



Consultation on proposed tobacco control regulations for England (under the Health Act 2009)

Summary of consultation responses

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Consultation on proposed tobacco control regulations for England (under the Health Act 2009)

Summary of consultation responses

Tobacco Programme, Department of Health

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1. Executive summary and introduction

The consultation

On 12 October 2009, the Department of Health published the *Consultation on proposed tobacco control regulations for England (under the Health Bill 2009)*. The Health Bill was being considered by Parliament at the time that the consultation was published and was enacted on 12 November 2009 as the Health Act 2009 (c.21).

Four sets of proposed regulations were included in the consultation covering:

- displays of tobacco products;
- regulating display of prices of tobacco products displays;
- specialist tobacconists; and
- preventing access to tobacco from vending machines

The consultation asked a number of specific questions on the regulatory proposals presented and also invited feedback from stakeholders on the consultation-stage impact assessments that were published as part of the consultation document.

The consultation that was published on 12 October 2009 included proposals for vending machines, based on the Health Bill as it was drafted at the time. After that date, Parliament further considered the Health Bill and made amendments relating to tobacco vending machines. The Department of Health, therefore, published a revised edition of the consultation that took into account these amendments. The revised edition of the consultation included a separate updated supplement on tobacco vending machines.

The consultation closed on 4 January 2010.

The Department of Health wishes to thank all respondents for taking the time to send us their contributions to this consultation.

Overview of responses received

This report provides an overview of the responses received to the consultation.

A total of **544 responses** were received to the consultation from a wide variety of stakeholders such as vending machine operators and representative organisations, NHS Primary Care Trusts (PCTs), smoke free alliances, tobacco manufacturers, trading standards bodies, local authorities, health charities and NGOs, retail representative bodies, small retailing companies and from individuals.

A total of **250** completed proforma questionnaires were returned to DH, both as hard copies, as emails and as online responses. In addition **294** email and non-proforma responses were received (including e-mails, letters and larger hard copy responses). The total includes some standardised replies. We received **71** responses from stakeholders using a pre-written letter provided by the

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Independent Retail News. We also received a chain e-mail from the National Federation of Retail Newsagents (NFRN) which was endorsed by **164** small retailers. All proforma and non-proforma responses have been analysed.

There are a number of issues relevant to the interpretation of responses that the Department of Health wishes to highlight.

Collation, analysis and interpretation of consultation responses

The Department of Health engaged Ipsos MORI Social Research Institute to assist with the collation and initial analysis of consultation responses. The Department of Health has undertaken further analysis and evaluation of consultation responses. The Department of Health's views in response to stakeholder feedback is included in this report.

Given the breadth of responses received to the consultation, this report should not be considered a comprehensive list of all comments made by respondents. Instead, it gives a summary of views of the proposed regulations and the key themes arising from the responses received.

Single versus group responses

It is acknowledged that in some cases respondents have consulted with colleagues or a wider audience prior to submitting a response and therefore aim to represent the view of a particular group.

Such responses may represent a team, department or entire organisation. They may also have sought and included the views of local stakeholders, concerned and interested parties, local community groups and members of the public, and many other relevant parties. As such, consultation responses do not necessarily contain the views of one individual or group alone. It is possible that a broad summary of views is reflected within each response.

It is therefore not possible to make direct comparison across the numbers of respondents within certain categories, or between viewpoints, by the number of responses alone. The Department of Health's consideration of consultation responses is mindful of this diversity in the nature of the responses received.

Sample and population

The findings from this public consultation are from a consultation and not a survey. It cannot be used to generalise or extrapolate in the same way as representative quantitative research. A consultation seeks information and views relating to a specific proposal and is not intended to elicit representative samples of opinion.

Typically with consultations, responses come from those more likely to consider themselves affected and more motivated to express their views. The nature of consultations is that respondents are self-selecting and therefore not representative of national opinion. The view of stakeholders from the consultation cannot be regarded, for example, as a representative sample of *all* health bodies, retailers or tobacco sellers.

Presentation and interpretation of qualitative data

Key findings from the consultation form the bulk of this report. Supporting verbatim comments have been used for illustrative purposes. It is worth remembering that these comments are not statistically representative of the views of all the consultation respondents. Such comments are provided to illustrate the types of comments made, not the proportion of respondents holding those views.

Impact Assessments

The Department of Health has considered feedback from stakeholders on the Impact Assessments that were included with the consultation. Finalised Impact Assessments that take stakeholder feedback into account will be published alongside regulations when they are laid in Parliament.

Report structure

The report will consider the responses received in relation to each section of the consultation document:

- displays of tobacco products;
- regulating display of prices of tobacco products displays;
- specialist tobacconists; and
- preventing access to tobacco from vending machines

2. Displays of tobacco products

This chapter refers to the proposed Tobacco Advertising and Promotion (Display)(England) Regulations 2010.

Consultation question 1: *Do you believe that these proposed regulations set out an effective and workable approach to removing the display of tobacco products?*

Of the 179 respondents that answered this question, over half (53%) of respondents agreed the regulations set out an effective and workable approach to the removal of tobacco products from display. Over two in five (44%) disagreed, while a small percentage (3%) either didn't know or had no opinion (figure 1).

Effective and Workable (Removing Tobacco Displays)?

Q1 Do you believe that these proposed regulations set out an effective and workable approach to removing the display of tobacco products?

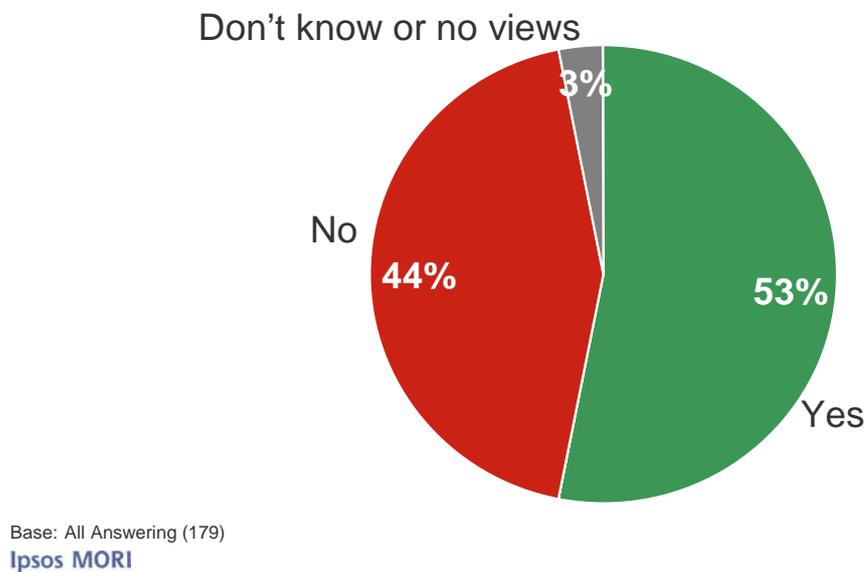


Figure 1

The respondents that expressed agreement with the regulations tended to be from Local Authorities, the NHS and health organisations, trading standards organisations and duty free retailers.

Some of the main reasons for why respondents agreed with the statement include:

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- The regulations are clear in their intention;
- They will further help “denormalise” smoking and keep brands out of sight of young people; and
- Local Council Trading Standards have reported the difficulties in dealing effectively with the distinction between tobacco display and the promotion and advertising of tobacco products.

Action on Smoking & Health (ASH), who said they are supportive of the proposals, cited evidence from Republic of Ireland on the effectiveness of a prohibition on the display of tobacco in shops in that country, and believed that implementation of that law had not been burdensome for retailers. ASH also provided information that suggested before 1 July 2009, one in three teenagers in Ireland thought they or their friends could successfully buy cigarettes. After the implementation of display laws, only 1 in 4 thought they could.

Tobacco control partnerships showed support for the regulations and believed they will achieve the aim of reducing underage tobacco consumption. However, they advocated a strengthening of the regulations. The British Heart Foundation (BHF) wanted to see these regulations extended to the advertising and display of associated tobacco products such as cigarette papers and stated that it is vital that the regulations are not diluted to allow for more exemptions.

Indeed, many of the respondents who thought that the regulations were effective, as well as those who disagreed with the proposals, offered suggestions about how they believe the regulations could be strengthened. A point frequently made was that all tobacco products as well as smoking related products such as pipes, cigarette papers and lighters should be covered by the regulations, for example:

All tobacco products and paraphernalia (pipes, papers, lighters) should be included in the regulations otherwise this will encourage advertising of these products.

NHS North Lancashire

Department of Health response: The new powers introduced by the Health Act 2009 apply to all products containing tobacco. The Government does not have powers to include other products associated with smoking, such as cigarette papers or lighters, in these regulations.

A Smokefree Future, the Government’s new comprehensive tobacco control strategy for England was published on 1 February 2010 and sets out that “there is emerging evidence that the promotion and marketing of some tobacco-associated products—particularly cigarette rolling papers—offers companies a way to promote tobacco use, particularly to young people, and to create a positive image of smoking. Where evidence suggests that such proxy promotion exists, the Government will take action to prevent it.”

Comments from NHS and other health groups stated that requirements to remove display should include all retailers where the public have access to tobacco products, including duty free shops, bulk suppliers of tobacco and specialist tobacconists.

Department of Health response: The Department of Health believes that the particular nature of specialist tobacconists and bulk suppliers of tobacco warrants specific provisions around tobacco displays for those businesses. Provided the conditions that are set out in the regulations are met, we believe these provisions will be effective in reducing the exposure of young people to tobacco products.

Other suggestions on the proposed regulations included:

- The proposed restrictions on the form and size of openings of storage units should be more prescriptive;
- Regulations should cover tobacco displays shown in television programmes and through internet advertising;
- Retail premises must be clear as to the date they are expected to comply;
- Re-stocking should only take place outside of opening hours;
- An alarm or buzzer could be used to ensure the storage units or cabinets are only open for a limited length of time; and
- A limit on the number of tobacco storage units per square metre of shop space.

