Cigarette packs and labelling

Standard Note: SN/SC/1894
Last updated: 12 May 2010
Author: Louise Smith
Section Science and Environment Section

This note summarises the legislation concerning health warnings on tobacco packaging, including regulations which implement the EU Directive laying down requirements for the labelling of the content of cigarettes, and increasing the size of health warnings on packs of cigarettes and other tobacco products.

Regulations on the labelling of tobacco products and the prohibition of marketing of certain types of oral tobacco were tightened considerably by a major new piece of EU legislation: *Directive 2001/37/EC concerning the manufacture, presentation and sale of tobacco products, which* defines maximum tar, nicotine and carbon monoxide yields of cigarettes. It lays down requirements for the labelling of the content of cigarettes and increases the size of health warnings to 30% of the front and 40% of the back of packets of cigarettes and other tobacco products.

Following *consultation*, the *Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002* were passed which implemented many of the provisions of the Directive in the UK.

The 2001 Tobacco Labelling Directive also contained a commitment that the European Commission would later adopt rules for the use of colour photographs and other images to depict and explain the consequences of smoking. European decisions governing the use of photographs and containing a library of pictures for use were issued in 2003, 2005 and 2006. The decisions did not make the use of the images compulsory, but member states that want to use them must follow the rules. Only written warnings are compulsory.

In May 2006 the Labour government issued another *consultation* in relation to the pictorial warnings provisions of the 2001 directive. In August 2007 the *Tobacco Products (Manufacture, Presentation and Sale) (Safety) (Amendment) Regulations 2007* were laid. These Regulations introduced mandatory picture warnings, which started appearing on tobacco products from the autumn of 2008. The provisions are again being phased in, with all cigarette packets having to carry picture warnings by 1 October 2009, and all other tobacco products by 1 October 2010.

Contents

1 Background 2

2 The grounds for regulating the information on cigarette packs 3

2.1 Effects on tobacco consumption 4

3 The 2002 regulations 5

3.1 Costs 5

3.2 Timetable 6

4 Pictorial warnings 6

4.1 EU law 6

4.2 UK implementation 6

4.3 Effectiveness 7

4.4 Costs 7

1 Background

In 1989 the EU adopted regulations on the labelling of tobacco products and the prohibition of marketing of certain types of oral tobacco (89/622/EEC), and in 1990 a further Directive was passed placing limits on the tar yields of cigarettes (90/239/EEC). These regulations were amended in 1992 (Directive 92/41/EEC). The initial requirement was for the health warnings to cover 4-8% of the packet.

Requirements were tightened considerably by a major new piece of legislation published on 18th July 2001. *Directive 2001/37/EC concerning the manufacture, presentation and sale of tobacco products* defines maximum tar, nicotine and carbon monoxide yields of cigarettes, lays down requirements for the labelling of the content of cigarettes and increases the size of health warnings to 30% of the front and 40% of the back of packets of cigarettes and other tobacco products.[1] Another requirement is for a black border around the message. The "Tobacco Labelling Directive" draws together, updates and augments existing legislation in the light of the latest scientific and medical evidence. The Directive is intended to approximate the Member States' laws on these issues, and is based on articles 95 and 133 of the Treaty establishing the European Community regarding the workings of the internal market. In addition, in accordance with Article 95(3) of the Treaty, the Directive takes as a basis a high level of health protection.

The directive was opposed by tobacco manufacturers, who argued that it was driven by public health concerns (which are generally the responsibility of member states) but presented as an internal market measure. They challenged it in the European courts. A

[1] OJL 194, *Directive 2001/37/EC of the European parliament and the Council on the approximation of the laws, regulations and administrative provisions of Member States concerning manufacture, presentation and sale of tobacco products*

formal opinion was delivered by the Advocate General of the European Court of Justice.[2] He argued that the 2001 directive is valid in EU treaty law, and he supported the legislation's right to apply the same restrictions to cigarettes exported from the EU. The European Court of Justice's final judgment confirmed that the directive was valid under EU treaties but found that Article 7 of the directive, which bans descriptions suggesting that one product is safer than another, should be construed as applying only to tobacco products marketed within the European Community.[3]

In July 2001 the Department of Health consulted on the derogation for the application of the new regulations on tar and other limits to cigarettes intended for export (Article 3). Following the consultation, the Secretary of State took the decision to implement the maximum possible derogation for cigarettes intended for export (until 1 January 2007).

