

2013 No. 85

PUBLIC HEALTH

**The Sale of Tobacco (Display of Tobacco Products and Prices
etc.) (Scotland) Regulations 2013**

Made - - - - - *27th February 2013*

Laid before the Scottish Parliament *28th February 2013*

Coming into force in accordance with regulation 1(1)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1(2)(c), 1(4), 2, 3(1), 3(2), 3(5) and 40(2) of the Tobacco and Primary Medical Services (Scotland) Act 2010(a) and sections 4(3), 4(4), 6(1)(c) and 19(2) of the Tobacco Advertising and Promotion Act 2002(b) and all other powers enabling them to do so.

Citation and commencement

1.—(1) These Regulations may be cited as the Sale of Tobacco (Display of Tobacco Products and Prices etc.) (Scotland) Regulations 2013 and come into force for the purposes of large shops on 29th April 2013 and for all other purposes on 6th April 2015.

(2) For the purposes of this regulation—

“large shop” means a shop which has 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 used neither for the serving of customers in connection with the sale of goods nor for the display of goods.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Tobacco and Primary Medical Services (Scotland) Act 2010;

“bulk tobacconist” means a shop, 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 paragraph (2), meet the following conditions—

- (a) 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;
- (b) 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;

(a) 2010 asp 3.

(b) 2002 c.36. Section 4(3) has been amended by S.I. 2006/2369 and section 6(1) is amended by paragraph 3 of schedule 2 to the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3).

“original package” means the package in which the cigarettes or hand rolling tobacco were supplied for the purpose of retail sale by the manufacturer or importer and “packaged for sale” is to be construed accordingly;

“other 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 a product, but does not include a bar code or stock number;

“package” means any box, carton or other container;

“shop” means any premises^(a) where there is carried on a trade or business consisting wholly or mainly of the sale of goods;

“specialist tobacconist” has the meaning given by section 6(2) of the Tobacco Advertising and Promotion Act 2002;

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

“tobacco area” means a part of a shop containing only tobacco products or smoking related products[”]; and

“trade tobacconist” means a shop 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.

(2) The sales referred to in the definition of “bulk tobacconist” are to be measured by sale price—

- (a) during the most recent period of 12 months for which accounts are available; or
- (b) during the period for which the shop has been established, if it has not been established long enough for 12 months’ accounts to be available.

Requirements for displays of tobacco products or smoking related products in specialist tobacconists

3.—(1) The requirements for the purposes of section 1(2)(c) of the Act^(b) are prescribed below.

(2) The display must include a notice which—

- (a) contains the statement “Tobacco products can damage your health and are addictive”;
- (b) is not less than 297 millimetres by 420 millimetres; and
- (c) is displayed in a prominent position and is readily visible to persons seeing the display.

(3) Each character of the statement on the notice in paragraph (2) must be not less than 36 millimetres high.

(4) The display must not be visible from outside the specialist tobacconist.

Requirements for other displays in respect of which no offence is committed

4. In accordance with section 1(4) of the Act^(c), no offence is committed under section 1(1) of the Act in relation to a display of tobacco products or smoking related products which complies with the requirements specified in regulation 5, 6 or 7.

(a) “Premises” is defined in section 35 of the Tobacco and Primary Medical Services (Scotland) Act 2010 to include any place and any vehicle, vessel or moveable structure.

(b) Section 1(2)(c) of the Act provides that Scottish Ministers may prescribe requirements in relation to displays of tobacco products or smoking related products in specialist tobacconists. “Specialist tobacconist” is defined in section 1(7) of the Act.

(c) Section 1(4) of the Act provides that Scottish Ministers may provide that no offence is committed under section 1(1) of the Act (prohibition of display in the course of business of tobacco products or smoking related products in a place where tobacco products are offered for sale) if the display complies with specified requirements.

