



BRIEFING PAPER

Number 5537, 6 January 2020

Prohibition of tobacco displays

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Summary

The [Health Act 2009](#) (HA 2009) received Royal Assent on 12 November 2009. Section 21 of the Act prohibits tobacco displays in all large and small shops by inserting new sections 7A and 7B into the [Tobacco Advertising and Promotion Act 2002](#) (TAPA 2002). The stated aim is to reduce smoking uptake among children whilst supporting those people who smoke and want to quit.

The [Tobacco Advertising and Promotion \(Display\) \(England\) Regulations 2010](#) (as amended by the [Tobacco Advertising and Promotion \(Display and Specialist Tobacconists\) \(England\) \(Amendment\) regulations 2012](#)) are commonly known as the “Display Regulations”. The Display Regulations deal with the practicalities of shops implementing the prohibition of tobacco displays. A main objective is to minimise costs and burdens to retailers of implementing section 21. Specifically, the Regulations:

- enable retailers to make temporary, limited-size displays on request when selling a tobacco product to a customer;
- provide for low cost solutions to be used in covering tobacco displays in shops;
- enable bulk-tobacconists to display tobacco in designated tobacco display areas

The Display Regulations came into force on 6 April 2012 for large shops and on 6 April 2015 for all other shops.

It is important to note that specialist tobacconists are treated differently. The [Tobacco Advertising and Promotion \(Specialist Tobacconists\) \(England\) Regulations 2010](#) (as amended by the [Tobacco Advertising and Promotion \(Display and Specialist Tobacconists\) \(England\) \(Amendment\) regulations 2012](#)) are commonly known as the “Specialist Tobacconists Regulations”. Under the Regulations, specialist tobacconists can display and advertise tobacco products inside their shops, provided they are not visible from outside. The Regulations came into force on 6 April 2015.

The purpose of this briefing paper is to consider in detail both sets of regulations.

1. Introduction

The [HA 2009](#) received Royal Assent on 12 November 2009. Part 3 of the Act contains miscellaneous provisions, including five new tobacco control provisions. The stated aim of the tobacco control measures is to protect children and young people from the harm caused by smoking.

In a nutshell, regulations resulting from the tobacco control provisions of the Act:

- prohibit the sale of tobacco from vending machines from 1 October 2011;
- prohibit the display of tobacco products in large shops from 6 April 2012 and in small shops from 6 April 2015;
- regulate the format of tobacco price lists and labels displayed in large shops from 6 April 2012 and in all other places from 6 April 2015;
- require that from 6 April 2015 specialist tobacconists may only advertise and display tobacco products inside their stores, out of general public view;

This briefing paper is concerned only with the prohibition of tobacco displays in shops and the treatment of specialist tobacconists. There is a separate Library paper on the "[Prohibition of tobacco vending machines](#)" (CBP 5536).

Overriding aim: the protection of young people from the harm caused by smoking.

2. The Display Regulations

2.1 Background

Section 21 of the [HA 2009](#) prohibits the display of tobacco products at the point of sale in shops (i.e. at shop display units, often referred to as gantries) by inserting new **sections 7A** and **7B** into the [Tobacco Advertising and Promotion Act 2002](#) (TAPA 2002).

The provision to prohibit tobacco displays in shops was debated extensively at all stages of the Health Bill's progress through Parliament. Those who opposed the provision argued variously that it would greatly affect small businesses at a difficult time and that there was insufficient evidence to support a ban on tobacco displays.¹ The Government's position was that the evidence supported a prohibition on tobacco displays and that a similar ban in Ireland and elsewhere had been effective.² It also argued that regulations to implement the prohibition would be flexible rather than prescriptive.³

Parliamentary debate on the tobacco control provisions

A Department of Health (DH) consultation ran from 12 October 2009 to 4 January 2010 on draft regulations to implement section 21 of the HA 2009. The aim of the consultation was to seek views on how best to introduce a general prohibition of the display of tobacco products in shops whilst enabling retailers to continue selling tobacco to adults, taking into account different retailing environments.