Department of Health response: The Department of Health believes that:

- Further prescription on the form and size of openings on storage units would provide less flexibility for businesses to develop innovative solutions;
- The Department of Health does not feel there is the need to regulate further on tobacco Advertising and Promotion over the internet or on television at the present time.
- The dates that retailers would need to comply with legislation have been clearly set out, but will be made clearer in the regulations. When regulations have been made, the Department of Health will develop an awareness raising campaign with businesses and local government to develop understanding of the requirements of the law;
- It is fair for retailers to be able to restock during business hours especially as some stores are open 24 hours;
- Retailers may find it useful to install an alarm to warn of a storage unit being left open, to help them ensure they comply with the law, but this should not be a legal requirement. Likewise, we do not believe that regulations should be so prescriptive as to require storage units to automatically shut; and
- We are not aware of evidence that a limit on the number of tobacco storage units per store would support the objectives of this legislation.

Of those who said the regulations are not effective or workable, the majority are from tobacco manufacturers and retailers of tobacco products. Their main concerns surround what they perceive to be the impracticalities of implementing the regulations, for example:

We welcome the move to make the display ban 'less onerous' than was proposed in the original 2008 consultation. We also approve that convenience stores will not be forced to implement the display ban until October 2013, giving them an opportunity to learn from the experience of the main stores implementation of the ban. However, we have serious practical concerns about how these measures will be implemented and believe there will still be substantial, capital costs to retailers in restricting the display of

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tobacco in their stores, and are unconvinced they will achieve the Department's aim of reducing the demand for tobacco

Sainsbury's

We note the proposal that there will be a similar approach and limit on temporary display for restocking at the tobacco unit of 1500 sq cm which we consider is limiting on operations. With a small area for display this will inevitably mean that restocking will be a longer process than currently, given this would involve opening flaps to expose areas requiring stocking separately. Difficulties will also arise in not being able to ascertain when products need restocking given they will be out of sight

Co-operative

Other criticisms of the proposed regulations stated in response to this question were:

- It is also the view of a number of retailers that consumer choice could be compromised through restrictions on price lists, along with the standardisation of price lists and displays.
- The exemption for specialist tobacconists could give them an unfair advantage over other small retailers;
- The cost implications for independent retailers.

These criticisms are dealt with in more detail later in the report.

Department of Health response: The Department of Health believes that the display provisions in the Health Act 2009 are based on good evidence and the proposals for regulations set out a proportionate approach to delivering the public health aims of the legislation.

Consultation question 2: Do you believe that the proposed regulations are comprehensive and cover all types of sales of tobacco?

Of the 179 respondents that answered this question, the majority believed that the regulations are comprehensive and covered all types of sales of tobacco, around six in ten (59%) agreed, one in three (32%) disagreed, while one in ten (9%) saying they didn't know or had no opinion (figure 2).

There is no trend by respondent type in terms of agreement and disagreement. Most tobacco manufacturers, retailers, trading standards organisations, local authorities and health organisations said the proposed regulations are comprehensive.

Nevertheless, even among those who said they are supportive of the regulations, some expressed concerns (particularly PCTs and trading standards organisations), that the proposed regulations are not as comprehensive as they could be, for reasons including:

- The regulations do not include smoking accessories such as cigarette papers and lighters;
- Although the regulations include smokeless tobacco, this may not be clear to retailers;
- It is not clear if some of the less well-known types of tobacco, such as bidis, pan (leaves), gutka (chewing tobacco) and paste are covered;
- It is not clear whether the regulations cover market stalls and trading from vehicles;

- Businesses should be advised well in advance of the requirements relating to niche tobacco products such as shisha and smokeless tobacco;
- There is a need for a targeted marketing campaign for retailers to make them aware of their obligations;
- The regulations should take the opportunity to make the sale of Nicotine Replacement Therapies (NRT) mandatory where tobacco is sold; and
- Further limits and restrictions need to be introduced for the sale of tobacco from the internet.

Sale of Tobacco

Q2 Do you believe that the proposed regulations are comprehensive and cover all types of sales of tobacco?

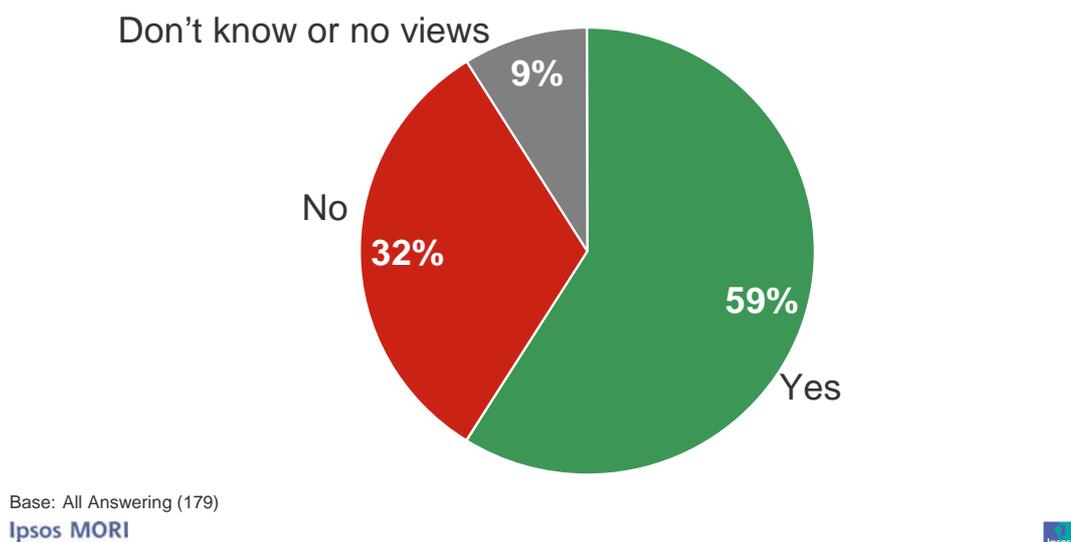


Figure 2

The following quotes illustrate commonly held views from health respondents:

It is clear that these regulations do apply to smokeless tobacco, but this must be clearly communicated to retailers to ensure compliance. The BHF would also like to see these provisions extended to the advertising and display of associated tobacco products such as cigarette papers

British Heart Foundation

The regulations as set out do seem to comprehensively cover all forms of tobacco products including all smoked and smokeless varieties. Often

smokeless tobacco is sold by retailers who do not sell smoked tobacco products and therefore they may not be aware that legislation will apply to them and may be overlooked when the regulations are communicated to businesses

ASH

Department of Health response: Section 21 of the Health Act 2009, prohibiting tobacco displays, inserts four new sections (7A, 7B, 7C, 7D) into the Tobacco Advertising and Promotion Act 2002, and that Act applies to all tobacco products. The prohibition of displays, therefore, also applies to all products containing tobacco, including all smoked, non-smoked and smokeless tobacco products.

The Health Act makes it an offence for a person to display tobacco products in the course of a business. The regulations apply to any premises in England and contain a comprehensive definition of premises, which includes any place and any vehicle, vessel, hovercraft, stall or moveable structure.

The Department of Health is committed to working with both retail stakeholders and local government to develop comprehensive guidance and a communications programme to support the implementation of the new law.

The Department of Health does not believe it necessary to impose legal requirements on retailers to sell nicotine replacement therapy because these medicines are already available from a wide range of retailers.

The Department of Health is of the opinion that the Tobacco Advertising and Promotion Act 2002 etc. (Amendment) Regulations 2006 currently provide suitable restrictions on tobacco sales over the internet, with respect to websites hosted in the United Kingdom.

Consultation question 3: *Do you believe that these proposed regulations are proportionate and avoid imposing unnecessary burdens on businesses to achieve removing the display of tobacco products?*

Of the 180 respondents that answered this question, over half (53%) considered the regulations to be proportionate, while more than two in five (44%) said they are not (figure 3).

For some of those respondents who were in support of the regulations, such as health stakeholder groups, they felt the regulations needed tightening and that they do not impose unnecessary burdens on businesses. The reasons given include:

- Some stakeholders believed the proposed regulations are significantly looser than Irish regulations which, for example, require that only one copy of a statutory sign may be used to indicate that tobacco products are for sale;
- Evidence from countries such as Norway and Ireland, where tighter regulations have been introduced in the space of 8 months for retailers, have shown compliance to be extremely high, and many respondents from health-related organisations commented on the long lead-in time outlined in these proposals; and
- Small shops, currently working on an implementation date of 2013, will have no incentive to take action until as late as possible.

Department of Health response: The Health Act 2009 does not provide powers for the Government to regulate generic signage in shops that do not promote tobacco products by brand, and the Government believes that retailers must be able to communicate with customers that they sell tobacco products, because despite the health harms from its use, it is a legal product.

Legislation to remove tobacco displays will be implemented on 1 October 2011 for large stores and 1 October 2013 for small stores, as defined in the proposed regulations. The Government believes that the longer lead-in time for smaller shops will enable them to best prepare for implementation and take advantage of innovations and developments in removing displays in larger shops.

Proportionate

Q3 Do you believe that these proposed regulations are proportionate and avoid imposing unnecessary burdens on businesses to achieve removing the display of tobacco products?

