



# Tobacco and Primary Medical Services (Scotland) Act 2010

## 2010 asp 3

### PART 1

[<sup>F1</sup>TOBACCO AND NICOTINE VAPOUR PRODUCTS ETC.]

### CHAPTER 1

[<sup>F1</sup>DISPLAY, SALE AND PURCHASE]

#### Annotations:

#### Amendments (Textual)

- F1** Pt. 1 Ch. 1 title substituted (1.4.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#) (asp 14), [ss. 15\(1\)](#), 36(2); S.S.I. 2017/12, reg. 2, sch.

*Display of tobacco products etc.*

#### **1 Prohibition of tobacco displays etc.**

- (1) A person who in the course of business displays or causes to be displayed tobacco products or smoking related products in a place where tobacco products are offered for sale commits an offence.
- (2) A person does not commit an offence under subsection (1) if the display—
  - (a) is in a specialist tobacconist,
  - (b) does not include cigarettes or hand-rolling tobacco, and
  - (c) complies with any prescribed requirements.
- (3) A person does not commit an offence under subsection (1) if—
  - (a) the tobacco products or smoking related products are displayed in the course of a business involving the sale of tobacco products only to persons who carry on a tobacco business (or their employees), and

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*Changes to legislation: There are currently no known outstanding effects for the Tobacco and Primary Medical Services (Scotland) Act 2010, Chapter 1. (See end of Document for details)*

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- (b) the display complies with any prescribed requirements.
- (4) The Scottish Ministers may provide in regulations that no offence is committed under subsection (1) in relation to a display of tobacco products or smoking related products which complies with requirements specified in the regulations.
- (5) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (6) For the purposes of subsection (1), a website is not a place.
- (7) In subsection (2), “specialist tobacconist” has the meaning given by section 6(2) of the Tobacco Advertising and Promotion Act 2002 (c.36).

**Annotations:**

**Commencement Information**

- I1** S. 1 in force at 6.4.2015 in so far as not already in force by [S.S.I. 2013/38, art. 2](#)
- I2** S. 1 in force at 26.2.2013 for specified purposes and for further specified purposes 29.4.2013 by [S.S.I. 2013/38, art. 2\(a\)\(b\)](#)

## 2 Displays which are also advertisements

The Scottish Ministers may by regulations provide that a display of tobacco products or smoking related products which also amounts to an advertisement is to be treated for the purposes of offences under this Act and the Tobacco Advertising and Promotion Act 2002—

- (a) as an advertisement and not as a display, or
- (b) as a display and not as an advertisement.

**Annotations:**

**Commencement Information**

- I3** S. 2 in force at 6.4.2015 in so far as not already in force by [S.S.I. 2013/38, art. 2](#)
- I4** S. 2 in force at 26.2.2013 for specified purposes and for further specified purposes 29.4.2013 by [S.S.I. 2013/38, art. 2\(a\)\(b\)](#)

## 3 Regulation of display of prices

- (1) The Scottish Ministers may by regulations impose requirements in relation to the display in the course of business of prices of tobacco products or smoking related products in a place where tobacco products are offered for sale.
- (2) For the purposes of subsection (1), a website is not a place but the regulations may otherwise provide for the meaning of “place” in that subsection.
- (3) A person who displays or causes to be displayed prices of tobacco products or smoking related products in breach of a requirement contained in the regulations commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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**Changes to legislation:** There are currently no known outstanding effects for the Tobacco and Primary Medical Services (Scotland) Act 2010, Chapter 1. (See end of Document for details)

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- (5) The regulations may provide that a display of prices which also amounts to an advertisement is to be treated for the purposes of offences under this Act and the Tobacco Advertising and Promotion Act 2002—
- (a) as an advertisement and not as a display of prices, or
  - (b) as a display of prices and not as an advertisement.

