

Standardised Packaging of Tobacco Products: Implications for Retailers

Introduction

The Government and the European Parliament have previously introduced numerous measures to limit the promotion of tobacco products in an attempt to curb their use. With the particular intention of reducing consumption by young people, recent changes to the law seek to further diminish the appeal of all tobacco products.

As well as addressing the content and packaging of conventional tobacco products, the European Parliament's Revised Tobacco Products Directive 2014 ("the Directive") modernises previous law by regulating non-conventional tobacco products, such as e-cigarettes and flavoured cigarettes. The UK Government's Standardised Packaging of Tobacco Products Regulations 2015 and Tobacco and Related Products Regulations 2016 ("the Regulations") incorporate and go beyond the Directive by fully standardising the packaging of cigarettes and rolling tobacco.

The changes

As of 21 May 2017 retailers must ensure that all tobacco products they sell comply with the Regulations. The requirements of the Regulations include:

Cigarettes and Rolling Tobacco

- The outside of packaging must be coloured Pantone 448 C (a dull brown which was voted in an Australian Poll as being the ugliest colour in the World) and the inside either white or Pantone 448 C.

- At least 65% of the front and the back of the packaging must contain a combined health warning which consists of a written statement (such as "Smoking reduces fertility") as well as one of the unpleasant images we are now familiar with. This is a noticeable increase in size from the previous 30% on the front and 40% on the back.
- No other writing is permitted on the packaging other than the brand name and variant, details of the producer, barcode, calibration mark and number of cigarettes or weight of the rolling tobacco.
- A minimum of either 20 cigarettes or 30 grams of tobacco in a packet and
- Cigarettes and rolling tobacco must not have a flavour tasting or smelling other than tobacco. There is an exception for menthol flavour which can be sold until 20 May 2020.

E-Cigarettes

- At least 65% of the front and the back of the packet must contain a combined health warning as discussed above (this is an entirely new requirement).
- Packaging cannot refer to taste or smell or state that the product is less harmful than others (for example a statement that e-cigarettes are less harmful than cigarettes). This applies to all tobacco products.
- No more than 20mg of nicotine per e-cigarette (unless prescribed as medicine).

- A maximum container size of 2ml for disposable and refillable e-cigarettes and
- A maximum size of 10ml for dedicated refill containers.

Smokeless Tobacco Products (chewing tobacco, nasal tobacco or tobacco for oral use etc.)

- At least 30% of the front and back of the packet must contain the wording “This tobacco product damages your health and is addictive”.
- Packaging cannot refer to taste or smell or state that the product is less harmful than others.

Enforcement

The Regulations are enforceable by the Local Authorities who have powers to investigate, seize goods and bring a prosecution.

The penalty for non-compliance is a maximum of 2 years imprisonment and/or an unlimited fine. If a company commits an offence and a director or manager (or person appearing to have similar authority) has consented to the offence or been negligent in failing to prevent the offence then both parties will be liable.

Impact

Retailers should be aware of the significant legal implications for selling tobacco products after the 20 May 2017 which are not compliant with the Regulations.

Retailers should take steps to avoid being left with a surplus of unsellable stock on the 21 May 2017 by ensuring that supplies of new stock are compliant. Leaving the purchase of compliant stock until the last minute may result in stock deficiencies as demand is likely to be much higher at the time of change.

To speed up time at the till and ease the transition, retailers should consider giving customers advanced notice of the changes by putting up posters and engaging in discussions.

Standardising packaging will make it difficult to distinguish between brands so to avoid selling customers the wrong products, retailers should

ensure that stock rooms and tobacco shelves are clearly ordered.

Conclusion

The Regulations will again alter the way tobacco products are sold in the UK. Retailers must manage stock carefully during the period of transition, ensure that staff are sufficiently trained and implement adequate systems for distinguishing products.

Although these changes are EU driven, there is little prospect of them being revoked post-Brexit as they currently enjoy Governmental support.

If you have questions about managing the transition period or the compliance of products, please contact the Commercial Real Estate and Licensing Team at Winckworth Sherwood.

For further information, please contact:



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