

# Guidance for those selling Tobacco Products

From 1 July 2009, changes  
in legislation affect all  
those who sell tobacco  
products to the public.

Public Health (Tobacco) Acts



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# Introduction

In November 1999, the Oireachtas Joint Committee on Health and Children published *A National Anti-Smoking Strategy – A Report on Health and Smoking* which recommended that a national anti-tobacco strategy be adopted.

In response, the Tobacco Free Policy Review Group was set up to carry out a fundamental review of health and tobacco and to make recommendations to the Minister for Health and Children. Their report *Towards a Tobacco Free Society* was published in 2000 and was adopted as Government policy.

Against this background, the Smoke Free at Work initiative was introduced on 29 March 2004. The primary purpose of this measure is to protect the health of workers and the public from exposure to toxic environmental tobacco smoke.

Tobacco use causes the premature deaths of over 6,500 Irish people every year. Thousands of others become ill from tobacco-related diseases. The aim of the measures introduced is to protect the public from exposure to advertising that serves to normalise tobacco products, particularly among young people. Removing advertising will also support adults who are trying to quit.

Research shows that tobacco advertising is a key factor in a young person starting and continuing to smoke. The location of prominent tobacco displays in retail outlets, in itself, plays a role in promoting tobacco consumption. This placement of tobacco in close proximity to everyday consumer goods, such as newspapers and sweets, helps tobacco to be seen as another benign consumer product. Research has shown that 78% of Irish smokers started smoking before they reached the age of 18, evidence that smoking initiation is largely a childhood and teenage phenomenon. If the decision whether or not to smoke can be delayed until adulthood, over time, the numbers of people both becoming addicted to smoking and suffering smoking related illnesses can be significantly reduced.

It should be noted that 'advertising' is very broadly defined and includes every form of recommendation of the product to the public including a statement of the name of a manufacturer, importer or brand of tobacco product, or a display or other publication of a trademark, emblem, marketing image or logo, by reference to which the product is marketed or sold.

# Commencement of Further Provisions of the Public Health (Tobacco) Acts

## From 1 July 2009:

1. No advertising or display of tobacco products is permitted in a retail premises that sells tobacco products;
2. Retailers must ensure that their tobacco products are stored out of view, within a closed container or dispenser only accessible by the retailer and retail staff;
3. The retailer may use a pictorial list (in accordance with Regulations) to inform a member of the public aged 18 years and older who intends to purchase a tobacco product as to the products that are available;
4. Retailers must display a sign at their premises informing the public that tobacco products may be sold at those premises to persons aged 18 years and over;
5. Self-service vending machines are prohibited except in licensed premises and registered clubs and must be operated in accordance with Regulations;
6. All retailers of tobacco products must register with the Office of Tobacco Control (OTC).

## Guidance Document

The aim of this publication is to provide retailers of tobacco products, including shops, licensed premises and registered clubs, with guidance in relation to the measures introduced on 1 July 2009.

As interpretation of the law is a matter for the Courts, this guidance is intended to provide general information on tobacco control legislation and should not be construed as legal advice. It is without prejudice to any other legal obligations under criminal or civil law.

Retailers are encouraged to contact the OTC (lo-call information line 1890 333 100) and the Health Service Executive (through their local Environmental Health Service office) for further information.

# Ban on Point of Sale Advertising

## Relevant Legislation

Section 33A of the Public Health (Tobacco) Act, 2002 (as amended)<sup>1</sup>, prohibits all advertising of tobacco products in retail premises in which tobacco products are sold.

### What does this mean for me?

- ⊙ No tobacco related advertising is permitted on your premises. This includes both internal and external tobacco display and advertising signage.
- ⊙ No tobacco related advertising is permitted either surrounding or on the front of the closed container or dispenser that stores the tobacco product. This includes all in-store advertising or promotional material for tobacco products.
- ⊙ Signs and memorabilia connected with brands which are no longer on the market may continue to be displayed. If a brand no longer exists, there is no product to recommend and the display of, for example the name of an obsolete brand is not a recommendation of that product.
- ⊙ Tobacco products or reproductions of tobacco products cannot be on display.<sup>2</sup>
- ⊙ All tobacco products must be kept out of view in a closed container or dispenser only accessible by the retailer and retail staff.
- ⊙ It is entirely a matter for each retailer of tobacco to decide: How tobacco products are removed from view; and In what type of closed container they are stored.
- ⊙ The location of the closed container or dispenser is a matter for the retailer. **It is not required to be under the counter.**
- ⊙ Only the tobacco product must be out of sight. The closed container may be visible.
- ⊙ Self-service vending machines are prohibited, except in registered clubs<sup>3</sup> and licensed premises<sup>4</sup>. They must also be free of all tobacco related advertising.
- ⊙ Selection decals/buttons for dispensing machines and self service vending machines must not display tobacco product trademarks, emblems, marketing images or logos unless they are out of the view of the customer.

