



Department of
Health

An Roinn Sláinte

Mánnystrie O Poustie

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REVIEW OF LEGISLATION BANNING THE SALE OF TOBACCO PRODUCTS FROM VENDING MACHINES IN THE NORTH OF IRELAND

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Introduction

1. Legislation banning the sale of tobacco products from vending machines in the north of Ireland came into force from 1 March 2012. The main aim of the ban is to reduce youth smoking prevalence by making it more difficult for children and young people to access tobacco products.
2. Prior to the ban, tobacco vending machines were commonly found on licensed premises, such as restaurants, bars and hotels. While they can be adapted to allow for age verification checks to be carried out, in the north of Ireland tobacco vending machines were “self-service” and often situated in areas of the premises where unsupervised access by minors would have been possible.
3. Tobacco sales from such machines were small, only representing 1% of the overall UK market in tobacco sales; however, a disproportionate number of young people under the age of 18 historically obtained cigarettes from this source.
4. Children and young people are a priority group in the Department’s 10-year tobacco control strategy, which was published in February 2012. At the time of publication, 8% of 11-16 year olds here were regular smokers, and a key objective of the strategy was to prevent children and young people from taking up the smoking habit.

Background

5. Smoking is the single greatest cause of preventable illness and death in the north of Ireland, killing around 2,300 people here each year. Illnesses for which smoking is a major risk factor include cancer, coronary heart disease, strokes and other diseases of the circulatory system. The cost of smoking to our society is high. In economic terms, the hospital cost of treating smoking-related illnesses here is in the region of £164m each year.

6. According to a 2014/15 survey¹, 66% of adult smokers in the north of Ireland started smoking before the age of 18; these people are three times more likely to die from cancer than those who start smoking in their twenties.

Smoking behaviour amongst children and young people

7. The Young Persons Behaviour and Attitudes Survey (YPBAS) 2010 revealed that 8% of 11-16 year olds in the north of Ireland were current smokers. YPBAS is a school-based survey that covers a range of topics relevant to the lives of young people today such as demographics, social support, money, school, knife culture, smoking and alcohol. The survey has taken place every 3 years since 2000.
8. Despite it being illegal to sell tobacco products to persons under the age of 18, children and young people have continued to find ways of obtaining cigarettes. The 2010 YPBAS survey showed that vending machines were a regular source of tobacco for underage smokers, with 14% of 11-16 year old regular smokers surveyed claiming they purchased their cigarettes from these machines.

Relevant legislation

9. The decision by the Department to introduce new tobacco control legislation was first announced in February 2009. Assembly agreement was obtained in March 2009 to the extension of tobacco provisions contained in the Westminster Health Act 2009 to the north of Ireland. This inserted a new section in the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (“the 1991 Order”) which provided the Department with the necessary powers to prohibit the sale of tobacco from vending machines. The powers allow only for the banning of sales from such machines, they do not contain any provisions allowing for restriction of use.
10. Regulations banning the sale of tobacco from vending machines subsequently came into operation on 1 March 2012 through *The Protection from Tobacco (Sales from Vending Machines) Regulations (Northern Ireland) 2012*. The maximum fine for non-compliance is currently a level 4 fine (£2,500) or a £250 fixed penalty. The Health (Miscellaneous Provisions) Act (Northern Ireland) 2016,

¹ Health Survey Northern Ireland 2014/15 – Department of Health.

however, amends the 1991 Order to raise the maximum fine to a level 5 (£5,000) and it is expected that this will come into force in early 2017.

11. Similar vending machine bans were introduced across Britain between October 2011 and April 2013, and the sale of tobacco from vending machines is also banned, or has never been permitted, in over 20 other European countries. The Department of Health in the south of Ireland is in the process of drafting legislation to introduce a similar ban in the near future.

Consultation

12. The vending machine regulations formed part of a wider consultation exercise in which the public was asked to comment on these and other regulations relating to a ban on the display of tobacco products at point of sale in retail outlets. Over 1,000 responses were received to the consultation from a variety of stakeholders, including representatives from the health sector, wider public sector, tobacco industry, retail sectors and vending machine suppliers.

