



BRIEFING PAPER

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Prohibition of tobacco vending machines

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Summary

On 1 October 2011, the [*Protection from Tobacco \(Sales from Vending Machines \(England\) Regulations 2010*](#) banned the sale of tobacco from vending machines in England. The primary objective is to protect children and young people from the harm caused by smoking by making it difficult for them to obtain cigarettes.

The Regulations were made under the [*Health Act 2009*](#) (HA 2009), which received Royal Assent on 12 November 2009. Part 3 of the Act contains miscellaneous provisions, including five new tobacco controls (sections 20 to 24). Sections 22 and 23 of the Act give the appropriate national authority in England and Wales and Northern Ireland the power to prohibit tobacco sales from vending machines. The purpose of this Commons briefing paper is to consider in detail the new [*Protection from Tobacco \(Sales from Vending Machines \(England\) Regulations 2010*](#).

Responsibility for tobacco regulation is devolved to the Scottish Parliament. The [*Tobacco and Primary Medical Services \(Scotland\) Act 2010*](#) contains a number of tobacco regulation provisions, including a provision to prohibit tobacco vending machines.

Separate Commons briefing paper [CBP5537](#) provides information on the [*Tobacco Advertising and Promotion \(Display\) \(England\) Regulations 2010*](#). These Regulations, also made under the [*HA 2009*](#) (section 21), deal with the practicalities of shops implementing a prohibition of the display of tobacco products (since 6 April 2012) in respect of large shops and (since 6 April 2015) in respect of small shops.

1. Introduction

The [HA 2009](#) (*HA 2009*) received Royal Assent on 12 November 2009. Part 3 of the Act contains miscellaneous provisions, including five new tobacco control provisions. The stated aim of the tobacco control measures is to protect children and young people from the harm caused by smoking.

In a nutshell, regulations made under the tobacco control provisions of the Act have:

- prohibited the sale of tobacco from vending machines since 1 October 2011
- prohibited the display of tobacco products in large shops since 6 April 2012 and in small shops from 6 April 2015
- regulated the format of tobacco price lists and labels displayed in large shops since 6 April 2012 and in all other places since 6 April 2015
- required, since 6 April 2015, that specialist tobacconists may only advertise and display tobacco products inside their stores, out of general public view

The rest of this Commons briefing paper deals only with the [Protection from Tobacco \(Sales from Vending Machines \(England\) Regulations 2010](#) ("**the Regulations**") which prohibit the sale of tobacco from vending machines. They also specify who would be held responsible for any breach of the Regulations.

2. Background to the Regulations

Prior to 1 October 2011, and the introduction of the 2010 Regulations, it was an offence under the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#) to allow persons under the age of 18 years to obtain cigarettes from vending machines. It was the responsibility of the retailer to ensure that no one under the age of 18 used the machine.

However, it was the Government's view that tobacco vending machines were regularly being used by children who had little difficulty in making purchases since the machines were self-service and rarely supervised. Data collected by "LACORS" for the period 2008-09 period, revealed that the majority of illegal tobacco sales to under-18s (58%) were being made from vending machines across England.¹

As originally drafted, clauses 22 and 23 of the [Health Bill](#) would have enabled the appropriate national authority to impose tighter restrictions on the use of tobacco vending machines and, following a review of their effectiveness after two years, to impose a full ban only if deemed necessary. However, during Report Stage the Commons agreed an amendment to the Bill (moved by Ian McCartney MP) to ban tobacco vending machines altogether.²

As enacted, section 22 of the [HA 2009](#) gives the Secretary of State and the Welsh Ministers the power to prohibit sales from tobacco vending machines in England and Wales. Section 23 gives the Department of Health, Social Services and Public Safety (DHSSPSNI) the power to prohibit sales from tobacco vending machines in Northern Ireland.

In respect of England, a Department of Health (DH) consultation on draft regulations ran from 12 November 2009 to 4 January 2010. The DH explained the policy background to the draft regulations as follows:

Protecting children from the health harms of smoking is a public health priority for the Government. There is evidence that in 2008, 12% of young people aged 11-15 who are regular smokers usually access cigarettes through vending machines (2008 is the latest data set). Removing this form of access to cigarettes for young people will assist our key public health priority of reducing smoking uptake amongst young people. With two thirds of smokers stating that they started smoking before the age of 18, the Government believes that preventing the uptake of smoking by young people is vital.

The National Association of Cigarette Machine Operators (NACMO) has had in place a voluntary code designed to limit the number of underage sales made from vending machines, for over 10 years. This has not achieved adequate results, as demonstrated by the proportion of young people still using tobacco vending machines and therefore the Government believes it is necessary to introduce these regulations.