**No advertising or display of tobacco products is permitted.**

1 Public Health (Tobacco) Act 2002 (No. 6 of 2002); Public Health (Tobacco) (Amendment) Act 2004 (No. 6 of 2004); Public Health (Tobacco) (Amendment) Act 2009.

2 A 'tobacco product' means any product consisting, in whole or in part, of tobacco, that is intended to be smoked, and any cigarette paper, tube or filter manufactured for use in smoking of tobacco. (Public Health (Tobacco) Act 2002 as amended).

3 A 'registered club' is a premises registered under the Register of Clubs Act 1904 to 2008.

4 A 'licensed premises' means a premises in respect of which a license for the sale of intoxicating liquor has been granted by the Circuit or District court under the Intoxicating Liquor Act 2008.

# Closed Container

## Relevant Legislation

Section 43(3) of the Public Health (Tobacco) Act, 2002 (as amended), provides that a person registered with the Office of Tobacco Control under Section 37 must ensure that all tobacco products sold are kept in a closed container or dispenser that is not visible or accessible to the public.

## What does this mean for me?

- ⊙ A person registered with the Office of Tobacco Control under Section 37 must ensure that all tobacco products are out of view and stored within a closed container or dispenser only accessible by the retailer and retail staff.
- ⊙ Only the tobacco product must be out of sight. The closed container or dispenser may be visible.
- ⊙ The location of the closed container or dispenser is a matter for the retailer. **It is not required to be under the counter.**
- ⊙ Selection decals/buttons for dispensing machines must not display tobacco product trademarks, emblems, marketing images or logos unless they are out of the view of the customer.
- ⊙ No tobacco related advertising is permitted either surrounding or on the front of the closed container or dispenser that stores the tobacco product.
- ⊙ The registration number(s) issued by the OTC, must be affixed to the closed container(s) or dispenser(s) following registration. (See page 10, *Register of Retailers of Tobacco Products*).

**Tobacco products must be out of view and stored within a closed container or dispenser in all registered premises.**

# Provision of Product Information

## Relevant Legislation

Section 43(5) of the Public Health (Tobacco) Act, 2002 (as amended), provides that a person registered with the Office of Tobacco Control under Section 37 may provide information to a member of the public intending to purchase a tobacco product in accordance with Regulations.

The Public Health (Tobacco) (Product Information) Regulations 2009, (S.I. No. 123 of 2009) set out the information that retailers may provide to a customer aged 18 years and over who enquires about what tobacco products are available to purchase.

## What does this mean for me?

- ⊙ Retailers may **show** to a customer intending to purchase a tobacco product:
  - One packet only of each tobacco product sold or a reproduction thereof;
  - or
  - A pictorial list consisting of visual images of packets of the tobacco products sold by him or her, provided that:
    - (i) Each such image is not greater in size than the size of the packet concerned;
    - (ii) The list does not contain more than one image of the same product;
    - (iii) The list or each such image contains one of the mandatory health warnings<sup>5</sup>.
- ⊙ Only one image of each brand variant or pack size can be included.
- ⊙ Tobacco products or reproductions of tobacco products cannot be on display.
- ⊙ A pictorial list to inform customers of the tobacco products sold cannot be left on display.
- ⊙ Separate lists for different types of tobacco products and self-service vending machine stock are permitted.

**A pictorial list to inform customers of the tobacco products sold cannot be left on display.**

5. The warnings are set out in the European Communities (Manufacture, Presentation and Sale of Tobacco Products) Regulations 2003 as amended by S.I.No. 255 of 2008.

# Retail Sign

## Relevant Legislation

Section 43(4) of the Public Health (Tobacco) Act, 2002 (as amended), provides that a person registered with the Office of Tobacco Control under Section 37 must display a sign at a premises where tobacco products are sold.

The sign is prescribed in the Public Health (Tobacco) (Retail Sign) Regulations 2009 (S.I. No. 57 of 2009).

