

## Health and Social Services

### Public Health Department

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### **Guidance on the display and pricing of Tobacco Products in Jersey, for tobacco retailers**

On the 30<sup>th</sup> April 2013 the States of Jersey voted in favour of regulations on the advertising, promotion and display of cigarettes. The Public Health Department have produced this guidance to help support retailers to prepare for the new regulations. The guidance is not intended to be definitive or a substitute for the relevant law and independent legal advice should be sought where appropriate. Only the courts can interpret statutory legislation with any authority. It is the retailer's responsibility to ensure that the correct changes are made by the date the law comes into effect. Further advice and support will be provided by the Public Health Department.

1. The law on the display of all products containing tobacco and the display of tobacco prices in Jersey is changing.
2. From October 30<sup>th</sup> 2014, the new law will affect all shops selling tobacco products.
3. The new law applies to all businesses selling tobacco products to the public, not just the shops but also for example, "on trade" licensed premises such as pubs and clubs.
4. The law does not apply to wholesale businesses within the tobacco trade, in which -  
  
Premises are accessible only to persons who are engaged in, or employed by,  
  
(i) a business which is part of the tobacco trade  
  
AND  
  
(ii) from which the prices of tobacco products are not visible from outside the premises.
5. From these dates it will be illegal to display tobacco products in the relevant shops and businesses in Jersey, except to people over the age of 18 years in the limited circumstances set out in the new law. Where appropriate, age checks must be carried out before any tobacco product is shown to a customer who asks to buy tobacco or asks for information about tobacco product.
6. From October 30<sup>th</sup> 2014, it will also be illegal to display the prices of tobacco products in the relevant shops and businesses in Jersey. Except in the formats set out in the new law.

7. The aim of this guidance is to explain the requirements of the law so that businesses are helped to implement it successfully. It also suggests practical steps that retailers can take to prepare for the new law. This guidance has been written by the Public Health Department.
8. In this guidance:
  - a. “shop” means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods.
  - b. 'regulatory officers' who have been authorised by the Minister of HSSD. In most cases, this will mean Environmental Health Officers.
  - c. “tobacco” and “tobacco product” each include any particular brand of tobacco;
  - d. “bulk tobacconist” means a shop selling tobacco products (whether or not it sells other products) whose sales of cigarettes or hand-rolling tobacco, comply with the following conditions –
    - (i) at least 90% of its cigarette sales are in pre-packed quantities of 200 or more cigarettes in their original package, and the remainder are in pre-packed quantities of 100 or more in their original package, and
    - (ii) at least 90% of its hand-rolling tobacco sales are in pre-packed quantities with a weight of 250 grams or more in their original package, and the remainder are in pre-packed quantities with a weight of 125 grams or more in their original package.
  - e. “specialist tobacconist” means a shop selling tobacco products by retail in respect of which more than half of the sales conducted in the shop or in a self-contained part of the shop derive from the sale of cigars, snuff, pipe tobacco and smoking accessories
  - f. “storage unit” means a gantry, cabinet, shelf or other product in which tobacco is held pending sale

### **What are the changes?**

9. From October 30<sup>th</sup> 2014, tobacco products must be stored out of public sight except in the limited circumstances listed in paragraph 24-28. The size of each temporary display allowed must not exceed 1.5 square metres. It will be illegal to show, as well as to sell, tobacco products to a customer under the age of 18 years who asks to see or to buy tobacco.
10. From the same date, price lists and price labels for tobacco products must *only* be displayed in the specific formats set out in the new law. The requirements of the new law are explained in paragraphs 43-50.

### **Why is this legislation being introduced?**

11. Removing permanent tobacco displays is one initiative among many being delivered to help to reduce smoking uptake by young people and to support adult smokers who want to quit. The States of Jersey commitment to these aims is set out in Tobacco Control Strategy 2010-2015 and its vision of a smoke free future.

