

Statutory Document No. 20XX/XX

*Public Health (Tobacco) Act 2006*

## TOBACCO CONTROL REGULATIONS 2015

*Laid before Tynwald:**Coming into Operation: 1 December 2015*

The Department of Health and Social Care makes the following Regulations under sections 3(3), 4A(2), 4B(3), 4C(1) and 8(1) of the Public Health (Tobacco) Act 2006.

### 1 Title

These Regulations are the Tobacco Control Regulations 2015.

### 2 Commencement

These Regulations come into operation on 1 December 2015.

### 3 Interpretation

(1) In these Regulations —

“**the Act**” means the Public Health (Tobacco) Act 2006 and a reference to a numbered Part or section is to a Part or section of the Act so numbered;

“**area of storage unit**” means the total area of the storage unit in which tobacco products and any other products are visible;

“**bulk tobacconist**” means a shop selling tobacco products (whether or not it also sells other products) and whose sale of cigarettes or hand-rolling tobacco, measured in accordance with paragraph (2), comply with the following conditions —

- (a) at least 90% of its cigarette sales are in pre-packed quantities of 200 or more cigarettes in their original package, and the remainder in pre-packed quantities of 100 cigarettes or more in their original package; and
- (b) 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 in pre-packed quantities with a weight of 125 grams or more in their original package;

“**EEA Agreement**” means the Agreement on the European Economic Area signed at Oporto on 2<sup>nd</sup> May 1993<sup>1</sup> as adjusted by the Protocol signed at Brussels on 17<sup>th</sup> March 1993<sup>2</sup>;

“**European Economic Area**” means the territory of —

- (a) the European Community; and
- (b) States which are party to, or otherwise bound by, the EEA Agreement;

“**feature**” means a name, emblem or other feature, whether alone or in combination;

“**group of companies**” means a holding company and its subsidiaries within the meaning of section 218 (interpretation) of the Companies Act 2006;

“**non-tobacco product**” means any product other than a tobacco product;

“**original package**” means the package in which the cigarettes or hand-rolling tobacco were supplied for the purpose of retail sale by the manufacturer or importer;

“**other feature**” means a logo, trademark, symbol, motto, type-face, colour or pattern of colour, picture, artwork, imagery, appearance, message or other indication that constitutes all or part of the recognisable identity of a product, but does not include a bar code or stock number;

“**package**” means any box, carton or other container;

“**premises**” includes any place and any vehicle, vessel, hovercraft, stall or moveable structure;

“**price list**” means a list of the prices of tobacco products normally offered for sale in the place where such list is displayed or made available;

“**shop**” means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods;

“**storage unit**” means a gantry, cabinet or unit, tray, shelf or other product in which a tobacco product is held pending sale;

“**tobacco area**” means an area within a bulk tobacconist shop containing tobacco products and smoking accessories, and

“**tobacco producer or promoter**” means any producer or promoter engaged in the production or promotion of tobacco products.

(2) The sales referred to in the definition of “**bulk tobacconist**” are to be measured by sale price —

- (a) during the most recent period of twelve months for which accounts are available; or

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<sup>1</sup> Cmnd 2073.

<sup>2</sup> Cmnd 2183.

- (b) during the period for which the shop has been established, if it has not been established long enough for twelve months' accounts to be available.

#### **4 Meaning of “place”**

- (1) For the purposes of sections 3, 4A and 4C, “place” means premises where tobacco products are offered for sale in the course of a business, other than premises —
  - (a) which are accessible only to persons who are engaged in, or employed by, a business which is part of the tobacco trade; and
  - (b) from which the prices of tobacco products are not visible from the outside of the premises.