**Annotations:**

**Commencement Information**

- I5** S. 3 in force at 6.4.2015 in so far as not already in force by [S.S.I. 2013/38, art. 2](#)
- I6** S. 3 in force at 26.2.2013 for specified purposes and for further specified purposes 29.4.2013 by [S.S.I. 2013/38, art. 2\(a\)\(b\)](#)

*[<sup>F2</sup>Sale and purchase of tobacco and nicotine vapour products]*

**Annotations:**

**Amendments (Textual)**

- F2** S. 4 crossheading substituted (6.2.2017 for specified purposes, 1.4.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\), ss. 2\(2\), 36\(2\); S.S.I. 2017/12, reg. 2, sch.](#)

**4 Sale of tobacco products to persons under 18**

- (1) A person who sells a tobacco product or cigarette papers to a person under the age of 18 commits an offence.
- (2) It is a defence to a charge in proceedings against a person (“the accused”) under subsection (1) that—
  - (a) the accused believed the person under the age of 18 (“the customer”) to be aged 18 or over, and
  - (b) the accused had taken reasonable steps to establish the customer's age.
- (3) For the purposes of subsection (2)(b), the accused is to be treated as having taken reasonable steps to establish the customer's age if and only if—
  - (a) the accused was shown any of the documents mentioned in subsection (4), and
  - (b) that document would have convinced a reasonable person as to the customer's age.
- (4) The documents referred to in subsection (3)(a) are any document bearing to be—
  - (a) a passport,
  - (b) a European Union photocard driving licence, or
  - (c) such other document, or a document of such description, as may be prescribed.
- (5) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**Changes to legislation:** There are currently no known outstanding effects for the Tobacco and Primary Medical Services (Scotland) Act 2010, Chapter 1. (See end of Document for details)

**Annotations:**

**Commencement Information**

- I7** S. 4 in force at 24.10.2010 for specified purposes and 1.4.2011 in so far as not already in force by [S.S.I. 2010/345, art. 2, Sch.](#)

**[<sup>F3</sup>4A Sale of nicotine vapour products to persons under 18**

- (1) A person who sells a nicotine vapour product to a person under the age of 18 commits an offence.
- (2) It is a defence to a charge in proceedings against a person (“the accused”) under subsection (1) that—
  - (a) the accused believed the person under the age of 18 (“the customer”) to be aged 18 or over, and
  - (b) the accused had taken reasonable steps to establish the customer's age.
- (3) For the purposes of subsection (2)(b), the accused is to be treated as having taken reasonable steps to establish the customer's age if and only if—
  - (a) the accused was shown any of the documents mentioned in subsection (4), and
  - (b) that document would have convinced a reasonable person as to the customer's age.
- (4) The documents referred to in subsection (3)(a) are any document bearing to be—
  - (a) a passport,
  - (b) a European Union photocard driving licence, or
  - (c) such other document, or a document of such description, as may be prescribed.
- (5) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

**Annotations:**

**Amendments (Textual)**

- F3** S. 4A inserted (6.2.2017 for specified purposes, 1.4.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\), ss. 2\(1\), 36\(2\); S.S.I. 2017/12, reg. 2, sch.](#)

**[<sup>F4</sup>4B Age verification policy**

- (1) A person commits an offence if the person—
  - (a) carries on a tobacco or nicotine vapour product business, and
  - (b) fails to operate an age verification policy in respect of premises at which the person carries on the tobacco or nicotine vapour product business.
- (2) Subsection (1) does not apply to premises (“the business premises”) from which—
  - (a) tobacco products, cigarette papers or nicotine vapour products are, in pursuance of a sale, despatched for delivery to different premises, and
  - (b) no other tobacco or nicotine vapour product business is carried on from the business premises.

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- (3) An “age verification policy” is a policy that steps are to be taken to establish the age of a person attempting to buy a tobacco product, cigarette papers or a nicotine vapour product on the premises (the “customer”) if it appears to the person selling the tobacco product, cigarette papers or nicotine vapour product that the customer may be under the age of 25 (or such older age as may be specified in the policy).
- (4) The Scottish Ministers may by regulations amend the age specified in subsection (3).
- (5) The Scottish Ministers may publish guidance on matters relating to age verification policies, including, in particular, guidance about—
  - (a) steps that should be taken to establish a customer's age,
  - (b) documents that may be shown to the person selling a tobacco product, cigarette papers or a nicotine vapour product as evidence of a customer's age,
  - (c) training that should be undertaken by the person selling the tobacco product, cigarette papers or nicotine vapour product,
  - (d) the form and content of notices that should be displayed in the premises,
  - (e) the form and content of records that should be maintained in relation to an age verification policy.
- (6) A person who carries on a tobacco or nicotine vapour product business must have regard to guidance published under subsection (5) when operating an age verification policy.
- (7) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.]

