

BRIEFING

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Proposed Ban on Tobacco Display

The Government has announced that it is to implement a plan to ban the display of tobacco products in all shops, other than specialist tobacconists, except in very limited circumstances. The ban was announced on 9 March 2011 as part of the Government's launch of its 'Tobacco Control Plan for England'.

This Briefing Note explores the key elements of the proposed change to the law.

The ban on the display of tobacco products

The plan to ban the display of tobacco products was first set out by the last Labour Government in the Health Act 2009. The Tobacco Advertising and Promotion (Display) (England) Regulations 2010 ("the Regulations") were published in March of that year and the ban was to come into force on 1 October 2011. However, the present Government did not immediately commit to the plan and it stated that the plan was under review as with all other 'legacy' provisions.

The Government has now confirmed that the ban will be implemented and it made this announcement on 9 March 2011, as part of its launch of its 'Tobacco Control Plan for England', which sets out its targets for reducing smoking rates in England by 2015.

The ban will prohibit the display of products containing tobacco in premises in England that offer such products in the course of a business i.e. most supermarkets, convenience stores, petrol stations and newsagents. The Regulations do not, however, apply to 'specialist tobacconists', though it remains to be seen whether specific regulations for these retailers will also be implemented (see below).

The effect of the Regulations is that retailers can only put on view a limited-sized display of tobacco products if it is at the request of a customer, aged 18 or over, to purchase a product, or for information about a tobacco product. In addition, the tobacco products must only be on view for the time necessary to remove the requested product from the storage unit. Retailers will not commit an offence if the products are on display whilst they are in the process of restocking, provided that they are not on display for longer than is necessary.

The Regulations previously stated that the area of the storage unit that may be put on view during the course of the transaction must not exceed 0.75 square metres. The Government has now stated that it intends to amend the Regulations so that this area is increased to 1.5 square metres.

As drafted, the Regulations allow retailers to apply simple magnetic covers to existing tobacco shelving, provided such shelving does not exceed 1.5 square metres. However, it is possible that this will change when the amended Regulations are published.

In addition, the Government has announced that it will postpone the implementation of the Regulations so as to give retailers more time to prepare. For large stores (stores with a relevant floor area exceeding 280 square metres) the ban will now come into force on 6 April 2012, as opposed to 1 October 2011. For all other stores, the ban will now come into effect from 6 April 2015, as opposed to 1 October 2013.

Penalties

The Regulations will be enforced by Local Authorities.

Those found guilty of an offence under the Regulations could face imprisonment for up to 6 months and/or a fine of up to £5,000.

If proceedings are brought in a Crown Court, an offender could receive a prison sentence of up to 2 years and/or a fine.

Display of Prices of Tobacco Products

The Health Act 2009 gives ministers the power to regulate the display of tobacco prices.

The Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010 were published, also by the previous Government, and this stipulates how tobacco prices and price lists can be displayed to the public. However, it remains to be seen whether the present Government will implement these regulations.

If these regulations are implemented as drafted, retailers must comply with restrictions on the content, format and size of the price display for tobacco products. A retailer will be able to provide to customers aged 18 or over a price list which includes a picture of the packaged product (of no more than 50 square centimetres). Even so, the font cannot be more than 4mm high and only one price list will be allowed for each till where the tobacco products are located.

If implemented, the regulations are scheduled to come into force on 1 October 2011 for large shops and 1 October 2013 for all other shops.

Specialist Tobacconists

The previous Government also published regulations relating to specialist tobacconists, The Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010.

In a nutshell, these regulations will allow specialist tobacconists to continue advertising specialist tobacco products and displaying all tobacco products inside their shops, provided neither is visible from outside the shop.

Further regulation?

The Government has also stated that it plans to carry out a consultation exercise on a proposal to restrict tobacco packing to plain packaging. This could not be implemented under the powers from the Health Act 2009 and new legislation would be required if this plan is implemented.

Will the Regulations work?

Since the advertising ban under the 2002 Act, tobacco firms have concentrated time and money on making tobacco displays more attractive to customers. Some experts also see the cigarette packet as an effective advertising tool in its own right.

The Government's announcement and 'Tobacco Control Plan' clearly indicates that it believes such advertising can promote smoking by young people and undermine the resolve of adult smokers who are trying to quit.

Whilst it is certain that all retailers will welcome the longer time they have to prepare for the implementation of these Regulations, small businesses in particular are concerned that when they are implemented, customers will go to larger shops under the belief that they will have a better product range. Smaller businesses may also be concerned that what is currently a quick transaction is likely to become far more labour intensive. There is also concern that the Regulations will lead to an increased use of black market cigarettes.

Conclusion

The implementation of these Regulations, together with the possible implementation of the other regulations mentioned above, will hugely change the way tobacco products are sold in England.

Retailers need to act early to train their staff and ensure that they are ready to implement the changes. Retailers will also need to be aware of the minute details in the regulations which we have not bored you with in this briefing note!

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