

# Rapid Review of Compliance with Tobacco Advertising and Promotion (Display) Regulations (2010) in small business premises

Commissioned by the Department of Health Tobacco Policy Team  
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Chartered Trading Standards Institute (2015)

A STUDY  
COMMISSIONED BY  
THE DEPARTMENT OF  
HEALTH TOBACCO  
POLICY TEAM;  
DEVELOPED AND  
DELIVERED BY THE  
CHARTERED TRADING  
STANDARDS INSTITUTE  
AND LOCAL TRADING  
STANDARDS SERVICES  
IN ENGLAND



## SUMMARY AND KEY FINDINGS

- *The Tobacco Advertising and Promotion (Display) Regulations 2010 and The Tobacco Advertising and Promotion (Display of Pricing) (England) Regulations 2010 came into force for small business premises on the 6<sup>th</sup> April 2015; these Regulations have been in force for large businesses since 2012.*
- *A total of 592 compliance visits were conducted across England in July and August 2015 by Trading Standards Services as part of a Department of Health supported operation designed to assess compliance with the new Regulations. The operation was managed by the Chartered Trading Standards Institute.*
- *Compliance with both sets of Regulations was found to be high with just under 90% of all businesses visited being fully compliant; where non-compliance was found, further advice and guidance will be provided by the local Trading Standards Service to bring the business into compliance.*
- *Compliance was found to be broadly similar across both urban and rural areas.*
- *The majority of businesses visited had received guidance about the change in the law. The most frequently cited source was their tobacco industry representative with local authority guidance being the next most cited source.*
- *Most businesses had received assistance with their gantry solutions from the tobacco industry. However, around a quarter of businesses had produced their own solution. These ranged from shower curtains and vertical blinds to flags.*

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## 1. INTRODUCTION

The Health Act 2009<sup>1</sup> made provision in Sections 20 and 21 for amendment to be made to the Tobacco Advertising and Promotion Act 2002<sup>2</sup> specifically the insertion of Sections 6 (A1), 7A, 7B and 7C allowing for the prohibition of tobacco displays.

As a result of this amendment, the Tobacco Advertising and Promotion (Display) (England) Regulations 2010<sup>3</sup> came into force in England on the 6 April 2012 for large business premises. At the same time, The Tobacco Advertising and Promotion (Display of Pricing) (England) Regulations 2010 came into force controlling the manner in which pricing information is given for tobacco products.

The purpose of these regulations is to effectively prohibit the display of tobacco products at point of sale in all business premises; the display of tobacco in small premises has been similarly controlled since 6 April 2015.

### 1.1 THE LEGISLATION AND REQUIREMENTS

From the 6 April 2015 it became illegal ( as it has been in large premises since April 2012 ) to display tobacco products in small business premises in England, except in the limited circumstances set out in the regulations and described as a “temporary display” specifically:

- Following a request to buy or see tobacco products made by a customer over the age of 18 years
- Incidental displays whilst staff are actively
  - Assessing stock levels for the purpose of stock control
  - Restocking
  - Undertaking staff training
  - Cleaning the storage unit
  - Maintaining the storage unit
  - Refurbishing the storage unit
- Following a request made by an enforcement officer

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<sup>1</sup> Health Act (2009) available at : <http://www.legislation.gov.uk/ukpga/2009/21/contents> [accessed online 7 August 2015]

<sup>2</sup> Tobacco Advertising and Promotions Act 2002 available at : <http://www.legislation.gov.uk/ukpga/2002/36/contents> [accessed online 7 August 2015]

<sup>3</sup> Tobacco Advertising and Promotion ( Display ) Regulations 2010 available at : <http://www.legislation.gov.uk/uksi/2010/445/contents/made> [ accessed on line 7 August 2105]

Only in these circumstances is a display of tobacco products permitted; the size of the display must not exceed 1.5 square meters.

It also became illegal to display the prices of tobacco products in such businesses in England, except in the formats set out in the legislation namely in a poster style list, a list of products including images and prices available only on request or by price labels on storage units of a regulated size.

In October 2012, a rapid review of compliance with these regulations in large business premises and bulk tobacconists was undertaken by Trading Standards Services. A report<sup>4</sup> was published by the Trading Standards Institute in 2013.

The review found that:

*“Implementation of the Tobacco Advertising and Promotion (Display) (England) Regulations 2010 and the Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010 has been found to be high in this rapid review of compliance carried out by regulatory officers across nine English regions.”*

## 2. PURPOSE

The purpose of this review is to assess levels of regulatory compliance by small businesses with the Tobacco Advertising and Promotion (Display) (England) Regulations 2010 and the Tobacco Advertising and Promotion (Display of Pricing) (England) Regulations 2010.

