SCOTTISH STATUTORY INSTRUMENTS

2004 No. 144

PUBLIC HEALTH

The Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2004

Made - - - -	*24th March 2004*
Laid before the Scottish Parliament - - - -	*25th March 2004*
Coming into force - -	*21st December 2004*

The Scottish Ministers, in exercise of the powers conferred sections 4(3) and (4) and 19(2) of the Tobacco Advertising and Promotion Act 2002(**1**), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2004 and shall come into force on 21st December 2004.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations–

"A5 size" means the size of an area of any shape which is equal to the area of size A5 in the A series of paper sizes defined in BS EN ISO 216: 2001(**2**);

"the Act" means the Tobacco Advertising and Promotion Act 2002;

"advertisement" means a tobacco advertisement, except an advertisement which is not for cigarettes or hand-rolling tobacco which is in, or fixed to the outside of the premises of, a specialist tobacconist;

"gantry or display unit" means a gantry, display cabinet, tray or other product in which a tobacco product is held pending sale that is–

(a) fixed to one place within fixed or movable premises; and

(b) primarily used for the display of tobacco products to customers;

(**1**) 2002 c. 36. The "appropriate Minister" is defined by section 21 as meaning, in relation to Scotland, the Scottish Ministers.
(**2**) Copies of BS EN ISO 216: 2001 can be obtained from the British Standards Institute, 389 Chiswick High Road, London, W4 4AL

"group of companies" means a holding company and its subsidiaries within the meaning of section 736 (interpretation) of the Companies Act 1985(**3**);

"other feature" means a logo, trademark, symbol, motto, print, 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; and

"point of sale" has the meaning given to it in regulation 3.

Point of sale

3.—(1) In these Regulations, "point of sale" means a point within any fixed or movable premises at which a gantry or display unit is affixed.

(2) Except where regulation 5 applies, these Regulations apply only to advertisements published at the point of sale and not elsewhere.

(3) Subject to paragraph (4), where there is more than one point of sale within any premises, tobacco products may be advertised at only one of those points of sale.

(4) Where premises are occupied by more than one separate business, tobacco products may be advertised at only one point of sale within the part of the premises occupied by each of those businesses.

(5) For the purposes of paragraph (4), "separate business" means a business which is–

(a) controlled and managed by a single individual who, or by a firm, company or group of companies which, controls and manages only one business which sells tobacco products in the premises in question;

(b) managed separately from any other business in those premises which sells tobacco products; and

(c) carried on in a distinct part of the premises which is separate from any other part of the premises in which tobacco products are sold.

(6) "Place" in section 4(3)(a) of the Act means–

(a) the point of sale; and

(b) the place where a tobacco vending machine is located.

Advertising at point of sale

4.—(1) Subject to regulations 3 and 6 and the following paragraphs of this regulation, no offence is committed under section 2 of the Act by the publication on a gantry or display unit at the point of sale of an advertisement to which this regulation applies.

(2) An advertisement to which this regulation applies may include–

(a) the name, emblem or other feature (in any combination) of the tobacco product to which the advertisement relates;

(b) the price of a packet of that product and the size of the packet to which the price relates,

but shall not include any other word or image.

(3) An advertisement to which this regulation applies shall be presented in two dimensional format and shall be either–

(a) a single advertisement which has; or

(b) two or more advertisements which together have,

a surface area which does not exceed A5 size.

(**3**) 1985 c. 6. Section 736 was substituted by the Companies Act 1989 (c. 40), section 144.