## What does this mean for me?

- ⦿ A person registered with the OTC must display the prescribed sign at their premises.
- ⦿ Only one sign per premises is permitted.
- ⦿ Attention shall not be drawn to the sign by means of light, sound or any other means.
- ⦿ No other sign, notice or display is permitted at the premises indicating that tobacco products are for sale, except for the purposes of the European Communities (Requirements to Indicate Product Prices) Regulations 2002 (S.I. No. 639 of 2002).
- ⦿ The prescribed sign is available to download from [www.dohc.ie/tobacco](http://www.dohc.ie/tobacco) or [www.otc.ie](http://www.otc.ie). The downloaded sign must be printed on white paper or cardboard and conform to the dimensions, type-face colour, font and point size of the sign prescribed in the Regulations (S.I. No. 57 of 2009).
- ⦿ Your retail register number will be available following registration by the OTC. (See page 10, *Register of Retailers of Tobacco Products*).

**All registered premises must display a sign informing the public that tobacco products may be sold to those aged 18 years and over.**

# Self-Service Vending Machines

## Relevant Legislation

Section 43(1) of the Public Health (Tobacco) Act, 2002 (as amended), prohibits the sale by retail of tobacco products by means of self-service. Section 43(2) of the Public Health (Tobacco) Act, 2002 (as amended), provides that tobacco products may be sold by means of a vending machine on licensed premises or the premises of a registered club, in accordance with Regulations.

The Public Health (Tobacco) (Self Service Vending Machines) Regulations 2009 (S.I. No. 42 of 2009), govern the sale of tobacco products by means of self service in licensed premises or registered clubs.

## What does this mean for me?

- ⊙ Self-service vending machines are prohibited, except in registered clubs<sup>6</sup> and licensed premises<sup>7</sup>.
- ⊙ Self-service vending machines must be located adjacent or in close proximity to that part of the licensed premises or registered club which is generally attended by a member of staff.
- ⊙ Self-service vending machines must also be located within the line of sight of a member of staff at all times.
- ⊙ Self-service vending machines must be activated by means of a disc or card obtained from a staff member or by a device controlled by a staff member.
- ⊙ A customer cannot purchase a tobacco product from a self-service vending machine without first obtaining a disc or card from a staff member. This disc or card is then used to activate the vending machine. The customer must also deposit money to complete the transaction.
- ⊙ The staff member shall not provide a disc or card to activate a self-service vending machine, or activate the machine by means of a device, unless they are satisfied that the purchaser has attained the age of 18 years.
- ⊙ Self-service vending machines must be free of all tobacco related advertising.
- ⊙ Selection decals/buttons for self service vending machines must not display tobacco product trademarks, emblems, marketing images or logos.
- ⊙ The registration number(s) issued by the OTC, must be affixed to the self-service vending machine(s) following registration. (See page 10, Register of Retailers of Tobacco Products).

**Self-service vending machines are prohibited except in licensed premises and registered clubs.**

<sup>6</sup> A 'registered club' is a premises registered under the Register of Clubs Act 1904 to 2008.

<sup>7</sup> A 'licensed premises' means a premises in respect of which a license for the sale of intoxicating liquor has been granted by the Circuit or District court under the Intoxicating Liquor Act 2008.

# Register of Retailers of Tobacco Products



## Relevant Legislation

Section 37 of the Public Health (Tobacco) Act, 2002 (as amended), provides for the establishment and maintenance by the Office of Tobacco Control of a register of all persons who carry on in whole or in part the business of selling tobacco products by retail.

The Public Health (Tobacco) (Registration) Regulations 2009 allow the Office of Tobacco Control to collect the information necessary for the establishment and maintenance of the Register.

## What does this mean for me?

If you sell or intend to sell tobacco product by retail whether over the counter or from a self-service vending machine you must register with the OTC.

- ⊙ All retailers who sell tobacco products must be registered with the OTC.
- ⊙ A person who proposes to commence the business of selling tobacco products by retail, must register with the OTC before they can sell tobacco products.
- ⊙ In relation to self-service vending machines, **both** the owner of the self-service vending machine(s) and the holder of a license for the sale of alcohol for a licensed premises or the person entered in the register of clubs (as an official of the committee of management or governing body of a registered club) in which the machine is located must register. **Tobacco Products can only be sold when both parties have registered and are entered on the register.**
- ⊙ The registered number(s) issued by the OTC, must be affixed to the closed container(s) or self-service vending machine(s) following registration.
- ⊙ To keep the register up to date you are required to notify the OTC of any change in particulars. These changes can be submitted online using a unique pin number which will be issued following registration.