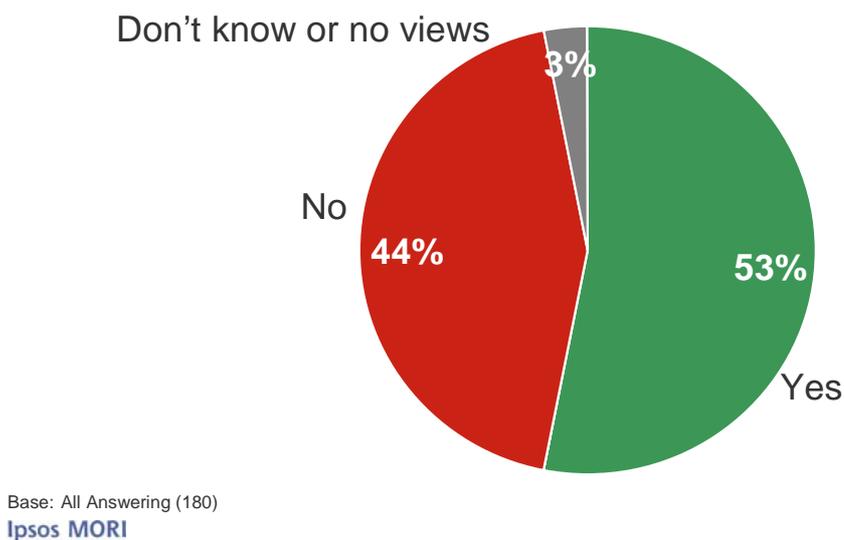


Figure 3

A sizeable proportion of respondents said that they do not believe the regulations to be proportionate, avoiding imposing unnecessary burdens on businesses. These included tobacco manufacturers, retailers and several individual respondents. These respondents were particularly concerned about the extra costs and inconvenience involved in introducing new storage units. It is unclear from most of these respondents as to whether they are opposed to the principle of removing tobacco displays from shops or whether they have specific concerns about the drafting of the proposed regulations.

These respondents felt the proposals are disproportionate (particularly compared to the regulation on the sale of alcohol products) and they also questioned the evidence that it will bring about a reduction in young people's smoking rates, for example:

We believe measures that have already been introduced – including Think 25 and increasing the minimum purchase age from 16 to 18 – could have a more significant impact on smoking levels among young people than restricting the display of tobacco in retail environments

Sainsbury's

Some respondents suggested that the timing of the regulations is a particular concern in the current economic climate. Some independent retailers mentioned the increased likelihood of shoplifting as shop assistants will have to spend more time searching for out-of-sight products with their back to the customer.

Other comments on the proportionality of the regulations included:

- The final regulations need to be communicated in a timely and understandable manner to retailers to ensure minimal disruption and compliance;
- Irish businesses report their primary source of information about introducing the display law was the tobacco industry, so more information about implementation will be required from the Government in England;
- It should be made clear that the definition of a 'large shop' also applies to the retail area of pubs, clubs and other venues such as casinos and hotels where tobacco is sold;
- Communicating the health objectives of the legislation should be made a priority; and
- Retailers should be allowed to utilise automatic vending machines as a method of complying with the regulations.

Department of Health response: The legal requirements for the removal of tobacco displays are included within the Health Act 2009, and the proposed regulations set out the detail of how the law will work. The regulations will be published and available for retailers (and the public in general) long before compliance is necessary. The Department of Health will work closely with the main representative organisations such as ACS, BRC, NFRN and others, to ensure that all their members receive information about the regulations. We will also work with these stakeholders and LACORS to produce guidance for both retailers and local trading standards officers, to help retailers understand what is expected of them to comply with the regulations.

The Government is satisfied that there is good evidence that the legislation will achieve the policy objectives of reducing smoking uptake among children and supporting those people who smoke and want to quit.

The Department of Health is not aware of evidence from other jurisdictions that have removed tobacco displays that shoplifting rates have increased.

The regulations contain a clear definition of what constitutes a "large shop" – this uses the existing definition in the Sunday Trading Act 1994 (Schedule 1) which businesses should already be familiar with. It is based on the relevant floor area used for the sale or display of goods, regardless of the type of venue that is in. This will also be dealt with in the proposed guidance.

Retailers will be able to use "retail vending machine" solutions if they choose to, as long as the requirements of the legislation are met.

Consultation question 4: Do you believe that these proposed regulations are enforceable?

Of the 179 respondents that answered this question, six in ten (61%) said that the proposed tobacco regulations are enforceable, while three in ten (31%) disagreed (figure 4).

Respondents have suggested that non-compliance would only arise from an individual's deliberate intention not to. For example:

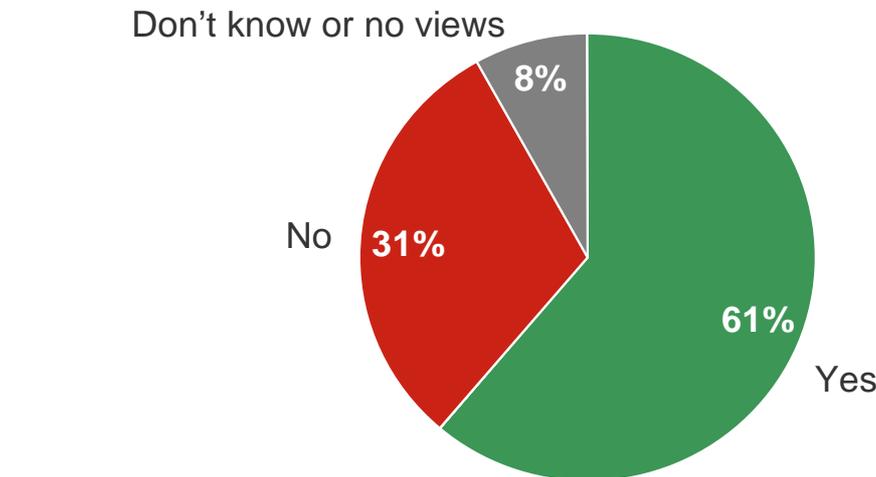
Whilst there will of course be disputes as to how long is permitted as a requested display, it seems unlikely that the intent of the Regulations would be frustrated by anything less than the most obvious abuse of this permission.

East Midlands Trading Standards

Nevertheless, a number of points about enforcement made in responses to previous questions were repeated here, and there were some suggestions as to how respondents thought the regulations could be enforced or improved.

Enforcing Regulations

Q4 Do you believe that these proposed regulations are enforceable?



Base: All Answering (179)

Ipsos MORI



Figure 4

It was suggested by some health respondents that every tobacco retailer should be visited in the first 12 months to ensure compliance and understanding of the new regulations. Additionally, it

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was suggested by a cross-section of stakeholders that enforcement staff should be provided with appropriate guidance and training to support businesses preparing for compliance, as well as enforcement, where necessary. Other comments and suggestions on improvements included:

- Enforcement staff such as Environmental Health and Trading Standards could incorporate checks into existing work;
- The regulations should stipulate that storage solutions should default to closed;
- No additional features should be allowed on storage cabinets, and they must be plain with no noise, light or colour features; and
- The regulations need to include audio announcements or advertisements.

The response from the Co-operative group is reflective of a number of retailers' views that the regulations could be difficult to enforce due to interpretation of the regulations:

With a highly prescriptive approach, there may be some areas that may prove difficult to enforce depending on the interpretation of enforcers. For example, in relation to how 'no longer than necessary' is interpreted in relation to temporary displays and restocking. This is where we hope guidance would play a role. However, we would not want a time limit to be imposed as this would be even more difficult to enforce.

The Co-Operative

The NFRN also questioned the resources of Trading Standards to enforce the regulations, and suggested that Ministry of Justice figures from 2007 show that only a small number of fines, and one prosecution, were made against retailers for selling tobacco to under-18s.

Department of Health response: Local authorities will be responsible for monitoring and enforcing the new legislation in line with their current responsibilities under the Tobacco Advertising and Promotion Act 2002. We will work with LACORS and local government to support them in this role, including through the development of enforcement guidance. We will encourage local authorities to work with retailers to build compliance by ensuring understanding of the new law and to take enforcement action in cases where the law is deliberately broken.

The Department of Health is of the opinion that the provisions in the Tobacco Advertising and Promotion Act 2002 are sufficient to stop the promotion and advertising of tobacco products alongside the removal of display. However, the Department of Health will monitor the legislation and can take decisions on further regulatory measures in the future if need be.

Consultation question 5: *Do you agree that having separate tobacco display areas is an effective and workable approach for retailers of bulk tobacco products?*

Of the 179 respondents who answered this question, the majority (55%) did not agree that having separate tobacco display areas was an effective and workable approach for retailers of bulk tobacco products (figure 5).

The main reason respondents give for not agreeing was that no exemption should be made for any retailer (including duty free and wholesale) if the public have direct access to their tobacco products. Some stakeholders are concerned about the arrangements proposed for bulk and

specialist tobacconists and this is reflected in the following comment:

Some sellers of bulk produce are frequently accessed by families, including 'cash and carry' and 'duty free' outlets.

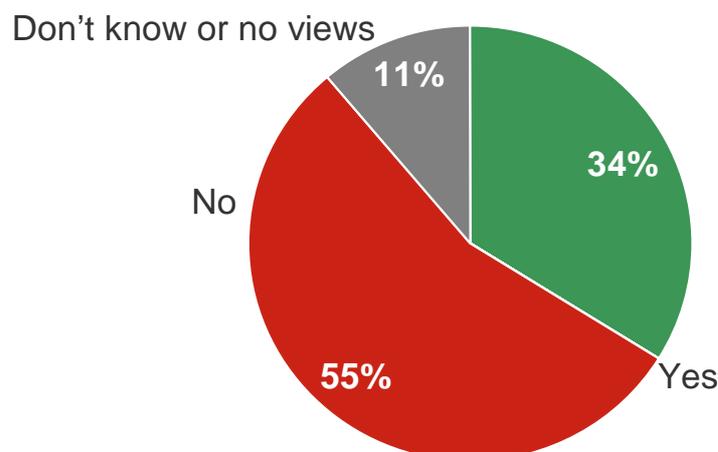
British Heart Foundation

Comments on tobacco display areas included:

- Retailers of bulk tobacco products should have to comply with the same rules as other businesses;
- There seems little justification for this different approach simply because the pack sizes are larger, some respondents suggested that retailers may be encouraged to sell tobacco in larger pack sizes;
- Allowing bulk tobacconists to have separate display areas will make tobacco more attractive by reinforcing its adult nature;
- Children should not be allowed to enter a tobacco display area;
- The display area also needs to be defined in such a way that a tobacco display 'corridor' is not permitted and that people do not need to pass through a tobacco display area to get to another part of the shop;
- There needs to be an improved definition between "cash and carries" and tobacco wholesale outlets that only sell to others in the tobacco trade.

Separate Tobacco Display Areas

Q5 Do you agree that having separate tobacco display areas is an effective and workable approach for retailers of bulk tobacco products?



