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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 144**

**PUBLIC HEALTH**

**The Tobacco Advertising and Promotion  
(Point of Sale) (Scotland) Regulations 2004**

<i>Made</i>	- - - -	<i>24th March 2004</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>25th March 2004</i>
<i>Coming into force</i>	- -	<i>21st December 2004</i>

The Scottish Ministers, in exercise of the powers conferred sections 4(3) and (4) and 19(2) of the Tobacco Advertising and Promotion Act 2002<sup>(1)</sup>, and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2004 and shall come into force on 21st December 2004.

(2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations—

“A5 size” means the size of an area of any shape which is equal to the area of size A5 in the A series of paper sizes defined in BS EN ISO 216: 2001<sup>(2)</sup>;

“the Act” means the Tobacco Advertising and Promotion Act 2002;

“advertisement” means a tobacco advertisement, except an advertisement which is not for cigarettes or hand-rolling tobacco which is in, or fixed to the outside of the premises of, a specialist tobacconist;

“gantry or display unit” means a gantry, display cabinet, tray or other product in which a tobacco product is held pending sale that is—

- (a) fixed to one place within fixed or movable premises; and
- (b) primarily used for the display of tobacco products to customers;

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<sup>(1)</sup> 2002 c. 36. The “appropriate Minister” is defined by section 21 as meaning, in relation to Scotland, the Scottish Ministers.  
<sup>(2)</sup> Copies of BS EN ISO 216: 2001 can be obtained from the British Standards Institute, 389 Chiswick High Road, London, W4 4AL

“group of companies” means a holding company and its subsidiaries within the meaning of section 736 (interpretation) of the Companies Act 1985(3);

“other feature” means a logo, trademark, symbol, motto, print, 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 a product; and

“point of sale” has the meaning given to it in regulation 3.

### **Point of sale**

3.—(1) In these Regulations, “point of sale” means a point within any fixed or movable premises at which a gantry or display unit is affixed.

(2) Except where regulation 5 applies, these Regulations apply only to advertisements published at the point of sale and not elsewhere.

(3) Subject to paragraph (4), where there is more than one point of sale within any premises, tobacco products may be advertised at only one of those points of sale.

(4) Where premises are occupied by more than one separate business, tobacco products may be advertised at only one point of sale within the part of the premises occupied by each of those businesses.

(5) For the purposes of paragraph (4), “separate business” means a business which is—

- (a) controlled and managed by a single individual who, or by a firm, company or group of companies which, controls and manages only one business which sells tobacco products in the premises in question;
- (b) managed separately from any other business in those premises which sells tobacco products; and
- (c) carried on in a distinct part of the premises which is separate from any other part of the premises in which tobacco products are sold.

(6) “Place” in section 4(3)(a) of the Act means—

- (a) the point of sale; and
- (b) the place where a tobacco vending machine is located.

### **Advertising at point of sale**

4.—(1) Subject to regulations 3 and 6 and the following paragraphs of this regulation, no offence is committed under section 2 of the Act by the publication on a gantry or display unit at the point of sale of an advertisement to which this regulation applies.

(2) An advertisement to which this regulation applies may include—

- (a) the name, emblem or other feature (in any combination) of the tobacco product to which the advertisement relates;
- (b) the price of a packet of that product and the size of the packet to which the price relates,

but shall not include any other word or image.

(3) An advertisement to which this regulation applies shall be presented in two dimensional format and shall be either—

- (a) a single advertisement which has; or
- (b) two or more advertisements which together have,

a surface area which does not exceed A5 size.

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(3) 1985 c. 6. Section 736 was substituted by the Companies Act 1989 (c. 40), section 144.

(4) An advertisement to which this regulation applies shall include an area which is not less than 30% of the total surface area of the advertisement in which is displayed in accordance with the requirements specified in paragraph (5), parallel to the floor, the health warning “Smoking kills” or the health warning “Smoking seriously harms you and others around you” and the information—  
“NHS Smoking Helpline 0800 169 0 169”.

