

THE PRICE MARKING ORDER 2004

Consultation on proposal to
amend the provisions
concerning a change to the
VAT rate

OCTOBER 2009

The Price Marking Order 2004

Consultation on proposal to amend the provisions concerning a change to the VAT rate

Contents

1. Executive Summary	Page 2
2. List of consultation questions	Page 2
3. Details of how to respond	Page 3
4. Background to the Price Marking Order 2004	Page 5
5. Initial Government view	Page 6
6. Next Steps	Page 7
Annex A – List of Stakeholders consulted	

1 EXECUTIVE SUMMARY

1.1 Traders are required to display clearly the prices of products inclusive of VAT. They will therefore need to change their prices to take account of price adjustments they make after a change in the rate of VAT. The standard rate of VAT will revert to 17.5% on 1 Jan 2010.

1.2 For a period of up to 14 days, traders are permitted under the Price Marking Order 2004 (SI 2004/102), to let consumers know, by way of a general notice, that an adjustment in price, to take account of the VAT change will be made at the till. During the 14 day period when the general notice is displayed, retailers need not alter the individual prices for items, in order to incorporate the VAT change.

1.3 Many retailers had difficulty meeting the 14 day deadline when the standard rate of VAT was reduced to 15% on 1 December 2008. Even more expect to have difficulty in complying with the change on 1 January 2010, when the standard rate of VAT will revert to 17.5%, as the change will co-incide with a public holiday, as well as following several other public holidays, and fall within the busiest trading period of the year. Many retailers expect to achieve sales up to 50% above their normal monthly volume during this period. As the law stands, retailers adjusting prices to account for the VAT change will be required to amend their shelf edge pricing and on-pack prices within 14 days of the VAT change. The scale and labour-intensive nature of the physical changes required for many retailers will be challenging given the limited flexibility of staffing at this time.

1.4 We therefore propose to extend the length of time that traders can display a general notice, and need not alter price tickets or labels for goods, from 14 days to 28 days. Retailers have indicated that 28 days would provide them with sufficient time to then comply with the pricing requirements. This change would therefore enable them to cope with the demands of one of their busiest trading periods and would be of particular benefit to SME retailers as they seek to rapidly and accurately update pricing with the limited number of staff they employ. This change would require amending Section 11(a) of the Price Marking Order 2004. If the amendment is to be made, it will need to come into force by no later than 1 January 2010 to coincide with the VAT change on that date.

1.5 We are seeking responses to the following specific questions.

For retailers

1. What are the benefits (or otherwise) – both in terms of costs and operations – in extending the 14 day period to 28 days?

2. We are of the view that 28 days will give retailers sufficient time to comply with the requirements. Do you think this time period will be sufficient?
3. The last change in the standard rate of VAT took place on 1 December 2008. The next one will take place on 1 January 2010. Does the date of the change affect your ability to comply with the 14 day deadline and, if so, to what extent?
4. If you were trading and registered for VAT in December 2008, did you have any problems complying with the 14 day period?
5. If you were trading and registered for VAT in December 2008, do you intend to change more, fewer or, broadly, the same number of price labels this time?

For consumers

6. What, if any, are the potential disadvantages in extending the 14 day period to 28 days?
7. VAT changes are always well publicised and shops which have yet to change price labels following a change in VAT must display a notice informing consumers of the change. Bearing that in mind, are there any significant disadvantages to consumers in a change from a 14 day period to a 28 day one?

For enforcement bodies

8. What impact would an amendment to the Order have on enforcement bodies?

2 How to respond

2.1 When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

2.2 The responses must be submitted by **Monday 23 November** and can be submitted via letter, fax or email to:

Beccy Eggleton
Consumer and Competition Directorate
Department for Business, Innovation and Skills
Room 425
1 Victoria Street

London SW1H 0ET
Tel: 020 7215 1748
Fax: 020 7215 0357
beccy.eggleson@bis.gsi.gov.uk

2.3 Under the Prices Act 1974, the Secretary of State is obliged to consult on any variation to the Price Marking Order. In order to amend the legislation in time for the expected VAT change on 1 January 2010, we need to consult for a shorter period of time than we usually allow. Ministers have approved a consultation period of four weeks in this case.

3 Additional copies

3.1 Additional copies of this consultation document may be made without seeking permission. Further printed copies of the consultation document can be obtained from:

BIS Publications Orderline:
<http://bis.ecgroup.net/Search.aspx>

Telephone: 0845 015 0010

3.2 Electronic versions may be viewed on the BIS website at:

<http://www.berr.gov.uk/files/file53309.pdf>

3.3 This consultation will be mainly of interest to retail bodies, consumer groups and enforcement bodies. A list of those organisations and individuals consulted is at **Annex A**. Please tell us if you know of other parties who would be interested in receiving this consultation.

