

Ending tobacco sales from vending machines in Northern Ireland – guidance for businesses with vending machines and enforcement officers

Introduction

1. From 1 March 2012, the law will change to make it illegal to sell tobacco products directly to the public from vending machines in Northern Ireland¹.
2. This guidance has been written by the Department of Health, Social Services and Public Safety 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 also District Council Environmental Health Officers who will enforce the law. The guidance also offers some practical advice about machines.
3. In this guidance:
 - a. ‘enforcement 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 Environmental Health 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 1 March 2012 it will be illegal to sell cigarettes (or any other tobacco product) from an automatic vending machine in Northern Ireland to any person - *regardless of age*.
5. After 1 March 2012, 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 with regards to the advertising and promotion of tobacco products. It should be noted in particular that, from October 2012, the law will change on the display of tobacco products and on the display of the prices of tobacco products. 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 enforcement officers to explain the requirements of the new law.

¹ The relevant regulations - the Protection from Tobacco (Sales from Vending Machines) Regulations (Northern Ireland) 2012 - can be found at www.legislation.gov.uk. These regulations were made under powers conferred by Article 4A of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991.

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 March 2012.

Why is this legislation being introduced?

7. The Department of Health, Social Services and Public Safety is committed to helping reduce smoking prevalence and the regulations are being introduced in order to prevent more children and young people from accessing tobacco products from vending machines.

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 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.

What happens if the law is broken?

10. Any person found guilty of the offence of selling 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.

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 1 March 2012 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. In this sense, the vending machine then becomes a secure retail dispensing unit, the main purpose of which is to hold tobacco products ready for sale.

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. Environmental Health Officers will be able to provide advice about the introduction of this law. The next section explains their role.

Securing compliance – the role of Environmental Health Officers

18. Local councils generally adopt a risk-based approach to build compliance with existing consumer protection laws. Their enforcement 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. As with all council enforcement decisions, all action taken should be fair, proportionate, consistent and in line with the principles of good enforcement as set out in the enforcement concordat.

Conclusion

20. 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.

21. Every effort will be made to ensure that businesses across Northern Ireland 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.