Base: All Answering (179)
Ipsos MORI



Figure 5

Department of Health response: The Department of Health believes that the particular nature of specialist tobacconists and bulk suppliers warrants the provision of specific provisions for the removal of tobacco displays in their businesses.

The regulations will allow duty free retailers (who sell only bulk tobacco products) to have separate “tobacco areas”, in which displays of bulk tobacco products would be allowed provided the displays are not visible to customers or members of the public from outside the area.

The Department of Health accepts that in a bulk tobacconist, customers should not pass through a tobacco display area to get to another part of the shop and will amend regulations to include this requirement.

The Department of Health does not believe that a prohibition on people under the age of 18 entering tobacco display areas or specialist tobacconists would be able to be easily enforced. We will encourage businesses that have these areas to consider adopting voluntary arrangements to dissuade young people from entering these areas.

The Department of Health agrees that the distinction between bulk tobacconists such as “cash and carries” and wholesale tobacco outlets should be clearer. The tobacco provisions in the Health Act 2009 already provide tobacco wholesalers an exemption from removing the display of tobacco “if the tobacco products are displayed in the course of a business which is part of the tobacco trade, they are displayed for the purposes of that trade, and the display is accessible only to persons who are engaged in, or employed by, a business which is also part of that trade”. We will make changes to regulations to more accurately reflect the particular nature of bulk tobacconists, mindful of the approach already adopted for the existing definition of specialist tobacconists which enforcement authorities are already familiar with.

Consultation question 6: *Do you have any other comments on the proposed regulations?*

More than four in five (83%) of respondents provided further comments on the proposed regulations. Many stakeholders had opinions on the question of how large the area of a storage unit should be when it is open to serve a customer or during restocking. Some respondents believed that the proposal for a 1,500 square centimetre allowable display on request is too big, while retail stakeholders said that it is too small and will be unnecessarily costly to implement. Retailers are also concerned that a small area will not enable the development of innovative solutions to remove displays of tobacco from shops. In their response, the Association of Convenience Stores (ACS) recommended that:

...the current regulations are amended to allow a maximum requested display area of 1.5 sq metres.

Association of Convenience Stores

Other responses included:

- Allowance should be made for a complete exemption for restocking and maintenance of storage units;
- Opportunities to utilise point of sale advertising space to promote NHS Stop Smoking Services should be explored;

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- "No ID, no sale" branded material must not adopt a variety of colour schemes which can be associated with different brands of tobacco;
- The proposed legislation may encourage a black market in tobacco products and this would mean that it is easier for underage smokers to obtain tobacco;
- Some stakeholders believe that young people are not encouraged to smoke because they see tobacco in shops but they start because they see adults smoking and think it is a grown up activity;
- The regulations are an unnecessary and costly burden to the independent retail trade. They have not been considered against the consequence of who they will affect;
- There should be provision to require retailers to display all stock on request from an authorised enforcement officer, for example to check for illicit tobacco; and
- There is no definition of tobacco products in the proposed regulations.

Department of Health response: The Department of Health carefully considered the arguments for increasing or reducing the proposed 1,500 sq cm allowance for requested display as set out in the proposed regulations. Ministers decided to increase the allowance to 7,500 sq cm as it appears that this would be a workable solution both in terms of ensuring a minimal burden on businesses and in ensuring the health policy aims were met. In addition the Department of Health:

- Is concerned that a complete exemption for restocking and maintenance of storage units could create problems for compliance, and believes that current proposed regulations provide sufficient scope to enable restocking to take place during business hours without compromising the objectives of the legislation;
- Believes that the provisions in the Tobacco Advertising and Promotion Act 2002 are sufficient to stop the promotion of tobacco products alongside the removal of display. However, the Department of Health will monitor the legislation and will make decisions on further regulatory measures in the future if need be;
- Is not aware of evidence that removing display of tobacco products has resulted in an increase in illicit trade in other jurisdictions. Regardless, the Government will continue to take strong action to bear down on the availability of illicit tobacco, as set out in *A Smokefree Future*;
- Believes that the display provisions in the Health Act 2009 are based on good evidence and the proposals for regulations are warranted and set out a proportionate approach to delivering the public health aims of the legislation;
- Believes that proposals to enable authorised enforcement officers to require retailers to display all stock for the purposes of enforcement is sensible (particularly for trading standards and HMRC officers to check for illicit tobacco), and we will incorporate amendments to enable this; and
- Believes that there is no need to define "tobacco products" in these regulations, as they are already defined in the Tobacco Advertising and Promotion Act 2002.

3. Regulating display of prices of tobacco products

This chapter refers to the proposed Tobacco Advertising and Promotion (Display of Prices)(England) Regulations 2010.

Consultation question 7: Do you believe that these proposed regulations set out an effective and workable approach to making information available for customers and staff, without creating avenues for promotion?

Of the 153 respondents that answered this question, over seven in ten (72%) did not agree that the approach set out in the regulations is effective and workable (figure 6).

Customer Information

Q7 Do you believe that these proposed regulations set out an effective and workable approach to making information available for customers and staff, without creating avenues for promotion?

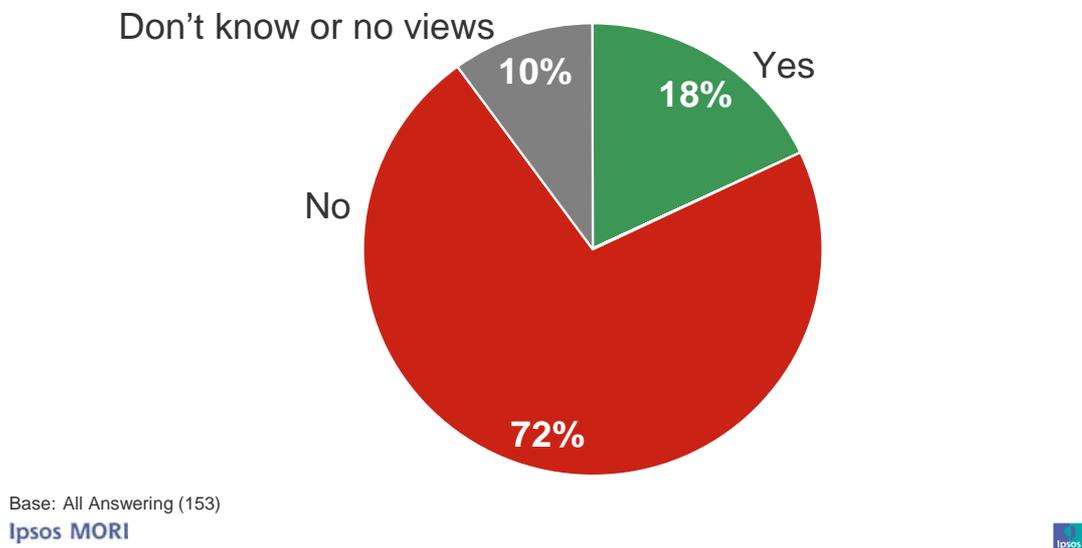


Figure 6

Among the 72% who do not think that the proposed regulations set out an effective and workable approach, there are both those who agreed with the regulations but felt they *do not go far enough* and those who disagreed with the regulations and felt they *go too far*. Examples of both of these points of view are covered below.

Consultation on proposed tobacco control regulations for England (under Health Act 2009): Summary of consultation responses

Some respondents believed that the allowance of a price list on display, an illustrated list available on request and price labels on the shelves is excessive and leaves open too many opportunities for promotional arrangements between retailers and tobacco manufacturers. They also suggested that it may give the impression to young people that they would find it easy to buy tobacco products. They also pointed out that most smokers have a preferred brand and so are not in need of this type of information. Instead, some respondents felt that these lists would become aimed at enticing young people to start smoking.

There were calls for one single price list regardless of the number of tills. Some stakeholders believed that if there is to be a list at each till, it should be identical and the presentation, size and font should be specified:

We believe that there should only be one single price list per store on display and an illustrated version only on request. As the regulations currently stand, a price list can be displayed at each till where tobacco products are sold. Cancer Research UK would be concerned if shops were allowed to have multiple price lists and signs denoting that tobacco is sold around the store. This would give young people the impression that tobacco products are easily available and that smoking is 'normal' behaviour. 90% of adult smokers know what brand of cigarette they will buy before entering a shop, therefore only a small amount of information on what products are sold is needed.

Cancer Research UK

The number of ways that consumers can view price should be reduced to ensure that these regulations are effective in protecting children and young people. For example, the regulations state that one displayed price list is permitted per till. In instances where retailers have a number of tills situated together, a single price list should be adequate. The regulations also allow for product name and price to be advertised on storage units. This should be removed as this is not permitted in Ireland.

British Heart Foundation

However, other organisations felt that the regulations are overly prescriptive. As illustrated below, The Co-operative highlighted a perceived difference between pricing information and advertising:

We are not convinced of the need for the excessively prescriptive controls being proposed relating to colours, fonts and size in relation to how prices are presented as we question whether this is necessary in relation to introducing a ban on tobacco display. If branded images of packs are not to be on open display, which the DH seem to think could be a potential advertising element, we do not see why pricing information, which is not advertising, should not follow the flexibility of the Price Marking Order (PMO) 2004 that price must be “unambiguous, easily identifiable and clearly legible” without resource to such prescription.

The Co-Operative

Consultation on proposed tobacco control regulations for England (under Health Act 2009): Summary of consultation responses

Furthermore, several respondents felt that the large number of tobacco products sold by some retailers would simply not fit on one A4 list. They felt that it was inevitable that retailers would favour larger brands in selecting which to display on the list, and so smaller brands would suffer unfairly.

In addition, a number of questions were raised by respondents:

- Is there a limit to the number of lists, or is it envisaged that there could be, for example, a “Marlborough” list and a “Benson and Hedges” list?
- Are price reductions to be permitted on the list or is the Government of the view that this could be used as a means of promotion?
- Are the lists in any one premises to be all in the same format?