#### **5 Display as a consequence of a requested display**

- (1) This regulation applies where a requested display<sup>3</sup> is made to an individual (“A”) aged 18 or over.
- (2) No offence is committed under section 4A(1) by a display of tobacco products in a storage unit to individuals other than A, if —
  - (a) the display —
    - (i) is solely as a consequence of the requested display; and
    - (ii) lasts for no longer than is necessary to remove the requested product from the storage unit; and
  - (b) the area of the storage unit displayed does not exceed 1.5m<sup>2</sup>.
- (3) No offence is committed under section 4A(1) by a display of tobacco products other than in a storage unit, to individuals other than A, if the display —
  - (a) is solely as a consequence of the requested display; and
  - (b) lasts for no longer than the requested display.
- (4) In this regulation, “the requested product” means the product which A asked to purchase or about which A sought information.

#### **6 Display in bulk tobacconists**

- (1) This regulation applies to displays in a bulk tobacconist.
- (2) No offence is committed under section 4A(1) by a display of tobacco products if —
  - (a) the display is —
    - (i) in the tobacco area; and
    - (ii) not visible from outside of the tobacco area;

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<sup>3</sup> The definition of “requested display” is in section 4B(8) of the Act.

- (b) a notice displaying the following statement is exhibited at the entrance to the tobacco area –  
“It is illegal to sell tobacco products to anyone under the age of 18”;  
and
  - (c) the shop is designated so that customers who wish to buy products other than tobacco products and smoking accessories are not required or encouraged to pass through the tobacco area.
- (3) The dimensions of the notice to be exhibited in accordance with subparagraph (2)(b) must be not less than 297 mm by 420 mm and the size of the statement to be displayed on the notice must be such that no character is less than 36 mm high.

## 7 Incidental displays

- (1) No offence is committed under section 4A(1) by a display of tobacco products in a storage unit if the display –
- (a) occurs in the course of an activity listed in paragraph (2) being actively carried out in the ordinary course of business in relation to tobacco products;
  - (b) is solely as a consequence of that activity being carried out;
  - (c) lasts no longer than is necessary in order to allow that activity to be carried out; and
  - (d) the area of the storage unit displayed does not exceed 1.5m<sup>2</sup>.
- (2) The activities referred to in subparagraph (1)(a) are –
- (a) assessing stock levels for the purposes of stock control;
  - (b) restocking;
  - (c) staff training;
  - (d) cleaning, maintenance or refurbishment of the storage unit.
- (3) No offence is committed under section 4A(1) by a display of tobacco products outside a storage unit during restocking if –
- (a) the products are displayed in the course of being placed in the storage unit only; and
  - (b) the display lasts for no longer than is necessary to place the products in the storage unit.

## 8 Display to authorised persons

No offence is committed under section 4A(1) by a display of tobacco products if that display is requested by –

- (a) a person who has authority under section 10(1)(b);
- (b) a constable; or

- (c) an officer of customs and excise,  
acting in the course of his or her duty.

## 9 Storage units: displays

- (1) This regulation applies to indications on storage units of the tobacco products held in the storage unit.
- (2) No offence is committed under section 1(1) if the indication complies with the requirements of paragraph (3).
- (3) The requirements are that the indication —
  - (a) is limited to the following information in relation to tobacco products —
    - (i) the brand name of the product;
    - (ii) where pre-packed, the number of units in the packages or, where sold by weight, the net weight of the product;
    - (iii) in relation only to cigars, the country of origin and dimensions;
    - (iv) in relation only to pipe tobaccos, the cut and type of tobacco used; and
    - (v) the price of the product<sup>4</sup>;
  - (b) is printed —
    - (i) in black Helvetica plain type on a white background;
    - (ii) in a font size consistent throughout the text with characters which are no higher than 4mm ; and
    - (iii) in lower case type, except that the first letter of a word may be in upper case type;
  - (c) does not exceed 9cm<sup>2</sup> in size;
  - (d) is limited in number to one indication for each separate location in a storage unit where a particular tobacco product is held; and
  - (e) does not contain any other feature.

## 10 Display of prices of tobacco products

- (1) The requirements specified in regulations 11, 12, 13 and 14 apply for the purposes of section 4C.
- (2) Subject to regulation 15 a display of prices of tobacco products in a place must comply with the requirements specified in regulations 11, 12, 13 and 14.

