

22

ELECTRONIC
CIGARETTES



The Tobacco and Related Products Regulations 2016

The Tobacco and Related Products Regulations 2016 ('the Regulations') became law in the UK on 20 May 2016. The Regulations implement Directive 2014/40/EU (on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC).

The Regulations prohibit the advertising of nicotine-containing electronic cigarettes (e-cigarettes) which are not licensed as medicines, but only in some media channels. These prohibitions are set out in rule 22.12. CAP has produced [Advertising Guidance](#) which explains the legal basis for and effect of these prohibitions, particularly in relation to the types of claims marketers may make online and how they might avoid indirectly promoting prohibited products in media subject to the Regulations through the marketing of non-nicotine or other products.

Overview

Other than in rule 22.12 which relates only to unlicensed, nicotine-containing products, for the purposes of this section "e-cigarette" means a product that is intended for inhalation of vapour via a mouth piece, or any component of that product, including but not limited to cartridges, tanks and e-liquids. Therefore rules 22.1 – 22.11 apply to marketing communications for, and which refer to, e-cigarettes and related products, including but not limited to e-shisha and e-hookah products, whether or not they contain nicotine. The e-cigarette market continues to innovate rapidly and new products may emerge which may not be caught precisely by the above definition. The ASA may apply these rules in circumstances where it considers that an advertised product is sufficiently similar to warrant the protection provided by this section.

The majority of e-cigarettes are currently sold as consumer goods; however marketers may seek a medicines licence for their product from the Medicines and Healthcare Products Regulatory Agency (MHRA). Except for rule 22.12 this section applies to marketing communications for e-cigarettes which are licensed as medicines by the MHRA. For products licensed as medicines, the rules in section 12 (Medicines, medical devices, health-related products and beauty products) apply in addition to any other relevant CAP rules.

Depending on the formulation of their product and the means by which it is supplied, marketers may have obligations relating to their advertising under chemical classification, labelling and packaging legislation. Marketers are advised to take legal advice to ensure compliance with the relevant law.

Rules

- 22.1 Marketing communications for e-cigarettes must be socially responsible.
- 22.2 Marketing communications must contain nothing which promotes any design, imagery or logo style that might reasonably be associated in the audience's mind with a tobacco brand.
- 22.3 Marketing communications must contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.
- 22.4 Marketing communications must make clear that the product is an e-cigarette and not a tobacco product.
- 22.5 Marketing communications must not contain health or medicinal claims unless the product is authorised for those purposes by the MHRA. E-cigarettes may be presented as an alternative to tobacco but marketers must do nothing to undermine the message that quitting tobacco use is the best option for health.
- 22.6 Marketers must not use health professionals to endorse electronic cigarettes.
- 22.7 Marketing communications must state clearly if the product contains nicotine. They may include factual information about other product ingredients.
- 22.8 Marketing communications must not encourage non-smokers or non-nicotine-users to use e-cigarettes.
- 22.9 Marketing communications must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.
- 22.10 People shown using e-cigarettes or playing a significant role must neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but must be obviously not using e-cigarettes.
- 22.11 Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.
- 22.12 Except for media targeted exclusively to the trade, marketing communications with the direct or indirect effect of promoting nicotine-containing

e-cigarettes and their components which are not licensed as medicines are not permitted in the following media:

- Newspapers, magazines and periodicals
- Online media and some other forms of electronic media

Factual claims about products are permitted on marketers own websites and, in certain circumstances, in other non-paid-for space online under the marketers control. Please refer to the [Advertising Guidance](#).