### **Who is responsible for compliance?**

12. Anyone who in the course of a business displays tobacco products, or causes tobacco products to be displayed, or displays the prices of tobacco products in a way that does not meet the requirements of the legislation, will be guilty of an offence unless an exemption applies.
13. As customers are not involved or responsible for carrying out a business, they cannot be held responsible.

### **Who can I ask for advice?**

14. Regulatory officers in The Public Health Department will be able to provide advice about the introduction of the law (Tel: 443712 email [publichealth@health.gov.je](mailto:publichealth@health.gov.je))

### **Retailers need to prepare in advance**

15. Retail business proprietors and managers are responsible for making sure that by the relevant date, all areas in which tobacco products are on sale comply with the new law. Also, that all price lists and price labels for tobacco products are in the required formats.
16. These changes are likely to take time and could involve changes to tobacco gantries, so business proprietors and managers will need to plan well in advance in order to ensure compliance by the time the law is introduced.
17. Where tobacco gantries are owned by tobacco manufacturers, proprietors or managers should consider contacting the owner of the gantry to discuss the changes that will be needed to comply with the new law. **It is the retailer's responsibility to ensure that the correct changes are made by the date the law comes into effect.**

### **Securing compliance – the role of regulatory officers**

18. The Environmental Health Department (EHD) will deliver the enforcement of the new tobacco legislation. The EHD encourages self compliance by advice, support and guidance. Their regulatory officers already work closely with businesses to build and maintain compliance across a wide range of laws, for example age restricted products, food safety and product safety. They use a risk-based approach to the monitoring and enforcement of compliance of all laws including the new laws on tobacco display and pricing.
19. The action taken by the EHD follows the procedures outlined in the department's policy on Inspection for Improvement which requires fairness, openness and transparency in dealing with business operators and they will always take a proportionate approach to securing compliance.

## **What happens if the law is broken?**

20. In the first instance an officer of EHD will investigate the non-compliance and seek to ensure improvement informally. If this fails, then a report will be prepared for consideration by the Law Officers recommending prosecution. On conviction on indictment in the Royal Court a person guilty of an offence under this Regulation is liable to an unlimited fine.

## **What will the new law on tobacco displays mean in practice?**

21. The new law applies to all tobacco products whenever and however they are displayed, in both permanent and temporary displays. It means that after the relevant date, retailers will no longer be able to have the tobacco products they sell on permanent, open display, for example on public view on gantries behind the counter. It means that retailers will have to make sure that tobacco products are out of public sight and cannot be seen, even for a short time, unless one of the specific exemptions in the law applies. It will be an offence to display tobacco products in any way that is not set out in the new law.

## **Do I have to fit new covers to my gantry?**

22. The legislation does not set out *how* tobacco products must be stored or covered. Retailers are free to choose for themselves the most appropriate and efficient means of removing tobacco products from sight. This may be, for example, by fitting covers, sliding doors or curtains to an existing gantry, by covering displays of cigars in cabinets and humidors, or by placing loose tobacco in opaque containers. Tobacco products can also be kept on open shelves under, over, or beside the counter, provided they face the staff and are only open to view by staff, so that the products cannot be seen by the public.
23. Where tobacco gantries are owned by tobacco manufacturers, retailers should consider contacting the owner of the gantry in advance to discuss the changes that will be needed to comply with the new law.

## **When can tobacco products be displayed after the relevant date?**

24. The law will allow temporary displays of tobacco products in some limited circumstances after the relevant date:
  - a) following requests to buy or see tobacco products by customers over 18 years old (described as a “requested display” in the legislation)
  - b) incidental displays while staff are actively –
    - assessing stock levels for the purposes of stock control
    - restocking
    - undertaking staff training
    - cleaning the storage unit
    - maintaining the storage unit
    - refurbishing the storage unit
  - c) in specified circumstances by bulk tobacconists

d) in specified circumstances by specialist tobacconists

e) following a request by an enforcement officer

In all cases under (b) above, the temporary incidental display must arise as a direct consequence of the activity in question being actively carried out and must only last as long as is necessary for that activity to be completed. The display must end if the relevant task is interrupted for any reason and is no longer actively being carried out. More than one temporary display may take place at a time, provided that the tasks being carried out are totally independent of each other and last only as long as is necessary to complete each task.

