



David Melding AM
Chair
Constitutional and Legislative
Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

11th October 2011

Dear David

Thank you for your letter of 5 October concerning the coming into force date of the Protection from Tobacco (Sales from Vending Machines) (Wales) Regulations 2011.

The Welsh Government consulted on the draft regulations in April 2010, which included a proposed coming into force date of 1 October 2011. However, legal challenges from the tobacco industry have raised timetabling issues.

In February 2010 Sinclair Collis, a tobacco vending machine operator and subsidiary of Imperial Tobacco, wrote to the Department of Health indicating that they intended to apply for a judicial review of section 22 of the Health Act 2009. After an exchange of correspondence with the Department of Health, Sinclair Collis made an application for judicial review. Section 22 of the Health Act 2009 is the section which gives the Secretary of State in relation to England, and Welsh Ministers in relation to Wales, the power to ban the sale of tobacco from vending machines. Sinclair Collis argued that section 22 of the Act breaches article 34 of the Treaty on the Functioning of the European Union (TFEU), as a ban on tobacco vending machines would constitute a restriction, without justification, on the free movement of goods between European Union Member States and, as such, would infringe article 34. They further argued that such a ban would amount to an unjustified interference with the property of Sinclair Collis contrary to Article 1 to the First Protocol of the European Convention on Human Rights.

Sinclair Collis also submitted a second application for judicial review challenging the making of the Tobacco (Sales from Vending Machines) (England) Regulations 2010. The two applications were consolidated.

If the Welsh Ministers had made the Protection from Tobacco (Sales from Vending Machines) (Wales) Regulations before the judicial review proceedings were concluded, it was anticipated that Welsh Ministers would be joined as a party to the judicial review action that was ongoing against the Secretary of State. The reason for this view is that the Welsh Regulations are identical in content and rely upon the same legal powers as those of the Secretary of State. The disadvantage to being added as a party to the proceedings would be the considerable legal costs that would be incurred in defending the judicial review action. Further, if the judicial review action had been successful any Regulations made under section 22 of the Health Act 2009 would have been quashed.

In view of the uncertainties raised by the judicial review proceedings and the desirability of avoiding Welsh Ministers' involvement in these proceedings, no action was taken to make the Welsh Regulations until the outcome of the judicial review was known. As the Judicial Review action completed in August, when Sinclair Collis' application to take their case to the Supreme Court was turned down, Welsh Ministers decided to bring forward the Regulations banning the sale of tobacco from vending machines in Wales. In the consultation report the Welsh Government committed to allowing appropriate time for businesses to implement the legislation and as such it is proposed for the Regulations to come into force 1 February 2012.

I am happy for this reply to be used in support of the debate on 18 October and I will arrange for it to be made available as a supporting document on the agenda.



Lesley Griffiths AC / AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services