2 The grounds for regulating the information on cigarette packs

In 2002 the Department of Health (DH) gave the following explanation of the drive to change the information on packaging:

> A complex range of factors contribute to encouraging people to smoke, particularly young people. However, research has shown that two reasons for the prevalence of smoking amongst young people are a common belief that the health effects of smoking are long-term and irrelevant to them; and a lack of awareness of the addictive nature of nicotine. The health warnings proposed under the Labelling Directive are intended to redress this.[4]

The consultation went on to justify the banning of terms such as 'mild':

> The addictive properties of nicotine make it extremely hard for smokers to give up altogether. Some smokers compromise by choosing to smoke instead varieties of cigarette which they believe will be less harmful to their health. Chief amongst these are 'light' or 'mild' varieties of cigarettes, which are widely believed to be 'safer' than normal cigarettes, in that they 'contain' less tar and nicotine. However, the tar and nicotine content of the tobacco in a 'light' or 'mild' cigarette is frequently no lower - or may even be higher - than that in a normal cigarette. When the tar and nicotine yield from a 'light' cigarette is measured by a machine, it is indeed lower than that of a standard cigarette. However, this fall in the yield is caused almost entirely by the structure of the cigarette, for example the number of air holes in the filter used, rather than by a difference in the actual tar and nicotine content of the tobacco. The different structure of the filter is effective when a 'light' cigarette is smoked only by a machine, but there is compelling evidence that smokers will unconsciously compensate for the effect of the filters and other mechanisms used in 'light' cigarettes by smoking each cigarette more intensively, with the consequence that they in fact extract the same or nearly the same levels of nicotine and tar from a 'light' cigarette as from a standard variety. It is for this reason that the Directive proposes a ban on misleading descriptors such as 'light' and 'mild'.[5]

---

2 Opinion of Advocate General Geelhoed in Case C-491/01 *The Queen* v *Secretary of State for Health*, ex parte *British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd* , European Court, 10 September 2002

3 European Court of Justice, Judgment of the Court *Case C-491/01*, 10 December 2002

4 *Consultation on the Tobacco Products Manufacture, Presentation and Sale (Safety) Regulations 2002, implementing EU Directive 2001/37/EC (the Labelling Directive)*, Department of Health, 1 July 2002 para 13

5 *Consultation on the Tobacco Products Manufacture, Presentation and Sale (Safety) Regulations 2002, implementing EU Directive 2001/37/EC (the Labelling Directive)*, ibid. para 14

A claimed incidental advantage of health warnings on packs in general and larger ones in particular, is that they reduce the impact of brand imagery on packs.

2.1 Effects on tobacco consumption

The Department of Health stated that there is evidence that the presence of health warnings both deters non-smokers from starting, and encourages existing smokers to give up. It predicted a reduction of tobacco related deaths as a result of the regulations:

> In its report *Curbing the Epidemic* the World Bank recommended the use of prominent health warnings as an effective tool to combat smoking, even in countries which already have a long tradition of health education in the harmful effects of tobacco. It is hard to quantify precisely how large the effect of such health warnings may be in reducing the number of people who smoke in this country. However the Directive is likely to go some way towards helping us to meet the targets which the Government set in its White Paper *Smoking Kills* (no more than 26% of the adult population to smoke by 2005 and 24% by 2010). A realistic figure may be that new health warnings will eventually lead to between a 0.5% and a 1.0% reduction in the number of smokers. The health effects of smoking cessation are long-term, but this fall in the number of smokers could ultimately save between 600 and 1200 of the 120,000 lives lost to smoking-related diseases every year in the UK.[6]

The DH acknowledged controversy over whether reducing the levels of nicotine and tar contained in each cigarette would have major health benefits; that machine-measured yields of tar, nicotine and carbon monoxide may not always be indicative of the levels that a smoker actually inhales. However it considered the regulation to be a step towards attempting to reduce the harm done by the levels of nicotine, tar and carbon monoxide in individual cigarettes.