Requested displays

5.—(1) The requirements are that the display—

- (a) is a requested display or solely as a consequence of a requested display;
- (b) lasts for no longer than is necessary to complete the requested display; and
- (c) does not result in the display of a total area of storage unit exceeding 1,000 square centimetres in which tobacco products, smoking related products and any other products are visible.

(2) In this regulation—

“requested display” means a display 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.

Incidental displays

6.—(1) The requirements are that the display—

- (a) is an incidental display;
- (b) is solely as a consequence of an activity listed in paragraph (2) being carried out;
- (c) lasts for no longer than is necessary in order to allow that activity to be carried out; and
- (d) does not result in the display of a total area of storage unit exceeding 1,000 square centimetres in which tobacco products, smoking related products and any other products are visible.

(2) In this regulation “incidental display” means a display which occurs in the course of one or more of the following activities actively being conducted in the ordinary course of business in relation to tobacco products or smoking related products—

- (a) stocktaking;
- (b) ordering stock;
- (c) restocking;
- (d) staff training;
- (e) pricing;
- (f) cleaning, refurbishment or refitting of the storage unit.

Displays in bulk tobacconists and duty free shops

7.—(1) The requirements are that the display is—

- (a) in a bulk tobacconist or duty free shop;
- (b) in a tobacco area; and
- (c) not visible from any other part of the shop.

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

(a) S.I. 2000/645.

Place where requirements as to display of prices apply

8. In section 3(1) of the Act(a), “place” means any premises where tobacco products are offered for sale in the course of a business.

Requirements for display of prices of tobacco products or smoking related products

9. The requirements which apply for the purposes of section 3(1) of the Act are specified—
- (a) in regulation 10 for a place which is a specialist tobacconist or bulk tobacconist;
 - (b) in regulation 11 for a place which is a trade tobacconist; and
 - (c) in regulation 12 for all other places.

Specialist and bulk tobacconists

10.—(1) The requirement in subsection (2) applies only if the display of prices is visible from outside the premises of a specialist tobacconist or from outside the tobacco area in a bulk tobacconist.

- (2) A display of prices must—
- (a) comply with the general requirements in regulation 13;
 - (b) comply with the requirements in regulation 14(1)(a) and (b)(i) to (vi); and
 - (c) be limited to one for each premises or tobacco area.

Trade tobacconists

11. The requirement is that a display of prices must not be visible from outside the premises of the trade tobacconist.

Other places

12. The requirement is that a display of prices must comply with—
- (a) the general requirements specified in regulation 13; and
 - (b) the requirements specified in—
 - (i) regulation 14 (in relation to price lists);
 - (ii) regulation 15 (in relation to price lists available only on request);
 - (iii) regulation 16 (in relation to price labels).

General requirements for display of prices of tobacco products or smoking related products

13. The requirements are that a display of prices—
- (a) must only contain the following information in relation to the tobacco products or smoking related products—
 - (i) the brand name of the product;
 - (ii) where pre-packed, the number of units in the package or, where sold by weight, the net weight of the product;
 - (iii) in relation only to cigars, the country of origin and the dimensions;
 - (iv) in relation only to pipe tobaccos, the cut and type of tobacco used; and

(a) Section 3(1) provides that Scottish Ministers may impose requirements in relation to the display in the course of business of prices of tobacco products or smoking related products in a place where tobacco products are offered for sale.

- (v) the price of the product(a);
- (b) must be printed—
 - (i) in black Helvetica or Arial bold or plain type on a white background;
 - (ii) in type which has a consistent size throughout the text; and
 - (iii) in lower case type except that the first letter of a word may be in upper case type; and
- (c) except as otherwise provided by regulation 15(1)(b)(ii), must not contain any other feature.

Additional requirements for price lists

14.—(1) The requirements are that—

- (a) the display is a price list; and
- (b) the price list—
 - (i) has the title “Tobacco products/Smoking related products price list”;
 - (ii) may include sub-headings for “cigarettes”, “hand rolling tobacco”, “cigars”, “pipe tobaccos”, “other tobacco products” and “smoking related products”.
 - (iii) does not include the prices of any other products;
 - (iv) is worded with characters no higher than 7 millimetres;
 - (v) has no border or frame;
 - (vi) does not exceed 1250 square centimetres in size; and
 - (vii) does not exceed the limit in paragraph (2).