## 3. SCOPE

This was designed to be a rapid review of business compliance and has been carried out in an eight week period through July and August 2015. The review has been carried out by Trading Standards Services across a number of authorities in England. A mix of business premises in urban and rural settings have been assessed. A total of 592 compliance visits have been made. The data arising will be included in the National Tobacco Control survey for 2015-16.

## 4. METHOD

For the purposes of the coordination of trading standards matters there are nine regions in England. Each region conducted up to fifty compliance monitoring visits to business premises (of their choice) within their region and collected standard data as required by the study (see Annex 1). Additional compliance visits were undertaken by some regions and these data are included with the permission of the TSS in those regions.

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<sup>4</sup> The Display of tobacco products : a rapid review of compliance available at : <http://www.tradingstandards.uk/policy/Improvingthehealthofsociety.cfm> [ accessed online 7 August ]

Each region sent the collated results to the Chartered Trading Standards Institute for analysis and reporting. Guidance for the completion of the visit was provided in advance to the TSS taking part in the study (see Annex 2).

## 5. RESULTS

### 5.1 OVERALL COMPLIANCE RATES

A number of compliance visits were made by TSS in each region; each visit comprised of two elements:

- an assessment of compliance with the requirements of the Tobacco Advertising and Promotion (Display) (England) Regulations 2010 AND
- an assessment of compliance with the requirements of the Tobacco Advertising and Promotion (Display of Pricing) (England) Regulations 2010

The table below shows the number of compliant and non-compliant businesses visited in each Region – with respect to the ***tobacco display***

Region	Total number of compliance visits made	Total number of compliant businesses & percentage of total	Total number of non-compliant businesses & percentage of total
Eastern ( EETSA )	58	54 (93%)	4 (7%)
London ( LOTSA )	50	46 (92%)	4 (8%)
South East ( TSSE )	58	53 (91%)	5 (9%)
East Midlands ( TSEM )	49	45 (92%)	4 (8%)
South West (SWERCOTS)	53	49 (92%)	4 (8%)
Midlands ( CENTSA )	79	66 (84%)	13 (16%)
North West ( TSNW )	139	123 (88%)	16 (12%)
North East ( NETSA )	49	41 (84%)	8 (16%)
Yorkshire & Humber ( Y&HTS )	57	49 (86%)	8 (14%)
<b>Total</b>	<b>592</b>	<b>526 (89%)</b>	<b>66 (11%)</b>

Table 1: Tobacco Display compliance visits by Region

The overall compliance rate with the Tobacco Advertising and Promotion (Display) (England) Regulations 2010 was found to be **89%**.

Where non-compliance was recorded a variety of reasons were given including:

- *Doors were propped open at time of visit*
- *See-through curtain solution was not effective in covering the display*
- *Lighters , papers and matches stored along with tobacco products*
- *Ill-fitting blinds ineffective in covering the display*

- *Unaware the gantry had to be closed at ALL times other than for permitted activities*
- *Too busy to shut the doors in between serving customers*

The table below shows the number of compliant and non-compliant businesses visited in each Region – with respect to **pricing requirements**

Region	Total number of compliance visits made	Total number of compliant businesses & percentage of total	Total number of non-compliant businesses & percentage of total
Eastern ( EETSA )	58	46 (79%)	12 (21%)
London ( LOTSA )	50	46 (92%)	4 (8%)
South East ( TSSE )	58	55 (95%)	3 (5%)
East Midlands ( TSEM )	49	46 (94%)	3 (6%)
South West (SWERCOTS)	53	49 (92%)	4 (8%)
Midlands ( CENTSA )	79	62 (78%)	17 (22%)
North West ( TSNW )	139	127 (91%)	12 (9%)
North East ( NETSA )	49	36 (73%)	13 (27%)
Yorkshire & Humber ( Y&HTS )	57	47 (82%)	10 (18%)
<b>Total</b>	<b>592</b>	<b>514 (87%)</b>	<b>78 (13%)</b>

Table 2: Tobacco pricing compliance visits by Region

The overall compliance rate with the Tobacco Advertising and Promotion (Display of Pricing) (England) Regulations 2010 was found to be **87%**.