Some arguments have suggested that regulating the tar to nicotine ratio of cigarettes could be more effective than placing a simple limit on the tar and nicotine yields. For this reason the Directive makes provision for its requirements to be updated regularly, in light of the latest scientific and public health information, and contains a Commission commitment to review the issue of yields in its first report on the application of the Directive.

The Directive also:

- gives the Commission scope to propose a common list of ingredients permitted for use in the manufacture of tobacco products.
- prohibits the placing on the market of tobacco for oral use. (Article 8).
- provides for updating in line with scientific and technical developments.

In 2004 it was estimated that treating smoking-related diseases costs the NHS up to £1.7 billion every year in terms of GP visits, prescriptions, treatment and operations.[7] The DH estimates that if, for example, 0.5% to 1% of smokers were encouraged to quit, the NHS could ultimately save £8.5m to £17m per year, although the health effects of smoking cessation are long-term and these savings would build up gradually.

---

6 *Consultation on the Tobacco Products Manufacture, Presentation and Sale (Safety) Regulations 2002, implementing EU Directive 2001/37/EC (the Labelling Directive)*, ibid. para 1.5

7 DH, *Summary of Intelligence on Tobacco*, 2004

For further statistics on smoking see Library Standard Note, *Statistics on smoking*, SN/SG/3312, 14 May 2008.

3 The 2002 regulations

The *Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002* made the following provisions:

- Reduce maximum tar yields of cigarettes from 12 mg to 10 mg;
- introduce maximum yields of 1 mg nicotine and 10 mg carbon monoxide per cigarettes; and to permit Member States to require further tests to be carried out on tobacco products to assess the yield of other substances produced by them;
- require tobacco manufacturers to submit to Member States a list of non-tobacco ingredients and constituents, together with a statement of their purpose and toxicological information demonstrating that these ingredients are safe when used as intended;
- update and expand health warnings on tobacco products in the light of new scientific evidence (warnings increased from 6% of the pack face to at least 30% on the front and 40% on the back, and became bold black and white with new stronger messages)
- ban misleading descriptors such a “low tar”, “light” and “mild”, which give the impression that one tobacco product is safer than another.[8]

The same restrictions on yields as apply to cigarettes sold within the UK also apply to cigarettes exported from the UK to outside the EU. The UK chose to apply the maximum possible derogation on this (until 1 January 2007) in order to give the industry time to adjust its production processes.

3.1 Costs

A Regulatory Impact Assessment (RIA) was issued as part of the 2002 consultation process. It gives some idea of the cost of complying with the Regulations. The RIA estimated that the main cost of the ban lies in the short-term implementation, as the printing industry and manufacturers adjust to new requirements on health warnings and labelling, and the ultimate damage to the tobacco industry as consumption falls. The costs would also be affected by the ongoing effects that the Directive will have on exports, but these will have been mitigated by the ECJ’s judgement on the application of Article 7 (packaging should not suggest that a particular tobacco product is less harmful than others).

The new labelling requirements were estimated to cost the manufacturers around £3m to introduce. There would also be costs to the manufacturing industry of the measurement of contents, sales, exports, the ban on oral tobacco and these are set out in the RIA.

The major cost for central Government is in the potential loss of revenue through tax. In 2000 the Government received £9.6bn total revenue from taxation of tobacco products.[9] A 0.5%-1% fall in the number of smokers could lead to an annual fall of £48m-£96m in this revenue.

