



Current regulation of tobacco products

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Various legislation controls the advertising and display of tobacco products. Legislation also regulates the sale of tobacco products from shops and from vending machines. Specifically, tobacco products cannot be sold to anyone below 18 years of age.

This note provides information on the current legislation in respect of the display and sale of tobacco products both from retail premises and vending machines. This note does not consider the further tobacco controls contained in the Health Bill [HL], Bill 97 of 2008-09, currently in the House of Commons. Information on the Bill's provisions can be obtained from Research Paper 09/49.

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1 Background

The sale, advertising and display of tobacco products in shops and from vending machines are regulated in the UK. The relevant legislation is set out below:

- *Tobacco Advertising and Promotion Act 2002* (the 'TAPA 2002')
- *Children and Young Persons (Protection from Tobacco) Act 1991* ('the 1991 Act')
- *Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991* (the '1991 NI Order')
- *Tobacco Advertising and Promotion (Point of Sale) Regulations 2004* (the 'Point of Sale Regulations')
- *Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations 2004*

2 Current legal position in the UK

2.1 Sale of tobacco products to children from retail outlets

The starting position is that, under the 1991 Act, it is an offence for any person to sell tobacco products to anyone under the age of 18 years, even if they look older. The legal age for buying tobacco products in England, Wales and Scotland rose from 16 to 18 on 1 October 2008. Tobacco products include cigarettes, cigars, loose rolling tobacco and rolling paper. This is the case whether or not the cigarettes are for the young person's own use. The maximum fine on conviction for selling tobacco products to a person under the age of 18 years is £2,500.

Retailers are required to display a clear notice stating "It is illegal to sell tobacco products to anyone under the age of 18". This sign must have letters at least 36mm high, be A3 size (297mm x 420 mm) and be visible where tobacco products are sold. A retailer who failed to display could face a fine of up to £1,000. Retailers must only sell cigarettes in packets of 10 or more in their original packaging. It is illegal to sell loose cigarettes or split packets.

2.2 Sale of tobacco products to children from vending machines

The 1991 Act applies equally to over-the-counter sales and vending machines. Therefore, it is an offence to allow persons under the age of 18 years to obtain cigarettes from vending machines; it is the responsibility of the retailer to ensure that no one under the age of 18 uses the machine. It follows from this that the cigarette vending machine must be properly sited so that it is under the supervision of a member of staff and not accessible to a person under 18.

A notice must be displayed on every vending machine used for the sale of cigarettes stating that 'this machine is only for the use of people aged 18 or over'. The notice must not be less than 60mm x 100mm with the letters being no less than 6mm in height. It is an offence not to exhibit this warning sign and both the owner of the machine or the premises may be liable to prosecution. If a retailer fails to display the warning notice, the maximum fine on conviction is £1,000.

If a cigarette vending machine is accessible to a young person and they are able to buy cigarettes from it, a court may order its re-siting or removal. Anyone who sells cigarettes by

vending machine to someone under the age of 18 is liable to prosecution. The maximum fine on conviction for selling tobacco products to a person under the age of 18 years is £2,500.

Various councils have provided written guidance for retailers about the appropriate site for a cigarette vending machine. Suggestions include:

- The machine should not be put in an unsupervised area such as an entrance, corridor or hallway.
- The machine should be sited near to a bar or counter which is regularly staffed.
- Ensure that a member of staff who would be able to challenge an underage purchaser can see the machine and the customers using it.
- Staff should ask for proof of age if they have any doubt about the age of the person using the machine.

Voluntary guidelines from the National Association of Cigarette Machine Operators (NACMO), to managers of sites where machines are located, state that machines should be sited in places where children cannot access them and should be in full view of the person responsible for the premises, or an employee.

2.3 Tobacco Advertising and promotions

Following the implementation of the TAPA 2002, tobacco advertising and promotions are banned in the UK. This includes a prohibition of advertising in the print media and on billboards and in direct mail and other promotions. Tobacco sponsorship of sport (other than global events) ended on 31 July 2003 and sponsorship of Formula One motor racing was prohibited from July 2005.

2.4 Tobacco displays in retail outlets

The TAPA 2002 introduced a ban on advertising and the publication of tobacco advertisements. Specifically, section 8 of the Act makes it an offence to display tobacco products in a place if the display is against rules prescribed by the Minister:

A person who in the course of a business displays or causes to be displayed tobacco products or their prices in a place or on a website where tobacco products are offered for sale is guilty of an offence if the display does not comply with such requirements (if any) as may be specified by the appropriate Minister in regulations.

An advertisement for cigarettes or hand rolling tobacco can only be displayed in shops at the 'point of sale' subject to the *Tobacco Advertising and Promotion (Point of Sale) Regulations 2004* (known as the 'Point of Sale Regulations') which came into force on 21 December 2004.¹ For the purposes of the Regulations, 'point of sale' is defined as a point within any fixed or moveable premises at which a gantry or display unit is fixed. If there is more than one point of sale on the premises, then the advertisement can only be displayed at one of them. However, if the premises are occupied by more than one business, then each business within the premises may have one point of sale.

The Regulations limit tobacco advertising at the retail point of sale to a maximum space of the equivalent of an A5 size piece of paper. It is permissible for gantries to display specific brand advertising within the A5 size restrictions. These Regulations also require the display of a health warning about the dangers of smoking and the NHS Smoking Helpline number. Retailers are also required to display a notice on the legal age of sale of tobacco products.

