



# Tobacco and Primary Medical Services (Scotland) Act 2010

## 2010 asp 3

### PART 1

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

### CHAPTER 2

[<sup>F1</sup>REGISTER OF TOBACCO AND NICOTINE VAPOUR PRODUCT RETAILERS]

*[<sup>F1</sup>Tobacco and nicotine vapour product banning orders]*

#### Textual Amendments

**F1** S. 15 cross-heading substituted (1.10.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\), ss. 15\(8\), 36\(2\); S.S.I. 2017/12, reg. 2, sch.](#)

#### 15 [<sup>F2</sup>Tobacco and nicotine vapour product banning orders]

- (1) A council may apply to the sheriff for an order banning a person from carrying on a tobacco [<sup>F3</sup>or nicotine vapour product] business from premises within the council's area.
- (2) An application under subsection (1) must specify the premises from which the person is to be banned from carrying on a tobacco [<sup>F4</sup>or nicotine vapour product] business.
- (3) The sheriff may make an order banning the person from carrying on a tobacco [<sup>F5</sup>or nicotine vapour product] business at the premises specified in the order if satisfied, on the balance of probabilities, that—
  - (a) [<sup>F6</sup>there have been] 3 or more relevant enforcement actions in respect of each premises specified in the order,
  - (b) at least one of the actions occurred in the period of 2 months ending on the date the application was made,

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- (c) the conduct to which the actions relate took place within a period of 2 years, and
  - (d) the making of the order is necessary to prevent the commission of <sup>F7</sup>... offences under Chapter 1 or 2.
- (4) A <sup>F8</sup>relevant enforcement action occurs where a person mentioned in subsection (4A) is—
- (a) issued with a fixed penalty notice (which is not subsequently withdrawn), <sup>F9</sup>...
  - (b) convicted of an offence under Chapter 1 or 2<sup>F10</sup>, or
  - (c) convicted of an offence under section 92(1)(b) or (c) of the Trade Marks Act 1994 (unauthorised use of trade mark in relation to goods) in circumstances where the goods in question are, or include, tobacco products, smoking related products or nicotine vapour products.]

<sup>F11</sup>(4A) The persons are—

- (a) the person who is the subject of the application,
  - (b) an employee or agent of that person.]
- (5) An order made under this section has effect for the period (not exceeding 24 months) specified in the order beginning with the day the order is granted.
- (6) In this Part, an order made under this section is referred to as a “tobacco <sup>F12</sup>and nicotine vapour product] banning order”.

#### Textual Amendments

- F2** S. 15 title substituted (1.10.2017) by *Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016* (asp 14), **ss. 15(3)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F3** Words in s. 15(1) inserted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by *Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016* (asp 14), **ss. 10(1)(a)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F4** Words in s. 15(2) inserted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by *Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016* (asp 14), **ss. 10(1)(b)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F5** Words in s. 15(3) inserted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by *Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016* (asp 14), **ss. 10(1)(c)(i)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F6** Words in s. 15(3)(a) substituted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by *Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016* (asp 14), **ss. 10(1)(c)(ii)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F7** Word in s. 15(3)(d) repealed (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by *Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016* (asp 14), **ss. 10(1)(c)(iii)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F8** Words in s. 15(4) substituted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by *Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016* (asp 14), **ss. 10(1)(d)(i)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F9** Word in s. 15(4) repealed (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by *Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016* (asp 14), **ss. 10(1)(d)(ii)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F10** S. 15(4)(c) and word inserted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by *Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016* (asp 14), **ss. 10(1)(d)(iii)**, 36(2); S.S.I. 2017/12, reg. 2, sch.

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- F11** S. 15(4A) inserted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (asp 14), ss. 10(1)(e), 36(2); S.S.I. 2017/12, reg. 2, sch.
- F12** Words in s. 15(6) substituted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (asp 14), ss. 10(1)(f), 36(2); S.S.I. 2017/12, reg. 2, sch.

#### Commencement Information

- I1** S. 15 in force at 1.10.2011 by S.S.I. 2010/345, art. 2, Sch.

## 16 [F13Tobacco and nicotine vapour product banning orders: ancillary orders]

- (1) This section applies where—
- a council has applied for a tobacco [F14and nicotine vapour product] banning order in respect of a person (“P”), or
  - a tobacco [F14and nicotine vapour product] banning order has been made in respect of P.
- (2) A council may apply to the sheriff for an ancillary order—
- banning P from—
    - being connected to a person carrying on a tobacco [F15or nicotine vapour product] business at the specified premises,
    - seeking to control a person carrying on a tobacco [F15or nicotine vapour product] business at the specified premises,
  - where P is not an individual, banning any person connected to P from—
    - carrying on a tobacco [F15or nicotine vapour product] business at the specified premises,
    - being connected to a person carrying on a tobacco [F15or nicotine vapour product] business at the specified premises,
    - seeking to control a person carrying on a tobacco [F15or nicotine vapour product] business at the specified premises.
- (3) A sheriff may make the ancillary order if—
- the sheriff is satisfied, on the balance of probabilities, that the order is necessary to prevent the commission of further offences under Chapter 1 or 2, and
  - where this section applies by virtue of subsection (1)(a), the sheriff makes the tobacco [F16and nicotine vapour product] banning order.
- (4) An ancillary order made under this section ceases to have effect when the tobacco [F17and nicotine vapour product] banning order to which it relates ceases to have effect.
- (5) In subsection (2), “the specified premises” means the premises specified in the tobacco [F18and nicotine vapour product] banning order to which the ancillary order relates.
- (6) For the purposes of this section, a person is connected to a partnership, a limited liability partnership, a company or other body (whether incorporated or unincorporated) if the person—
- in the case of a partnership, is a partner,
  - in the case of a limited liability partnership, is a member,
  - in the case of a company—

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- (i) is a director, or
  - (ii) has control of the company,
  - (d) in any other case, is concerned in the management or control of the body.
- (7) For the purposes of subsection (6)(c)(ii), a person is taken to have control of a company if—
- (a) any of the directors of the company, or of any other company having control of the company, is accustomed to act in accordance with the person's directions or instructions, or
  - (b) the person is entitled to exercise, or to the control the exercise of, at least one third of the voting power at any general meeting of the company or of any other company having control of the company.