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<sup>4</sup> The indication of the selling price of all products, including tobacco products, is regulated by the Price Marking Order 2005 (SD 97/2005).

- (3) Where a display of prices of tobacco products in a place also amounts to an advertisement for the purposes of the Act, if it complies with the requirements of these Regulations it is to be treated as a display of prices and not as an advertisement for the purposes of offences under the Act.

## 11 General requirements for the display of prices of tobacco products

- (1) The requirements are that a display of prices of tobacco products —
- (a) is limited to the following information in relation to tobacco products —
    - (i) the brand name of the product;
    - (ii) where pre-packed, the number of units in the packages or, where sold by weight, the net weight of the product;
    - (iii) in relation only to cigars, the country of origin and dimensions;
    - (iv) in relation only to pipe tobaccos, the cut and type of tobacco used; and
    - (v) the price of the product;
  - (b) is printed —
    - (i) in black Helvetica plain type on a white background;
    - (ii) in type which has a consistent size throughout the text; and
    - (iii) in lower case type, except that the first letter of a word may be in upper case type; and
  - (c) except as otherwise provided by regulation 13(1)(e), must not contain any other feature.

## 12 Storage units: prices

- (1) The requirements are —
- (a) that the price of the tobacco product is displayed on a storage unit where that particular product is kept pending sale; and
  - (b) that such display —
    - (i) is worded with characters which are no higher than 4mm;
    - (ii) does not exceed 9cm<sup>2</sup> in size; and
    - (iii) is limited in number to one display for each separate location in a storage unit where a particular tobacco product is held.

## 13 Price lists

- (1) The requirements are —
- (a) that the display of prices of tobacco products is in the form of a price list; and

- (b) that the price list —
  - (i) has the title “Tobacco products price list”;
  - (ii) may include sub-headings for “cigarettes”, “hand rolling tobacco”, “cigars”, “pipe tobaccos” and “other tobacco products”;
  - (iii) does not include the prices of any other products;
  - (iv) is worded with characters which are no higher than 7 mm;
  - (v) has no border or frame;
  - (vi) does not exceed 1250cm<sup>2</sup> in size; and
  - (vii) is limited in number in accordance with paragraph (2).
- (2) The price list must be limited in number to one price list for each separate area where tobacco products are both located and can be paid for.

#### **14 Price lists: available only on request**

- (1) The requirements are —
  - (a) that the display of prices of tobacco products is in the form of a price list which is made available to an individual aged 18 or over following a particular request by the individual for information about tobacco products for sale in the place where such request takes place;
  - (b) that all reasonable steps are taken to ensure that the individual making such a request is aged 18 or over before such a display takes place;
  - (c) that the display lasts for no longer than is needed for the individual to obtain the information sought by that individual;
  - (d) that the size of the wording on the price list must be such that no character is greater than 4mm high;
  - (e) that the only other feature displayed is a picture of the actual tobacco product, as packaged for sale, where the size of such picture does not exceed 50cm<sup>2</sup>; and
  - (f) that the price list must be limited in number to —
    - (i) one price list for each separate area where tobacco products are both located and can be paid for; or
    - (ii) where there is more than one till at any such location, one price list for each such till.
- (2) For the purposes of paragraph (1)(b), a person is treated as having taken all reasonable steps to establish that the individual is aged 18 or over if either —

- (a) from the individual's appearance nobody could reasonably have suspected that the individual was aged under 18; or
- (b) the person asked the individual for evidence of the individual's age and the evidence would have convinced a reasonable person.

## 15 Bulk tobacconists

- (1) Regulations 10 to 14 do not apply to bulk tobacconists.  
This is subject to paragraph (2).
- (2) A display of prices of tobacco products which is visible from the outside of the tobacco area of a bulk tobacconist —
  - (a) must comply with the general requirements specified in regulation 11;
  - (b) must comply with the requirements of regulation 13(1)(a) and (b)(i) to (vi); and
  - (c) is limited in number to one display for each premises.