(2) The limit is—

- (a) one price list for each separate area where tobacco products or smoking related products are located and can be paid for; or
- (b) where there is more than one till at any such location, one price list for each such till.

Additional requirements for price lists available only on request

15.—(1) The requirements are that—

- (a) the display—
 - (i) is a requested price list; and
 - (ii) lasts for no longer than is necessary for the person requesting the price list to obtain the information sought by that person; and
- (b) the requested price list—
 - (i) is worded with characters no higher than 4 millimetres;
 - (ii) the only other feature displayed on it is a picture of the actual tobacco product or smoking related product, as packaged for sale, where the size of such picture does not exceed 50 square centimetres; and
 - (iii) it does not exceed the limit in paragraph (2).

(2) The limit is—

- (a) one price list for each separate area where tobacco products or smoking related products are located and can be paid for; or
- (b) where there is more than one till at any such location, one price list for each such till.

(a) The indication of the selling price of all products, including tobacco products, is regulated by S.I. 2004/102.

(3) In this regulation, “requested price list” means a price list which is made available to a person following a particular request by the person for information about tobacco products or smoking related products for sale in the premises where such a request takes place.

Additional requirements for displays on price labels

16.—(1) The requirements are that—

- (a) the display is a price label; and
- (b) the price label—
 - (i) is on the storage unit where the particular tobacco product or smoking related product is held pending sale;
 - (ii) is worded with characters no higher than 4 millimetres;
 - (iii) does not exceed 9 square centimetres in size; and
 - (iv) does not exceed the limit in paragraph (2).

(2) The limit is one label for each separate location in a storage unit where a particular tobacco product or smoking related product is held.

Displays of tobacco products or smoking related products or of their prices which are also advertisements

17. Where a display of, or of the prices of, tobacco products or smoking related products also amounts to an advertisement for the purposes of the Tobacco Advertising and Promotion Act 2002(a) (“the 2002 Act”), if it complies with the requirements of these Regulations it is to be treated for the purposes of offences under the Act and the 2002 Act as a display of tobacco products or smoking related products or, as the case may be, a display of prices and not as an advertisement.

Revocation of the Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2004

18. The Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2004(b) are revoked.

Amendment of the Tobacco Advertising and Promotion (Specialist Tobacconist) (Scotland) Regulations 2004

19. In regulation 2 of the Tobacco Advertising and Promotion (Specialist Tobacconist) (Scotland) Regulations 2004(c), after paragraph (5) insert—

“(5A) The advertisement must not be visible from outside the specialist tobacconist.”.

MICHAEL MATHESON

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
27th February 2013

(a) 2002 c.36.
(b) S.S.I. 2004/144.
(c) S.S.I. 2004/211.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the display of tobacco or smoking related products in specialist tobacconists (regulation 3) and in other retail premises (regulation 4). They also make provision in relation to the display of prices of tobacco products and smoking related products (regulations 8 to 17).

Section 1(1) of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the Act”) makes it an offence to display tobacco products or smoking related products in a place where tobacco products are offered for sale.

Section 1(2) of the Act provides an exemption for specialist tobacconists provided the display does not include cigarettes or hand rolling tobacco and it complies with prescribed requirements. Regulation 3 prescribes these requirements which are that the display must include a warning notice and must not be visible from the outside of the specialist tobacconist.

Section 1(4) of the Act allows Scottish Ministers to provide that no offence is committed under section 1(1) if a display complies with specified requirements. Regulation 4 provides that no offence is committed if the display of tobacco or smoking related products complies with the requirements in regulations 5, 6 or 7.

Regulation 5 sets out the requirements for a “requested display” which is defined in regulation 5(2).

