

Tobacco Vending Machines – Commencement and Implementation Q & A

General Questions

What are the changes?

From 1 October 2011, it will be illegal to sell cigarettes (or any other tobacco product) from an automatic vending machine in England to any person, *regardless of their age*.

It will also be against the law to display advertisements or pictures of tobacco products on vending machines. The current exemption allowing advertisements on vending machines will no longer apply.

Is the legislation coming into effect?

Legislation to end the sale of tobacco products from vending machines will come into effect in England on 1 October 2011.

Where can I find the relevant regulations?

The legal requirements are in regulations - the Protection from Tobacco (Sales from Vending Machines) (England) Regulations 2010. These regulations can be found at <http://www.legislation.gov.uk/ukxi/2010/864/contents/made>.

How is the Government telling people about the changes?

The Department of Health is undertaking activity to raise awareness of the legislation before October, and have supported the preparation of guidance for local authorities.

Sinclair Collis and the National Association of Cigarette Machine Operators were invited to comment on the draft version of the guidance.

Isn't there court action?

The Judicial Review challenges to the legislation brought by Sinclair Collis (wholly owned by Imperial Tobacco) have ended. On Thursday 28 July 2011, the Supreme Court refused permission to appeal further and so the legislation will come into force on 1 October 2011.

Is the new law compliant with European Union regulations?

The Government believes this legislation is compliant with EU law. Both the High Court and the Court of Appeal have upheld this view.

Press Office Defensive Lines

Why have I been given such little time to comply following the Supreme Court's decision?

The legislation to end tobacco sales from vending machines originated with consultation in 2008. This commencement date of 1 October 2011 has been clear ever since the regulations were made in March 2010. This means that cigarette machine operators have had eighteen months to prepare.

Why is the Government doing this?

The Government published *Healthy Lives, Healthy People: A Tobacco Control Plan for England*, on 9 March 2011, which included commitments to reduce the prevalence of smoking in young people and to support adults who are trying to quit. It also confirmed that the law would commence on 1 October 2011.

Where is the evidence attributing under age sales to vending machines?

- a) 11% of 11-15 year olds in England that are regular smokers say the vending machines are a source of cigarettes.¹
- b) In test purchases on vending machines conducted by the Local Authorities Co-ordinators of Regulatory Services (now Local Government Regulation) between October 2007 and April 2008, tobacco was sold to children from vending machines in 41 per cent of cases, with several councils reporting a 100 per cent failure rate.

Why is the Government introducing this law when a voluntary code exists?

In 1998, the National Association of Vending Machine Operators revised its voluntary code, so that the primary consideration when siting a machine was the need for appropriate supervision in order to prevent sales to children.

¹ A "regular smoker" means an 11-15 year old who says they smoke at least one cigarette a week.

The evidence shows that the voluntary code has inadequately achieved the intended effect of limiting underage access to cigarettes from vending machines, despite having been in place for over 10 years.

Will there be compensation?

The Government does not intend to pay compensation to vending machine companies, as it believes that the legislation is a proportionate means of achieving sound public health policy aims.

Why not allow age-restriction devices to be attached to machines, so that they can continue to be used?

The Government does not consider that a voluntary agreement to fit age-restriction devices would be an adequate response to the problem of underage access to cigarettes from vending machines.

Why has this Government enforced legislation that was passed by the previous administration?

The previous Government passed the legislation on vending machines. The Coalition Government is committed to making public health a priority, and in March, published *Healthy Lives, Healthy People: A tobacco control plan for England*. The Government's tobacco control plan sets out national ambitions to reduce smoking rates, as well as the commitment to end sales from vending machines

Why has the Government refused to negotiate with industry?

The Government strongly supports the Framework Convention on Tobacco Control and takes very seriously its obligations under the treaty to protect public health policies from the commercial and other vested interests of the tobacco industry. Tobacco companies can communicate views on tobacco control and wider public health policy to the Department in writing.

Why is the Government introducing this legislation when it is committed to reducing bureaucracy and cutting red tape?

The Government is serious about reducing bureaucracy and cutting red tape and considering the need for all regulation through the "Red Tape Challenge".

However, the Government is also committed to improving public health. As set out in *Healthy Lives, Healthy People: A Tobacco Control Plan for England*, the Government does believe that legislation on tobacco vending machines is needed.