Department of Health response: Retailers must be able to communicate with customers about which products they have available for sale and at what price but in the case of tobacco, such communications should not provide a means for the promotion or advertising of tobacco products. We believe the proposed regulations strike the right balance between the legitimate needs of businesses and the promotion of public health but we have carefully considered stakeholder feedback and made some changes.

The Department of Health accepts the point made by various stakeholders that an “on display” price list that is A4 in size may not be large enough to list all tobacco products on sale, and will therefore provide an allowance of an “on display” price list that is A3 in size, which is double the proposal in the consultation. The allowances for typeface size and design features will remain the same.

Retailers will be able to update price lists to show the current price. It is not however permissible to display both the old and new prices as the Government believes that this would serve as a form of promotion. Equally, the regulations do not allow for promotional words such as ‘special offer’ or ‘reduction’.

We believe that the design specification will be effective in preventing price and availability information being exploited as an avenue to advertise or promote tobacco products.

We also accept the feedback from various stakeholders that allowing an “on display” price list at every till is excessive, and will therefore limit “on display” price lists in number to one per separate area of a shop (as defined in the regulations) where tobacco products are located and can be paid for.

An “on request” price lists can be kept at any till where tobacco products can be paid for, if a retailer so chooses. The regulations also set out requirements as to the format and design of price lists, and what can be included on the list (including the price of products).

Consultation question 8: *Do you have any comments on the proposed requirements for the design of price lists?*

Over six in ten (63%) of respondents had comments on the proposed requirements for price lists. Many, particularly those from the NHS and health promotion organisations, were prompted by the desire to reduce the opportunity for the promotion of tobacco products. While respondents

Consultation on proposed tobacco control regulations for England (under Health Act 2009): Summary of consultation responses

supported the plans to specify requirements for the presentation of price lists, many felt this could, and should, go further if the regulations are to achieve their aims. Many respondents, particularly tobacco control partnerships, say that a maximum typeface size of 18 points would be sufficient and some stakeholders, including ASH and NHS Central Lancashire, suggested reducing this to 14 points:

We request that a uniform font size of no more than 14 be used on the price list and that all tobacco products should be listed on the price list and in alphabetical order and require that pictures of the packs to be a standard size and either all in black or white or all in colour.

NHS Central Lancashire

Some respondents also said that the typeface size should be consistent throughout the list and all tobacco products should be listed on the price list and in alphabetical order. This was suggested to prevent the promotion of certain brands over others:

The continuing promotion of individual brands again undermines the intention of the legislation which is to break the link between tobacco products and promotion and therefore reduce the appeal of tobacco. The font size permissible on the permanent price lists is excessive and should be significantly reduced. Given that a separate price list with pictures can be made available on request there is no need for the font size of the permanent list to be any larger than 14 point

ASH

Other suggestions included:

- A recommendation that the regulations should not allow retailers to use electronic price lists;
- To add the statutory age warning wording and “smoking kills” in the same size font as the prices;
- Some retail stakeholders have suggested that a *mandatory* requirement to have “on request” price lists at tills where tobacco can be paid for could be difficult;
- No price lists should be allowed at all, and only a statutory sign saying tobacco is for sale should be allowed;
- Price lists should be allowed to have generic headings, such as cigarettes, hand rolling tobacco, cigars, pipe tobacco to make them easier for customers to use;
- For cigars, price lists should be allowed to include country of origin and dimensions;
- For pipe tobacco, price lists should be allowed to include brand and weight for sale; and
- It is unnecessary to have specifications for the “on request” price list.

Regarding “on request” price lists, some respondents suggested that the pictures of cigarette packs should be required to be a standard size and either all in black and white or all in colour.

West Yorkshire Trading Standards Service (WYTSS) and trading standards welcomes the proposed controls relating to the design of price lists. However WYTSS's preferred option would be for no pictorial representation to be

**Consultation on proposed tobacco control regulations for England (under Health Act 2009):
Summary of consultation responses**

allowed (as the current draft Regulation 7 (e) permits) - customers will be able to make informed decisions based on the other information contained on price lists. If pictorial representations are to be allowed WYTSS believes that the size of pictures currently allowed by Regulation 7 (e) - 50 square centimetres - is too generous. WYTSS believes that a maximum picture size of 25 square centimetres would be more prudent and perfectly adequate. WYTSS is also of the view that, if pictures are to be allowed, they should be black and white, so that children are not attracted to coloured price lists if they happen to be in the vicinity of a customer who is viewing a price list or if a price list is 'accidentally' misplaced.

West Yorkshire Trading Standards Service

Department of Health response: The Department of Health believes that proposals allowing some flexibility in the design of price lists is fair and that imposing requirements that price lists be arranged alphabetically, should be required to list all products for sale, or should have further restrictions or requirements on design are not warranted at this point. The allowance for the “on request” price list to include colour pictures of tobacco products is intended to assist product recognition by customers, such as tourists or those with reading difficulties.

The Department of Health accepts the suggestion from retail stakeholders about allowing additional information for the benefit of customers (including the use of generic headings on price lists, as well as allowing price lists to include the additional information suggested for cigars and pipe tobacco).

While these regulations set out what will be allowable in terms of price lists, they do not compel retailers to make price lists available. These regulations do not replace the requirements that retailers have under the Price Marking Order 2004.

The Department of Health believes that the requirements set out in the proposed regulations strike the right balance between communication with customers while preventing the promotion or advertising of tobacco products.

Consultation question 9: *Do you believe that the proposed sizes and allowable features of labels on storage units will meet the need for the efficient operation of shops?*

Of the 62 respondents that answered this question, the majority (63%) disagreed that the proposals for labels on storage units will meet the need for the efficient operation of shops (figure 7).

Rather than commenting on the proposed sizes and allowable features of labels, many used the opportunity to restate their opposition to permitting labels on storage units at all. These respondents tended to suggest that labels are unnecessary for the regulations to be workable for retailers and would make compliance potentially more difficult. One respondent suggested using a key for staff indicating where the products are located rather than "full title" labels.

The potential extra trading standards resource required to enforce the regulations was a concern for some. They pointed out that many small, independent retailers still use hand-written notices or price lists and measuring the font sizes on storage units would not be an efficient use of time. Other respondents suggested that clarification was needed on whether the price labels should be

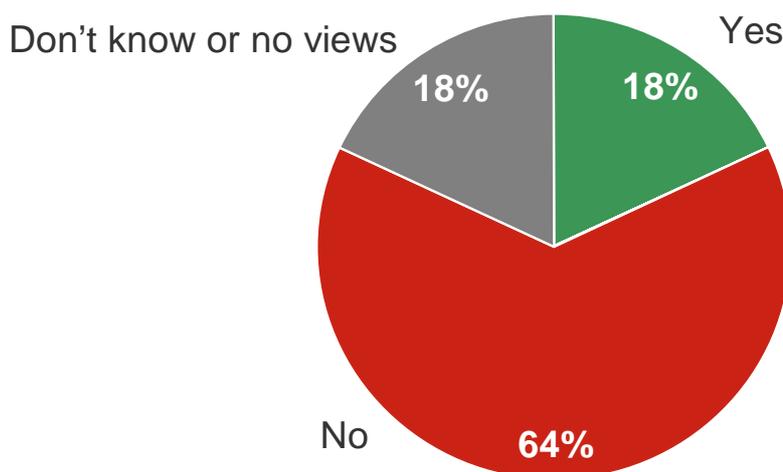
on the inside or outside of display cabinets, with a preference expressed by many for inside the units:

This provision complicates the regulations unduly, creating another area of potential confusion for retailers which will make enforcement more complex while providing no practical benefit. Furthermore, the regulations allow the labels to be displayed on "each separate location in a storage unit where a particular tobacco product is". [On a conventional gantry which had been covered with flaps this could result in a brand name being repeated over and over again...

ASH

Labels for Storage Units

Q9 Do you believe that these proposed sizes and allowable features of labels on storage units will meet the need for the efficient operation of shops



Base: All Answering (62)
Ipsos MORI



Figure 7

On the proposed regulations, many stakeholders suggested that labels for storage units should be made bigger, with a maximum size of at least a typeface size of 14 points, to be in line with the upper size recommended by the Royal National Institute of Blind People (RNIB), as compared to the typeface size of 12 points proposed in the consultation.

Department of Health response: The Department of Health believes that allowing retailers the option of using labels on storage units is necessary for staff to be able to locate tobacco products for sale. Therefore, labels need to be visible on the outside of the storage unit.

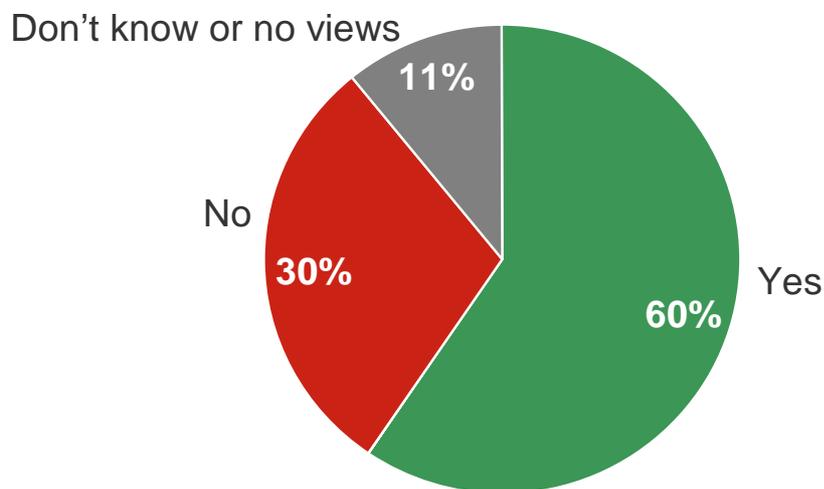
The Department of Health accepts the proposal for labels of a size that is in accordance with RNIB guidance and will make changes to allow labels to have typeface size no larger than 14 points.

Consultation question 10: Do you believe that these proposed regulations are enforceable?

Of the 152 respondents that answered this question, three in five (60%) agreed that the proposed regulations are enforceable (figure 8). However, many respondents choose to repeat the suggestions given in response to previous questions.