---

8 *Tobacco Products (Manufacture, Presentation and Sale)(Safety) Regulations 2002,* SI 3041/2002

9 Tobacco duty and VAT on related expenditure.

3.2 Timetable

The main parts of the Regulation came into force on 31 December 2002. Certain measures were phased in, as follows:

- Labelling requirements and health warnings: It was permitted to manufacture non-compliant cigarettes until 16 December 2002 and to market them until 30 September 2003. The equivalent dates for non-compliant cigars and other tobacco products were 16 December 2002 and 30 September 2004.

- Product descriptions: Non-compliant tobacco products were permitted until 30 September 2003.

- Yields: Non-compliant products were permitted to be manufactured and marketed until 1 January 2004. Non-compliant products were permitted to be exported outside the European Economic Area until 1 January 2007.[10]

4 Pictorial warnings

4.1 EU law

The 2001 Tobacco Labelling Directive also contained a commitment that the European Commission would later adopt rules for the use of colour photographs and other images to depict and explain the consequences of smoking. European decisions governing the use of photographs and containing a library of pictures for use were issued in 2003, 2005 and 2006.[11] The decisions did not make the use of the images compulsory, but member states that want to use them must follow the rules. Only written warnings are compulsory.

Belgium was the first EU member state to introduce pictorial warnings on cigarette packages in November 2006. Romania followed suit in July 2008 and Latvia from March 2010. The European Commission strongly encourages member states to use them.

4.2 UK implementation

On 27 May 2006 the Labour government issued a consultation in relation to the pictorial warnings provisions of the 2001 directive.[12] The consultation closed on 25 August 2006 and a response was published on 29 August 2007, along with a final Regulatory Impact Assessment.[13] In August 2007 the *Tobacco Products (Manufacture, Presentation and Sale) (Safety) (Amendment) Regulations 2007* were laid.[14] These Regulations introduced mandatory picture warnings, which started appearing on tobacco products from the autumn of 2008. The provisions are again being phased in, with all cigarette packets having to carry picture warnings by 1 October 2009, and all other tobacco products by 1 October 2010. The images were chosen from an EU photo library on the basis on market research and a public consultation in which most respondents opted for the more shocking images.

---

10 *The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002*

11 Commission Decisions 2003/641/EC, 2006/1502 and 2005/1452. For a full list of EU law on tobacco control, go to the web page Legal Documents Tobacco Control

12 *The introduction of picture warnings on tobacco packs: A consultation*, Department of Health, 2006

13 *The introduction of picture warnings on tobacco packs: final regulatory impact assessment*, Department of Health, 2007

14 *The Tobacco Products (Manufacture, Presentation and Sale) (Safety) (Amendment) Regulations 2007*, SI 2473/2001

4.3 Effectiveness

The Labour government's assumption was that the effect of pictorial warnings would be to reduce the number of smokers in the United Kingdom by 0.5% in the long term. According to the Department of Health, research from Canada, where picture warnings have been required for several years, demonstrates that they have been effective in encouraging people to give up smoking.[15] In Europe there is also some evidence for their effectiveness:

> In Belgium, one in four smokers think that the picture warnings make the tobacco packages less attractive and have discussed them with friends or family members. One in three feels that the images act as an additional incentive to quit smoking. The warnings are particularly effective among young people and smokers that would like to quit smoking. The latest Euro-barometer on tobacco shows that more than half (55%) of EU citizens believe that adding a colour picture to a text-only warning strengthens the message.[16]

It is accepted that, like written warnings, picture warnings will lose their effectiveness as smokers become more familiar with them. The Department of Health plans to vary the pictures on packs periodically to counter this effect.

4.4 Costs

The Regulatory Impact Assessment estimated set-up costs of £3.4 million to £4.1 million to the tobacco and packaging industries and, based on the predicted reduction of 0.5% in the number of smokers, an annual profit loss of £37.8 million to the tobacco industry and £52.5 million in lost revenue to the Exchequer.

---

15 Department of Health webpage Regulating tobacco products [27 April 2010]

16 EU Comission, *Questions and answers on tobacco health warnings* MEMO/09/253, 28 May 2009