**Annotations:**

**Amendments (Textual)**

- F4** S. 4B inserted (1.4.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), ss. [3\(1\)](#), [36\(2\)](#); S.S.I. 2017/12, reg. 2, sch.

**[<sup>F5</sup>4C Sale of tobacco or nicotine vapour products by persons under 18**

- (1) A responsible person who allows a tobacco product, cigarette papers or a nicotine vapour product to be sold by a person under the age of 18 commits an offence.
- (2) For the purposes of subsection (1), “responsible person” means—
  - (a) where the sale is at premises which are noted in a registered person's entry in the Register, the registered person for those premises,
  - (b) where the sale is at premises which are not noted in a registered person's entry in the Register—
    - (i) any employer of the person who made the sale, and
    - (ii) any other person having management or control of those premises.
- (3) Subsection (1) does not apply to a sale which—
  - (a) is made at premises which are noted in a registered person's entry in the Register, and
  - (b) is authorised by the registered person for those premises.
- (4) Each authorisation mentioned in subsection (3)(b) must be recorded and kept at the premises at which a sale by a person under the age of 18 is made.

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- (5) The Scottish Ministers may prescribe—
- (a) the form and content of authorisations made under subsection (3)(b),
  - (b) the method of recording authorisations for the purposes of subsection (4).
- (6) An authorisation is, for the purposes of subsection (3)(b), deemed not to have been made, if—
- (a) it is not recorded and kept in accordance with subsection (4), or
  - (b) it is not made in accordance with any provision made under subsection (5).
- (7) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.]

**Annotations:**

**Amendments (Textual)**

- F5** S. 4C inserted (6.2.2017 for specified purposes, 1.4.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 4, 36(2)**; [S.S.I. 2017/12](#), **reg. 2**, **sch.**

**[<sup>F6</sup>4D Defence of due diligence for certain offences**

- (1) It is a defence for a person charged with an offence to which this section applies to prove that the person (or any employee or agent of the person) took all reasonable precautions and exercised all due diligence to prevent the offence being committed.
- (2) This section applies to an offence under any of the following provisions of this Act—
- (a) section 4(1),
  - (b) section 4A(1),
  - (c) section 4C(1).]

**Annotations:**

**Amendments (Textual)**

- F6** S. 4D inserted (1.4.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 5, 36(2)**; [S.S.I. 2017/12](#), **reg. 2**, **sch.**

**5 Purchase of tobacco products by persons under 18**

- (1) A person under the age of 18 who buys or attempts to buy a tobacco product or cigarette papers commits an offence.
- (2) It is not an offence under subsection (1) for a person under the age of 18 to buy or attempt to buy a tobacco product or cigarette papers if the person is authorised to do so by a council officer or a constable for the purpose of determining whether an offence is being committed under section 4.
- (3) A council officer or a constable may authorise a person under the age of 18 to buy or attempt to buy a tobacco product or cigarette papers only if satisfied that all reasonable steps have been or will be taken to avoid any risk to the welfare of the person.

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- (4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

**Annotations:**

**Commencement Information**

**I8** S. 5 in force at 1.4.2011 by [S.S.I. 2010/345](#), art. 2, [Sch.](#)

## 6 Purchase of tobacco products on behalf of persons under 18

- (1) A person aged 18 or over who knowingly buys or attempts to buy a tobacco product or cigarette papers on behalf of a person under the age of 18 commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Annotations:**

**Commencement Information**

**I9** S. 6 in force at 1.4.2011 by [S.S.I. 2010/345](#), art. 2, [Sch.](#)

## [<sup>F7</sup>6A Purchase of nicotine vapour products on behalf of persons under 18

- (1) A person aged 18 or over who knowingly buys or attempts to buy a nicotine vapour product on behalf of a person under the age of 18 commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.]