#### *To a customer aged 18 years or over who asks to buy or see tobacco products*

25. It is not an offence to show a tobacco product to a person aged 18 or over who asks to buy a tobacco product or who has asked for information about a tobacco product. This display is described in the legislation as a "requested display".
26. Retailers must take appropriate steps to satisfy themselves that the customer is in fact aged 18 before displaying a product to them.
27. It is not an offence if other people in the shop (including children) see a tobacco product as a consequence of a "requested display", while a customer is being served, or for other tobacco products in a storage unit to be visible (for example through an open cupboard door) *provided* that the display is only a result of the requested display by a customer AND lasts for no longer than is necessary to remove the requested product from the storage unit AND provided the area of tobacco storage unit opened in order to serve the customer **does not exceed 1.5 square metres**.
28. The important point to bear in mind is that the law defines a "requested display" as being "to *an individual following a particular request by the individual to purchase a tobacco product, or for information about a tobacco product*". If a customer makes a more general enquiry about the range of tobacco products on offer, it may be appropriate to show them a pictorial price list.

#### *Assessing stock levels and during restocking*

29. It is not an offence to display tobacco products when, in the normal course of business, a member of staff is actively engaged in assessing stock levels for the purpose of stock control, or is actively placing a tobacco product in a storage unit. In both cases the area of tobacco storage unit on open display **must not exceed 1.5 square metres**.
30. Displays during restocking must only last for as long as needed to place the product in the storage unit. It is an offence for tobacco products to be visible while they are being moved around the shop, for example, while being taken from the stock room to the storage unit to restock.

### *Staff training*

31. While staff training is actively being carried out, it is not an offence to display a tobacco product provided that the display lasts no longer than is necessary to complete the training and the area of the tobacco storage unit on open display **does not exceed 1.5 square metres**.

### *Cleaning, maintaining and refurbishing the storage unit*

32. While cleaning, maintaining or the refurbishment of a tobacco storage unit is actively being carried out, it is not an offence to display tobacco products provided that the display lasts no longer than is necessary to complete the task and the area of the tobacco storage unit on open display **does not exceed 1.5 square metres**. The temporary display must end if the relevant task is interrupted for any reason and is no longer being actively carried out, for example, to collect cleaning products from a store room, or to get new equipment.

### 33. *By a bulk/specialist*

No offence is committed under Regulation 17 if –

- (a) the display is in premises –
  - (i) which are accessible only to persons who are engaged in, or employed by, a business which is part of the tobacco trade, and
  - (ii) from which the prices of tobacco products are not visible from outside of the premises;
- (b) the display –
  - (i) is in the course of a business which is part of the tobacco trade,
  - (ii) is for the purposes of that trade, and
  - (iii) is accessible only to persons who are engaged in, or employed by, a business which is also part of that trade;
- (c) the display –
  - (i) is in the premises of a specialist tobacconist, and
  - (ii) is not visible from the outside of those premises; or
- (d) the display is in a bulk tobacconist and the following conditions are satisfied –
  - (i) the display –
    - (A) is in a part of the shop (the “tobacco area”) containing tobacco products and smoking accessories only, and
    - (B) is not visible from outside of the tobacco area,
  - (ii) a notice is exhibited at the entrance to the tobacco area, such notice complying with the following conditions –
    - (A) it exhibits the statement “It is illegal to sell tobacco products to anyone under the age of 18”,

- (B) each character in the statement is not less than 36 millimetres high,
- (C) it does not contain any other statement, and
- (D) it is not less than 297 millimetres by 420 millimetres, and

(iv) the shop is designed so that customers who wish to buy products other than tobacco products or smoking accessories are not required or encouraged to pass through the tobacco area.