Department of Health consultation

The [Tobacco Advertising and Promotion \(Display\) \(England\) Regulations 2010](#), known as the "Display Regulations", were laid before Parliament on 2 March 2010.⁴ **Box 1** (below) provides an outline of the policy background to the regulations. The Regulations were subsequently amended by the [Tobacco Advertising and Promotion \(Display and Specialist Tobacconists\) \(England\) \(Amendment\) regulations 2012](#).

Box 1: Policy background to the Display Regulations 2010

The DH explained the policy background to the Regulations as follows:

The primary focus of the tobacco provisions in the Health Act 2009 is on protecting children and young people from the health harms of smoking. A consequential benefit of the policy will be to create a more supportive environment for adults who are trying to quit smoking. The Department of Health has evidence that two thirds of smokers start smoking regularly before the age of 18. The Government wishes to take action to enable young people not to start smoking, and to support those people who want to give up smoking. It has extensive evidence that both tobacco advertising and tobacco promotion through displays of products encourages young people to start smoking, and that since the Tobacco Advertising and Promotion Act 2002 banned tobacco advertising, the tobacco industry has increasingly focused on the display of tobacco in shops as a way of promoting its products.

¹ HC Deb 12 October 2009 c85

² HC Deb 12 October 2009 c104

³ HC Deb 12 October 2009 c106

⁴ SI No. 442/ 2010

[...] These regulations recognise that retailers need to be able to serve customers, restock products, and staff need to know where products are kept. The regulations therefore give exemptions to temporary displays during serving a customer and restocking and they allow for labels on storage units, all subject to specified restrictions.⁵

2.2 The Display Regulations in detail

As outlined in **Box 2** below, section 21 of the [HA 2009](#) prohibits the display of tobacco products at the point of sale (i.e. at shop display units, often referred to as gantries) in shops by inserting new sections 7A and 7B into the [Tobacco Advertising and Promotion Act 2002](#) (TAPA 2002). The Display Regulations were made under enabling provisions contained in these new sections.

Box 2: Prohibition of tobacco displays – section 21 of the Health Act 2009

- **Section 21** of the HA 2009 prohibits the display of tobacco products at the point of sale in shops by inserting new sections 7A and 7B into the [Tobacco Advertising and Promotion Act 2002](#) (TAPA 2002).
- **Section 7A(1)** provides that a person who in the course of business displays tobacco products or causes them to be displayed in a place is guilty of an offence.
- However, **section 7B(3)** allows the appropriate Minister (in England, the Secretary of State) to provide in regulations that no offence is committed if the display complies with requirements to be specified in regulations.
- Recognising that some consumers might like to see a brand of cigarette packet before buying it, the Act permits **“requested displays”** to an individual aged 18 or over. A ‘requested display’ is defined by **section 7B(2)** as a ‘display to an individual following a particular request by the individual to purchase a tobacco product, or for information about a tobacco product.

The [Display Regulations](#) came into force on 6 April 2012 for large shops (other than bulk tobacconists - see regulation 5 below). For all other shops, the Regulations came into force on 6 April 2015. A large store was defined as having a relevant floor area exceeding 280 sq. m/3,000 sq. ft. The Government gave small shops a longer lead-in time in order to minimise the impact on their business and to allow them to benefit from the experiences of large stores in implementing the Regulations.

