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2011 No. 000

PUBLIC HEALTH, ENGLAND

**The Tobacco Advertising and Promotion (Display and Specialist
Tobacconists) (England) (Amendment No.2) Regulations 2011**

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| <i>Made</i> | - - - - | 000 |
| <i>Laid before Parliament</i> | | 000 |
| <i>Coming into force</i> | | |
| <i>for the purpose of large shops other than bulk tobacconists and specialist tobacconists</i> | | 6th April 2012 |
| <i>for all other purposes</i> | | 6th April 2015 |

The Secretary of State makes the following Regulations, in exercise of the powers conferred by sections 4(3), 6(A1), 7A(2), 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 No.2) Regulations 2011 and come into force—

- (a) for the purpose of large shops other than bulk tobacconists and specialist tobacconists, on 6th April 2012; and
- (b) 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); and
- (b) “the Specialist Tobacconist Regulations” means the Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010(c).

(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/ .

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

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) Before the end of each review period, the Secretary of State must—

- (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) “Review period” means—

- (a) the period of five years beginning with the day on which these Regulations come fully into force, and
 - (b) subject to paragraph (4), each successive period of five years.
- (4) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.”.

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) Before the end of each review period, the Secretary of State must—

- (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) “Review period” means—

- (a) the period of five years beginning with the day on which these Regulations come fully into force, and
- (b) subject to paragraph (4), each successive period of five years.

(4) If a report under this regulation is laid before Parliament before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.”.

Signed by authority of the Secretary of State for Health

Date

Name
Parliamentary Under Secretary 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 from the Tobacco Programme, Department of Health, 7th Floor, Wellington House, 133-155 Waterloo Road, London SE1 8UG and is annexed to the Explanatory Memorandum which is available alongside the instrument on the Legislation website (www.legislation.gov.uk).