4 Confidentiality and Data Protection

4.1 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

4.2 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all

circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

5 Help with queries

5.1 If you have any comments or complaints about the way this consultation has been conducted, these should be sent to:

Tunde Idowu
Consultation Co-ordinator
Department for Business, Innovation and Skills
Room 562
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 0412
Fax: 020 7215 0235
babatunde.idowu@bis.gsi.gov.uk

5.2 A copy of the Government Code of Practice on Consultation is available on the BIS website at:

<http://www.berr.gov.uk/files/file47158.pdf>

6 The Price Marking Order 2004

6.1 The Price Marking Order 2004 (PMO) implements European Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers. The Order came into force on 22 July 2004. It covers products, not services, and is limited to sales between traders and consumers. The Order requires the selling price and, where appropriate, the unit price of products to be clearly displayed. All prices must be inclusive of VAT and must be “unambiguous, easily identifiable and clearly legible”. There is no requirement to price mark items individually. Prices can be shown on the goods themselves, on a ticket or notice on or near to them, or grouped together with other prices on a list or catalogue(s) in close proximity to them.

6.2 The PMO also provides that where there is a change to the VAT rate, a trader is permitted to notify consumers by way of a general notice that a VAT adjustment will be made to any purchases. The general notice must itself be unambiguous, easily identifiable and clearly legible, and “in proximity” to the product. However, the general notice is only permitted for a period of 14 days, after which, the retailer must provide for proper pricing information in accordance with the PMO. A failure to do so would be in breach of the PMO, and a breach of the Order is an offence under the Prices Act 1974. Local Trading Standards have a duty to enforce the PMO.

7 The Government's initial view

7.1 Different retailers have busy periods at different times of the year. Whenever a tax change occurs, it therefore seems likely that some retailers would have difficulty complying with the current 14 day requirement.

7.2 The Government wishes to minimise unnecessary burdens on business, particularly during the current economic downturn and at one of the busiest times of the year for many retailers. Rather than wait for a later legislative opportunity, it has decided to respond swiftly to business requests that the time period for adjusting prices should be extended and is therefore publishing this consultation document with a shortened consultation period in order to enable the change to 28 days, if it takes place, to come into force before the increase in the standard rate of VAT on 1 January 2010.

7.3 VAT changes are always widely publicised so provided notices are clearly displayed to let customers know that a product is not for sale at the price indicated and that the price will be adjusted to take account of the VAT change, consumers are unlikely to be misled during a 28 day period following a change in rate or coverage. A failure to provide consumers with clear and timely information that a price adjustment will be made at the till could potentially be an offence under the Consumer Protection from Unfair Trading Regulations 2008, where this is likely to cause the average consumer to purchase a product he would not otherwise have purchased.

7.4 It will generally be in retailers' own interests to change price markings on products and on shelves as soon as possible, so the extension from 14 days to 28 days should not encourage retailers to put off changing price markings until the last possible moment. Rather, it should enable them to operate more efficiently by eliminating some pressure points and ensuring that resources are used in a sensible way.

7.5 Business organisations have suggested that if workplace absences caused by swine flu reach an elevated level in early January 2010, it may be appropriate to relax the PMO. As businesses are already encouraged to have contingency plans in place to cope with such a situation, the Government has decided that if the PMO has already been amended to implement a change from 14 days to 28 days, it would not consider any additional relaxation.

7.6 The Government is also of the view that the proposed change to 28 days would be a permanent change (subject to any general review of the Order) – there is no current intention to revert to a 14 day period.

8 Costs and Benefits

8.1 We expect that the costs to business, consumers and enforcement agencies of this change will be minimal. We also think that the monetisable benefits will be very limited and difficult to measure. In the circumstances, we have, therefore, not produced an impact assessment. There is likely to be a small administrative cost in ensuring that guidance to enforcement agencies (Trading Standards officers) is updated ahead of the January 2010 change in VAT rate but there should be no cost to VAT-registered businesses or their customers or suppliers. There is no obvious monetisable benefit for these groups – businesses may be able to plan the introduction of the changes better and by having more time to do so may be more sure of complying. It will also be far easier for retailers to absorb the costs of compliance at a slightly later date when there will be more scope for flexibility in labour costs. This delay would therefore reduce the costs for business.

9 What happens next?

9.1 If following this consultation, a decision is taken to change the PMO, we would plan for the amended PMO to come into force before the VAT change on 1 January 2010.

Annex A : List of Organisations consulted

Advertising Standards Authority
Asda Stores Ltd
Alliance Boots PLC
Arcadia Group
Association of Convenience Stores Ltd
British Chamber of Commerce
British Retail Consortium
British Shops and Stores Association
Citizens Advice
C&J Clarks International Ltd
The Co-operative Group
Confederation of British Industry
Consumer Focus
County House Retail Ltd
C2zero
DSGi PLC
Ebay
Equality and Human Rights Commission
Federation of Small Businesses
Federation of Wholesale Distributors
The Giftware Association
Greggs
HMRC
HMT
Home Retail Group PLC
The Horticultural Trades Association
Ikea Ltd
Independent Retailers Confederation
IMRG (Interactive Media in Retail Group)
John Lewis Partnership
Kingfisher PLC
LACORS
Local Better Regulation Office
Mail Order Traders Association
Marks and Spencer PLC
Musgrave Group
National Consumer Federation
National Federation of Retail Newsagents
Nisa-Today's
The Office of Fair Trading
J Sainsbury PLC
SCS
Tesco PLC

Tobacco Retailers Alliance
Trading Standards Institute
Village Retail Services Association, Rural Shops Alliance
Which?
William Morrison Supermarkets PLC