All shops are now required to cover up tobacco shelving, but retailers are free to cover the gantry as they see fit provided they comply with the regulations. Recognising that some customers might like to see a brand of cigarette packet before buying it, the [TAPA 2002](#) permits “requested displays” to an individual aged 18 or over.⁶

Staggered
implementation

Requested displays

⁵ [Explanatory Memorandum to the Tobacco Advertising and Promotion \(Display \(England\) Regulations 2010](#), SI No. 445/2010, [online] (accessed 6 January 2020)

⁶ [Section 7B\(2\)](#) TAPA 2002

7 Prohibition of tobacco displays

Although it is an offence under [section 7A\(1\)](#) of the TAPA 2002 for a shop assistant to display tobacco products to an individual aged under 18 following a “request” by that individual, the TAPA 2002 provides that, for the purposes of such an offence, it is a defence that the person making the display believed the individual was aged 18 or over and either had taken all reasonable steps to establish the individual’s age, or from the individual’s appearance nobody could reasonably have suspected that the individual was aged under 18 years.⁷ A person is treated as having taken all reasonable steps to establish an individual’s age if:

- the person asked the individual for evidence of the individual’s age, and
- the evidence produced would have convinced a reasonable person.⁸

In effect, it may be a defence for a person charged with causing a requested display to an individual aged under 18, that they exercised all due diligence to avoid committing the offence. Further detail is provided in the [Display Regulations](#), as outlined in **Box 3** below.

Statutory defence:
displaying tobacco
products to those
aged under 18

Box 3: The Tobacco Advertising and Promotion (Display) (England) Regulations 2010

In a nutshell, the Display Regulations (as amended) enable retailers to make temporary, limited-size displays when selling tobacco to customers over the age of 18. At all other times, businesses will have to cover up their displays of tobacco products.

Regulation 4 deals with a “requested display” by someone aged 18 or over to either purchase a tobacco product or for information about the product. It envisages a situation where a shop keeper may be asked to display tobacco products in a storage unit (such as a gantry, cabinet or unit, tray, shelf or other container in which tobacco products are held pending sale) or is required to place the tobacco product on the counter during sale. Regulation 4 states that no offence will be committed by a display of tobacco products to persons other than the individual who requested the display if:

- the display is solely as a consequence of the requested display,
- lasts for no longer than is necessary, and
- the area of storage unit displayed does not exceed 1.5 square metres

In effect, regulation 4 deals with the situation where, for example, a child is in the shop buying sweets at the same time as an adult is buying cigarettes.

Regulation 5 allows “bulk tobacconists” to retain their tobacco displays provided they meet the specified conditions contained in regulation 5. For instance, the tobacco display must be in an area of the shop containing only tobacco products and smoking accessories and the display must not be visible from outside of the tobacco area. For the purposes of the Regulations, a bulk tobacconist means a shop that does not sell cigarettes or hand-rolling tobacco in small units. An example of a bulk tobacconist would be a duty free outlet which only sells tobacco products to the public in bulk quantities.

For the purposes of the **regulation 2(1)** a bulk tobacconist is defined as having:

⁷ [Section 7B\(5\)](#), TAPA 2002

⁸ [Section 7B\(6\)](#), TAPA 2002

- 90% of its cigarette sales in pre-packed quantities of 200 or more cigarettes in their original package, and the remainder in pre-packed quantities of 100 or more cigarettes in their original package; and
- at least 90% of its hand-rolling tobacco sales in pre-packed quantities with a weight of 250 grams or more in their original package, and the remainder in pre-packed quantities with a weight of 125 grams or more in their original package (the sales are to be measured by sale price)

Regulation 6 deals with the situation where a person is actively engaged in restocking a storage unit (or other incidental displays). No offence is committed if tobacco products are displayed in the course of being placed in a storage unit provided the display lasts for no longer than is necessary and the area of storage unit displayed does not exceed 1.5 square metres.

Similarly, **regulation 7** allows for displays of tobacco products where such displays are requested by one of the following duly authorised officers acting in the course of their duty:

- an enforcement authority (e.g. a trading standards officer);
- a police constable; or
- an officer of Revenue and Customs

Importantly, **regulation 8** permits an indication to be made on a storage unit of the tobacco products held in the storage unit provided the indication is limited to the following information:

- the brand name of the product,
- where pre-packed, the number of units in the packages or, where sold by weight, the net weight of the product,
- in relation only to cigars, the country of origin and dimensions,
- in relation only to pipe tobacco, the cut and type of tobacco used, and
- the price of the product

Indications cannot contain any other feature (such as a logo, trademark, or symbol) and must conform to strict specifications on size, type-face, font, colour of print, and background colour.

