

HEALTH (TOBACCO, NICOTINE ETC. AND CARE) (SCOTLAND) ACT 2016

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 1 – Tobacco, Nicotine Vapour Products and Smoking

Chapter 2 – Advertising and Promotion of Nicotine Vapour Products

Section 17 – Advertising and brand sharing

53. [Section 17\(1\)](#) of the Act contains a wide power for the Scottish Ministers to make regulations to prohibit or restrict advertising and brand-sharing of NVPs. The powers could, for example, be used to prohibit or restrict the advertising of NVPs on billboards, product displays, bus stops, posters, leaflets, banners, brochures and certain published material in Scotland. Regulations could also prohibit or restrict unrelated branded products or services being used in NVP branding, and vice versa. The regulations can only apply to an activity in the course of a business. [Section 17\(2\)](#) contains a non-exhaustive list of the kind of provision which may also be made in regulations, covering enforcement, offences, penalties, defences and exceptions e.g. there could be an exception made for specialist trade shops and an exception allowing certain forms of advertising and promotion at point of sale.
54. [Section 17\(3\)](#) specifies the maximum penalty which regulations may prescribe for offences as, on summary proceedings, imprisonment not exceeding 12 months or a fine not exceeding the statutory maximum (currently £10,000) or both and, on conviction on indictment, imprisonment not exceeding two years or an unlimited fine or both.
55. [Section 17\(4\)](#) defines certain expressions used in section 17. In particular, the definition of “nicotine vapour product advert” concerns a “published advertisement” whose purpose or effect is to promote a NVP, but it also includes a product “display” whose purpose or effect is to promote a NVP. The word “advertisement” is not defined and bears its ordinary meaning. A wide definition of “published” is provided to make clear that this term covers any way of making an advertisement available to the public in Scotland; it is, for example, not limited to print media and can cover electronic and audio-visual media.

Section 18 – Free distribution and nominal pricing

56. [Section 18\(1\)](#) of the Act contains a power for the Scottish Ministers to make regulations to prohibit or restrict in the course of a business the giving away of NVPs (and coupons for those products) for free including retailing them for a nominal sum. [Section 18\(2\)](#) contains a non-exhaustive list of the kind of provision which may also be made in regulations, covering enforcement, offences, and penalties, defences and exceptions. It also makes clear that regulations can make further provision about the circumstances in which a product or coupon is to be treated as being made available for a nominal sum.

*These notes relate to the Health (Tobacco, Nicotine etc. and Care)
(Scotland) Act 2016 (asp 14) which received Royal Assent on 06 April 2016*

57. **Section 18(3)** specifies the maximum penalty which regulations may prescribe for offences as, on summary proceedings, imprisonment not exceeding 12 months or a fine not exceeding the statutory maximum (currently £10,000) or both and, on conviction on indictment, imprisonment not exceeding two years or an unlimited fine or both.

Section 19 – Sponsorship

58. **Section 19(1)** of the Act contains a power for the Scottish Ministers to make regulations to prohibit or restrict a person in the course of a business entering into a sponsorship agreement where the purpose or effect of anything done as a result of the agreement promotes a NVP. Subsection (4) defines “sponsorship agreement”. It can include the sponsorship of an event, activity or person in, or connected to, Scotland. Section 19(2) contains a non-exhaustive list of the kind of provision which may also be made in regulations, covering enforcement, offences, and penalties, defences and exceptions.
59. **Section 19(3)** specifies the maximum penalty which regulations may prescribe for offences as, on summary proceedings, imprisonment not exceeding 12 months or a fine not exceeding the statutory maximum (currently £10,000) or both, and on conviction on indictment, imprisonment not exceeding two years or an unlimited fine or both.