Where non-compliance was recorded a variety of reasons were given including:

- *No price indication given at all*
- *Price labels on shelf edge too big*
- *Too many sources of price indication provided*
- *Price list “on-order”*
- *Was not aware that there were regulations for pricing*

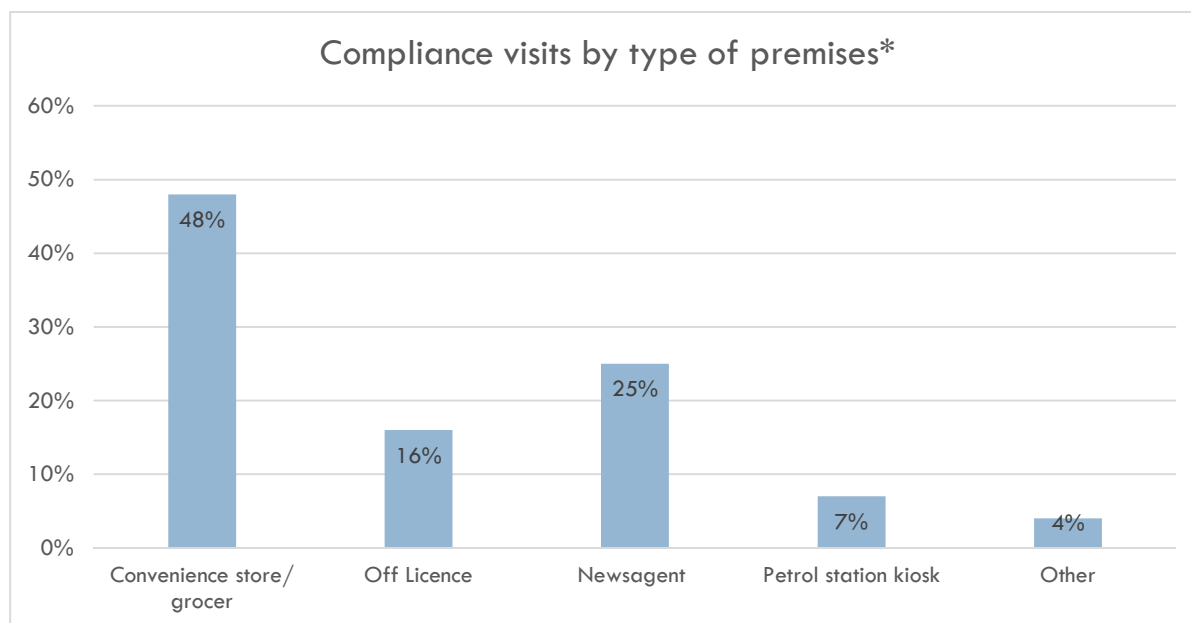


Example of compliance with display requirements

Courtesy of SW region

## 5.2 VISITS BY BUSINESS TYPE

The chart below provides the detail of the types of business premises visited during this rapid review. The greatest percentage, 48 % of the total visits, were made to convenience stores / grocers.



\* In addition, 1 visit was made to a licensed premises

Figure 1: Compliance visits by type of premises



Example of compliance with display requirements in an  
Off- licence premises  
Courtesy of SW region



### 5.3 COMPLIANCE WITH THE REGULATIONS BY BUSINESS TYPE

As stated in section 5.1, compliance with the regulations was found to be high across both the display and pricing provisions. The following charts detail the visits made by business type and of those visits the number (and percentage) that were found to be compliant.