Enforcing Customer Information, Price Lists and Labels

Q10 Do you believe that these proposed regulations are enforceable?



Base: All Answering (152)
Ipsos MORI



Figure 8

The following comment is reflective of a number of respondents' views:

The ability to enforce the regulations will only be possible if the principal enforcement agencies, e.g. Trading Standards, have the capacity to do so and if agencies work together to ensure compliance.

Northamptonshire Smokefree Alliance

Furthermore, respondents advocate the need for retailer/staff training with the assistance of Trading Standards.

Department of Health response: The Department of Health will work with LACORS, local government and retail stakeholders to support their efforts to prepare for the implementation of this legislation.

Consultation question 11: Do you have any other comments on the proposed regulations?

Almost half (48%) of respondents to this question reiterated their responses to the other questions on price lists, but many also gave their overall support for the regulations. In addition, several referred to the higher standards contained in the equivalent regulations in place in the Republic of Ireland and suggested that the proposed regulations should be in line with these.

In most instances, the comments from NHS and health organisations say there is a need further restrictions to be placed on the sale of tobacco:

We are disappointed that the regulations are the bare minimum necessary for effective regulation and are looser than the Irish regulations. It is unclear why this is needed in England as the Irish regulations have been effectively implemented since July 2009. We should learn from the Irish experience especially in regard to signs such as 'Can't see what you want - just ask' which draw attention to the sale of tobacco.

**NHS Central Lancashire and Central Lancashire
Tobacco Control Alliance**

Some individual respondents, along with several retailers and the representatives from the tobacco industry, also restated their opposition to the regulations. The following quote is reflective of these views:

These regulations are simply too restrictive to allow the free sale of a legal product to adult smokers in the UK. They will be difficult - if not impossible - to enforce and they place an unfair burden on the retail trade especially the small newsagents.

Individual Respondent

Department of Health response: As stated above the Department of Health believes that it has struck an appropriate balance in the regulations between ensuring businesses can communicate with their customers while ensuring price lists do not become a promotion tool.

4. Specialist tobacconists

This chapter refers to the proposed Tobacco Advertising and Promotion (Specialist Tobacconists)(England) Regulations 2010.

Consultation question 12: Do you believe that specialist tobacconists should be allowed to display and advertise tobacco products in the ways set out in the proposed regulations, given the nature of their business?

Of the 137 respondents who answered this question, most (49%) did not believe that specialist tobacconists should be exempted from the regulations in the manner proposed, compared to just over two fifths who felt that they should (figure 9). Most of those who felt that specialist tobacconists should be exempted did so on the condition that under-18s should be banned or strongly discouraged from entering the premises in the first place.

Specialists Tobacconists Advertising

Q12 Do you believe that specialist tobacconists should be allowed to display and advertise tobacco products in the ways set out in the proposed regulations, given the nature of their business?

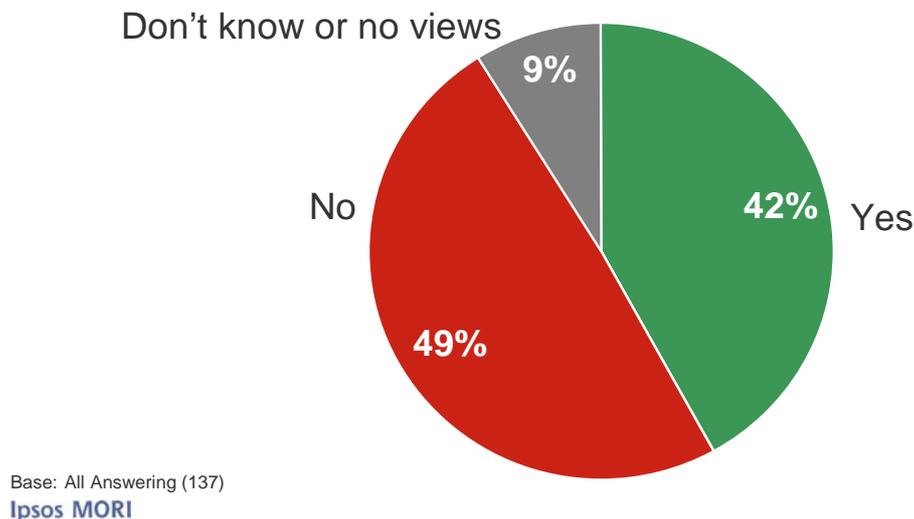


Figure 9

The most commonly raised concern was that specialist tobacconists are not currently age-restricted premises. They were concerned that children are currently permitted to enter these premises, despite the age-restricted products on sale. As such, they felt that specialist tobacconists should not be allowed to display and advertise tobacco products.

Consultation on proposed tobacco control regulations for England (under Health Act 2009): Summary of consultation responses

Many respondents drew a comparison with other businesses whose activities are deemed to be unsuitable for children. They suggested that a simple and workable solution would be to class specialist tobacconists as age-restricted, and require windows to be obscured. This would mean that no internal changes would be necessary, reducing the burden on these retailers.

A small number suggested that further clarification was needed over what constitutes a specialist tobacconist and whether the 50% of trade referred to turnover or to the size of the trade. They were concerned that the proposed regulations provided the potential for exploitation.

Among those who did not support the exemptions, some health groups suggested that specialist tobacconists could use the remaining 50% of turnover to provide child-friendly products in order to entice children into the store where tobacco products would be on display. There was a suggestion that specialist tobacconists could become a promotional avenue for tobacco companies and that the proposed new regulations would result in a large increase in the number of businesses designating themselves as specialist tobacconists. Some felt that these should be licensed premises, with a restricted number of licenses to prevent such an increase in the number of businesses. There was also a concern that the exemptions applied to specialist tobacconists could undermine compliance by other small retailers, who could potentially see their trade being damaged by those who are exempt from the regulations.

Some respondents also felt that the regulations as proposed allow for the possibility of franchises and shops within shops, so that retailers, particularly supermarkets, could simply set up a concession for tobacco within the main store thus bypassing the regulations.

Those who support exemptions for specialist tobacconists, including many who work within the tobacco industry and several trading standards organisations, felt that exemptions were warranted, as once a customer enters a specialist tobacconist any tobacco purchase would be planned rather than an impulse.

Department of Health response: The Department of Health believes that the particular nature of specialist tobacconists warrants the provision of specific provisions for the removal of tobacco displays in their businesses. To be a specialist tobacconist, a shop must meet the conditions set out in section 6 of the Tobacco Advertising and Promotion Act 2002, including the requirement for more than 50% of sales to be from specialist tobacco products: cigars, snuff, pipe tobacco and smoking accessories. We understand that there are only about 45 shops in England that qualify to be a specialist tobacconist at the present time.

The proposed regulations mean that shops that meet the conditions of being a specialist tobacconist will be able to display tobacco products in their shops, provided that the products are not visible from outside the shop, allowing flexibility for this specific type of retailer while focusing on the policy effect we wish to achieve. Therefore, we do not believe that additional requirements, for example for obscured windows, are necessary.

Given the small number of specialist tobacconists in England, the Department of Health does not believe that further restrictions need to be included in regulations at this stage, but we will keep the operation of the regulations under review.

We understand that some specialist tobacconists already operate voluntary age restriction policies and we will continue to work with the specialist trade to encourage and extend the voluntary adoption of “over-18s only” policies. The Department of Health is not convinced that legislation to require age restriction for these shops is needed at present.

Consultation question 13: Do you believe that these proposed regulations set out an effective and workable approach for specialist tobacconists?

Amongst the 136 respondents who answered this question, there was broad agreement (61%) that the approach for specialist tobacconists is effective and workable (figure 10). The long lead-in time was mentioned here, which was thought to be beneficial, as was the need for advice and guidance to businesses prior to implementation.

Effective and Workable (Specialist Tobacconists)

Q13 Do you believe that these proposed regulations set out an effective and workable approach for specialist tobacconists?

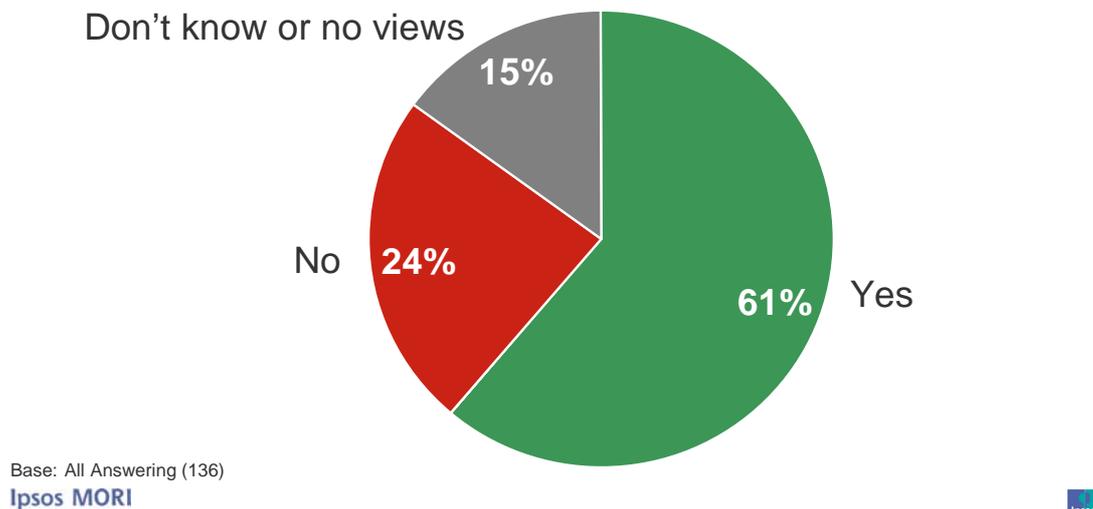


Figure 10

There were few other comments made by respondents, as most felt that the regulations would be effective and workable. Several of those who thought that the proposed regulations do set out an effective and workable approach again mentioned that this is the minimum that should be done.

Those who thought they weren't effective and workable were split between those who feel that the regulations do not go far enough and feel specialist tobacconists should be an age-restricted premises and those who feel that the proposed regulations will victimise these small, generally family owned businesses.

