

Changes to tobacco regulations 2015/16

This document has been produced by the Trading Standards Institute and Action on Smoking and Health (ASH), based on our understanding of publically available information.

During 2015/16 a number of new pieces of tobacco control legislation will be implemented which will affect local regulatory services.

This document has been produced to provide local authorities with a summary of what these new regulations will cover, when they are likely to be introduced, who will be responsible for enforcement, and what the penalty will be for non-compliance. Where the details have not yet been confirmed we have made this clear. The brief is based on our most up to date information as of September 2015.

Regulations covered in this brief:

| <u>Regulations</u> | <u>Act</u> | <u>When will these changes come into effect?</u> |
|--|---|---|
| Point of sale display ban of tobacco in small stores not subject to Sunday Trading Laws. | Health Act 2009 | 6 th April 2015 |
| Proxy purchasing of tobacco and nicotine products (such as electronic cigarettes) | Children and Families Act 2014 | 1 st October 2015 |
| Age of sale for nicotine products (such as electronic cigarettes) | Children and Families Act 2014 | 1 st October 2015 |
| Smoking in cars with children | Children and Families Act 2014 | 1 st October 2015 |
| Standardised packaging | Children and Families Act 2014 | 20 th May 2016 |
| Revisions under the European Union Tobacco Products Directive. | The European Union Tobacco Products Directive | From 20 th May 2016 |

The Health Act 2009

Ban on displays of tobacco at the point of sale in small stores 6th April 2015

Section 21 of [The Health Act 2009](#) prohibits the display of tobacco products at the point of sale.¹ Since 6th April 2012 it has been illegal to display tobacco products at the point of sale in large stores. A large store is a store with a relevant floor area exceeding 280 square meters and is based on the definition in the Sunday Trading Act 1994. This law was extended to cover small shops and any other premises selling tobacco (i.e. pubs and clubs), which measure up to and including 280 square meters, in all jurisdictions of the UK on 6th April 2015.

Further guidance on the ban of displays of tobacco can be found at <http://www.businesscompanion.info/en/quick-guides/goods/display-and-sale-of-tobacco-products#Displayandpricemarkingoftobaccoproducts>.

Who will be responsible for enforcement? Regulatory officers who have been authorised by the local council are responsible for enforcing the law. In most cases this refers to local trading standards officers.²

What is the penalty for non-compliance? Non-compliance is a criminal offence. A person found guilty of such an offence, including managers and workers, is liable to:

- If found guilty on summary conviction in a Magistrates' Court, face a fine not exceeding level 5 on the standard scale (currently £5,000), or imprisonment for a term not exceeding six months, or both.
- If found guilty in a Crown Court, face a prison sentence of up to two years, or a fine or both.

Children and Families Act 2014

The [Children and Families Act 2014](#) (C&F) has a number of provisions for the Government to regulate to better protect the health of children.³ These include:

Proxy Purchasing: (C&F: Part 5, section 91) (1st Oct 2015)

A proxy purchasing offence is committed when someone over the age of 18 purchases, or attempts to purchase, tobacco or a nicotine product (such as an electronic cigarette) on behalf of a child or young person under 18 years of age. The new offence will come into force on 1 October 2015.

Regulatory officers will be able to issue a Fixed Penalty Notice to a person who commits an offence of proxy purchasing. The level of fixed penalties will be set out in regulations.

Who will be responsible for enforcement? Trading standards officers will be responsible for enforcing the law.

What is the penalty for non-compliance? Trading standards officers will be granted powers to issue fixed penalty notices in respect of an offence of proxy purchase.⁴ The fixed penalty amount is proposed to be £90 (£60 if payable within 15 days). This is consistent with the offence of proxy

purchase of alcohol. Failure to pay a fine may result in the matter being pursued in court. If found guilty of an offence of proxy purchasing by a Magistrates' Court, an individual could face a fine of up to £2,500 (level 4 on the standard scale).

Age of sale for nicotine products: (C&F: Part 5, section 92) (1st Oct 2015)

The Children and Families Act creates a provision for the Secretary of State to make [regulations](#) on the sale of nicotine products (such as electronic cigarettes) to children and young people under the age of 18. The regulations relate to 'nicotine inhaling products' which include the inhaling device, nicotine cartridge or nicotine refill substance. The regulations exempt licensed nicotine replacement therapy (NRT) including electronic cigarette devices that are licensed as medicines or medical devices.

Following a public consultation, the draft regulations and Impact Assessment were approved by Parliament on 25th March 2015.

Who will be responsible for enforcement? As with the enforcement of age of sale for tobacco, trading standards officers will be responsible for implementing the law.

What is the penalty for non-compliance? If found guilty of an offence of selling nicotine products to a child or young person under 18 years of age in a Magistrates' Court, an individual could face a fine of up to £2,500 (level 4 on the standard scale).

In addition, Section 93 of the Children and Families Act integrates the sale of nicotine inhaling products into the existing enforcement regime for relating to the persistent sales of tobacco to children. Therefore, a person or a business found to be repeatedly selling nicotine inhaling products to people under the age of 18 could receive a Restricted Sales Order or a Restricted Premises Order from the court. Such an order prohibits a named individual, or a named retail outlet, from selling nicotine inhaling products or tobacco to anyone for a period of up to one year.

Smoking in cars with children: (C&F: Part 5, section 95) 1 October 2015

During the passage of the Children and Families Act through Parliament, an amendment was agreed enabling Ministers to bring forward regulations to make it a criminal offence to smoke in private vehicles carrying children and for failing to prevent smoking in a private vehicle carrying children. The consultation on the draft regulations was launched in July 2014 and concluded at the end of August.⁵ Regulations were passed by Parliament in February 2015 which will come into effect on 1st October 2015.

