



# Health Act 2009

## 2009 CHAPTER 21

### PART 3

#### MISCELLANEOUS

##### *Tobacco*

#### **20 Prohibition of advertising: exclusion for specialist tobacconists**

In section 6 of the Tobacco Advertising and Promotion Act 2002 (c. 36) (specialist tobacconists), before subsection (1) insert—

“(A1) The appropriate Minister may provide in regulations that no offence is committed under section 2 if the tobacco advertisement—

- (a) is in, or fixed to the outside of premises of, a specialist tobacconist in England and Wales or Northern Ireland,
- (b) is not for cigarettes or hand-rolling tobacco, and
- (c) complies with any requirements specified in the regulations.”

#### **Commencement Information**

**II** S. 20 partly in force; s. 20 in force for specified purposes at Royal Assent see s. 40(6)(b)

#### **21 Prohibition of tobacco displays etc**

After section 7 of the Tobacco Advertising and Promotion Act 2002 (developments in technology) insert—

*Status: Point in time view as at 31/10/2012.*

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### **“7A Prohibition of tobacco displays**

- (1) A person who in the course of a business displays tobacco products, or causes tobacco products to be displayed, in a place in England and Wales or Northern Ireland is guilty of an offence.
- (2) The appropriate Minister may by regulations provide for the meaning of “place” in this section.
- (3) The appropriate Minister may by regulations make provision for a display in a place which also amounts to an advertisement to be treated for the purposes of offences in England and Wales or Northern Ireland under this Act—
  - (a) as an advertisement and not as a display, or
  - (b) as a display and not as an advertisement.

### **7B Tobacco displays: exclusions and defence**

- (1) No offence is committed under section 7A if—
  - (a) the tobacco products are displayed in the course of a business which is part of the tobacco trade,
  - (b) they are displayed for the purposes of that trade, and
  - (c) the display is accessible only to persons who are engaged in, or employed by, a business which is also part of that trade.
- (2) No offence is committed under section 7A if the display is a requested display to an individual aged 18 or over.
- (3) The appropriate Minister may provide in regulations that no offence is committed under section 7A if the display complies with requirements specified in the regulations.
- (4) Subsections (5) and (7) apply where a person (“D”) is charged with an offence under section 7A in a case where the display is a requested display to an individual aged under 18.
- (5) Where D is charged by reason of D having displayed the tobacco product it is a defence that—
  - (a) D believed that the individual was aged 18 or over, and
  - (b) either—
    - (i) D had taken all reasonable steps to establish the individual's age, or
    - (ii) from the individual's appearance nobody could reasonably have suspected that the individual was aged under 18.
- (6) For the purposes of subsection (5), a person is treated as having taken all reasonable steps to establish an individual's age if—
  - (a) the person asked the individual for evidence of the individual's age, and
  - (b) the evidence would have convinced a reasonable person.
- (7) Where D is charged by reason of D having caused the display of the tobacco product it is a defence that D exercised all due diligence to avoid committing the offence.

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- (8) In this section “a requested display” means a display to an individual following a particular request by the individual to purchase a tobacco product, or for information about a tobacco product.

#### **7C Displays: prices of tobacco products**

- (1) The appropriate Minister may by regulations make provision imposing requirements in relation to the display in a place in England and Wales or Northern Ireland in the course of a business of prices of tobacco products.
- (2) A person who displays or causes to be displayed prices of tobacco products in breach of a requirement contained in the regulations is guilty of an offence.
- (3) The regulations may, in particular, provide for the meaning of “place” in this section.
- (4) The regulations may make provision for a display of prices in a place which also amounts to an advertisement to be treated for the purposes of offences in England and Wales or Northern Ireland under this Act—
- (a) as an advertisement and not as a display of prices, or
  - (b) as a display of prices and not as an advertisement.

#### **7D Displays on a website**

- (1) The Secretary of State may by regulations make provision imposing requirements in relation to the display in England and Wales or Northern Ireland in the course of a business of tobacco products or their prices on a website where tobacco products are offered for sale.
- (2) A person who displays or causes to be displayed tobacco products or their prices in breach of a requirement contained in the regulations is guilty of an offence.
- (3) A service provider established in England and Wales or Northern Ireland is guilty of an offence if, in the course of providing information society services, the provider does anything in an EEA State other than the United Kingdom which, if done in England and Wales or Northern Ireland, would constitute an offence under subsection (2).
- (4) Nothing in subsection (2) makes it an offence for a service provider established outside the United Kingdom to do anything in the course of providing information society services.
- (5) The regulations may make provision for a relevant display of tobacco products or their prices which also amounts to an advertisement to be treated for the purposes of offences in England and Wales or Northern Ireland under this Act—
- (a) as an advertisement and not as a display, or
  - (b) as a display and not as an advertisement.
- (6) In subsection (5) a “relevant display” means a display on a website where tobacco products are offered for sale.”