¹ SI 2004/765

In practice, corner shops and other retail outlets display tobacco products predominantly in gantries or large shelving units behind the cash till. In large supermarkets, tobacco products are sold from separate kiosks or sales areas, generally sited close to the store entrance. It is not unusual for brands of cigarettes to be stored by creating arches of cigarette packs at the top of the gantry.

2.5 Tobacco advertising on vending machines

The Point of Sale Regulations 2004 also control the amount of tobacco advertising that is permitted on vending machines. Where it is not possible to see the products inside a tobacco vending machine, advertising is restricted to the following:

- The picture of the packet which is for sale from the machine.
- The picture may not be larger than the largest face of the packet in question.
- It must include one of the health warnings 'Smoking kills' or 'Smoking seriously harms you and others around you'. The health warning must occupy at least 30% of the surface area of the advertisement and be surrounded by a black border between 3-4mm thick; it must not interfere with the text.

If more than one different tobacco product is for sale from the machine than a picture of some or all of the products may be shown. This is to enable purchasers to select what they want to buy.

If it is possible to see the product within the machine, a tobacco advertisement is still permitted on the machine. However, it must be no larger than A5 in area, 30% of the advert must include the health warning:

- 'Smoking kills' or
- 'Smoking seriously harms you and others around you' and
- The NHS smoking helpline number

The retailer must also ensure that the machine on their premises complies with these requirements. Failure to do so is a criminal offence carrying a maximum penalty of a £5,000 fine or 6 months imprisonment or both.

2.6 Specialist tobacconists and the sale of smoking accessories

Specialist tobacconists must meet the requirements of the TAPA 2002, the Point of Sale Regulations 2004 and the *Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations 2004*.

As outlined above, the TAPA 2002 bans the advertising and promotion of tobacco products. However, Section 6(1) of the Act provides an explicit exemption if the tobacco advertisement:

- is in or fixed to the outside of the premises of a specialist tobacconist;
- is not for cigarettes or hand-rolling tobacco; and
- complies with any requirements specified by the appropriate Minister in regulations in relation to tobacco advertisements on the premises of specialist tobacconists.

In effect, specialist tobacconists are treated differently to other retailers; all advertising (including window displays) for cigarettes and hand rolling tobacco is banned, but it remains

legal for them to advertise cigars, pipe tobacco and snuff. However, advertising inside or on the outside of specialist tobacconists is required to carry a government health warning and information on the NHS smoking helpline. If the advertisement itself is over 75 cm² in area, a warning measuring 22.5cm² plus the 3mm to 4mm black border is required. If the advertisement is under 75 cm² in area, a warning covering 30 per cent of the advertisement's area plus the black border is required. Section 6(1) of the TAPA 2002 also enables the Secretary of State to make regulations to specify further conditions in relation to advertising in specialist shops to ensure that this exemption is not used inappropriately.

For the purposes of the TAPA 2002, a specialist tobacconist is a shop selling tobacco products by retail, where more than half of sales on the premises are of cigars, snuff, pipe tobacco and smoking accessories (such as pipes, lighters and papers).² This explicit exemption was made because the Government took the view that specialist tobacconists sell products which are generally not bought or used by children and young people. It has been estimated that there are 50 such shops throughout the country.³

In respect of the advertising of cigarettes or hand rolling tobacco, specialist tobacconists must comply with the same rules as general retailers of tobacco products (i.e. the Point of Sale Regulations 2004). Thus only one advertisement is permitted on the premises, and this must be at the point of sale. The advertisement is restricted in size to A5. The advertisement must be in a two-dimensional format, and may comprise a single advert, or more than one, provided that the total surface area does not exceed A5 size. The advertisement for cigarettes or hand rolling tobacco must also include a health warning as specified in the Regulations.

3 Enforcement of legislation

3.1 Role of Trading Standards Services

Local authority trading standards services have responsibility for the enforcement of legislation relating to the sale of age-restricted products such as tobacco, alcohol and fireworks. The Local Authorities Coordinators of Regulatory Services (LACORS) is the local government central body responsible for overseeing local authority and related services in the UK.

3.2 Restricted premises and restricted sales orders

On 1 April 2009, new sanctions came into force to tackle retailers who persistently commit tobacco offences by selling tobacco products to persons under the age of 18 years.⁴

Local authority trading standards offices may now apply to a Magistrates Court for a restricted premises order or a restricted sale order or, in certain circumstances, both orders. A restricted premises order means that the retail business at the location where the tobacco offences took place is prohibited from selling tobacco products for a period of up to 12 months – to be determined by the court. This means that no tobacco sales may take place from those business premises. A restricted sale order means that a named person within a business is prohibited from selling tobacco or from having any management role in any premises relating to tobacco sales within a business for a period of up to 12 months – to be determined by the court. This means that the business premises may still sell tobacco

² Section 6(2) *Tobacco Advertising and Promotion Act 2002*

³ HL Deb 6 May 2009 c554

⁴ Sections 12A and 12B *Children and Young Persons Act 1933* (as amended by the *Criminal Justice and Immigration Act 2008*)

products but that the named individual may not. The order will apply to the named individual regardless of where they are employed. The sanctions are triggered if three 'tobacco offences' are committed (the last of which must have led to a conviction) within a period of two years.

These orders are part of a new system of 'negative licensing' which aims to tackle those retailers who persistently sell tobacco to underage people. According to the Government, such court orders are a last-resort action for trading standards officers; to tackle those who persistently sell tobacco products to young people under the age of 18 years and where advice and support has failed to gain compliance.⁵

⁵ HL Deb 9 March 2009 cc419-420GC