

## POLICY NOTE

### THE SALE OF TOBACCO (DISPLAY OF TOBACCO PRODUCTS AND PRICES ETC.) (SCOTLAND) REGULATIONS 2013

SSI 2013/85

The above Regulations are made 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 (“the 2010 Act”) and sections 4(3) and 6(1)(c) of the Tobacco Advertising and Promotion Act 2002. The instrument is subject to negative procedure.

#### Policy Objectives

The policy aim of these Regulations is to protect children and young people under 18 from the promotion of tobacco through the display of tobacco and smoking related products in places where tobacco is offered for sale, whilst minimising the impact on tobacco retailers.

The intention of these Regulations is to provide detail of the tobacco display ban. The Regulations will come into force for large stores (defined as a relevant floor area exceeding 280 square metres) on 29 April 2013 and for all other purposes on 6 April 2015.

#### Display

In accordance with section 1 of the 2010 Act, the Regulations make further provision in relation to the prohibition on the display of tobacco and smoking related products in places where tobacco products are offered for sale.

#### *Specialist Tobacconists*

Section 1(2) of the Act exempts Specialist Tobacconists from the tobacco display ban in relation to all tobacco products and smoking related products other than cigarettes and hand-rolling tobacco provided the display is inside the Specialist Tobacconist’s premises and complies with prescribed requirements. The Regulations provide that these requirements are that the display must not be visible from outside the premises and require a health warning to be displayed within the premises.

A Specialist Tobacconist is defined in the Tobacco Advertising and Promotion Act 2002 as a “shop selling tobacco products by retail (whether or not it sells other things) more than half of whose sales on the premises in question derive from the sale of cigars, snuff, pipe tobacco and smoking accessories”. Information provided by the Independent Scottish Specialist Tobacconists’ Association suggests that there are around 10 shops in Scotland that qualify as Specialist Tobacconists. The Act provided an exemption for Specialist Tobacconists as it is generally accepted that children and young people do not frequent the small amount of stores that are found in Scotland. However, in developing the Regulations, some stakeholders were concerned that displaying tobacco in a way that is visible from outside of a Specialist Tobacconist could expose children and young people to tobacco promotion. The Regulations therefore seek to address this concern.

### *Allowed Displays*

The Regulations set out three exemptions to the display ban:

- **Requested Display:** This applies to all retailers and allows a display to a person following a particular request by that person to buy, or for information about, a tobacco or smoking related product. The display must not be larger than 1,000 square centimetres and must last no longer than is necessary to fulfil the requested display.
- **Incidental Display:** Again this applies to all retailers and allows for display in the course of a range of prescribed activities during the course of business including: stocktaking; ordering stock; restocking; staff training; pricing; and cleaning, refurbishment or refitting of the storage unit. Again the display must not be larger than 1,000 square centimetres and must last no longer than is necessary in order to carry out the activity.
- **Displays in Bulk Tobacconists and Duty Free Shops:** This allows displays provided they are in a 'tobacco area' and are not visible from any other part of the premises.

The intention of the 2010 Act is to prevent the display, and therefore the promotion, of tobacco in a retail environment. The intention is not to impede or affect the transaction process or other legitimate undertakings, such as stocktaking. If the Regulations did not provide an exemption to allow for the sale of tobacco and other day to day business activity, it would mean that retailers may be in breach of the ban simply by retrieving a packet of cigarettes for the purpose of sale or by re-stocking their storage units. Based on advice from retailers about what activities may lead a retailer to display a tobacco product during the course of business, the Regulations therefore prescribe how much of a tobacco storage unit may be displayed during these activities without undermining the spirit of the 2010 Act.

The 2010 Act exempts wholesalers who only sell Tobacco to those involved in the Tobacco Trade. In order to support practical solutions in other businesses that sell large quantities of tobacco and are not easily or regularly frequented by young people, the Regulations prescribe a limited exemption to bulk tobacconists and duty free stores. The Regulations stipulate the quantities of cigarettes and hand-rolling tobacco that a premise must sell each year in order to qualify for bulk tobacconist status.

### Prices

In accordance with section 3 of the Tobacco and Primary Medical Services (Scotland) Act 2010, the Regulations make provision in relation to the display of prices of tobacco products and smoking related products. Different requirements are prescribed for specialist tobacconists and bulk tobacconists; for trade tobacconists and for all other retail premises.

The purpose of the price Regulations is to ensure that all tobacco pricing is displayed in a standardised format and cannot therefore carry any features that could be deemed to promote specific tobacco products. The Regulations have also been developed to allow retailers to continue to comply with existing Price Marking Order (2004) legislation.

The display of prices in specialist and bulk tobacconists is only regulated if it is visible from outside the premises or tobacco area. The only requirement for trade tobacconists is that the display of prices must not be visible from outside their premises. This is in line with the

Regulations on display of tobacco that allow practical solutions to be developed in premises that are not easily or regularly frequented by children and young people while ensuring that children and young people are not exposed to tobacco promotion through price displays that are visible from outside of the store.

### **Consultation, Impact Assessments and Financial Effects**

The Regulations have been developed in discussion with retailers. A public consultation on the Regulations, including a Partial Impact Assessment, ran from 27 April 2010 to July 2010.

In order to explore concerns raised by retailers about the practicality of the Regulations a further extended engagement period was held to explore these throughout 2011. This included meetings with the Scottish Retail Consortium (SRC), the Scottish Grocers Federation (SGF), the National Federation of Retail Newsagents (NFRN) and the Scottish Wholesale Association (SWA) as well as visits to a range of retail outlets. During this time, Section 1 of the Tobacco and Primary Medical Services (Scotland) Act 2010 was also the subject of a judicial review by Imperial Tobacco.

Final Regulations (along with a consultation report<sup>1</sup> and final Business and Regulatory Impact Assessment<sup>2</sup>) were made public in January 2012 and notified to the European Commission under the Technical Standards Directive in February 2012. In response to the concern raised by retailers during the consultation period, the updated Regulations included: an increase in the size of a requested and incidental display from 120 square centimetres to 1,000 square centimetres; the addition of Arial as a permitted font for price displays and amended criteria for the definition of a Bulk Tobacconist.

Following the Supreme Court's dismissal of Imperial Tobacco's challenge of sections 1 and 9 of the 2010 Act in December 2012, it was confirmed that the Regulations would come into force for large shops in April 2013 and 6 April 2015 for all other shops. Further discussions were also held with SRC, SGF and a number of large retailers to determine that 29 April 2013 would be the most appropriate implementation date for them. Scottish Government has also worked with Trading Standards Officers and Retail Representative Bodies to develop guidance<sup>3</sup> to support enforcement officers and retailers.

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<sup>1</sup> <http://www.scotland.gov.uk/Topics/Health/Services/Smoking>

<sup>2</sup> <http://www.scotland.gov.uk/Topics/Health/Services/Smoking>

<sup>3</sup> <http://www.scotland.gov.uk/Topics/Health/Services/Smoking>