#### **Commencement Information**

**I2** S. 21 partly in force; s. 21 in force for specified purposes at Royal Assent see s. 40(6)(b)

*Status: Point in time view as at 31/10/2012.*

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| <p><b>I3</b> S. 21 in force at 6.4.2012 for specified purposes for E. by S.I. 2010/1068, <b>art. 2(1A)(a)</b></p> <p><b>I4</b> S. 21 in force at 31.10.2012 for specified purposes for N.I. by S.R. 2012/389, <b>art. 2(1)(a)</b></p> |
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## 22 Power to prohibit sales from vending machines

- (1) After section 3 of the Children and Young Persons (Protection from Tobacco) Act 1991 (c. 23) (sale of unpackaged cigarettes) insert—

### “3A Sales from vending machines in England and Wales

- (1) The appropriate national authority may by regulations make provision prohibiting the sale of tobacco from an automatic machine in England and Wales.
  - (2) The regulations must make provision as to the persons who are liable in the case of any breach of a prohibition.
  - (3) Where a prohibition contained in the regulations is breached, any person liable in accordance with the regulations is guilty of an offence.
  - (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
  - (5) Sections 13, 14 and 15 of the Tobacco Advertising and Promotion Act 2002 (enforcement etc.) apply for the purposes of this section and regulations made under it as they apply for the purposes of provisions of that Act.
  - (6) The power of the appropriate national authority to make regulations under this section—
    - (a) is exercisable by statutory instrument,
    - (b) may be exercised to make different provision for different cases or circumstances, and
    - (c) includes power to make supplementary, incidental, consequential or transitional provision.
  - (7) A statutory instrument containing regulations made under this section may not be made—
    - (a) by the Secretary of State unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament, and
    - (b) by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
  - (8) In this section—
 

“the appropriate national authority”—

    - (a) in relation to England, means the Secretary of State; and
    - (b) in relation to Wales, means the Welsh Ministers;

“tobacco” has the same meaning as in section 7 of the Children and Young Persons Act 1933.”
- (2) In section 12D(1) of the Children and Young Persons Act 1933 (c. 12) (restricted premises orders and restricted sales orders: interpretation)—

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- (a) omit “or” at the end of paragraph (a);
- (b) after paragraph (b) insert “, or
- (c) an offence committed under section 3A of the Children and Young Persons (Protection from Tobacco) Act 1991 in respect of any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”).”

#### Commencement Information

- I5** S. 22 partly in force; s. 22 in force for specified purposes at Royal Assent see s. 40(6)(b)
- I6** S. 22 in force at 1.10.2011 for E. in so far as not already in force by S.I. 2010/1068, art. 2(1)(a)
- I7** S. 22 in force at 1.2.2012 for W. in so far as not already in force by S.I. 2011/2362, art. 2

### 23 Power to prohibit sales from vending machines: Northern Ireland

After article 4 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (S.I. 1991/2872 (N.I. 25)) (sale of unpackaged cigarettes) insert—

#### “4A Sales from vending machines

- (1) The Department may by regulations make provision prohibiting the sale of tobacco from an automatic machine.
- (2) The regulations must make provision as to the persons who are liable in the case of any breach of a prohibition.
- (3) Where a prohibition contained in the regulations is breached, any person liable in accordance with the regulations is guilty of an offence.
- (4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) Sections 13, 14 and 15 of the Tobacco Advertising and Promotion Act 2002 (enforcement etc.) apply for the purposes of this Article and regulations made under it as they apply for the purposes of provisions of that Act.
- (6) The power to make regulations under this Article includes power to make supplementary, incidental, consequential or transitional provision.
- (7) Regulations may not be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (8) In this Article “tobacco” has the same meaning as in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978.”

#### Commencement Information

- I8** S. 23 partly in force; s. 23 in force for specified purposes at Royal Assent see s. 40(6)(b)
- I9** S. 23 in force at 1.3.2012 in so far as not already in force by S.R. 2012/68, art. 2

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## 24 Tobacco: minor and consequential amendments

Schedule 4 (which makes minor and consequential amendments relating to the advertising and promotion of tobacco products) has effect.

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### Commencement Information

- I10** S. 24 partly in force; s. 24 in force for specified purposes at Royal Assent and in force for further specified purposes at 12.1.2010 see s. 40(5)(a)(6)(c)(7)(b)(c)(8)
- I11** S. 24 in force at 6.4.2012 for specified purposes for E. by S.I. 2010/1068, art. 2(1A)(b)
- I12** S. 24 in force at 31.10.2012 for specified purposes for N.I. by S.R. 2012/389, art. 2(1)(b)

**Status:**

Point in time view as at 31/10/2012.

**Changes to legislation:**

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