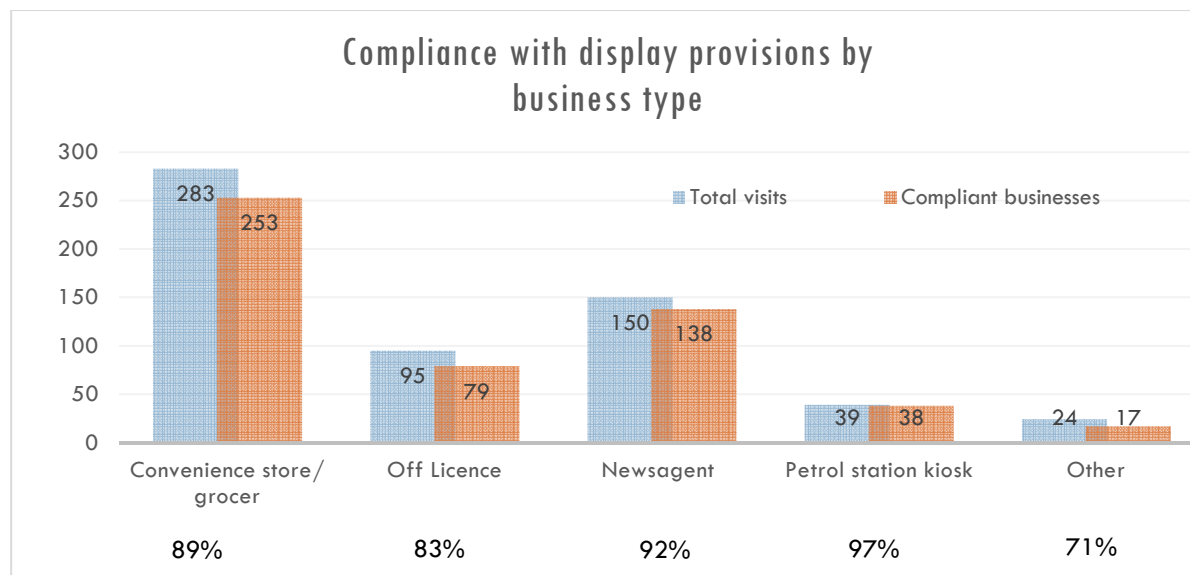


Figure 2: Compliance with display provisions by business type

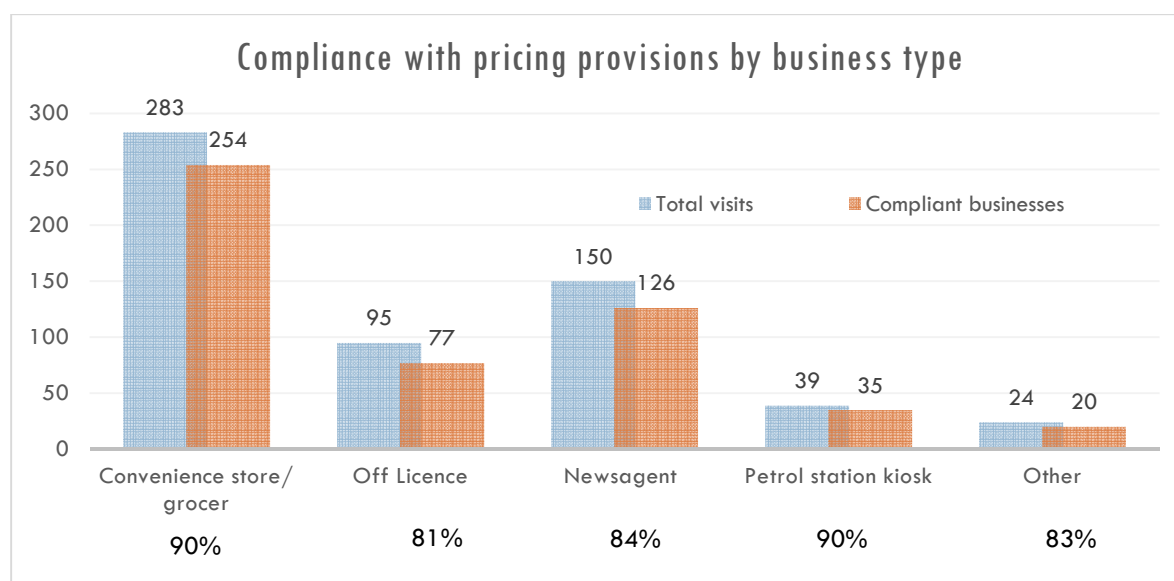


Figure 3: Compliance with pricing provisions by business type

### 5.3 COMPLIANCE BY LOCATION OF PREMISES - RURAL V URBAN

The following table provides information relating to the urban / rural businesses visited in each Region.

Region	Total number of compliance visits made to urban premises	Total number of compliance visits made to rural premises
Eastern ( EETSA )	42	16
London ( LOTSA )	49	1
South East ( TSSE )	51	7
East Midlands ( TSEM )	34	15
South West (SWERCOTS)	33	20
Midlands ( CENTSA )	70	9
North West ( TSNW )	121	18
North East ( NETSA )	41	8
Yorkshire & Humber ( Y&HTS )	36	21
<b>Total</b>	<b>477</b>	<b>115</b>

Table 3: Visits per region broken down by location

The chart below shows break down of businesses between rural and urban settings and compliance with the **display requirements**.