Some respondents suggested that specialist tobacco stores should separate the tobacco and non-tobacco products that they sell to avoid the close proximity of tobacco products with products popular with children, such as confectionery.

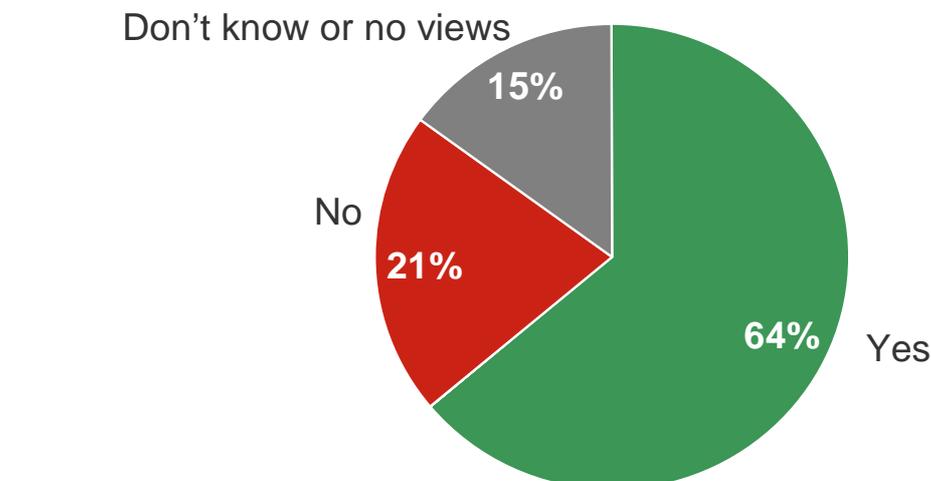
Department of Health response: The Department of Health believes, as stated above, that the particular nature of specialist tobacconists warrants the provision of specific provisions for the removal of tobacco displays in their businesses. We do not believe that there is further need to restrict these shops, as they do not attract young people as customers. Ensuring products are not visible from outside seems a proportionate balance as this could otherwise serve as promotion of tobacco products.

Consultation question 14: Do you believe that these proposed regulations are enforceable?

Of the 137 respondents who answered this question, two thirds (64%) of stakeholders agreed that the proposed regulations for specialist tobacconists are enforceable (figure 11).

Enforceable (Specialist Tobacconists)

Q14 Do you believe that these proposed regulations are enforceable?



Base: All Answering (137)

Ipsos MORI



Figure 11

There were very few comments made on whether the regulations would be enforceable or not. Most of those who did not agree that the proposed regulations are enforceable focused on the cost of enforcement. There were some respondents who felt that creating and enforcing new regulations should be a low priority until the enforcement of current regulations is taking place.

Department of Health response: The Department of Health already works closely with LACORS and other local government partners to encourage the enforcement of tobacco-related legislation and the implementation of wider comprehensive tobacco control measures in local communities.

Question 15: *Do you have any other comments on the proposed regulations?*

There were very few additional comments relating to the exemption of specialist tobacconists. Again there was reiteration of the idea that specialist tobacconists should not receive any exemptions from the law, primarily on the grounds that they are not age-restricted premises. There were concerns around the potential for loopholes in creating separate legislation for specialist tobacconists.

5. Preventing access to tobacco from vending machines

This chapter refers to the proposed Protection from Tobacco (Sales from Vending Machines)(England) Regulations 2010.

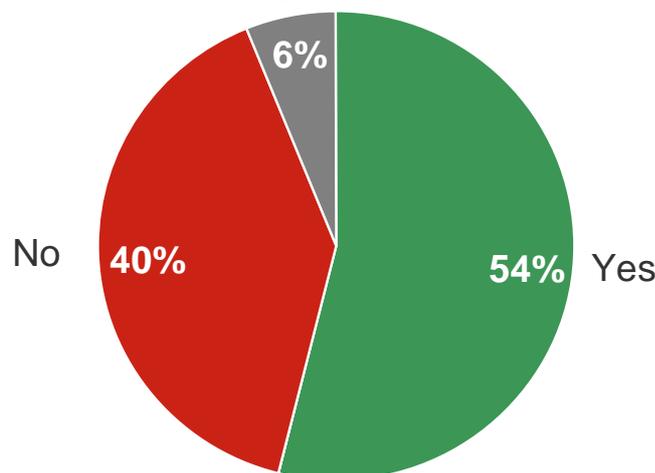
Consultation question 16: *Do you think the intended effect of prohibiting the sale of tobacco from vending machines will be achieved with the proposed regulations?*

Slightly over half (54%) of the 190 respondents that answered this question agreed that the intended effect of prohibiting the sale of tobacco from vending machines would be achieved by the proposed regulations. Two fifths (40%) disagreed that this will be the case (figure 12).

Vending Machines

Q16 Do you think the intended effect of prohibiting the sale of tobacco from vending machines will be achieved with the proposed regulations?

Don't know or no views



Base: All Answering (190)
Ipsos MORI



Figure 12

There was much support expressed by health stakeholders for a prohibition on the sale of tobacco from vending machines. Cited in support by some respondents is that they believe that no other age-restricted products are sold from vending machines. There was evidence presented by trading standards organisations and other stakeholders that the industry's current voluntary code of

Consultation on proposed tobacco control regulations for England (under Health Act 2009): Summary of consultation responses

conduct on vending machines is not working and that, should they want to, under-18s are easily able to buy tobacco from vending machines.

Restrictions on vending machines will not go far enough and we welcome the recognition in the consultation document that the National Association of Cigarette Machine Operators (NACMO) voluntary code has not been effective in limiting underage access to cigarettes from vending machines. We know that an unmanned machine cannot be properly policed, wherever it is situated.

British Heart Foundation

Evidence was also cited by some stakeholders about the lack of increased compliance gained by introducing ID vending machines in Japan. It was also noted that by introducing a prohibition on the sale of tobacco from vending machines, Britain would be brought in line with 22 other European countries who do not currently allow the sale of tobacco through vending machines.

ASH proposes support for the proposed regulations not only as they believe it will help reduce the number of under-18s purchasing tobacco, but also as they see vending machines as associated with unplanned purchases by adult smokers and can encourage lapses in smokers trying to quit. ASH supports a prohibition for the purposes of helping adult smokers make positive choices as well as reducing access to tobacco for those under-18:

Currently the price of tobacco from vending machines is very high in comparison with shops and smokers often associate purchases with relapse during quit attempts or unplanned purchases when drinking. The removal of vending machines will prevent illegal sales to children and may also support adult smokers in their positive choices not to smoke.

ASH

Those in the vending machine industry made up a large proportion of those who did not support the proposed regulations for vending machines. They felt that the proportionately small number of sales of tobacco through vending machines (compared to other sources) did not warrant the proposed prohibition. Some respondents felt that the impact of a prohibition on the sale of tobacco from vending machines would be felt much more by adult smokers than by those under-18, as they felt that cigarettes from vending machines are priced too highly for under-18s to consider buying. It was felt that the lack of vending machines has the potential to increase illegal trade of cigarettes, and suggested that this source could be much more damaging to children than vending machines.

There was particular concern regarding the fate of the vending machine industry. Several vending machine operators mentioned the closure of up to 200 companies with up to 650 job losses. Vending machine and tobacco companies do not feel that this is proportionate to what will be achieved by the regulations.

The manner in which the prohibition will be implemented will be critical to the livelihood of those people who own and work for over 200 trading companies, many of which are small businesses employing a handful of staff. To date the announcements have created uncertainty and have undermined the ability of these small businesses and their staff to maintain

normal business relationships with banks etc. While some people may disagree with cigarette smoking and vending machines, the companies currently legitimately operating these machines should be given the support of transitional arrangements to ensure that businesses can be wound up appropriately while employees can move to new jobs and so remain economically active.

Tobacco vending machine operator

Some vending machine companies also felt that the alternative technology for restricting sales to younger age groups had not been given a fair trial when preparing these proposals. Vending machine companies explained that the development of infrared technology, whereby the vending machine can be controlled by an adult operative, would be a suitable alternative to prohibiting the sale of tobacco from vending machines.

Department of Health response: The Department of Health remains concerned about the ease of access that children have to tobacco from vending machines, and that the availability of tobacco from vending machines could undermine efforts by adult smokers to quit.

The Department of Health has carefully considered the responses received during the consultation on vending machines. The Government has committed in *A Smokefree Future* that “we will prohibit the sale of tobacco from vending machines, subject to Parliamentary consideration of regulations”. The Government’s new tobacco control strategy includes a range of initiatives to stop the inflow of young people recruited as smokers, as well as motivating and assisting every smoker to quit.

The Health Act was amended in Parliament to remove the power for regulations to impose requirements on vending machines. There is significant evidence that under 18s are able to buy cigarettes from vending machines. The Government believes that prohibition is an appropriate response. The commencement date of October 2011 will allow companies and their staff, the opportunity to consider the options of diversification or re-employment.

Consultation question 17: *Do you think the proposed regulations will be enforceable?*

Of the 193 respondents who answered this question, almost six in ten (57%) agreed that the proposed regulations will be enforceable, with just over a third (35%) disagreeing (figure 13).

Enforceable (Vending Machines)

Q17 Do you think the proposed regulations will be enforceable?