### **Exemption for enforcement officers**

- 34.** No offence is committed under Regulation 17 if the display is requested by any of the following acting in the course of his or her duty –
- (a) an authorized officer;
  - (b) a police officer;
  - (c) an officer within the meaning of the Customs and Excise (Jersey) Law 1999

### **How should I go about ensuring compliance?**

- 35.** The law will prohibit both permanent and temporary displays of tobacco products and retailers will not only need to cover their displays, they will also need to make sure that staff are trained in the changes, so that there are no unlawful displays of tobacco products after the relevant date, especially to customers aged under 18 years of age.
- 36.** It is not illegal for children and young people under age 18 to see tobacco products if they happen to be in a shop while a customer is being served, or while other activities are being carried out which involve a legal display, but it will be illegal to show, as well as to sell, tobacco products to any customer under the age of 18 years of age who asks to see or buy tobacco. It is possible to commit two separate offences by showing and then selling tobacco products to someone under the age of 18. Staff must be satisfied that all customers asking to see or to buy tobacco are aged 18 or over *before* showing them any tobacco product.
- 37.** This means retailers must make sure that all staff are trained and understand that age checks must be carried out *before* displaying any tobacco products to customers asking to see or buy them. The training should include the action that staff should take if they are not satisfied that a customer is aged 18.
- 38.** Retailers will wish to consider the best way to adapt their existing age of sale policies, for example, 'No ID No Sale' to take into account the required changes.
- 39.** Staff will also need to understand that tobacco products must not be left on display after any request to see them has been met, or after any other activity involving a legal display has been completed.
- 40.** All tobacco price lists and price labels must comply with the new law (see the guidance on price lists to be found in paragraph 43 and following). Apart from

tobacco price lists and labels (that comply with the law), customers must not be able to see any reference to a specific tobacco product, or tobacco brand, unless they have asked to view them. Requests from children under 18 years of age must be refused.

41. Unbranded generic signs, such as, "Tobacco sold here" are allowed in any format. There is no change to the law that requires retailers to display a sign stating that it is illegal to make tobacco sales to people under the age of 18.
42. Tobacco accessories, for example tobacco papers, pipes and lighters, can continue to be displayed and kept in public view. Retailers will need to consider new arrangements if accessories (or any other non-tobacco products) are currently kept in a tobacco gantry or tobacco storage unit that will, in future, need to be covered. **It will be an offence to open a tobacco storage unit and to display tobacco products when serving customers with non-tobacco products such as accessories.**

### Displaying prices of tobacco products

43. From the relevant date all price lists and labels for tobacco products, must be in the formats set out in the new law. It will be an offence to label tobacco products or display their prices in any other way.
44. The aim is to ensure that price lists and labels cannot be exploited as forms of tobacco promotion. The intention is that there should be no public display of tobacco branding on price lists and labels, whether through the use of wording, colours, or any other feature that may be associated with an individual brand. The requirements of the legislation are, therefore, very detailed and specific, to make sure that the price lists and labels only provide unbranded information.
45. Only three types of tobacco price display will be permitted from the relevant dates:
  - a) Poster style lists which can be permanently on show. The law sets out that these must not exceed 1250 square centimetres; A3 sized paper falls within the legal size limit.
  - b) A list including pictures of products, which must not be left on permanent show but which can be shown to any customer aged 18 or over who asks for information about tobacco products sold.
  - c) Price labels, which can be placed on shelving, storage units or tobacco jars. One price label is permitted for each product *either* on the covered shelf where the product is stored *or* on the front of the storage unit.
46. The Price Indicators (Jersey) Regulations 2008 sets out the general legal requirements in respect of the display of the price of goods offered for sale and the new tobacco pricing law does not alter, change or interfere with the Price Indicators (Jersey) Regulations 2008 in any way. The new law simply means that when tobacco prices are displayed, they must be in one of the new legal formats. Retailers will need to consider which type or types of tobacco price list or label they wish to use to fulfil the requirements of the Price indicators Regulations 2008.
47. There are special rules for bulk tobacconists and specialist tobacconists, explained in paragraphs 54-56.



