

2012 No. 677

PUBLIC HEALTH, ENGLAND

**The Tobacco Advertising and Promotion (Display and Specialist
Tobacconists) (England) (Amendment) Regulations 2012**

Made - - - - *4th March 2012*

Laid before Parliament *7th March 2012*

Coming into force

*for the purpose of the amendments of
the Display Regulations for the
purpose of large shops other than
bulk tobacconists* *6th April 2012*

*for the purpose of the amendments of
the Specialist Tobacconist
Regulations, and for all other
purposes* *6th April 2015*

The Secretary of State makes the following Regulations, in exercise of the powers conferred by sections 4(3), 6(A1), 7B(3) and 19(2) of the Tobacco Advertising and Promotion Act 2002(a):

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Tobacco Advertising and Promotion (Display and Specialist Tobacconists) (England) (Amendment) Regulations 2012 and come into force—

- (a) for the purpose of the amendments of the Display Regulations for the purpose of large shops other than bulk tobacconists on 6th April 2012; and
- (b) for the purpose of the amendments of the Specialist Tobacconist Regulations, and for all other purposes, on 6th April 2015.

(2) These Regulations apply in relation to England.

(3) In these Regulations—

- (a) “the Display Regulations” means the Tobacco Advertising and Promotion (Display) (England) Regulations 2010(b);
- (b) “the Specialist Tobacconist Regulations” means the Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010(c); and

(a) 2002 c.36. Section 4(3) was amended by S.I. 2006/2369. Sections 6(A1), 7A and 7B were inserted by the Health Act 2009 (c.21), sections 20 and 21. The Secretary of State is the “appropriate Minister” in relation to England under section 21(1) of the Tobacco Advertising and Promotion Act 2002, which was substituted by section 24 of, and paragraphs 2 and 12 of Schedule 4 to, the Health Act 2009.

(b) S.I. 2010/445, amended by S.I. 2011/1256.

(c) S.I. 2010/446, amended by S.I. 2011/1256.

- (c) “large shop” and “bulk tobacconist” have the same meaning as in regulations 1(4) and 2(1) of the Display Regulations.

Amendment of the Display Regulations

2. The Display Regulations are amended as follows—

- (a) in regulation 4 (display as a consequence of a requested display), in paragraph (2)(b), for “0.75” substitute “1.5”;
- (b) for regulation 6 (display during restocking), substitute:

“Incidental displays

6.—(1) No offence is committed under section 7A(1) of the Act (prohibition of tobacco displays) by a display of tobacco products in a storage unit if that display complies with the requirements of paragraph (2).

(2) The requirements of this paragraph are that—

- (a) the display—
 - (i) occurs in the course of an activity listed in paragraph (3) being actively carried out in the ordinary course of business in relation to tobacco products;
 - (ii) is solely as a consequence of that activity being carried out; and
 - (iii) lasts for no longer than is necessary in order to allow that activity to be carried out; and
- (b) the area of storage unit displayed does not exceed 1.5 square metres.

(3) The activities referred to in paragraph (2)(a)(i) are—

- (a) assessing stock levels for the purposes of stock control;
- (b) restocking;
- (c) staff training;
- (d) cleaning of the storage unit;
- (e) maintenance of the storage unit;
- (f) refurbishment of the storage unit.

(4) No offence is committed under section 7A(1) of the Act by a display of tobacco products outside a storage unit during restocking if—

- (a) the tobacco products are displayed in the course of being placed in the storage unit only; and
- (b) the display lasts for no longer than is necessary to place the products in the storage unit.”; and

(c) after regulation 9 (revocation) insert—

“Review

10.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the provisions of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system which is the subject of these provisions;
- (b) assess the extent to which those objectives are achieved; and

- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (3) The first report under this regulation must be published before the end of the period of five years beginning with 6th April 2015.
- (4) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”.

Amendment of the Specialist Tobacconist Regulations

3. The Specialist Tobacconist Regulations are amended as follows—

- (a) in regulation 2 (advertising in specialist tobacconists), in paragraph (4)(a), for “not more than half” substitute “half or more”; and
- (b) after regulation 4 (revocation) insert—

“Review

5.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the provisions of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system which is the subject of these provisions;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) The first report under this regulation must be published before the end of the period of five years beginning with 6th April 2015.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”.

Signed by authority of the Secretary of State for Health.

4th March 2012

Paul Burstow
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Tobacco Advertising and Promotion (Display) (England) Regulations 2010 (the “Display Regulations”) and the Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010 (the “Specialist Tobacconist Regulations”).

The Display Regulations provide for exemptions from the prohibition of tobacco displays imposed by section 7A(1) of the Tobacco Advertising and Promotion Act 2002 (“the Act”).

Regulation 2 amends the Display Regulations by increasing the size of temporary display permitted in consequence of a “requested display” under the Act; and by extending the exemption for temporary displays during restocking to further activities carried out in the normal course of business.

It also inserts into the Display Regulations a requirement for the Secretary of State to review the operation and effect of the Display Regulations and publish a report within five years after they come fully into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Display Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Display Regulations or to amend them.

The Specialist Tobacconist Regulations make provision for exemptions in relation to specialist tobacconists from the prohibition of tobacco advertisements imposed by section 2 of the Act and the prohibition of tobacco displays imposed by section 7A of the Act. Regulation 3 corrects a minor error in these Regulations in relation to the required content of permitted tobacco advertisements; and inserts into the Specialist Tobacconist Regulations a requirement for the Secretary of State to review the operation and effect of the Specialist Tobacconist Regulations and publish a report within five years after they come fully into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Specialist Tobacconist Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Specialist Tobacconist Regulations or to amend them.

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 the Council (OJ No L204, 21.7.98, p37) laying down a procedure for the provision of information in the field of technical standards and regulations, as amended.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available on the Department of Health website at: www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_132877

An Explanatory Memorandum is available alongside the instrument on the Legislation website (www.legislation.gov.uk).

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