

Guidance on ending tobacco sales from vending machines in England

Prepared for businesses with vending machines on site and regulatory officers

Introduction

1. From 1st October 2011, the law will change to make it illegal to sell tobacco products directly to the public from vending machines in England¹.
2. This guidance has been written by the Local Government Regulatory Support Unit and the Department of Health to explain the requirements of the new law. The aim is to help both the owners and managers of premises where tobacco vending machines are located, and the regulatory officers who will enforce the law. The guidance also offers some practical advice about machines.
3. In this guidance:
 - a. 'regulatory officer' is used to refer to all those officers who have been authorised by a local council to undertake the work of securing compliance with these regulations. In most cases, this will mean local Trading Standards Officers.
 - b. 'premises' includes any place where a cigarette vending machine is located, including any vehicle, vessel, hovercraft, stall or moveable structure.

What are the changes?

4. From 1st 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 age*.
5. After 1st October 2011, 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 apply².
6. 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

¹ The relevant regulations - the Protection from Tobacco (Sales from Vending Machines) (England) Regulations 2010 - can be found at <http://www.legislation.gov.uk/ukxi/2010/864/contents/made>. These regulations were made under powers in section 3A of the Children and Young Persons (Protection from Tobacco) Act 1991, as inserted by section 22 of the Health Act 2009.

² The exemption from the prohibition in section 2 of the Tobacco Advertising and Promotion Act 2002 which is contained in regulation 5 of the Tobacco Advertising and Promotion (Point of Sale) Regulations 2004, applies to "a vending machine from which only tobacco products are sold"; there can be no such machine from 1 October 2011.

and Promotion (Point of Sale) Regulations 2004 regulating the A5 advertisement allowed at point of sale). It should also be noted that, from 6th April 2012, the law will change on the display of tobacco products³ and of the display of the prices of tobacco products⁴. 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.

Why is this legislation being introduced?

7. The Government is committed to helping reduce smoking prevalence and this is why *Healthy Lives, Healthy People: A Tobacco Control Plan for England*, was published on 9th March 2011⁵.

Who is responsible for compliance?

8. 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).
9. Both the owner of the vending machine 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.

What happens if the law is broken?

10. Any person 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.
11. Any person 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.

³ 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>

⁴ The 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>

⁵ A copy of this can be found at www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_124960.pdf

What should I do with my vending machine?

12. The legislation does not ban vending machines themselves. Vending machines can stay in their current position *if* they are no longer used to sell tobacco products *and* all advertisements of tobacco products are removed from them or covered up.
13. If the owner or manager of a premises wishes to remove a vending machine, they should contact the owner or operator of the machine to discuss and agree appropriate arrangements. Owners or managers of premises may, in any case, wish to discuss and agree a way forward with the vending machine owner in order to ensure compliance with the new law.
14. The owner or manager of a premises may also wish to get ready for 1st October 2011 by making sure that all tobacco products are removed from vending machines.

Can staff still use a vending machine to dispense cigarettes?

15. Yes, the vending machine could, for example, be 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.
16. The advertisements or pictures of tobacco products on vending machines will still need to be removed because the current exemption allowing advertisements on vending machines will no longer apply. (See also paragraph 6 above).

Who can I ask if I need further advice?

17. Regulatory officers will be able to provide advice about the introduction of this law. The next section explains their role.

Securing compliance – the role of regulatory officers

18. Local councils generally adopt a risk-based approach to build compliance with existing consumer protection laws. Their regulatory officers already work closely with businesses to build and maintain compliance across a wide range of laws, for example age restricted products, food safety and product safety. It is envisaged that councils will adopt the same risk-based approach to the monitoring and enforcement of compliance with this new law on vending machines.

19. Each council should already have in place an appropriate enforcement policy for their area. The following approach may be helpful to use as the basis of such a policy to build maximum compliance.

Step 1

20. Initially, an educational and advisory approach should be taken both before and for a period of time after, the law comes into force. It will soon become apparent which businesses are making efforts to comply and which are not.

Step 2

21. Non-compliance may be due to misunderstandings or a lack of diligence and may be remedied by providing further information, advice and guidance with clear deadlines to achieve full compliance.

Step 3

22. Where it is evident that serious efforts are not being made to comply, then a move to take enforcement action may become appropriate. This will need to be fully and properly considered and will need clear justification. In general, except in cases of blatant refusal to comply, it may be desirable to have evidence of the fact that earlier advice and support was given and that the business has had reasonable opportunity to comply.

23. As with all council enforcement measures, all action taken should be fair, proportionate and consistent and decided upon with reference to the Regulators' Compliance Code: www.bis.gov.uk/files/file45019.pdf and the enforcement policy statement of the individual council.

Conclusion

24. This guidance is not intended to be definitive or a substitute for the relevant law and independent legal advice should be sought where appropriate. Only the courts can interpret statutory legislation with any authority.

25. Every effort will be made to ensure that businesses across England are treated fairly and in a consistent manner. However, as with all legislation, in order to reflect individual local circumstances there may be occasions when local interpretation and application are appropriate.