(5) The health warning and information which is required to be published by paragraph (4) shall be—

- (a) indelible;
- (b) legible;
- (c) printed in black Helvetica bold type on a white background;
- (d) in a font size consistent throughout the text which ensures that the text occupies the greatest possible proportion of the area specified for the warning and information;
- (e) in upper case and lower case type as set out in paragraph (4);
- (f) centred in the area in which the text is required to be printed;
- (g) surrounded by a black border outside the area specified for the health warning and information, which shall be not less than 3 millimetres and not more than 4 millimetres in width, which does not interfere with the text of the warning or information; and
- (h) irremovably printed on the advertisement.

(6) This regulation does not apply to advertisements, published at the same point of sale at the same time, which have a surface area which in total exceeds A5 size.

### **Advertising on tobacco vending machines**

**5.—(1)** Subject to the following paragraphs of this regulation, no offence is committed under section 2 of the Act by the publication of an advertisement on a vending machine from which only tobacco products are sold.

(2) This regulation applies where the only features used on the vending machine to promote a tobacco product are contained in an advertisement which—

- (a) consists only of a picture of the packet of a tobacco product which is for sale from that vending machine;
- (b) is no larger than the surface area of the largest face of the packet of the tobacco product depicted; and
- (c) includes a health warning which—
  - (i) is identical to a health warning which is required by regulation 7 (warnings on tobacco products) of the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002<sup>(4)</sup> to be shown on the most visible surface of the tobacco product which is depicted in the picture;
  - (ii) occupies not less than 30% of the surface area of the advertisement; and
  - (iii) is surrounded by a black border, not less than 3 millimetres nor more than 4 millimetres in width, which is outside the area occupied by the warning and which does not interfere with the text of the warning.

(3) If more than one different tobacco product is for sale from a vending machine, a picture of the packet of some or each of those products which complies with paragraph (2) may be published.

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(4) S.I.2002/3041.

(4) In this regulation, “vending machine” means a tobacco vending machine which contains tobacco products which are not visible prior to purchase.

### **General provisions**

6.—(1) The provisions of these Regulations which provide that no offence is committed under section 2 of the Act do not apply to an advertisement which—

- (a) is displayed electronically on a screen or contains a moving image or a moving background, or an image or background which changes colour or is illuminated by flashing lights; or
- (b) is, or is designed or adapted to be, accompanied by any sound or smell.

(2) The provisions of these Regulations which provide that no offence is committed under section 2 of the Act apply only to advertisements which remain fixed in a static position.

(3) Where by virtue of any provision of these Regulations a person does not commit an offence under section 2 of the Act by the publication of an advertisement in a place, no offence is committed by any person who—

- (a) causes that advertisement to be published in that place; or
- (b) prints, devises or distributes that advertisement for use in that place or causes it to be so printed, devised or distributed.

St Andrew’s House, Edinburgh  
24th March 2004

*TOM McCABE*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide that no offence is committed under section 2 (prohibition of tobacco advertising) of the Tobacco Advertising and Promotion Act 2002 (“the Act”) in relation to certain tobacco advertisements which are published at places where tobacco products are sold. They extend to Scotland only.

Regulation 3 defines the meaning of “point of sale” for the purposes of these Regulations and “place” for the purposes of section 4(3)(a) of the Act.

Regulation 4 restricts the size, format and content of tobacco advertisements which may be published at a point of sale.

Regulation 5 restricts the size, format and content of tobacco advertisements which may be published on certain tobacco vending machines.

Regulation 6 imposes general restrictions on the tobacco advertisements which may be published under these Regulations and provides that where the publication of a tobacco advertisement is not an offence by virtue of these Regulations, no offence is committed by a person who—

- (a) causes the publication;
- (b) prints, devises or distributes the advertisement; or
- (c) causes it to be printed, devised or distributed.

A draft of these Regulations has been notified to the European Commission as a technical standard, pursuant to Directive [98/34/EC](#) of the European Parliament and of the Council (O.J. No. L 204, 21.7.98, p.37) laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by the European Parliament and Council Directive [98/48/EC](#) (O.J. No. L 217, 5.8.1998, p.18).

A Regulatory Impact Assessment has been prepared for these Regulations and a copy has been placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Executive Health Department, Substance Misuse Division, St. Andrew’s House, Regent Road, Edinburgh EH1 3DG.