Regulation 9 revokes the *Tobacco Advertising and Promotion (Point of Sale) Regulations 2004*, which permitted certain tobacco advertisements to be published at places where tobacco products are sold.

Under **regulation 10**, the Secretary of State must from time to time carry out a review of the provisions of these Regulations; set out the conclusions of the review in a report; and publish the report. The report must in particular:

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

Importantly, the Display Regulations do not apply to specialist tobacconists. Separate regulations have been made in respect of specialist tobacconists (see **Section 3** below).

2.2 Territorial extent

The [Display Regulations](#) apply only to England. However, the powers in new section 7A and 7B of the TAPA 2002 is applicable to England, Wales and Northern Ireland. Wales and Northern Ireland have regulated in a similar manner on tobacco product displays.

Responsibility for tobacco regulation is devolved to the Scottish Parliament. The [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) contains a number of new tobacco controls, including a provision to prohibit the display of tobacco products. Scotland introduced a display ban in 2012.

2.3 The cost of compliance

There was a great deal of debate during the passage of the HA 2009 through Parliament of the actual cost to shops of removing tobacco displays. The Government estimated the average cost of removing tobacco displays to be £1,000 per store. This estimate was largely based on evidence from the Canadian experience of removing tobacco displays. The Government suggested that under the counter or overhead solutions would be an appropriate method of compliance with the Regulations, allowing sales assistants to select products for a customer without revealing any tobacco to the public at all (see **Box 4** below).

By way of comparison, the [Impact Assessment](#)⁹ that accompanied the Display Regulations gave the [Association of Convenience Stores](#) (ACS) estimate that under the counter solutions could cost as much as £4,965 per shop (taking into account the cost of the unit, fitting, and installation). The [British Retail Consortium](#) (BRC) estimated the cost as being between £2,500 and £10,000 per store depending on the size of unit. The Impact Assessment estimated the compliance cost at £4,965 average per small store, and £7,500 average per larger store.

The impact assessment acknowledged the concern raised by the ACS that smaller businesses might lose out to larger stores despite identical restrictions on tobacco display; customers might assume larger stores are more likely to carry their particular brand. Although there was no evidence of customer migration in Canada, the Government recognised that compliance might be harder for small shops. Consequently, it gave smaller shops an additional 2 years in which to comply with the [Display Regulations](#).

Box 4: Government position on the cost of compliance with the Display Regulations:

The Government's position was given in the [Impact Assessment](#):

In drafting regulations, we have attempted to enable cost-effective solutions, like those seen in Canada, to be developed. That is why regulations would allow a small area of display to be visible when serving a customer. This would enable shopkeepers to keep their existing tobacco shelving and apply simple covers that can be lifted when serving a customer and avoids the need for under the counter or overhead solutions to be installed. In addition, specialist tobacconists, which tend to be small shops, will still be able to display their tobacco products as long as they are not visible from outside the shop. This means changes to specialist shops will be minimal, limiting the cost of compliance to small businesses.¹⁰

⁹ [Impact Assessment of Regulations Supporting the Prohibition of the Display of Tobacco at Point of Sale](#), Department of Health, 26 January 2010 [online] (accessed 6 January 2020)

¹⁰ [Explanatory Memorandum to the Tobacco Advertising and Promotion \(Display \(England\) Regulations 2010](#), SI No. 445/2010, [online] (accessed 6 January 2020)

3. The Specialist Tobacconists Regulations

3.1 Background

The requirements for specialist tobacconists in relation to the prohibition of the display of tobacco products are set out in separate regulations, the [Tobacco Advertising and Promotion \(Specialist Tobacconists\) \(England\) Regulations 2010](#), known as the “Specialist Tobacconists Regulations”.¹¹ The Regulations were laid before Parliament on 2 March 2010 and subsequently amended by the [Tobacco Advertising and Promotion \(Display and Specialist Tobacconists\) \(England\) \(Amendment\) regulations 2012](#).