**Annotations:**

**Amendments (Textual)**

**F7** S. 6A inserted (1.4.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), ss. 6, 36(2); [S.S.I. 2017/12](#), reg. 2, sch.

### *Miscellaneous*

## 7 Confiscation of tobacco products from persons under 18

- (1) Where a constable has reasonable grounds for suspecting that a person in a public place—
- (a) is under the age of 18, and
  - (b) is in possession of a tobacco product or cigarette papers,
- the constable may require the person to surrender the tobacco product or, as the case may be, the cigarette papers to the constable.
- (2) A constable making a requirement under subsection (1) may also require the person to supply the constable with the person's name and address.

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**Changes to legislation:** There are currently no known outstanding effects for the Tobacco and Primary Medical Services (Scotland) Act 2010, Chapter 1. (See end of Document for details)

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- (3) Where a constable makes a requirement under subsection (1) the constable must inform the person concerned—
- (a) of the constable's suspicion, and
  - (b) of the fact that failure to comply with a requirement made under subsection (1) or (2) is an offence.
- <sup>F8</sup>(4) .....
- (5) A person who fails to comply with a requirement made under subsection (1) or (2) commits an offence.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (7) The constable may dispose of any tobacco product or cigarette papers surrendered to the constable in such manner as the constable considers appropriate.
- (8) In this section “public place” includes—
- (a) any place to which the public have access for the time being (whether on payment of a fee or otherwise), and
  - (b) any place to which the public do not have access but to which the person mentioned in subsection (1) has unlawfully gained access.

**Annotations:**

**Amendments (Textual)**

**F8** S. 7(4) repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 23](#); [S.S.I. 2017/345](#), art. 3, sch.

**Commencement Information**

**I10** S. 7 in force at 1.4.2011 by [S.S.I. 2010/345](#), art. 2, [Sch.](#)

## 8 Display of warning statements

- (1) A person who carries on a tobacco business must display a notice in accordance with subsection (2) in any premises where that business is carried on.
- (2) The notice must—
- (a) contain the following statement— “ It is illegal to sell tobacco products to anyone under the age of 18 ”, and
  - (b) be displayed in a prominent position in the premises where the statement is readily visible to persons at the point of sale of the tobacco products.
- (3) A person who fails, without reasonable excuse, to comply with subsection (1) commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) The Scottish Ministers may prescribe the dimensions of the notice to be displayed in accordance with this section and the size of the statement to be displayed on it.



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**Changes to legislation:** There are currently no known outstanding effects for the Tobacco and Primary Medical Services (Scotland) Act 2010, Chapter 1. (See end of Document for details)

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**Annotations:****Commencement Information**

- I11** S. 8 in force at 24.10.2010 for specified purposes and 1.4.2011 in so far as not already in force by [S.S.I. 2010/345](#), [art. 2](#), [Sch.](#)

**9 Prohibition of vending machines for the sale of tobacco products**

- [<sup>F9</sup>(1) A person who has the management or control of premises on which a vending machine is available for use commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) In this section, “vending machine” means an automatic machine for the sale of tobacco [<sup>F10</sup>or nicotine vapour] products (regardless of whether the machine also sells other products).]

**Annotations:****Amendments (Textual)**

- F9** S. 9 repealed and re-enacted (20.3.2013) by [The Tobacco and Primary Medical Services \(Scotland\) Act 2010 \(Incidental Provision and Commencement No. 4\) Order 2013 \(S.S.I. 2013/106\)](#), [art. 1\(1\)](#), [2\(2\)\(3\)](#)
- F10** Words in s. 9(3) inserted (25.1.2018) by [The Sale of Nicotine Vapour Products \(Vending Machines\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/422\)](#), [regs. 1](#), [2](#)

**Commencement Information**

- I12** S. 9 in force at 29.4.2013 by [S.S.I. 2013/106](#), [art. 3](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Tobacco and Primary Medical Services (Scotland) Act 2010, Chapter 1.