable on request.	£50	£30
All other offences in chapters 1 and 2 of Part 1 of the 2010 Act.	£200	£150

Other than for offences under Sections 5 and 7, an escalator of an additional £200 (discounted £150) is applied for each previous “enforcement action” within 2 years ending on the date a FPN is issued.

”Enforcement action” means the issue of a FPN for an offence under Part 1 of the 2010 Act which is not subsequently withdrawn or the conviction of an offence under Part 1 of the Act.

Display of tobacco products and smoking related products

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

21. The new legislation applies to all tobacco products and smoking related products (in a place where tobacco products are offered for sale) 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 and smoking related 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 and smoking related products are out of public sight and cannot be seen, even for a short time, unless one of the specific exemptions in the legislation applies. It will be an offence to display tobacco products in any way that is not set out in the new legislation.

Do I have to fit new covers to my gantry?

22. The legislation does not set out *how* tobacco products and smoking related products must be stored or covered. Retailers are free to choose for themselves the most appropriate and efficient means of removing tobacco products and smoking related 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 and smoking related products can also be kept on 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.

23. 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 legislation and the costs involved.

When can tobacco products be displayed after the relevant date?

24. In normal circumstances the open display should not exceed 1000 square centimetres. The legislation will allow temporary displays of tobacco and smoking related products in some limited circumstances after the relevant date:

a) following requests to buy or see tobacco products by customers (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
- pricing
- cleaning the storage unit
- refurbishing the storage unit
- refitting the storage unit

25. In all cases under (b), 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.

26. It is *not* an offence if other people in the premise (including children) see a tobacco product as a consequence of a "requested display" while a customer is being served. Nor is it an offence 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, lasts for no longer than is necessary to remove the requested product from the storage unit and the area of tobacco storage unit opened in order to serve the customer does not exceed 1000 square centimetres.

27. The important point to bear in mind is that the legislation defines a "requested display" as being to a person following a particular request by that person –

- (a) to purchase
- (b) to retrieve for the purpose of sale: or
- (c) for information about
a tobacco product or smoking related product.

28. If a customer makes a more general enquiry about the range of tobacco products on offer, it may be more appropriate to show them a pictorial price list (see pages 10-14).

29. A display following a request to retrieve for the purpose of sale will allow sales persons to retrieve tobacco products and smoking related products for inclusion in online orders for delivery to customers.

Assessing stock levels and restocking

30. It is not an offence to display tobacco products or smoking related 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 or smoking related product in a storage unit. In both cases provided the area of tobacco storage unit on open display must not exceed **1000 square centimetres**.

31. 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 or smoking related products to be visible while they are being moved around the premise, for example, while being taken from the stock room to the storage unit to restock.

Staff training

32. While staff training is actively being carried out, it is not an offence to display a tobacco product or smoking related 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 **1000 square centimetres**.

Cleaning, refurbishment and refitting of the storage unit

33. While cleaning, refurbishment or the refitting of a tobacco storage unit is actively being carried out, it is not an offence to display tobacco products or smoking related 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 **1000 square centimetres**. 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.

Display by a bulk tobacconist and in a duty free shop

34. It is not an offence for a bulk tobacconist or duty free shop to display tobacco products or smoking related products *provided* that the display complies with the all of the following –

- is in a separate “tobacco area” which means a part of the premise containing only tobacco products and smoking related products.
- is not visible from any other part of the premise

Display by a specialist tobacconist

35. It is not an offence for a specialist tobacconist to display tobacco products or smoking related products *provided* the display complies with all of the following -

- is inside their premise
- does not include cigarettes or hand rolling tobacco
- includes a notice stating “Tobacco products can damage your health and are addictive” which is not less than 297 millimetres by 420 millimetres and displayed in a prominent position and readily visible to persons seeing the display and
- is not visible from outside the premises

How should I go about ensuring compliance?

36 The legislation will prohibit both permanent and temporary displays of tobacco products and smoking related products and retailers will not only need to cover their displays but will also need to make sure that staff are trained in the changes, so that there are no unlawful displays of tobacco products or smoking related products after the relevant date.

37. Although it is not an offence to display tobacco products to a person under 18 following a requested display, it is illegal both to sell to under 18s and for them to purchase these products.

38. Therefore, it would be good practice if retailers could make sure that all staff are trained and understand that age checks should be carried out *before* displaying any tobacco products or smoking related 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. Retailers will wish to consider the best way to adapt their existing age of sale policies, for example Challenge 25.

39. Staff will also need to understand that tobacco products and smoking related 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 or interrupted.