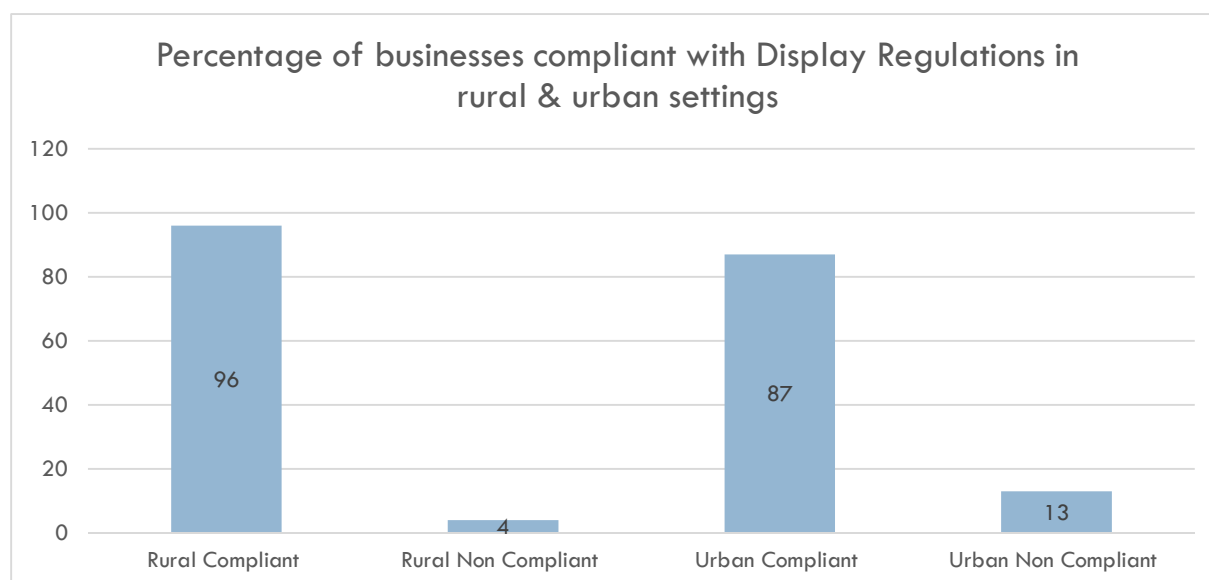
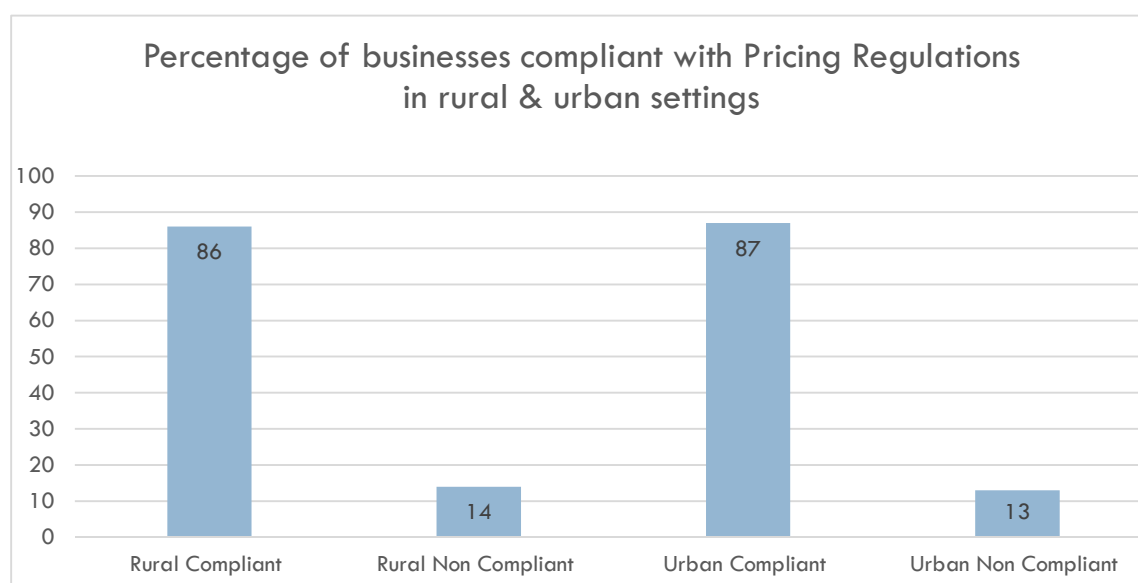


Figure 4: Compliance with display provisions by setting: rural v urban

87% of businesses in the urban setting were found to be compliant compared to a higher percentage (96%) of businesses in the rural setting.

The chart below shows break down of businesses between rural and urban settings and compliance with the **pricing requirements**.



*Figure 5: Compliance with pricing provisions by setting: rural v urban*

Similar rates of compliance were found between businesses in the rural and urban settings for compliance with the pricing requirements (86-87%).

#### 5.4 SUPPLIER OF GANTRY COVER

Ninety nine percent of businesses responded to the question of who had supplied their gantry solution. The majority (57%) stated that the gantry cover had been provided by the tobacco industry, with 28% stating they had provided their own solution.

Of those described as “supplied by self” there was a wide range of innovative solutions observed from the use of shower curtains, flags, cupboards, under counter drawers, old vending machines (locked )and black bin bags. Some were more successful than others in achieving the desired effect.

