

Tobacco Vending machines

www.ash.org.uk

Overview

The sale of tobacco products from vending machines became illegal in England from 1 October 2011.^{1,2} Prohibition of the sale of tobacco products from vending machines was included as part of the Health Act 2009³, following a consultation on the future of tobacco control that received over 100,000 (mostly positive) responses.⁴

In June 2011 the Court of Appeal rejected an appeal against the regulation to ban tobacco vending machines by Sinclair Collins, a subsidiary of Imperial Tobacco. The Court confirmed that: "The purpose of the ban was to improve public health... In all the circumstances it was not unreasonable or disproportionate for the Secretary of State to conclude that a ban was appropriate and to reject the possibility of a voluntary code". In July 2011 the Supreme Court stated that it would not hear a further appeal by Sinclair Collins, meaning that implementation would go ahead on 1 October.

What the law says

In England, it is now against the law to sell tobacco products from a vending machine directly to the public.

It is also against the law to display advertisements or pictures of tobacco products on vending machines. The exemption under the Tobacco Advertising and Promotion Act 2002, which allowed advertisements on vending machines, no longer applies.

The legislation does not ban vending machines themselves. Vending machines can be retained **if** they are no longer used to sell tobacco products **and** all advertisements of tobacco products are removed from them or covered up.

Businesses will also still be able to sell tobacco products if they wish to but must comply with the current law, including regulations relating to the A5 advertisement allowed at point of sale.⁵ It should also be noted that, from 6th April 2012, the law will change on the display of tobacco products⁶ and of the display of the prices of tobacco products.⁷ It will be illegal to display tobacco products except in the limited circumstances set out in the new law.

Guidance is available for businesses and regulatory officers to explain the requirements of the new law.⁸ Small businesses in need of further guidance about the ban should speak to their local authority trading standards department.

Who is responsible for compliance?

The "person who controls, or is concerned with, the management of the premises" where a vending machine is located will be guilty of an offence if tobacco products are sold from that machine. Any person found guilty of the offence of selling tobacco from a vending machine will be liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500).

Anyone found guilty of an offence in relation to tobacco advertisements is liable to a more serious penalty: on summary conviction to imprisonment for a term not exceeding six months, or a fine not

exceeding level 5 on the standard scale (currently £5,000), or both; or on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or both.

Elsewhere in the UK

The Health Act 2009 also gives powers to the Northern Ireland Assembly and National Assembly in Wales to prohibit the use of tobacco vending machines in those countries. Following consultation on draft regulations, the Northern Ireland Assembly and Welsh Government have introduced regulations to implement a ban from 1 February 2012.^{9,10}

In Scotland, the ban on the sale of tobacco from vending machines under the Tobacco and Primary Medical Services (Scotland) Act was due to take effect from 1 October 2011, but this is now delayed due to an ongoing legal challenge.

Until these new laws come into effect, the sale of tobacco from vending machines will continue to be controlled by a voluntary agreement between cigarette vending machine manufacturers and the managers of sites where vending machines are located. This non-binding agreement states that machines should be sited in places where children cannot access them and should be in full view of staff. Despite this agreement, vending machines are regularly used by children who have little difficulty in making purchases since the machines are self-service and rarely supervised.

Currently 22 countries in Europe ban or have never allowed sales from vending machines of tobacco.¹¹ Prohibiting the sale of tobacco products from vending machines will bring the UK in line with the majority of European nations and will reduce children's access to tobacco.

Who uses vending machines?

A survey of smoking among children in England revealed that 17% of 11 to 15 year olds who smoked regularly said that vending machines were their usual source of cigarettes.¹²

According to the British Heart Foundation, this means that in 2006 more than 46,000 11-15 year old regular smokers obtained cigarettes from vending machines.¹³ Overall vending machines account for less than 1% market share of total sales of cigarettes, indicating that 11 to 15 year olds are more likely to purchase tobacco from vending machines than the population as a whole.

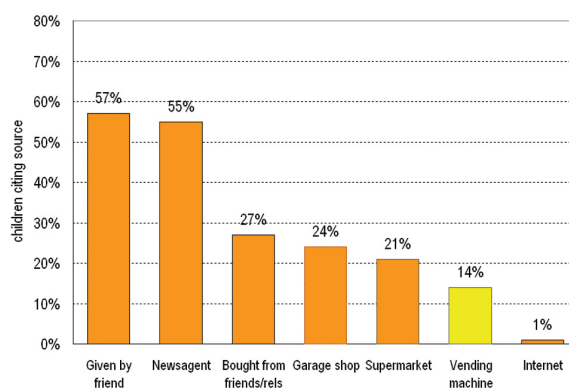
The case for prohibiting the sale of tobacco from vending machines

A survey by LACORS¹⁴ reporting on test purchases by young people under the supervision of trading standards officers, showed that there was an almost two-fold increase in illegal sales of tobacco to minors in the six months from October 2007 to March 2008 compared with the same period in 2006/7.

The research in 2006-07 took place when the minimum age for the purchase of tobacco was 16 while the second survey took place after the raising of the legal minimum age from 16 to 18.