¹ "Test purchasing of tobacco products, results from local authority Trading Standards, 1 October 2007 to 31st March 2008", LACORS, [not online]

² HL Deb 9 November 2009 c.605

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The Regulations are designed to help prevent access to tobacco products by children. Adults will be able to buy tobacco from other sources.³

The [*Protection from Tobacco \(Sales from Vending Machines \(England\) Regulations 2010*](#) came into force on 1 October 2011.⁴ The Regulations apply only to England.

³ See Explanatory notes to SI No. 864

⁴ SI No. 864, 2010

3. The regulations in detail

The [*Protection from Tobacco \(Sales from Vending Machines \(England\) Regulations 2010*](#) were made by the Secretary of State by the powers conferred by section 3A of the [*Children and Young Persons \(Protection from Tobacco\) Act 1991*](#). A draft of the Regulations was laid before Parliament in accordance with section 3A(7)(a) of that Act and approved by resolution of each House of Parliament.

The Regulations themselves are very brief and straightforward consisting of only two sections. Section 2 contains the prohibition and states:

2.—(1) The sale of tobacco from an automatic machine is prohibited.

(2) The person who controls, or is concerned with the management of, the premises where the automatic machine is located shall be liable for a breach of paragraph (1).

(3) In this regulation—

“premises” includes any place and any vehicle, vessel, hovercraft, stall or moveable structure.

It is clear that liability for a breach of this prohibition will fall on the person who controls or manages the premises in which the vending machine is located.

4. Legal challenge by Imperial Tobacco

On 1 December 2010, the Administrative Court (Sir Anthony May, President of the Queen's Bench Division) handed down judgment dismissing the application for judicial review brought against the Secretary of State for Health by a subsidiary of Imperial Tobacco Ltd (Sinclair Collis), supported by the members of the National Association of Cigarette Machine Operators.⁵

The presiding Judge rejected the claim that certain provisions of the [HA 2009](#) and the [Protection from Tobacco \(Sales from Vending Machines\) Regulations 2010](#) contravened the free movement of goods provisions of EU law (Articles 34 and 36 of the [Treaty on the Functioning of the European Union](#)) and the right to peaceful enjoyment of possessions (Article 1 Protocol 1 of the [European Convention on Human Rights](#)). The judgment included a discussion of the principles of proportionality and Parliament's margin of discretion.

In early March 2011, the Court of Appeal heard Sinclair Collis' appeal. Judgment was handed down on 17 June 2011.⁶ The majority of the Court of Appeal (the Master of the Rolls and Arden LJ, Laws LJ dissenting) held that the legislation fell within the broad margin of appreciation accorded in the field of public health and was proportionate. In doing so, they upheld the decision of the Queen's Bench Division.

⁵ Sinclair Collis Ltd v Secretary of State for Health, case no. co/1906/2010 and co/4699/2010, judgment given 1 December 2010.

⁶ Sinclair Collis Ltd and Nacmo v The Secretary of State for Health [2011] EWCA Civ 437

5. Position in other parts of UK

5.1 Wales and Northern Ireland

The [HA 2009](#) gives powers to the [National Assembly for Wales](#) and the [Northern Ireland Assembly](#) to prohibit the use of tobacco vending machines in those countries.

In October 2011, a ban on the sale of tobacco products from vending machines in Wales was given final approval by the Welsh government.⁷ This followed a consultation on draft regulations which ended on 6 July 2010. The ban came into force on 1 February 2012, under the [Protection from Tobacco \(Sales from Vending Machines\) \(Wales\) Regulations 2011](#).

Since 1 March 2012, it has been illegal to sell cigarettes (or any other tobacco product) from an automatic vending machine in Northern Ireland to any person – regardless of age. The relevant legislation is the [Protection from Tobacco \(Sales from Vending Machines\) Regulations \(Northern Ireland\) 2012](#). These regulations were made under powers conferred by Article 4A of the [Children and Young Persons \(Protection from Tobacco\) \(Northern Ireland\) Order 1991](#).

5.2 Scotland

In Scotland, a ban on the sale of tobacco products from vending machines under the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) was due to take effect from 1 October 2011. However, it was delayed due to an ongoing legal challenge. This challenge was eventually dismissed by the Supreme Court.

The vending machine provisions of the Act finally came into force on 29 April 2013. Since that date it has been an offence for a person who has management or control of premises to have an automatic vending machine for the sale of tobacco products available for use.

⁷ ["Ban on sale of tobacco from vending machines in Wales"](#), National Assembly for Wales, 1 February 2012, [online] (accessed 8 May 2017)

6. Position in other countries

Many countries have either imposed a ban or have never allowed sales from vending machines of tobacco products (for example, France, Greece, Croatia, Finland, Estonia, Latvia and Lithuania, Georgia, Cyprus, Israel, and Singapore). In a number of other countries, vending machines contain some sort of electronic device to verify age of buyer.

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