## 16 Brandsharing

- (1) The use by a person in connection with any non-tobacco product or service of any feature which is the same as, or is so similar as to be likely to be mistaken for, any feature which is connected with a tobacco product is prohibited if the purpose or effect of that use is to promote a tobacco product in the Isle of Man.  
This is subject to paragraph (3) and regulation 17(1) to (4).
- (2) The use by a person in connection with any tobacco product of any feature which is the same as, or is so similar as to be likely to be mistaken for, any feature which is connected with any non-tobacco product or service is prohibited if the purpose or effect of that use is to promote a tobacco product in the Isle of Man through the association which it has with any non-tobacco product or service.  
This is subject to paragraph (3) and regulation 17(5) to (8).
- (3) Paragraphs (1) and (2) apply only to the use in the Isle of Man of a feature in the course of a business.

## 17 Brandsharing: exceptions

- (1) The prohibition in regulation 16(1) does not apply if —
  - (a) it was not the purpose of the person's use to promote a tobacco product, or (as the case may be) the tobacco product in question; and
  - (b) the person could not reasonably have foreseen that that would be its effect.



- (2) The prohibition in regulation 16(1) does not apply if —
  - (a) when the person uses any feature in connection with a non-tobacco product or service, he does not do so for the purpose of promoting a tobacco product;
  - (b) that person is not, and is not employed or commissioned by —
    - (i) a tobacco producer or promoter;
    - (ii) a company in the same group of companies as a tobacco producer or promoter; or
    - (iii) a company which has a common parent company with a tobacco producer or promoter; and
  - (c) the feature is not used by that person under any agreement or licence, or any series of agreements, licences or both, to which at least one party is a tobacco producer or promoter.
- (3) The prohibition in regulation 16(1) does not apply if —
  - (a) when the person uses any feature in connection with a non-tobacco product or service, he does not do so for the purpose of promoting a tobacco product;
  - (b) the feature was first used in connection with a non-tobacco product or service on or before 1<sup>st</sup> September 2002 in an area which was then or has subsequently become part of the European Economic Area; and
  - (c) the presentation of the feature of the non-tobacco product or service does not make it appear that it belongs to the same brand as any tobacco product.
- (4) The prohibition in regulation 16(1) does not apply if —
  - (a) the person who is using a feature in connection with a non-tobacco product or service does not know that the purpose or effect of using the feature is, or is likely to be, to promote a tobacco product; and
  - (b) the use of the feature does not make it appear that the same person, firm or company is responsible for the branding of both the tobacco product and the non-tobacco product or service (whether that is in fact so or not).
- (5) The prohibition in regulation 16(2) does not apply if —
  - (a) it was not the purpose of the person's use to promote a tobacco product, or (as the case may be) the tobacco product in question, through the association which any relevant feature has with any non-tobacco product or service; and
  - (b) the person could not reasonably have foreseen that that would be its effect.
- (6) The prohibition in regulation 16(2) does not apply if —

- (a) when the person uses any feature in connection with a tobacco product, he does not do so for the purpose of promoting a tobacco product through the association which that feature has with any non-tobacco product or service;
  - (b) the person is not, and is not employed or commissioned by —
    - (i) a tobacco producer or promoter;
    - (ii) a company in the same group of companies as a tobacco producer or promoter; or
    - (iii) a company which has a common parent company with a tobacco producer or promoter; and
  - (c) the feature is not used by that person under any agreement or licence, or any series of agreements, licences or both, to which at least one party is a tobacco producer or promoter.
- (7) The prohibition in regulation 16(2) does not apply if —
- (a) when the person uses any feature in connection with a tobacco product, he does not do so for the purpose of promoting a tobacco product through the association which that feature has with any non-tobacco product or service;
  - (b) the feature was first used in connection with a tobacco product on or before 1<sup>st</sup> September 2002 in an area which was then or has subsequently become part of the European Economic Area; and
  - (c) the presentation of the feature of the tobacco product does not make it appear that it belongs to the same brand as any non-tobacco product or service.
- (8) The prohibition in regulation 16(2) does not apply if —
- (a) the person who is using a feature in connection with a tobacco product does not know that the purpose or effect of using the feature is, or is likely to be, to promote a tobacco product through the association which the feature has with any non-tobacco product or service; and
  - (b) the use of the feature does not make it appear that the same person, firm or company is responsible for the branding of both the tobacco product and the non-tobacco product or service (whether that is in fact so or not).