**All retailers who sell tobacco products must be registered with the OTC.**

# How to Register?

Retailers can register online or by using a printed application form. The online facility is available at [www.tobaccoregister.ie](http://www.tobaccoregister.ie).

Copies of the application form are available on line at [www.tobaccoregister.ie](http://www.tobaccoregister.ie) or [www.otc.ie](http://www.otc.ie). Alternatively, copies can be requested from the OTC lo-call information line 1890 333 100. In addition, application forms are available at your local HSE Environmental Health Service office.

## Application Fee

- Ⓢ Each applicant must pay an application fee of €50 to the OTC.
- Ⓢ Where an applicant is registering more than one premises or self-service vending machine a single application fee of €50 is payable.
- Ⓢ Payment is possible via credit card, laser card, postal order, bankdraft and by cheque. Online payments are SSL encrypted.

# Exemptions

## Specialist Tobacco Retailers

- ⊙ Section 44(1) of the Public Health (Tobacco) Act, 2002 (as amended), provides an exemption from section 43 for specialist tobacco retailers.
- ⊙ A specialist tobacco retailer is defined as "a person who—
  - (a) carries on, in whole, the business of selling by retail—
    - (i) tobacco products, or
    - (ii) products used for the purposes of or in connection with smoking tobacco products, unless he or she is a subsidiary of a company that does not carry on in whole such business, or
  - (b) carries on, in part, the business of selling tobacco products by retail and does not carry on any business that consists, in whole or in part, of selling cigarettes."
- ⊙ A specialist tobacco retailer must apply to the Minister for a Certificate of Exemption.
- ⊙ Following confirmation that the conditions in a or b above are met a Certificate of Exemption will issue to the retailer.
- ⊙ A person who is issued with a Certificate of Exemption is also exempt from section 33A as amended.

## Airport Duty Free

- ⊙ Section 35 of the Public Health (Tobacco) Act, 2002 (as amended), provides that a pictorial list consisting of visual images of packets of the tobacco products on sale may be displayed in duty free premises in airports provided that:
  - (i) each such image is not greater in size than the size of the packet concerned,
  - (ii) the list does not contain more than one image of the same product, and
  - (iii) the list or each such image contains one of the mandatory health warnings.

# Suspension from the Register

- ⊙ A person who is registered with the OTC and who is convicted of an offence under the Public Health (Tobacco) Act, 2002 (as amended), will be suspended from the register for a period of time as determined by the Court.
- ⊙ If a person has more than one premises registered, only the premises to which the conviction relates will be suspended from the register.
- ⊙ Tobacco products cannot be sold from the premises to which the conviction relates for the period of time determined by the Court.

# Enforcement and Penalties

The Environmental Health Officers of the Health Service Executive are responsible for the enforcement of the legislation.

Penalties for offences under the Public Health Tobacco Acts are set out in Section 5 of the Public Health (Tobacco) Act, 2002 (as amended). In addition, if a person is convicted of an offence, the premises to which the conviction relates will be suspended from the register of retailers for a period as determined by the Courts.

- ⊙ The period of suspension specified in the Court Order shall not commence until
  - (a) the expiration of any period during which the conviction may be appealed,
  - or
  - (b) where the conviction is appealed and affirmed, the date of the decision of the court before which the appeal is heard affirming the conviction

Tobacco products cannot be sold from the premises during this period.

# Data Protection

The Office of Tobacco Control fully respects your right to privacy. Any personal information relating to an applicant for retail registration will be treated in accordance with the Data Protection Acts, 1988 and 2003 (and any amending or substituting legislation).

Your personal information will be used only for the purposes for which it is provided, for example, for conducting regulatory checks or requirements or to comply with a legal process.

You are entitled to access information that the Office of Tobacco Control holds relating to you and can do so by applying to the Office of Tobacco Control in writing. We reserve the right to charge a reasonable administration fee for each access request. We are entitled to take reasonable steps to establish your identity in relation to any amendment, access or deletion request and may, at our discretion, require proof of identity, your PIN number or other documents or identifying information.

# Freedom of Information

The Office of Tobacco Control is prescribed as a 'Public Body' within the meaning of the Freedom of Information Acts, 1997 and 2003, pursuant to Statutory Instrument 297 of 2006. Pursuant to the provisions of the Freedom of Information Acts, certain information provided to the Office of Tobacco Control may form the subject of a Freedom of Information request. Personal information concerning identifiable individuals is not disclosable under the Freedom of Information Acts other than to the individual concerned except under limited circumstances provided for in the legislation.

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