The study found that young people were able to buy cigarettes from coin-operated vending machines on more than four in ten occasions, with a number of councils reporting a 100% successful purchase rate. The findings are as follows:

Figure 1. Usual source of cigarettes for smokers aged 11-15



Source: Smoking, drinking and drug use among young people in England in 2006

Sales by premise type: Oct 2007-March 2008

	Total attempts to purchase	Total sales made	Purchase rate
Large national retailer	295	57	19%
Small retailer	601	91	15%
National newsagent	125	24	19%
Independent newsagent	675	157	23%
Off licence	281	39	14%
Petrol station kiosk	206	31	15%
Vending machines	94	39	41%
Other (e.g. cafes)	82	19	23%
Total sales tobacco 2006-7	1823	241	13%
Total sales tobacco 2007-8	2362	457	19%

Some councils found that where children were successfully prevented from purchasing from vending machines it was because the machine was broken rather than because they were challenged.

The survey reveals the sharp increase in illegal sales following the raising of the minimum age for the purchase of tobacco. It also suggests that vending machines are likely to be a common source of cigarettes for 16-18 year olds and underlines the need to prohibit sales from this source. A similar outcome was found in a test purchase exercise in South West England, where 73% of attempts by 15 year olds to purchase tobacco were successful.¹⁵

Why modifying vending machines is not an adequate means of preventing illegal sales to children

The tobacco industry argues that vending machines could be modified to prevent underage sales, by for example, requiring the use of tokens or ID cards.

Neither of these options to 'child-proof' vending machines are likely to be an effective deterrent and are open to abuse. Unlike a human retailer, a machine cannot verify that the ID is being presented by its proper owner. In a bid to tackle under age purchases from vending machines age verification cards have been issued in Japan. However, it is reported that under age smokers routinely borrow them from friends and family or find other means of circumventing the system.^{16,17,18}

The National Association of Cigarette Machine Operators gave evidence to the Scottish Government in 2009 about its test purchasing trial of radio-frequency controlled vending machines, which showed that staff failed to ask for ID in 1 in 5 cases.¹⁹

The tobacco industry also argues that banning vending machines would have an adverse impact on businesses that currently host machines on their premises. However, vending machines could be modified for the sale of healthier products such as nicotine replacement therapies to cater for the 70% of smokers who want to stop smoking.²⁰

Public Opinion

There is clear public support for a ban on the sale of tobacco from vending machines. A YouGov survey commissioned by ASH found that 65% of respondents in England said they were in favour of a ban, with 16% against the measure²¹. A 2010 survey by Cancer Research UK found that 77% of adults supported a complete ban on cigarette vending machines.²²

References

- 1 [Healthy Lives, Healthy People: Our strategy for public health in England](#), Department of Health, 2010 (pdf)
- 2 [The Protection from Tobacco \(Sales and Vending Machines\) \(England\) Regulations 2010](#)
- 3 [Health Act 2009](#)
- 4 Consultation on the future of tobacco control. Department of Health, London, 2008
- 5 Tobacco Advertising and Promotion (Point of Sale) Regulations 2004
- 6 [The Tobacco Advertising and Promotion \(Display\) \(England\) Regulations 2010](#)
- 7 [The Tobacco Advertising and Promotion \(Display of Prices\) \(England\) Regulations 2010](#)
- 8 Guidance on ending tobacco sales from vending machines in England, Local Government Regulatory Support Unit and Department of Health, 25 August 2011
- 9 [The Protection from Tobacco \(Sales from Vending Machines\) Regulations \(Northern Ireland\) 2011](#), Department of Health, Social Services and Public Safety, 2011.
- 10 [The Protection of Tobacco \(Sales from Vending Machines\) \(Wales\) Regulations 2011](#), Welsh Government, 18 October 2011.
- 11 [The European Tobacco Control report](#), WHO 2007
- 12 Smoking, drinking and drug use among young people in England in 2006. The Information Centre for Health & Social Care, 2007
- 13 Briefing note on EDM 2502 on tobacco vending machines. British Heart Foundation, October 2008
- 14 Test Purchasing of Tobacco Products, Results from Local Authority Trading Standards, 1st October 2007 to 31st March 2008. Local Government Regulation (formerly LACORS) is the organisation responsible for overseeing local authority regulatory services in the UK.
- 15 Thomas, P. Tobacco Vending Machines – Regulatory and Compliance Survey. Presentation to the APPG on Smoking and Health., June 2009
- 16 See for example: [Magazine photos fool age-verification cameras](#), pinktentacle.com, 2008
- 17 Kanda, H. et al, [Age verification cards fail to fully prevent minors from accessing tobacco products](#). Tobacco Control online, 21 October 2010
- 18 Miyajima, S. et al. Longitudinal observation of influence of “taspo” on smoking behaviour among high school students, BioScience Trends, August 2010 4 (4), 161-164
- 19 National Association of Cigarette Machine Operators. [Evidence submission to the Scottish Bill Committee](#), 2009.
- 20 Statistics on Smoking: England, 2007. The Information Centre for Health and Social Care, 2007
- 21 [Beyond Smoking Kills](#), Action on Smoking and Health, London, 2008
- 22 Cancer Research UK, [Press Release: Huge public support to remove cigarette vending machines and tobacco displays in shops](#), 25 July 2010.