A consultation on draft regulations ran from 12 October 2009 to 4 January 2010. Many specialist tobacconists felt they were likely to go out of business altogether if they were not allowed to display specialist tobacco products. On consideration of responses, Health Ministers decided, on balance, that it was appropriate to provide the restricted exemption for specialist tobacconists:

This decision recognises the nature of this particular type of retailer and feels that the regulations strike the right balance between achieving the public health aims of the legislation whilst not creating unnecessary burdens for these businesses.¹²

Further information on the policy background to the Regulations is given in **Box 5** below.

Box 5: Policy background to the Specialist Tobacconists Regulations

The DH has explained the policy background to the Regulations as follows:

These Regulations intend to give an exemption, with restrictions, for specialist tobacconists, allowing them to display tobacco products within their stores. The reason for the exemption is because of both the specialist nature of their trade -meaning a full removal of display would be highly burdensome - and because young people are not commonly customers in specialist tobacconists, indeed some shops voluntarily operate an adult only policy. It is not believed that specialist tobacconists are a source of tobacco for either under 18-year olds or a source of temptation for adults trying to quit smoking. In order to maintain this position, however, specialist tobacconists are being restricted so that display and advertising of tobacco products are not visible from outside the shop. This will bring Specialist Tobacconists in line with the general policy of removing tobacco product displays from the general public view. We understand there are only about 45 stores in England that qualify to be Specialist Tobacconists. To be a specialist tobacconist, a shop must meet the conditions set out in section 6 of the Tobacco Advertising and Promotion Act 2002, including the requirement for 50% of sales to be from specialist tobacco products (not cigarettes or hand rolling tobacco) and smoking accessories. Accompanying regulations on requirements for the removal of the display of tobacco products and tobacco product price lists are subject to separate regulations.¹³

¹¹ SI No. 446 /2010

¹² [Explanatory Memorandum to the Tobacco Advertising and Promotion \(Specialist Tobacconists\) \(England\) Regulations 2010, SI No.446/2010](#) (SI No. 446/2010), page 3 [online] (accessed 6 January 2020)

¹³ Ibid, page 2

3.2 The Regulations in detail

The Specialist Tobacconists Regulations came into force on 6 April 2015.

For the purposes of the Regulations, a specialist tobacconist is a shop selling tobacco products by retail, where more than half of sales on the premises are of cigars, snuff, pipe tobacco and smoking accessories (such as pipes, lighters and papers).¹⁴

Box 6: The Specialist Tobacconists Regulations

The Regulations are straightforward. In a nutshell, the Regulations:

Provide an exemption for specialist tobacconists to the general prohibition of the display of tobacco products imposed by **new section 7A** of the TAPA 2002. Specialist tobacconists are permitted to advertise and display specialist tobacco products inside their shops, provided they are not visible from outside the shop.

Under **regulation 2** no offence is committed under section 2 of the TAPA 2002 if a tobacco advertisement is published in a specialist tobacconist provided that the advertisement is not for cigarettes or hand-rolling tobacco; is not visible from outside of the premises; and contains the required health warning and health information, in the specified form.

Under **regulation 3** the display of tobacco products, including cigarettes and hand-rolling tobacco is allowed in specialist tobacconists if the tobacco products are not visible from outside of the premises.

The *Tobacco Advertising and Promotion (Specialist Tobacconists) regulations 2004* are revoked by **regulation 4**.

Under **regulation 5**, the Secretary of State must from time to time carry out a review of the provisions of these Regulations; set out the conclusions of the review in a report; and publish the report. The report must in particular:

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

3.3 Territorial extent

As their title would suggest, the Regulations apply only to England.

However, Wales and Northern Ireland have regulated in a similar manner. The [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) regulates specialist tobacconists operating in Scotland.

¹⁴ Section 6(2) [Tobacco Advertising and Promotion Act 2002](#)

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