

STATES OF JERSEY



DRAFT PRICE INDICATORS (AMENDMENT) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 31st July 2012
by the Minister for Economic Development**

STATES GREFFE



Jersey

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REPORT

Introduction

The Draft Price Indicators (Amendment) (Jersey) Regulations 201- have been proposed as a result of the decision by the States on 2nd November 2011 when a proposition by Senator A. Breckon was adopted by a large majority. (P.146/2011) The proposition was as follows –

“to request the Minister for Economic Development to bring forward for approval the necessary legislation to introduce a requirement for all retailers of road fuel to display the price of road fuel on sale so that it is clearly visible to passing motorists from the adjacent roadway.”

The Minister has also taken the opportunity to propose some additional unrelated amendments to the Regulations. These seek to clarify the circumstances under which retailers that indicate a selling price which is equivalent to the United Kingdom (UK) Value Added Tax (VAT) inclusive price (as defined in the Draft Regulations), may discount those marked prices for the benefit of local consumers, if they wish, without the need to re-price those goods.

Fuel prices at the roadside

In August 2011 the Jersey Competition Regulatory Authority (JCRA) published its Review of the Jersey Market for road fuels. Senator Breckon’s proposition reproduced several sections of the report which included the following recommendation found at paragraph 4.6 –

“The JCRA strongly recommends that all forecourts should display price signs that are clearly visible from the roadside. If the JCRA’s recommendation is accepted, further work would need to be undertaken with the Department for Planning and Environment, Trading Standards and the industry to formulate the obligation to display prices in practical terms. It seems possible that the change could be brought about relatively easily by incorporating the requirement into the Price Indicators (Jersey) Regulations 2008. Any change would, of course, need to be followed up with appropriate enforcement so the change becomes part of the normal business practice of the road fuel market in Jersey...”

If adopted, these draft amendments will give effect to the States decision as well as implementing the recommendation of the JCRA.

Consultation

In January all fuel retailers were contacted by Trading Standards to ensure that they were aware of the States decision as well as to inform them that the Minister had authorised appropriate amendments to the Regulations to be drafted. All were given an outline of what would be required, the likely timescale and the need to consider possible planning issues. Retailers were asked to let the Department know if they envisaged any problems in gaining consent for any proposals to achieve compliance with the States decision. Out of 27 fuel retailers contacted (representing 34 forecourts) 8 requested more information or clarification on various matters. Discussions were held and appropriate advice was given.

The proposals

All retailers selling road fuel will be required to display signs at the roadside showing the grades of fuel with the selling price which will be the same price that is set on the pump display. Under no circumstances will conditional or discounted price indications be permitted at the roadside. Every grade of road fuel which is available at a forecourt (does not include red diesel which is not a road fuel) must have its price displayed at the roadside and in all cases the price must be clearly visible to passing motorists from the adjacent roadway. A provision has been included that the prices must be displayed during all opening hours. It has become apparent that a number of retailers intend to use what are called moveable 'A Boards' which may well be taken in when the premises close.

It is the case that some retailers offer savings to customers who purchase fuel using loyalty cards or other account cards. The availability of these discounts may be advertised in premises, other than at the roadside, provided the conditions for obtaining any discount are displayed in a way that is unambiguous, easily identifiable and clearly legible to customers.

Other proposed amendments

Other draft amendments have been included in this proposition to clarify the circumstances in which retailers may, if they wish, display the selling price of goods by discounting a UK price, as defined in the Draft Regulations. Therefore amendments to Article 5 have been proposed.

Article 5 currently makes provision for traders to offer a reduced selling price (for example during a sale) if the trader indicates by a general notice or any other visible means, that the goods are or may be for sale at a reduction. This is provided that the details of the reduction are displayed in a manner which is unambiguous, easily identifiable and clearly legible. However, this only applies where goods have actually been previously available at the selling price for a period of time so that consumers are not misled by apparent discounts on fictitious selling prices which have never in fact been charged.

The need to amend Article 5 was highlighted recently when a new UK based toy retailer opened in the Island. The particular retailer operates one computer based pricing system throughout its 68 stores and these prices therefore include VAT at 20%. The retailer concerned wished to maintain its UK pricing system in its Jersey store by displaying UK prices but offering a 10% reduction to Jersey consumers in recognition that VAT does not apply in the Island. However, as the reduction would

be based on a higher selling price that had never been charged this would be a technical breach of the Regulations as they currently stand.

The draft amendments to Article 5 will remove this technicality so that Jersey consumers may benefit from lower prices. If and when traders wish to discount UK VAT equivalent prices, this will become an option without the need to re-price all goods or set up a separate pricing infrastructure for a Jersey store.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these Draft Regulations

Explanatory Note

These Regulations amend the Price Indicators (Jersey) Regulations 2008 (defined by *Regulation 1* as “the principal Regulations”) in 2 main respects: to provide for the manner in which fuel prices may be displayed by traders at the roadside, and to permit discounting of retail prices of goods priced per unit of sale.

Regulation 2 inserts, into Regulation 1 of the principal Regulations, definitions which are needed for the interpretation of these amendments, in particular a definition of “UK price” which ensures that traders may not cite a selectively high price as the basis for a purported discount price in Jersey. (The opportunity is also taken to adopt a precise definition of “food”, so that the uplift to include GST permitted by Regulation 3(4) of the principal Regulations may not be applied to pre-priced imported packs of animal food.)