Questions for NACMO members (for 14 September conference)

What do owners/managers of premises need to do?

From 1 October 2011, owners/managers of premises need to:

- make sure that the public cannot purchase tobacco products from vending machines; and
- ensure that all tobacco product advertising is removed or totally covered up.

It is recommended that owners/managers of premises speak to the owner/operator of the machine, in advance of 1 October, to ensure that tobacco products cannot be purchased and to arrange for the machine to be removed if appropriate.

What do Trading Standards Officers need to do?

In advance of 1 October 2011, Trading Standards Officers will need to:

- contact premises owners/managers to make them aware of the new law and its requirements;
- advise on steps to achieve compliance, giving time to comply; and
- follow up to check compliance and give additional explanation where needed.

What do owners/operators of vending machines need to do?

In advance of 1 October 2011, owners and operators of vending machines should:

- contact clients, advising them of the new law;
- arrange to move machines to position where the public can't access them; and
- if vending machines are to be used as secure retail dispensing units (i.e., only by staff not by the public), decals and pictures of tobacco packs must be removed, but can be replaced with the product name in black type on a white background.

Can publicans continue to sell cigarettes?

Businesses will still be able to sell tobacco products if they wish to but must comply with the current law (for example, the Tobacco Advertising and

Promotion (Point of Sale) Regulations 2004 regulating the A5 advertisement allowed at point of sale).

It should be noted in particular that, from 6 April 2012, the law will change on the display of tobacco products² and of the display of the prices of tobacco products³. It will be illegal to display tobacco products except in the limited circumstances set out in the new law. Guidance will be available for businesses and regulatory officers to explain the requirements of the new law.

Can publicans keep machines?

Yes, the vending machine could, for example, be located behind the bar, *provided* that the machine is positioned where the owner or manager of the premises can guarantee that it is impossible for any member of the public to use the machine. In effect, the vending machine would become a secure retail dispensing unit.

The advertisements or pictures of tobacco products on vending machines must still be removed because the current exemption allowing advertisements on vending machines will no longer apply.

How can owners/manager of premises dispose of a vending machine?

If the vending machine isn't owned by the premises manager/owner, it should not be moved or damaged. The premises manager/owner should contact the owner or operator of the machine to agree arrangements to empty the machine or remove it.

The new law does not ban cigarette vending machines themselves, so a machine can stay in place but only if it cannot be used by the public to buy tobacco products and does not have any tobacco advertising on show.

How can owners/operators dispose of their machines?

Last year, the Department of Health received correspondence from the company WEEE Environmental (GB) Ltd that confirmed their willingness to dispose (recycle) tobacco vending machines free of charge. The company's website is at www.weee-environmental.co.uk. The Department of Health does not endorse the company, but is passing this information to interested parties.

There may be other electrical recycling companies willing to offer the same service free of charge. You may wish to get in touch with local electrical

² The relevant regulations The Tobacco Advertising and Promotion (Display) (England) Regulations 2010 can be found at <http://www.legislation.gov.uk/ukSI/2010/445/contents/made>

³The relevant regulations The Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010 can be found at <http://www.legislation.gov.uk/ukSI/2010/863/contents/made>

recycling businesses, for example, by searching for “electrical recycling” on the Yellow Pages website at: www.yell.co.uk

Your local council will also be able to provide advice on the disposal and/or recycling of vending machines.

What happens if the law is broken?

Penalty for making a tobacco sale from a vending machine

The owner or manager of the premises where a vending machine is located will be guilty of an offence if tobacco products are sold from that machine (in the legislation, the offence falls to “the person who controls, or is concerned with the management of, the premises” where the machine is located).

Anyone found guilty of the offence of selling of tobacco from a vending machine is liable on summary conviction to a fine not exceeding level 4 (£2,500 at the time of publication) on the standard scale.

Penalty for keeping adverts on a vending machine

Both the owners of the vending machines and the owners and managers of the premises on which vending machines are located, will be responsible for ensuring that there are no advertisements of tobacco products on vending machines.

Anyone found guilty of an offence in relation to tobacco advertisements is liable to a more serious penalty. These are:

- on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 (£5,000 at time of publication) on the standard scale, or both; or
- on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or both.