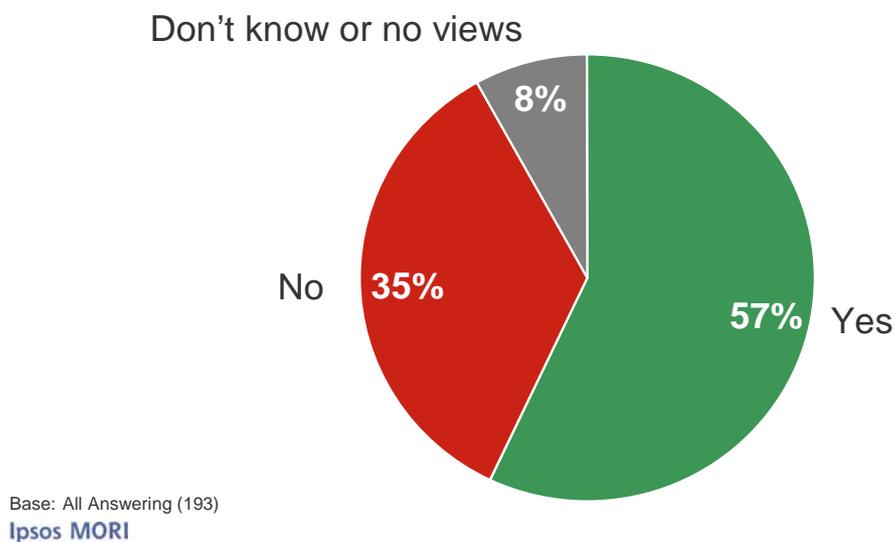


Figure 13

Many respondents suggested that anything less than a total prohibition on the sale of tobacco from vending machines would place a burden on regulators and enforcers and as such would make enforcement more difficult. Trading standards respondents believed that they would need new powers of entry to premises such as private members clubs to ensure the law was being enforced.

Some respondents felt that without a prohibition, the person activating the machine would need to be personally liable for misuse of the machine or failure to monitor usage of the machine. Two trading standards organisations felt that the penalty for breaching the regulations would not be enough to stop people from complying if they did not want to, as currently proposed at level 4. It was suggested that the penalty should be increased to level 5 (i.e. the level of the penalty could be up to £5,000 rather than £2,500 as it would be under the currently proposal).

Department of Health response: The Department of Health will work with enforcement agencies to ensure that the burden is minimised for them. We believe that the penalty level is appropriate.

Consultation question 18: Do you have any other comments on the proposed vending machine regulations?

There were few further comments on the proposed vending machine regulations. Respondents used this opportunity to restate either their belief that a prohibition on vending machines is needed, or their opposition to the proposals.

There was some confusion over the implementation date, with respondents not sure whether the regulations would come into effect in October 2010 or in October 2011.

Those who disagreed with the proposed regulations again stated that the regulations represent a disproportionate response due to small number of tobacco sales that take place in this way. They also felt that there was a lack of evidence that the proposed regulations would result in fewer under-18s smoking.

Vending machine companies also mention that since the Health Act 2009 was introduced into Parliament, they have had problems maintaining their business due to uncertainty of the industry. Again, vending machine companies and operators questioned why radio frequency verification has not been trialled. There was much support amongst vending machine companies for proposing and trialling and alternative methods of control.

Adoption of a RF Device ensures that the industry can remain in business, no compensation sought and importantly businesses not closed or put into financial difficulties, nor people made redundant.

National Association of Cigarette Machine Operators (NACMO)

Department of Health response: The Department of Health is committed to prohibiting the sale of tobacco from vending machines as evidence clearly demonstrates that it is a source of tobacco disproportionately used by under 18s.

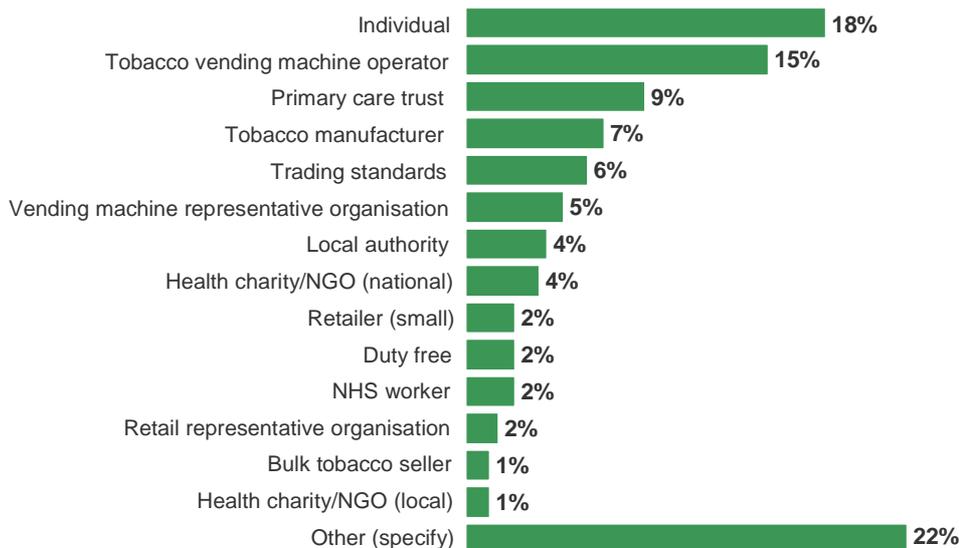
A typing error in one place in the Consultation document may have caused some confusion over whether the implementation date for vending machines is 2010 or 2011. As correctly reflected in the proposed regulations themselves, the Department of Health's intention has always been for the regulations to commence on 1 October 2011.

Appendix A: Who responded to the consultation?

A total 544 responses were received to the consultation. Of the total 250 responses received on the consultation proforma, the chart below shows the broad category of respondent by organisation or occupation type.

Organisation Type

Q20 Please tick your occupation or the type of organisation you are respondent on behalf of:



Base: All Answering (250)

Ipsos MORI



The following is a list of organisations that responded to the consultation (the list does not include individual respondents):

- Action on Smoking & Health (ASH)
- Aelia UK Ltd
- AMF Bowling
- Asda
- Association of Convenience Stores
- Association of Independent Tobacco Specialists
- Association of North East Councils (ANEC)
- Birmingham Health and Wellbeing Partnership

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Birmingham International Airport Ltd
Blackpool Council
Bristol Airport
British American Tobacco
British Beer & Pub Association
British Heart Foundation
British Medical Association
British Retail Consortium
Buckinghamshire Action Against Smoking
Cancer Research UK
Cheshire and Merseyside Tobacco Alliance
Chhana Newsagent
Co-operative Retail Trading Group
Cumbria & Lancashire Public Health Network
Cumbria Fire and Rescue Service/Cumbria County Council
Cumbria Tobacco Alliance
Dale Vending
Dark Market Ltd
Dawsons (Wales) Ltd
Doncaster Tobacco Control Alliance
Dorset Smokefree
Duckworth (Blackpool) Ltd
East Of England Trading Standards Association Ltd
Faculty Of Public Health
Federation Of Small Businesses
Federation of Wholesale Distributors
Fresh Smoke Free North East
Gatwick Airport
GMFA
Hampshire and Isle of Wight Tobacco Control Alliance
Hampshire County Council
Hampshire Youth Parliament
Hari Market News
Heart of Mersey
Heathrow Airport Ltd
Herne Hill Londis
Hertfordshire County Council Trading Standards Service
House of Oliver Twist
Hunters & Frankau
Imperial Tobacco Ltd
Imported Tobacco Products Advisory Council
Independent Retailer
Information Centre
Islington Council's Trading Standards Team
Islington News
Japan Tobacco International
JKN Vending
Kishan News
Lancashire and South Cumbria Cancer Network
Lancashire Public Health Network
Local Authorities Coordinators of Regulatory Services
London City Airport

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London Luton Airport Operations Ltd
London Trading Standards Association
Manchester Airports Group
Mitchells & Butlers Plc
National Association of Cigarette Machine Operators
National Association of Cigarette Machine Operators North
National Federation of Retail Newsagents
National Heart Forum
Newcastle International Airport
NHS Blackpool
NHS Bromley
NHS Central Lancashire
NHS East Lancashire
NHS Gloucestershire
NHS Halton and St Helens
NHS Lincolnshire
NHS Norfolk
NHS North East Essex
NHS North Lancashire
NHS Nottinghamshire County
NHS Rotherham
NHS Sefton
NHS Stockport
North East Chamber of Commerce
Northamptonshire Smokefree Alliance
Nottinghamshire County Tobacco Commissioning Alliance
Peel Airports Group
Phillip Morris Ltd
Premier Vending Ltd
Premvend
Purdy & Tully
Quit
Rochdale Tobacco Alliance
Royal College Of General Practitioners
Royal College of Physicians
Royal College of Physicians of Edinburgh
Rural Shops Alliance
Sainsbury's Supermarkets Ltd
Sentinal Newsagents
Sinclair Collis
Smoke Free Norfolk Alliance NHS Norfolk
Smokefree Bristol Alliance
Smokefree Cornwall
Smokefree Cumbria/NHS Cumbria
Smokefree Islington Alliance
Smokefree Lincolnshire Alliance
Smokefree North West
Smokefree Somerset Alliance
Smokefree Surrey
Smokefree Wakefield
Smokefree Wiltshire
South Staffordshire Primary Care Trust

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Spar UK Ltd
Staffordshire County Council
Stoke-on-Trent Tobacco Control Alliance
Suffolk Primary Care Trust
Swercots
Swindon Tobacco Control Partnership
Tabac World Ltd
Terrington Stores
The British Lung Foundation
The British Thoracic Society
The Co-operative
The North East Trading Standards Association
The People who Enjoy Tobacco of the UK
The Royal College of Physicians of Edinburgh
Tobacco Free Lancashire
Tobacco Manufacturers Association
Tobacco Retailers Alliance
Tor Imports Ltd
Tower Hamlets PCT/Tobacco Alliance
Trading Standards East Midlands
Trading Standards East Midlands Underage Sales Best Practice
Group
Trading Standards South East Region
Tuebrook Post Office
Twyfords News Ltd
UK Centre for Tobacco Control Studies
UK Travel Retail Forum
Venture Vending
West View Stores
West Yorkshire Trading Standards
Western Cheshire PCT
Western Cheshire Tobacco Control Alliance
WHR Vending
Worcestershire PCT
World Duty Free
Yorkshire & the Humber Trading Standards Group

In addition to the respondents listed above, large-scale non-proforma responses were organised by:

Independent Retail News (71 responses):
www.talkingretail.com/independent-retail-news-magazine

National Federation of Retail Newsagents (164 responses):
www.nfrnonline.com/cgi-bin/library.cgi?action=detail&id=1334