

# 33

ELECTRONIC CIGARETTES



## Background

For the purposes of this section "electronic 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 or e-liquids. The rules in this section apply to marketing communications for, and which refer to, electronic 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). The rules in this section also apply to marketing communications for electronic cigarettes which are authorised by the MHRA. For products authorised as medicines, the rules in section 11 (Medicines, medical devices, treatments and health) also apply.

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.

## The Tobacco Products Directive

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) came into effect in the UK on 20 May 2016. It prohibits advertisements on TV and radio which have the direct or indirect effect of promoting nicotine-containing e-cigarettes and e-liquids. The prohibition is set out in Section 10 (Prohibited Categories) and includes the full legal definitions of the products for which advertising is prohibited.

E-cigarette products which are not caught by those definitions may continue to be advertised subject to the rules in this section. These are (i) Products which are licensed as medicines or medical devices, (ii) non-nicotine-containing liquids and refill containers, (iii) non-nicotine-containing disposable e-cigarettes and (iv) rechargeable e-cigarettes which are designed to

be fitted only with cartridges containing non-nicotine-containing e-liquid. Advertisements for medicines / medical devices must also comply with the rules in Section 11 (Medicines, medical devices, treatments and health).

Therefore, for the purposes of this section only, “electronic cigarette” means a product that can be used for the consumption of vapour via a mouth piece, or any component of that product, including a cartridge, a tank, an e-liquid and the device without cartridge or tank (regardless of whether it is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), that is not prohibited from being advertised by Section 10.

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.

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

## Rules

- 33.1 Advertisements for e-cigarettes must be socially responsible.
- 33.2 Advertisements 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.
- 33.3 Advertisements 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.
- 33.4 Advertisements must make clear that the product is an e-cigarette and not a tobacco product.
- 33.5 Advertisements must not contain 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.

- 33.6** Advertisements must not use health professionals to endorse electronic cigarettes.
- For the avoidance of doubt, this does not apply to public health campaigns (see rule 10.1.11).
- 33.7** This rule was deleted on 8 November 2018, following public consultation.
- 33.8** Advertisements must not encourage non-smokers or non-nicotine-users to use e-cigarettes.
- 33.9** Advertisements 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.
- 33.10** 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.
- 33.11** **Radio Central Copy Clearance** – Radio broadcasters must ensure advertisements for e-cigarettes are centrally cleared.