## 18 Brandsharing: general provisions

- (1) A person who uses any feature of any product or service in circumstances set out in one or more of the exceptions in regulation 17(1) to (4) does not commit an offence under sections 1, 2, 2A, 4A, 4C, 4D, 6 or 7 in respect of the use of that feature.
- (2) Where a person charged with an offence under section 8(4) relies on an exception under regulation 17(1) to (3) or (5) to (7), he must adduce

evidence which is sufficient to raise an issue with respect to that exception.

- (3) Where a person charged with an offence under sections 1, 2, 2A, 4A, 4C, 4D, 6 or 7 relies on a defence provided by paragraph (1), he must adduce evidence which is sufficient to raise an issue with respect to that defence.
- (4) Where evidence is adduced under paragraph (2) or (3), the court or jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

**MADE**

**HOWARD QUAYLE**

*Minister for Health and Social Care*

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision under the Public Health (Tobacco) Act 2006 in respect of tobacco advertising (under section 3(3), tobacco displays (under sections 4A(2) and 4B(3)), the display of tobacco prices (under section 4C) and tobacco brandsharing (the use of the same or similar names, emblems or other features in connection with both tobacco products and non-tobacco products and services) (under section 8).

Regulations 1 to 3 are introductory and provide for the title, commencement date and interpretation of the Regulations.

Regulation 4 defines the meaning of “*place*” for the purposes of sections 3 (advertising: exclusions), 4A (prohibition of tobacco displays) and 4C (displays: prices of tobacco products) of the Act. It is defined as meaning premises where tobacco products are offered for sale in the course of a business, other than premises which are accessible only by persons engaged in, or employed by, the tobacco trade and which do not display the prices of tobacco products on the outside of the premises.

Regulation 5 applies when there is a display of tobacco products to an individual following a particular request by the individual to purchase a tobacco product, or for information about a tobacco product; this is a “*requested display*” as defined in section 4B(8) (tobacco displays: exclusions and defence) of the Act. No offence will be committed by a display of tobacco products to persons other than the individual who requested the display if the requirements in regulation 5 are met.

Regulation 6 allows for displays of tobacco products in “*bulk tobacconists*”. “*Bulk tobacconists*” are defined (in regulation 3) to mean shops that do not sell cigarettes or hand-rolling tobacco in small units. Tobacco products may be displayed if they are in an area of the shop containing only tobacco products and smoking accessories (“*the tobacco area*”) and the requirements of regulation 6 are met.

Regulation 7 allows for displays of tobacco products during restocking. Tobacco products may be displayed only whilst they are being placed in a unit in which they will be held pending sale (a “*storage unit*” defined in regulation 3). A limit is imposed on the area of the unit in which products may be visible during restocking.

Regulation 8 allows for displays of tobacco products where such displays are requested by authorised persons under section 9 (Enforcement) of the Act, police officers or customs officers acting in the course of their duty.

Regulation 9 allows indications on storage units where tobacco products are held if the requirements in this regulation are met.

Regulation 10 provides that the display of prices of tobacco products in a place must comply with the requirements specified in the Regulations. Regulation 11 lays down general requirements which must be met by all such displays.