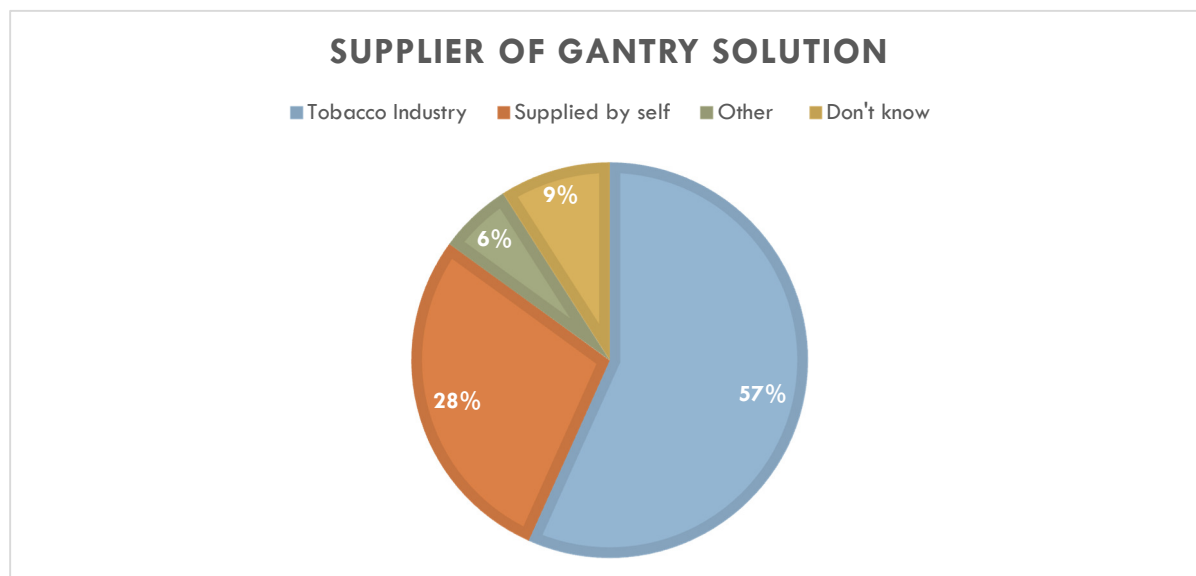
There were several examples of gantry covers that were doubling as advertising space for nicotine inhaling products (E-cigarettes).



Example of gantry being used to advertise  
Nicotine Inhaling Products

Courtesy of London region

See Annex 3 for further examples of gantry solutions.

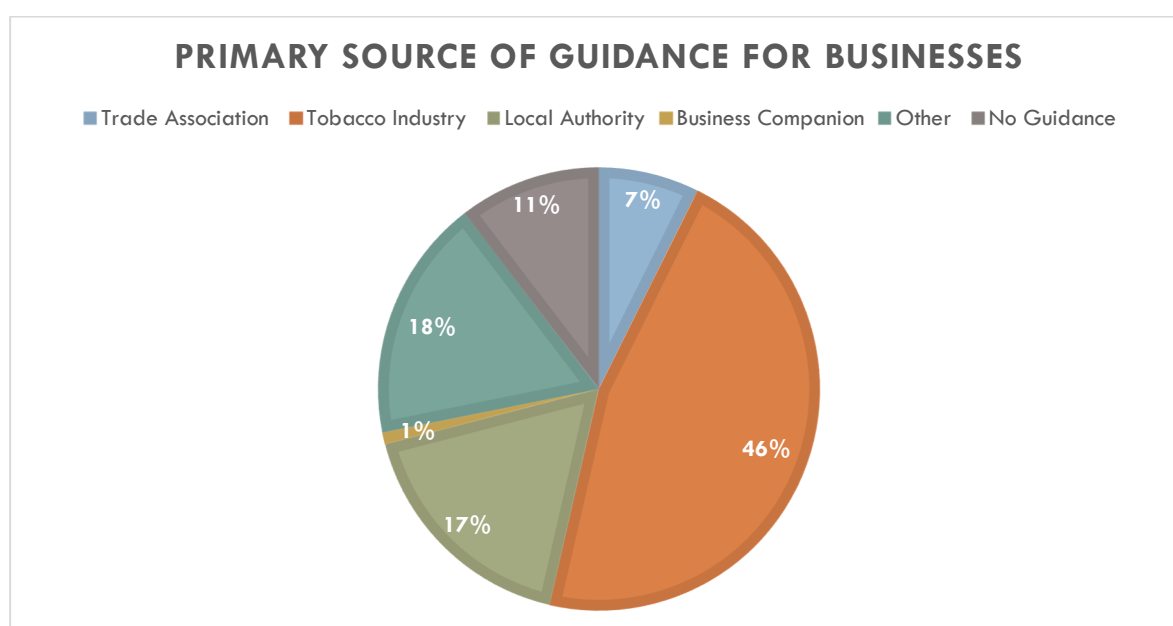


*Figure 6: Supplier of Gantry Solutions to small businesses*

#### 5.5 MAIN SOURCE OF BUSINESS GUIDANCE

The chart below shows that when asked, 46% of businesses visited stated that their main source of guidance for compliance with the regulations was provided by the tobacco industry followed by 17% of businesses who stated that they received guidance from the Local Authority TSS.