*General requirements for **all** tobacco price list and labels*

**48.** All types of price list or label must be:

- (a) in black Helvetica plain type on a white background;
- (b) in a type which has a consistent size throughout the text

In many cases, Helvetica is available on computers when manually typed into the font options box. Access to computers is available at many public libraries and often at no cost, although the printing of documents may incur a small cost.

**49.** All letters must be in lower case, except for first letters of words where appropriate. No underlining, italics, bold type or any other distinguishing emphasis is allowed. The background must be white. No other colours for the either the wording or the background are allowed.

**50.** The only information that can be given about tobacco products is:

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

*Poster style list*

**51.** A poster style price list must comply with the general requirements set out in paragraphs 49 to 51 above and cannot include any other information about the individual tobacco products themselves or the prices of any other, non-tobacco, products. In addition it –

- must have the title “Tobacco products price list”;
- must be worded with characters which are no higher than 7 millimetres;
- must not include the price of any other item or product;
- must not have a border or frame; and
- must not exceed 1250 square centimetres in size.

The price list may include any of the following sub-headings –

- “cigarettes”;
- “hand rolling tobacco”;
- “cigars”;
- “pipe tobaccos”;
- “other tobacco products”.

There must only be one price list for each separate area where tobacco products are both located and can be purchased.

### *The Picture Price List*

- 52.** A picture price list must comply with the general requirements set out in paragraphs 48 to 50. It is not restricted by size but it –
- Must not be on general or permanent display to customers. It can only be shown if a customer aged 18 or over asks for information about tobacco products for sale in the place where this request takes place. All reasonable steps must be taken to ensure that the individual making the request is aged 18 or over before the list is shown to them.
  - Can only be displayed for as long as is necessary for the customer requesting the information to obtain the information they need.
  - Must use wording with characters which are no higher than 7mm.
  - May contain colour pictures of the actual tobacco product as packaged for sale, as long as each picture does not exceed 50 square centimetres in size.
  - Must not contain pictures of individual cigarettes or other any other unpackaged tobacco products.
  - Must be limited in number to one copy for each separate area where tobacco products are located and sold, unless there is more than one till in an area where a gantry is found, in which case one copy for each till is allowed.

### *Price labels on tobacco storage units*

- 53.** Price labels must comply with the general requirements set out in paragraphs 48 to 50. In addition they –
- be such that each character is no higher than 10 millimetres;
  - be in a style that is consistent with displays of prices on storage units for non-tobacco products on sale in the same premises (if any); and
  - be limited to one display for each separate location in a storage unit where a particular tobacco product is held.

### *Special rules on tobacco prices for bulk tobacconists and specialist tobacconists*

- 54.** Bulk tobacconists and specialist tobacconists do not generally have to comply with the requirements on the display of prices of tobacco products in the new law.
- 55.** Requirements only apply to specialist tobacconists if tobacco prices are visible from outside their premises and to bulk tobacconists if tobacco prices are visible from outside the tobacco area (as defined in paragraph 33 above).
- 56.** If any bulk or specialist tobacconists do have tobacco prices displayed where the public can see them from outside the relevant area or shop, then they must comply with the requirements listed in paragraph 51 for poster style price lists and tobacco labels and there can only be one poster style price list for each specialist tobacconist or tobacco area.