40. All tobacco price lists and price labels must comply with the new legislation (see pages 10-14 for guidance on price lists). Apart from tobacco price lists and labels (that comply with the legislation), customers must not be able to see any reference to a specific tobacco product, or tobacco brand, unless they have asked to view them. We would recommend that as a matter of practice requests from children and young people under 18 years of age should be refused.

41. Unbranded generic signs, such as “Tobacco sold here” are allowed in any format. There is no change to the existing legislation that requires retailers to display a sign stating that “It is illegal to sell tobacco products to anyone under the age of 18”. These signs must continue to be displayed. The size of the notice must not be less than 297 mm by 420 mm and the size of the statement to be displayed on the notice must be such that no character is less than 36 mm high.

42. Tobacco accessories which are not smoking related products, for example lighters and matches can continue to be displayed and kept in public view. However, retailers will need to consider new arrangements if such 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 or smoking related products when serving customers with non-tobacco products such as accessories.**

Displaying prices of tobacco products and smoking related products

43. From the relevant date all price lists and labels for tobacco products and smoking related products (in a place where tobacco products are also sold) must be in the formats set out in the new legislation. It will be an offence to label tobacco products or smoking related products or display their prices in any other way.

44. 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.

45. 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 legislation sets out that these must not exceed 1250 square centimetres; A3 sized paper falls within the legal size limit.

b) A price list available on request (picture price list), which must not be left on permanent show but which can be shown to any customer who asks for information about tobacco products or smoking related products sold. Good practice would suggest that age checks should be carried out before showing the picture price list and requests from children and young people under the age of 18 should be refused.

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 where the particular tobacco product or smoking related product is held pending sale.

46. 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 legislation does not alter, change or interfere with the PMO in any way. The new legislation simply means that tobacco prices 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.

Display of Prices in Trade Tobacconists

47. The only requirement for trade tobacconists is that any display of prices must not be visible from outside their premises. A trade tobacconist means a premise selling tobacco products (whether or not it sells other products) in the course of a business involving the sale of tobacco products only to persons who carry on a tobacco business or their employees.

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

48. All types of price list or label must use black Helvetica (bold or plain) font or Arial (bold or plain) font, in the same size throughout the text, all lower case

(except that the first letter may be in upper case) on a white background. See page 13 for examples of Helvetica in the relevant font sizes. In many cases, Helvetica / Arial are 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.

49. 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 (e.g. length and ring gauge)
- for pipe tobaccos only, the cut and type of tobacco used.

The price list or label cannot contain any other feature. The only exception is the picture which is allowed on a requested price list. A “feature” means a logo trademark, symbol, motto, type-face, colour or pattern of colour, picture, artwork, imagery, appearance, message or other indication that constitutes all or part of the recognisable identity of the product. It does not include a barcode or stock number.

Additional requirements for the Poster style list

50. A poster style price list must comply with the general requirements set out in this guidance and cannot include any other information about the individual tobacco products or smoking related products themselves or the prices of any other, non-tobacco, products. In addition it -

- Must be entitled “Tobacco products/Smoking related products price list”.
- May include any of these sub-headings “cigarettes”, “hand rolling tobacco”, “cigars”, “pipe tobacco” or “other tobacco products” and “smoking related products”. 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 price list for each separate area where tobacco products or smoking related products are located and can be paid for. More than one copy will only be allowed if there is more than one till in that area. In that case one price list is permitted for each till.

Additional requirements for a Price List Available on Request (picture price list)

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

- Must not be on general or permanent display to customers.

- 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 or smoking related 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 or smoking related products are located and can be paid for, unless there is more than one till at any such location, in which case one copy for each till is allowed.

Additional requirements for Price labels on tobacco storage units or tobacco jars

52. Price labels must comply with the general requirements set out in previous paragraphs. In addition they -

- Must not be larger than 9 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/label for each separate location in a storage unit where a particular tobacco product or smoking related product is kept.

53. Businesses should make efforts to move towards the 9 square centimetre label size stipulated in the regulations, however, many businesses currently use a price label which is greater in size than this. In these circumstances, the mandatory information set out in para 49 should be included within a 9 square centimetre printable area on the shelf edge label. This may mean that the overall size of the shelf edge label is greater allowing non-mandatory information, such as the product barcode, to be included on the label outside of the 9 square centimetre printable area. **Any additional information included on the label must be within the spirit of the legislation. This would mean any text should be in keeping with the regulations (black Arial / Helvetica bold or plain font, 4mm in size) and there should be no other colours. Nor should there be any text, markings or symbols which could be seen as a form of tobacco promotion. This should be monitored by enforcement officers and the Scottish Government reserves the right to amend this guidance at any time.**

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.