11% of businesses stated they have not received any guidance at all.



*Figure 7: Primary source of guidance for small businesses*

## 6. DISCUSSION & CONCLUSIONS

It is pleasing to note that at this early stage of implementation that compliance with both the Tobacco Advertising and Promotion (Display) (England) Regulations 2010 and the Tobacco Advertising and Promotion (Display of Pricing) (England) Regulations 2010 is high in the small business premises tested in this review . There is no reason to suggest that this should not be indicative of the compliance level more generally.

Whilst the solutions to removing the display of tobacco products may not in some cases be regarded as quite as “professional” as the majority of those observed in large business premises nevertheless, the objective of removing tobacco from sight has been achieved in the majority of cases.

Where non-compliance was found; advice was given by the TSS at the time of the visit to bring the business into compliance.

Perhaps of equal interest is the finding that the majority of businesses received guidance about the change in the law. Most often this was provided by their tobacco industry representative; with the least obtaining their guidance from the Business Companion website. This suggests that there is a preference expressed by small businesses for face to face and published guidance as opposed to information that is accessed via the internet. This is an important aspect of securing compliance in this sector.

There will be further regulation next year that will affect the retail of tobacco and thus an assessment of the preferred sources of guidance by small businesses is useful. Further research would be required to test this indication more thoroughly.

## 7. RECOMMENDATIONS

### 7.1 TRADING STANDARDS SERVICES

- Where non-compliance was found, a follow up visit is scheduled to verify that compliance has been achieved by the business
- Where visits are made to small business premises for whatever reason ; an assessment is made of compliance with this legislation and the data recorded for inclusion in the national tobacco control survey for 2015-16 ( to be collected April 2016)
- Where under-age test purchase operations are planned that due consideration is given to the inclusion of the additional offence for displaying tobacco to a young person under the age of 18 years IF an illegal sale is made

## 7.2 CHARTERED TRADING STANDARDS INSTITUTE

- Review the promotion of the Business Companion website as a means of delivering guidance to small businesses ; consider what can be done to encourage the use of this resource for future legislative changes affecting small businesses
- CTSI to publish this report and respond to media enquires where appropriate
- CTSI to share this report with Public Health England (PHE) and to encourage dissemination by PHE to regional centres with a view to highlighting the findings to Directors of Public Health locally
- CTSI to share the results with the relevant trade associations notably: The Association of Convenience stores, National Federation of Newsagents and the Rural Shops Alliance

## 7.3 DEPARTMENT OF HEALTH

- The Department of Health to note the findings of this report.

## 8. ACKNOWLEDGEMENTS

The author is grateful to colleagues at the DH, CTSI particularly the content management team for Business Companion, Trading Standards coordinators, members of the Tobacco Focus Group and the numerous trading standards professionals who participated in this project.

## ANNEX 1 INDICATION OF DATA COLLECTED DURING COMPLIANCE VISITS

Type of premise	Rural or Urban	Display compliant?	Supplier of cover	Prices compliant?	Information received by business	Photo reference if applicable
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Type of Premise: drop down list

- Convenience store / grocer
- Off licence
- Newsagent
- Petrol station Kiosk
- Licensed premise
- Other

Supplier of Cover: drop down list

- Tobacco Company
- Supplied by self
- Supplied by other trade body
- Don't Know

Information received by the business : drop down list

- Trade association
- Tobacco Industry representative
- Local Authority
- Business Companion website
- Other
- No guidance



### **Rapid Review of compliance in small business premises with:**

- **The Tobacco Advertising and Promotion (Display) (England) Regulations 2010**
- **The Tobacco Advertising and Promotion (Display of Prices)(England) Regulations 2010**

### **Notes for guidance for Trading Standards on the completion of the compliance visits to small business premises**

#### **Introduction**

The Tobacco Advertising and Promotion (Display) (England) Regulations 2010 came into force for small businesses on the 6<sup>th</sup> April 2015 (6<sup>th</sup> April 2012 for large premises).

This review will provide valuable insight to the Department of Health into the level of compliance with the regulations 3-4 months post implementation. All English regions are participating in this review and have been requested to select a range of small premises in a variety of locations (rural / urban) to visit and assess compliance.

The final report will be made available by CTSI in November 2015.

#### **The Law**

Since the 6<sup>th</sup> April 2015, tobacco products in small business premises must be stored out of public sight except in the limited circumstances listed below:

- 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

Trading Standards colleagues are requested to complete a compliance assessment for each business visited in accordance with the guidance outlined below and to record their findings on the data sheet provided. The data entry fields have been set to allow for ease of analysis post review.