Who will be responsible for enforcement? Although current laws concerning smoking in workplace vehicles are enforced by officers authorised by local authorities (mainly environmental health officers), as with other motor vehicle related offences, including driving whilst on the phone and not wearing a seat belt, the police will be responsible for enforcing the law.

What is the penalty for non-compliance? A fixed penalty notice of £50 could be issued for each offence. If a person does not pay the fine or if they so choose, the matter may be referred to a court. Conviction of smoking in a private vehicle could result in a fine to a maximum of level 1 on the standard scale, failing to prevent smoking in a smokefree vehicle could result in a maximum of level 4.

For more details please see section 3.12 of [regulations](#).⁶

Standardised Packaging: (C&F: Part 5, section 94) 20th May 2016 (TBC)

Standardised packaging of tobacco, also known as plain packaging, refers to packaging that has had the attractive promotional aspects of tobacco products removed (See example standard pack below). The appearance of all tobacco packs will be standardised including the colour of the pack. The draft regulations were published for consultation in June 2014⁷ and were passed by Parliament in March 2015. The measure will enter into force on 20th May 2016, in line with the EU Tobacco Products Directive.

Who will be responsible for enforcement? Local trading standards officers will be responsible for ensuring compliance with the law.

What is the penalty for non-compliance? A person who produces or supplies a tobacco product in breach of the regulations is guilty of an offence. For more details see section 5.18 of the regulations as laid.⁸

- If found guilty by a Magistrates Court a person could face a prison sentence of up to three months, or a fine or both.
- If found guilty by a Crown Court a person could face a prison sentence of up to two years, or a fine or both.



European Union Tobacco Productive Directive (EU TPD)

In February 2014 the EU agreed a revised Tobacco Products Directive.⁹ The new laws strengthen the rules on how tobacco products are manufactured, produced and presented in the EU. The TPD has to be transposed into domestic law and implemented by 20 May 2016. The Government is expected to consult on draft proposals in spring/summer 2015.

What is included in the EU TPD?

20th May 2016 onwards

The Directive:

- prohibits cigarettes and roll-your-own tobacco with characterising flavours, for example, fruits and chocolate;
- requires that health warnings appear on packages of tobacco. Combined (picture and text) health warnings must cover 65% of the front and back of cigarette and roll-your-own tobacco packages;
- bans all promotional and misleading elements on tobacco products;
- requires the tobacco industry to submit detailed reports to the Member States on the ingredients used in tobacco products, in particular cigarettes and roll-your-own tobacco;
- introduces EU-wide tracking and tracing to combat illicit trade of tobacco products;
- allows Member States to prohibit internet sales of tobacco and related products;
- obliges manufacturers to notify novel tobacco products before placing them on the EU market;
- introduces new labelling and reporting requirements for novel tobacco products and herbal products for smoking; and
- sets minimum content for unit packs of at least 20 cigarettes and 30g for roll your own tobacco.¹⁰

Menthol cigarettes

Menthol cigarettes will also be banned under the EU TPD. However member states will have an additional four year (2020) phase-out period before they are banned outright.

Electronic cigarettes under the EU TPD

The EU TPD also includes a number of regulations regarding electronic cigarettes. Products which contain **less than 20 mg/ml** of nicotine and that have not opted into medicinal regulations i.e. do not wish to make claims relating to smoking cessation, come under the TPD. These products will be regulated as consumer products. Regulatory officers will be responsible for ensuring:

- Products are child and tamper proof.
- Health warnings, instructions for use, information on addictiveness and toxicity appear on the packaging and accompanying information leaflet.
- There are no promotional elements on packaging.
- All substances contained in the product and information on the product's nicotine content are listed.
- Existing rules regarding cross-border advertising and promotion of tobacco products, which will apply to electronic cigarettes, are adhered to.
- Manufacturers inform Member States before placing new products on the market and that they report annually to Member States.
- That a size limit for e-liquids of 10ml for dedicated refill containers and 2ml for electronic cigarette cartridges and tanks is adhered to.

Products containing **more than 20 mg/ml** of nicotine or which make smoking cessation claims will be prohibited unless they are licensed as medicines. These products will require authorisation by the Medicines and Healthcare Products Regulatory Agency (MHRA) in the UK and this will be enforced by the MHRA.

¹ Department of Health. *The Health Act 2009*. London, HMSO. (available online: <http://bit.ly/1tW65zz>)

² Guidance on the display and pricing of tobacco products in England, for tobacco retailers and regulatory officers, issued 16th December 2011. (available online: <http://bit.ly/1BGvnog>)

³ Department for Education. *Children and Families Act 2014*. London, HMSO. (available online: <http://bit.ly/1zzJciz>)

⁴ Hansard: 5 Feb 2014: Column 238. (available online: <http://bit.ly/1zaCheG>)

⁵ Smoking in private vehicles carrying children – consultation on proposed regulations to be made under the Children and Families Act, 2014 (available online: <http://bit.ly/1D3w46w>)

⁶ The Smoke-free (Private Vehicles) Regulations 2015 (available online: <http://bit.ly/1D3ywdh>)

⁷ Consultation on the introduction of standardised packaging, 2014 (available online: <http://bit.ly/1w2HZyX>)

⁸ The Standardised Packaging of Tobacco Products Regulations 2015 (available online: <http://bit.ly/1EnktU6>)

⁹ Official Journal of the European Union, EU Tobacco Products Directive, 2014 (available online: <http://bit.ly/1zzJAh5>)

¹⁰ European Commission, Tobacco Products (available online: <http://bit.ly/1zzJZA1>)

This document is available online here: <http://ash.org.uk/information/facts-and-stats/ash-briefings>