Regulation 6 sets out the requirements for an “incidental display” which is defined in regulation 6(2).

Regulation 7 sets out the requirements for displays of tobacco or smoking related products in a bulk tobacconist or duty free shop. The display must be in part of the premises which only contains tobacco and the display must not be visible from outside that area.

Section 3(1) of the Act allows Scottish Ministers to impose requirements in relation to the display of prices of tobacco products or smoking related products in a place where tobacco products are offered for sale. Regulation 8 defines “place” in section 3(1) to mean any premises where tobacco products are offered for sale in the course of a business. “Premises” are defined in section 35 of the Act to include any place and any vehicle, vessel or moveable structure.

Regulation 9 specifies which of the subsequent regulations apply to different types of retailers in relation to display of prices of tobacco and smoking related products.

Regulation 10 specifies the requirements for specialist and bulk tobacconists. These restrictions on display of prices only apply if the display is visible from outside the specialist tobacconists or the tobacco area within a bulk tobacconist. If that is the case then the display must be a price list which complies with the requirements in regulations 13 and 14(1)(a) and (b)(i) to (vi). Only one price list which is visible from the outside is allowed for each premises or tobacco area.

Regulation 11 set out the requirements for trade tobacconists. The only requirement for displays of prices in trade tobacconists is that they must not be visible from outside the premises.

Regulation 12 sets out the requirements for all other retailers. Displays of prices in retailers to which regulation 12 applies have to comply with general requirements as provided in regulation 13 and in addition with requirements in regulations 14, 15 or 16 depending on the type of price display.

Regulation 13 sets out the requirements for all forms of display of price lists. These are requirements as to the information which can be included and the way in which that is presented.

Regulation 14 sets out the requirements in addition to those in regulation 13 if the display of prices is by way of a price list. This is a price list which can be displayed at all times in contrast to a requested price list which can only be displayed if requested by the customer. Regulation 14 sets out requirements as to the title and headings of the list and its size. Only one price list can be

displayed in each area in premises where tobacco products and smoking related products are located and can be paid for. If there is more than one till in that area there can be a price list displayed at each till.

Regulation 15 sets out the requirements in addition to those in regulation 13 if the display of prices is by way of a requested price list. The regulation sets out the required size of the wording and that the only feature which is allowed is a picture, less than 50 square centimetres in size, of the tobacco product or smoking related product.

Regulation 16 sets out the requirements in addition to those in regulation 13 if the display of prices is by way of price labels. It sets out requirements that the label must be on the storage unit where the product is kept pending sale and as to the size of the label. Only one label is allowed for each part of the storage unit where a particular product is kept.

Regulation 17 clarifies that if a display of tobacco products or prices meets the requirements of these Regulations then it is to be subject to the regulatory regime (applying to offences) under these provisions rather than that under the Tobacco Advertising and Promotion Act 2002 which regulates tobacco advertising.

The Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2004 which regulated tobacco advertising at points of sale and on tobacco vending machines are revoked (regulation 18).

The Tobacco Advertising and Promotion (Specialist Tobacconist) (Scotland) Regulations 2004 are amended to bring the advertising in line with the restrictions on display in such premises that they must not be visible from the outside of the premises (regulation 19).

These Regulations were notified in draft to the European Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council (OJ L 204, 21.7.1998, p.37) as amended by Directive 98/48/EC of the same institutions (OJ L 217, 5.8.1998, p.18), which lays down a procedure for the provision of information in the field of technical standards and regulations.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from Tobacco Policy Team, Scottish Government, St Andrew's House, Edinburgh.

© Crown copyright 2013

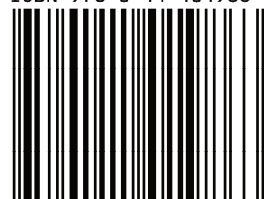
Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.

£5.75

S2013022716 03/2013 19585

<http://www.legislation.gov.uk/id/ssi/2013/85>

ISBN 978-0-11-101986-3



9 780111 019863