13. Health stakeholders came out strongly in support of a ban on the sale of tobacco from vending machines stating that the regulations would help to prevent children and young people from easily accessing tobacco products. A number of respondents, representing retailers and the tobacco industry, expressed the view that the measures were excessively prohibitive and that regulations placing restrictions on vending machines should be introduced instead. This was not an option as the enabling Act, the Health Act 2009, only provides powers for the Department to ban, rather than restrict, tobacco sales from vending machines.

14. Following analysis of the consultation responses, there were no substantive changes made to the vending machine regulations with the exception of the commencement date. This was put back from 1 October 2011 to 1 March 2012.

Enforcement and compliance

15. Tobacco control legislation in the north of Ireland is enforced by authorised officers of district councils, facilitated by funding provided by the Public Health Agency. There are 12 dedicated Tobacco Control Officers employed across 11

councils, and assisted by environmental health officers. They ensure compliance through spot checks, investigation of complaints, and test purchasing exercises. Enforcement activity is reported to the Department, via the Tobacco Strategy Implementation Steering Group, on an annual basis.

16. Prior to the ban, there were an estimated 1,831 tobacco vending machines operational here. While the ban prohibits members of the public from accessing tobacco vending machines, it does not prohibit these machines from being used as secure retail dispensing units. A vending machine could, for example, be located behind a bar, provided that the machine is positioned where the owner or manager of the premises can guarantee that it is not possible for any member of the public to use the machine.
17. Since the ban was introduced in March 2012, district council enforcement officers have only recorded one breach of the legislation which was resolved following the issuance of a warning letter. There have been no incidences of prosecutions taken in relation to this offence.

Impact of the Vending Machine Ban

18. The main aim of the ban on the sale of tobacco products from vending machines was to reduce youth smoking prevalence by making it more difficult for children and young people to access tobacco products.
19. The ban came into force in March 2012 and the 2013 YPBAS survey, carried out after the introduction of the ban, reported that the use of vending machines as a source of tobacco had reduced to 2% (from 14% in 2010). Caution needs to be exercised when considering the 2013 figures due to the small number of pupils claiming that they obtained cigarettes from a vending machine, (a weighted count of 3) particularly given the relatively short time that the ban had been in place before the survey was carried out.
20. In addition, the survey also reported that the overall smoking prevalence rate among 11-16 year olds had reduced to 5% (from 8% in 2010). This decrease cannot be attributed solely to the vending machine ban as a downward trend was

already being observed in relation to youth smoking uptake, however, it will have contributed to reducing children's access to tobacco.

Conclusions

21. As stated in the introduction, children and young people are a priority group in the Department's 10-year tobacco control strategy, and preventing them from taking up the smoking habit is a key objective in the strategy. The main aim of the ban on the sale of tobacco products from vending machines is to reduce youth smoking prevalence by making it more difficult for children and young people to access tobacco products.
22. A comparison of the YPBAS surveys in 2010 and 2013 shows a considerable reduction both in the percentage of young people who currently smoke and in the number of children who access tobacco from vending machines. These results clearly point towards the conclusion that the ban on vending machines has been successful in achieving its aim.
23. Confirmation from district councils that enforcement officers have not recorded any breaches of the ban to date further supports this, and the increase in the maximum fine for non-compliance from £2,500 to £5,000 (expected to come into force in early 2017) should provide even stronger incentive to comply with the ban.
24. While the Department believes that the available evidence points towards legislation banning tobacco sales from vending machines as being a successful initiative, it is important to highlight that it is only one of a range of measures the Department has introduced in recent years in order to reduce youth smoking prevalence. Legislation banning the display of tobacco products, and their prices, at the point of sale in large shops was also introduced in 2012. Both measures can reasonably be attributed as factors in the overall reduction in prevalence rates from 8% in 2010 to 5% in 2013.

Recommendations

25. Compliance with the legislation to date has been exceptionally high; however, it is recommended that district councils should continue to carry out routine checks on relevant premises to ensure that the passage of time does not lead to breaches with regards to future compliance.

26. The selling of age-restricted products from self-service vending machines is always open to potential abuse. The Department intends to introduce age restrictions for e-cigarettes in 2017, thereby, prohibiting their sale to minors. It is recommended that the Department also makes use of the powers made available through the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 to prevent the sale of e-cigarettes from vending machines, if this retailing method becomes popular.