Regulation 3 adds to Regulation 4 of the principal Regulations provisions which, first, prohibit the display of conditional discounted prices for fuel unless the terms of the discount are clearly indicated (paragraphs (6) and (7)); and second, set out the general requirements for roadside display of fuel prices (paragraph (8)).

Regulation 4 substitutes a new Regulation 5 into the principal Regulations, providing for the circumstances and manner in which reductions, both of Jersey retail prices and of UK prices, may be displayed. *Regulation 5* provides for citation and commencement of these Regulations.



Jersey

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 2 of the Price and Charge Indicators (Jersey) Law 2008¹, have made the following Regulations –

1 Interpretation

In these Regulations, “the principal Regulations” means the Price Indicators (Jersey) Regulations 2008².

2 Regulation 1 amended

In Regulation 1 of the principal Regulations –

- (a) for the definition of “food”, there shall be substituted the following definition –

“ ‘food’ has the meaning given by Article 1 of the Food Safety (Jersey) Law 1966³;”;

- (b) after the definition of “GST”, there shall be inserted the following definitions –

“ ‘motor fuel’ means petroleum-spirit and diesel fuel;

‘motor vehicle’ and ‘petroleum-spirit’ have the meanings given respectively to those expressions by Article 1 of the Petroleum (Jersey) Law 1984⁴;”;

- (c) after the definition of “trader”, there shall be inserted the following definition –

“ ‘UK price’ means a price inclusive of VAT at which goods identical to goods offered by a trader for sale to consumers in Jersey are offered by that trader for sale to consumers in the United Kingdom (and, in a case where the trader offers the goods for sale to consumers at more than one location in the United Kingdom, a

- price is not a UK price unless it is the price charged in respect of the goods at each and every such location);”;
- (d) at the end after the definition of “unit of measurement”, there shall be added the following definition –
- “ ‘VAT’ means value added tax as charged in accordance with the Value Added Tax Act 1994 of the United Kingdom.”.

3 Regulation 4 amended

- (1) At the end of Regulation 4 of the principal Regulations there shall be added the following paragraphs –
- “(5) Subject to the exception in paragraph (7), paragraphs (6) to (8) of this regulation apply in the case of motor fuel sold from bulk, and in respect of each type and grade of such fuel.
- (6) Where this paragraph applies, the requirement in paragraph (1)(a) to display a price in a manner which is unambiguous shall not be satisfied where a price is displayed (whether in proximity to the selling price or otherwise) –
- (a) which is not the selling price at which a unit of fuel is offered for sale generally to all consumers, but
- (b) is a price at which fuel is offered for sale to a particular class of consumers only, whether by reason of any condition attaching to the sale or for any other reason whatever.
- (7) Nothing in paragraph (6) shall prevent fuel being offered for sale at a discounted price, provided that the discounted price and the conditions, if any, upon which the discount is made available are indicated as such and displayed in accordance with these Regulations (except that paragraph (8) shall not apply in respect of a discounted price).
- (8) Where this paragraph applies, the requirement in paragraph (1)(a) to display a price in a manner that is clearly legible and the requirement in paragraph (1)(c) shall not be satisfied unless the selling price per stated unit of measurement of the fuel is displayed –
- (a) on the premises from which the fuel is sold;
- (b) for a period which must be no shorter than the period during which the premises are open for sale of the fuel; and
- (c) in such a manner that the selling price may easily be read –
- (i) by a person in a motor vehicle on the highway,
- (ii) from whichever direction such a person may lawfully approach and enter the premises.”.

4 Regulation 5 amended

For Regulation 5 of the principal Regulations there shall be substituted the following Regulation –

“5 Price reductions

- (1) This Regulation applies where a trader proposes to sell goods to which the requirement in Regulation 2 applies –
 - (a) at less than the UK price applicable in respect of such goods, or
 - (b) at less than the selling price previously applicable.
- (2) Where this Regulation applies by reason of the case described in paragraph (1)(a), the trader shall be taken to have satisfied the requirement to indicate the selling price if the trader indicates one of the following –
 - (a) the UK price together with the percentage which is to be deducted from that price in order to determine the selling price;
 - (b) the UK price together with, in close proximity to the goods, the selling price; or
 - (c) the UK price and, by a general notice or other visible means, that the goods are or may be for sale at a reduction.
- (3) Where this Regulation applies by reason of the case described in paragraph (1)(b), the trader shall be taken to have satisfied the requirement to indicate the reduced selling price if the trader indicates, by a general notice or other visible means, that the goods are or may be for sale at a reduction.
- (4) For the purposes of paragraph (2) it does not matter whether the UK price is marked or printed on the goods or on the packaging of the goods or is otherwise attached to the goods or is displayed in proximity to the goods.
- (5) The details of a reduction shall be displayed in a manner that is unambiguous, easily identifiable and clearly legible, and for this purpose ‘reduction’ includes the percentage to be deducted as required by paragraph (2)(a).”

5 Citation and commencement

These Regulations may be cited as the Price Indicators (Amendment) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

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- ¹ *chapter 05.610*
 - ² *chapter 05.610.50*
 - ³ *chapter 20.225*
 - ⁴ *chapter 27.400*