#### Textual Amendments

- F13** S. 16 title substituted (1.10.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 15(4)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F14** Words in s. 16(1) substituted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 10(2)(a)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F15** Words in s. 16(2) inserted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 10(2)(b)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F16** Words in s. 16(3)(b) substituted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 10(2)(c)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F17** Words in s. 16(4) substituted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 10(2)(d)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F18** Words in s. 16(5) substituted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 10(2)(e)**, 36(2); S.S.I. 2017/12, reg. 2, sch.

#### Commencement Information

- I2** S. 16 in force at 1.10.2011 by [S.S.I. 2010/345](#), art. 2, **Sch.**

### 17 [F19] **Tobacco and nicotine vapour product banning orders etc.: appeals**

- (1) A person against whom a tobacco [F20] and nicotine vapour product] banning order or an ancillary order under section 16 is made may appeal to the sheriff principal, whose decision is final.
- (2) An appeal under this section must be made within 21 days of the order being made.
- (3) Where the appeal is against a tobacco [F20] and nicotine vapour product] banning order, the sheriff principal may determine the appeal by—
  - (a) quashing the order (and any ancillary order under section 16 relating to the order),
  - (b) substituting for the period specified in the order under section 15(5) such other period of effect (ending no later than 24 months after the day the order was granted) as the sheriff principal considers appropriate, or

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- (c) refusing the appeal.
- (4) Where the appeal is against an ancillary order under section 16, the sheriff principal may determine the appeal by—
  - (a) quashing the order, or
  - (b) refusing the appeal.

#### Textual Amendments

- F19** S. 17 title substituted (1.10.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 15(5)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F20** Words in s. 17 substituted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 10(3)**, 36(2); S.S.I. 2017/12, reg. 2, sch.

#### Commencement Information

- I3** S. 17 in force at 1.10.2011 by [S.S.I. 2010/345](#), art. 2, **Sch.**

### 18 **[<sup>F21</sup>Tobacco and nicotine vapour product banning orders etc.: notification to Scottish Ministers]**

- (1) On making a tobacco [<sup>F22</sup>and nicotine vapour product] banning order or an ancillary order under section 16, the sheriff must notify the Scottish Ministers.
- (2) On determining an appeal under section 17, the [<sup>F23</sup>Clerk of the Sheriff Appeal Court] must notify the Scottish Ministers.

#### Textual Amendments

- F21** S. 18 title substituted (1.10.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 15(6)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F22** Words in s. 18(1) substituted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 10(4)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F23** Words in s. 18(2) substituted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 3 para. 5** (with art. 4(2))

#### Commencement Information

- I4** S. 18 in force at 1.10.2011 by [S.S.I. 2010/345](#), art. 2, **Sch.** (with art. 4) (which saving provision was amended (21.2.2011) by [S.S.I. 2011/131](#), art. 2; and revoked (29.4.2013) by [S.S.I. 2013/106](#), art. 4(a) (b))

### 19 **[<sup>F24</sup>Tobacco and nicotine vapour product banning orders: display of notices]**

- (1) This section applies where—
  - (a) a tobacco [<sup>F25</sup>and nicotine vapour product] banning order has effect in respect of a person, and
  - (b) the person carries on a retail business at the premises specified in the order.
- (2) The person must display a notice in the premises in accordance with subsection (3).

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- (3) The notice must—
- (a) state that the premises have been specified in a tobacco [F26 and nicotine vapour product] banning order and the period for which the order has effect,
  - (b) be displayed in a prominent position in the premises where it is readily visible to persons at every relevant point of sale, and
  - (c) be displayed no later than 14 days after the tobacco [F26 and nicotine vapour product] banning order is made.
- (4) A relevant point of sale is one that was used for the sale of tobacco products [F27, smoking related products or nicotine vapour products] at any time during the period of 2 months ending with the making of the banning order.
- (5) The Scottish Ministers may prescribe—
- (a) the dimensions of the notice to be displayed in accordance with this section,
  - (b) the wording of the statement to be displayed on the notice, and
  - (c) the size of the statement.

#### **Textual Amendments**

- F24** S. 19 title substituted (1.10.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 15(7)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F25** Words in s. 19(1)(a) substituted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 10(5)(a)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F26** Words in s. 19(3) substituted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 10(5)(b)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F27** Words in s. 19(4) substituted (6.2.2017 for specified purposes, 1.10.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 10(5)(c)**, 36(2); S.S.I. 2017/12, reg. 2, sch.

#### **Commencement Information**

- I5** S. 19 in force at 24.10.2010 for specified purposes and 1.10.2011 in so far as not already in force by [S.S.I. 2010/345](#), art. 2, **Sch.**

**Changes to legislation:**

There are currently no known outstanding effects for the Tobacco and Primary Medical Services (Scotland) Act 2010, Cross Heading: Tobacco and nicotine vapour product banning orders.