A copy of the regulations can be found at: [Advertising, promotion and display regulations](#)

## FREQUENTLY ASKED QUESTIONS?

### 1) **When will the new law take effect in Jersey?**

The new Law will take effect from October 30th 2014

### 2) **Which forms of price lists are mandatory?**

None. However, retailers must continue to comply with the Price Indicators (Jersey) Regulations 2008 (PIR). The PIR sets out the general legal requirements in relation to the display of the price of goods offered for sale and the new tobacco pricing law does not alter, change or interfere with the PIR in any way. The new law simply means that when tobacco prices are displayed, they must be in one of the new legal formats. Retailers will need to consider which type or types of tobacco price list or label they wish to use in order to fulfil the requirements of the PIR.

### 3) **How many temporary displays can be made at a time – by one member of staff or in one shop?**

The new law sets out when temporary displays of tobacco products can be made, which activities can give rise to a display and states that a temporary display must not last for any longer than necessary to complete the activity.

There is no limit on how many activities can be carried out at the same time and it is possible, therefore, to have more than one display at any one time provided that different tasks are being undertaken.

It is not an offence to open the wrong tobacco unit when looking for a product, but it should be closed immediately.

Regulatory officers will, however, need to consider the particular circumstances of individual cases and may decide that enforcement action is appropriate if a retailer is found to be deliberately circumventing the law by, for example, leaving displays open unnecessarily while several activities are carried out.

### 4) **When a delivery is made to a store, when do the display regulations take effect?**

The new tobacco display law only applies in premises selling tobacco products. The aim is to end the permanent open display of tobacco products and to limit the duration and circumstances of temporary displays.

While deliveries are often made "behind the scenes" with products being unloaded directly into storage areas that are not generally in public view, in many small shops deliveries have to be taken through the public area of the shop.

Depending on the nature of the outer packaging, it is possible that a technical breach of the display law may be made if deliveries can be seen by customers while they are being taken through the public area of a shop. Retailers must take steps to keep any such display to a minimum. Tobacco products should be removed from sight as soon as possible and deliveries should not be left on open view for any longer than is necessary to move them to a storage area.

Regulatory officers will need to consider the particular circumstances of individual cases and may decide that enforcement action is not warranted. However, if such

displays can be avoided, or a retailer is found to be deliberately circumventing the law, then enforcement action may be appropriate.

**5) *When a member of staff is undertaking an online shop for a customer, and has tobacco in a crate or trolley, does this constitute a display?***

The law limiting tobacco displays includes staff members collecting goods to make up orders on behalf of online customers. Staff members collecting goods to make up online orders should only display tobacco products for as long as is necessary to take the items out of the gantry and add them to the order. Tobacco products must not be visible to customers while being carried around the shop after being placed in a crate or trolley.

As tobacco products are generally sold from a separate counter, best practice would be for tobacco products to be covered in a bag, or added to an order as the final item so that staff members avoid the risk of displaying them while other goods are being collected to make up the online order.

**6) *Would showing a tobacco product in an open crate when delivering an online order to a customer be a “display”?***

No. The new tobacco display law only applies to the place where tobacco products are offered for sale.

**7) *What are the rules regarding electronic price lists and displays?***

There are no special allowances for electronic price lists and displays. Any electronic display of tobacco products or logos will result in a breach of the law if it is visible to the public. Similarly, electronic price lists visible to the public, must comply with the requirements of the legislation as set out above.

**8) *What is a tobacco accessory?***

A tobacco accessory is any product associated with smoking that does not contain tobacco. Examples include, matches, lighters and cigarette rolling papers.

**9) *Are till keypads with illustrations of cigarette packets legal?***

Keypads on cash tills that display pictures of tobacco products are legal *provided* that the display cannot be seen by customers.

**10) *Does the new law apply to sales in staff canteens that are not open to the public?***

Yes. The new tobacco display law applies to all premises selling tobacco products. The only exemption is for displays made in the course of a business which is part of the tobacco trade. In most circumstances a display in a staff canteen of tobacco products on sale to staff would not fall within this exemption.

**May 2013**