**Please take time to review the requested fields on the data sheet and clarify any issues prior to making your visits.**

Please return your data sheet and where appropriate, any photographs, to your nominated regional coordinator for this project not later than **31<sup>st</sup> August 2015**.

Upon receipt by CTSI of the collated data sheet from the region, each LA may then invoice for work undertaken as part of the project; your coordinator will advise you of this.

The fee per compliance assessment visit is x

### **Guidance for the completion of the Rapid Review Display Regulations visits to small business premises**

You are advised to take the following items with you:

- Copy of the DH / TSI guidance and the Regulations accessible online at :  
<http://www.businesscompanion.info/en/quick-guides/goods/display-and-sale-of-tobacco-products#Displayandpricemarkingoftobaccoproducts>
- Copy of this guidance
- Tape Measure
- Means of taking a photograph

**You are requested to assess business compliance; for the purposes of the regulations this includes the following matters:**

How does the tobacco sales area operate in practice?

If Practical to do so, observe the operation of the tobacco counter for a few minutes prior to identifying yourself to the appropriate staff member.

Please pay particular attention to the following matters:

- Is the display fully covered/ closed after a sale is made to a customer?
  - Is the size of each temporary display equal to or less than 1.5 square metres?
  - Is the display propped open or are the doors / or other method of covering faulty?
  - Is there any sign of stock being left in the open and visible to customers?
  - Is there evidence of a check on the customers age prior to sale (as appropriate)?
- “It is 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”.*

Complete the data sheet as appropriate indicating **“yes” or “no”** to the OVERALL assessment of compliance question.

Identify what type of price list is used and assess whether it complies with the requirements:

a) Poster style lists (up to A3 in size) 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.

Complete the data sheet as appropriate indicating **“yes” or “no”** to the OVERALL assessment of compliance question.

### **Other issues**

1. Please take photos of the methods employed to cover the tobacco display and reference these on the data sheet. These are invaluable for the final report.
2. If possible establish who provided the “cover” - tobacco representative, self-etc.

3. Similarly, we are interested in where the business obtained advice and information from (if they did) in advance of the regulation being implemented for example from the TMA, trade representatives, LA TS, On-line etc.
4. We are also interested to hear of the experiences of staff on the practical operation of the regulations; please try and obtain their views on this and record in the comments section.

**Please contact me at xxxxxxxx if you have any questions about this project.**

## ANNEX 3 SELECTION OF IMAGES OF GANTRY SOLUTIONS

The following images provide examples of the solutions used by small businesses to comply with the requirement to cover the display of tobacco products (or not).



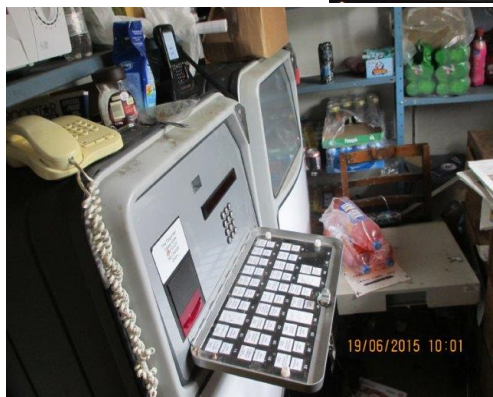
Courtesy of London Region

Courtesy of South West Region





Courtesy of Yorkshire & Humber  
Region



Courtesy of the Eastern Region



Courtesy of the North West Region



Courtesy of the North East Region



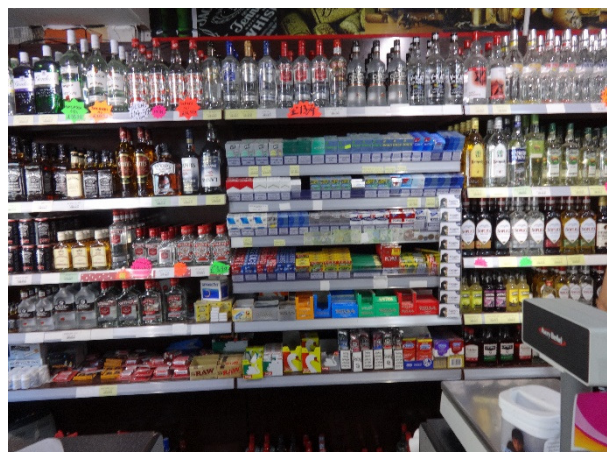




Courtesy of the West Midlands Region



Courtesy of the South East Region



Non-compliance

Courtesy of the East Midlands Region