Regulations 12 to 14 lay down additional requirements to be met in relation to particular means of displaying such prices. Prices may be displayed in one or more of the following ways: by labels on storage units, which meet the requirements of regulation 12; by way of price lists, which meet the requirements of regulation 13; and by price lists available on request, which meet the requirements of regulation 14.

Regulation 15 places requirements on the display of prices of tobacco products in bulk tobacconists where such displays would be visible from outside of the tobacco area.

Regulation 16 sets out the prohibitions on tobacco brandsharing. Paragraph (1) prohibits the use in connection with any non-tobacco product or service of any feature which is the same as, or is so similar as to be likely to be mistaken for, a feature which is connected with a tobacco product. Paragraph (2) prohibits the use in connection with any tobacco product of any feature which is the same as, or is so similar as to be likely to be mistaken for, any feature which is connected with a non-tobacco product or service if the purpose or effect of such use is to promote a tobacco product by the association which it has with any non-tobacco product or service.

Regulation 17 sets out exceptions to the prohibitions on tobacco brandsharing. Paragraph (1) applies if the person does not use brandsharing features for the purpose of promoting a tobacco product and that person could not reasonably have foreseen that a tobacco product would be promoted.

Paragraph (2) applies if the person does not use any brand feature in connection with a non-tobacco product or service for the purpose of promoting a tobacco product, he does not produce or promote any tobacco product and he is not a party to an agreement or licence relating to the use of the feature, to which a producer or promoter of a tobacco product is also a party. The paragraph also applies where the link between the user of the feature and the producer or promoter of the tobacco product is through various employment, commissioning or company relationships.

Paragraph (3) applies if the person does not use a brand feature for the purpose of promoting a tobacco product, the feature of a non-tobacco product or service was used in the European Economic Area before 1st September 2002 and the presentation of any feature of the product or service does not make it appear to belong to the same brand as any tobacco product.

Paragraph (4) applies if the person who is using a feature in connection with a non-tobacco product or service does not know that the purpose or effect of using the feature is, or is likely to be, to promote a tobacco product and the use of the feature does not make it appear that the same person, firm or company is responsible for the branding

of both the tobacco product and the non-tobacco product or service (whether that is in fact so or not).

Paragraph (5) applies if the person does not use brandsharing features for the purpose of promoting a tobacco product through an association with a non-tobacco product or service and that person could not reasonably have foreseen that a tobacco product would be promoted.

Paragraph (6) applies if the person does not use any brand feature in connection with both a tobacco product and a non-tobacco product or service for the purpose of promoting a tobacco product through an association with a non-tobacco product or service, he does not produce or promote any tobacco product and he is not a party to an agreement or licence relating to the use of the feature, to which a producer or promoter of a tobacco product is also a party. The paragraph also applies where the link between the user of the feature and the producer or promoter of the tobacco product is through various employment, commissioning or company relationships.

Paragraph (7) applies if the person does not use any brand feature for the purpose of promoting a tobacco product by association with a non-tobacco product or service, the feature of the tobacco product was used in the European Economic Area before 1st September 2002 and the presentation of any feature of the tobacco product does not make it appear to belong to the same brand as any non-tobacco product or service.

Paragraph (8) applies if the person who is using a feature in connection with a tobacco product does not know that the purpose or effect of using the feature is, or is likely to be, to promote a tobacco product through the association which the feature has with any non-tobacco product or service, and the use of the feature does not make it appear that the same person, firm or company is responsible for the branding of both the tobacco product and the non-tobacco product or service (whether that is in fact so or not).

Regulation 18 contains general provisions. Paragraph (1) prescribes the circumstances in which a person who uses brandshared features does not commit an offence under sections 1, 2, 2A, 4A, 4C, 4D, 6 or 7 of the Act. Paragraphs (2) to (4) provide that a person who wishes to rely on an exception in regulations 17 or 18 must adduce evidence sufficient to raise an issue with respect to that exception but that where he does so it is for the prosecution to prove beyond reasonable doubt that the exception does not apply.