This is an example of Arial 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 Arial 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

54. Bulk tobacconists and specialist tobacconists do not generally have to comply with the requirements on the display of prices of tobacco products and smoking related products in the new legislation.

55. Requirements only apply to specialist tobacconists if the prices are visible from outside their premises and to bulk tobacconists if the prices are visible from outside the tobacco area.

56. If any bulk or specialist tobacconists do have tobacco prices displayed where the public can see them from outside the relevant area or premise, then the display must comply with the general requirements listed in previous paragraphs and the requirements for poster style price lists. There can only be one poster style price list for each specialist tobacconist or tobacco area.

Advertisements in specialist tobacconists

57. The Sale of Tobacco (Display of Tobacco Products and Prices) (Scotland) regulations also amend the legislation on tobacco advertising in specialist tobacconists. In addition to the existing requirements for the advertisement to include a specified health warning and health information, the legislation now states that the advertisement must not be visible from outside the specialist tobacconist's premises.

Compliance with the Price Marking Order 2004

58. The **Price Marking Order 2004** (PMO) sets out the general legal requirements in respect of the display of the price of goods offered for sale. Article 7 of the Price Marking Order 2004 requires that the indication of the selling price, unit price and other pricing particulars of a product shall be unambiguous, easily identifiable and clearly legible and be given in proximity to the product so as to be available to consumers without the need for them to seek assistance from the trader or someone on his behalf in order to ascertain it.

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.

- If the business chooses the price list option then particular attention must be paid to the number of items that are featured on the list. The consumer must be able to read the prices of the products listed.
- If the business chooses the "price list available on request" option, there should be a notice displayed advising customers that this is available. **This notice must be in keeping with the spirit of the legislation. This would mean the text should be in keeping with the regulations (black Arial / Helvetica bold or plain font, 7mm in size) and there should be no other colours. Nor should there be any text, markings or symbols which could be seen as a form of tobacco promotion. This should be monitored by enforcement officers and the Scottish Government reserves the right to amend this guidance at any time.**
- If the business chooses the shelf edge label option, the business must either display the price list or have a price list available on request in order to satisfy the spirit of the PMO. Furthermore, if the shelf edge label contains the unit price of the product, it will not be necessary to indicate the unit price on the price list (as this is considered the secondary price indication in accordance with the PMO).

Frequently Asked Questions

1) What is a large shop?

The definition of a large shop is a shop which has a relevant floor area exceeding 280 square metres.

"Relevant floor area" is defined in the regulations as, "in relation to a premise, means the internal floor area of so much of the premise as consists of or is comprised in a building, but excluding any part of the premise 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 which 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 legislation will apply to their business, they should contact their local trading standards authority or representative trade organisation 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 legislation does not alter, change or interfere with the PMO in any way. The new legislation 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 legislation will apply to their business, they should contact their local trading standards authority or representative trade organisation, for advice.

Various scenarios could arise -

a) Trade Tobacconist Exemption

If the cash and carry is a wholesale business, involving the sale of tobacco *only* to people who retail tobacco products and are registered on the Scottish Tobacco retailers register, then the cash and carry is exempt from the display legislation. 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 sells tobacco to people outside the tobacco trade, then the new legislation on displaying tobacco products and prices applies. A cash and carry type business may meet the definition of a "bulk tobacconists" (set out in para 8(g)) and be able to display products in a separate tobacco area.

c) Separate tobacco room

Some cash and carry premises may already have a separate "tobacco room" which bulk tobacconists can make their tobacco area. Tobacco products may be openly displayed in the separate tobacco area / room as long as they are not visible from any other part of the shop. Bulk tobacconists must bear in mind that the display law will apply to the rest of the cash and carry premises outside of the tobacco area / room. This means that all tobacco products being conveyed through the main premises on their way to or from the tobacco area / room must be covered.

An important provision in the legislation 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, tobacco products must be covered while being conveyed through the main premises to the till point (whether carried by staff or customer).

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

The new legislation 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 (see pages 6-8). 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.

Enforcement 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 legislation 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 legislation 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 premises deliveries have to be taken through the public area of the premise.

Depending on the nature of the outer packaging, it is possible that a technical breach of the display legislation may be made if deliveries can be seen by customers while they are being taken through the public area of a premise. 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.

Enforcement 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 legislation, 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 legislation 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 premise 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 legislation 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 legislation 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 legislation if it is visible to the public. Similarly, electronic price lists visible to the public must comply with the requirements of the legislation as set out above.

10) 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.

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

There is no new legislation 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.

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

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

13) 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 legislation. 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.

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