



Health (Miscellaneous Provisions) Act (Northern Ireland) 2016

2016 CHAPTER 26

An Act to regulate the sale or use of nicotine products and tobacco, to make provision in relation to sugar sweetened drinks, to amend the Health and Personal Social Services (Northern Ireland) Order 1972 and the Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 in relation to the provision of health care, to raise awareness of human transplantation; and for connected purposes. [12th May 2016]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1

Sale or use of nicotine products and tobacco

Prohibition of sale of nicotine products to persons under 18

1.—(1) The Department may by regulations make provision prohibiting the sale of nicotine products to persons aged under 18.

(2) A person who breaches a prohibition in regulations under subsection (1) commits an offence.

(3) Subsection (2) does not apply if—

- (a) at the time of the sale, the person to whom the nicotine product is sold is employed by a manufacturer of nicotine products to which regulations under subsection (1) apply or by a dealer in such products (whether wholesale or retail); and
- (b) the purchase of the product is for the purposes of the manufacturer's or dealer's business.

(4) Where a person is charged with an offence under this section it is a defence that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) The Department may by regulations—

- (a) amend Article 4A of the Health and Personal Social Services (Northern Ireland) Order 1978 (purchase of tobacco on behalf of persons under 18) so as to apply it (with or without modifications) in relation to nicotine products; or
- (b) provide for that Article to apply (with or without modifications) in relation to nicotine products.

Prohibition of sale of nicotine products from vending machines

2.—(1) The Department may by regulations make provision prohibiting the sale of nicotine products from an automatic machine.

(2) The regulations must make provision as to the persons who are liable in the case of any breach of a prohibition.

(3) A liable person who breaches a prohibition in regulations under subsection (1) commits an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Amendments consequential on sections 1 and 2

3.—(1) Schedule 1 makes amendments consequential on sections 1 and 2.

(2) The Department may by regulations make provision amending, repealing, revoking or otherwise modifying any statutory provision (whenever passed or made) in connection with provision made by or under section 1 or 2.

Amendment of the Order of 1991

4. In Article 4A(4) of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (prohibition of sale of tobacco from vending machines), for “level 4” substitute “level 5”.

Prohibition of use of tobacco or nicotine products in a private vehicle

5.—(1) The Smoking (Northern Ireland) Order 2006 is amended in accordance with subsections (2) to (7).

(2) In Article 6 (smoke-free vehicles)—

(a) after paragraph (1) insert—

“(1A) Regulations under this Article may in particular provide for a private vehicle to be smoke-free where a person under the age of 18 is present in the vehicle.”;

(b) in paragraph (2), for “The regulations” substitute “Regulations under this Article”.

(3) In Article 10 (fixed penalties)—

(a) for the heading substitute “Fixed penalties”;

(b) in paragraph (1), for “, or in a place or vehicle,” substitute “or in a place”;

(c) after paragraph (1) insert—

“(1A) An authorised officer of an enforcement authority who has reason to believe that a person has committed an offence under Article 7(5) or 8(2) in a vehicle in relation to which the authorised officer has functions may give that person a penalty notice in respect of the offence.

(1B) The Department may by regulations provide that, in the circumstances specified in the regulations, an authorised officer of an enforcement authority who has reason to believe that a person has committed an offence under Article 9(3) in relation to a vehicle in relation to which the authorised officer has functions may give the person a penalty notice in respect of the offence.”.

(4) In Article 11 (enforcement)—

(a) for the heading substitute “Enforcement”;

(b) in paragraph (1), for “premises, places and vehicles” substitute “premises and places”;

(c) after paragraph (1) insert—

“(1A) The Department may make regulations designating the persons or bodies or descriptions of person or body which are to be enforcement authorities for the purposes of enforcing, as respects vehicles, the provisions of this Order and regulations made under it.

(1B) The regulations—

(a) must specify the descriptions of vehicle in relation to which an enforcement authority has functions,

(b) may provide for a case being dealt with by one enforcement authority to be transferred (or further transferred back) to, and taken over by, another enforcement authority.

(1C) It is the duty of an enforcement authority to enforce, as respects the vehicles in relation to which it has enforcement functions, the provisions of this Order and of regulations made under it.”;

(d) in paragraph (2)—

(i) after “district council” insert “or other enforcement authority”;

(ii) after “the council” insert “or other authority”;

(iii) for “authorised by it” substitute “authorised by that council or other authority”.

(5) In Article 12(1) (obstruction of officers), after “district council” insert “or other enforcement authority”.

(6) In Article 15(3) (regulations subject to affirmative procedure)—

(a) in sub-paragraph (a), for “or 14” substitute “, 10(1B) or 14”;

(b) in sub-paragraph (b), for “or 8” substitute “, 8 or 18”.

(7) In Schedule 1 (fixed penalties), after paragraph 17 add—

“Power to amend or modify Schedule

18. The Department may by regulations—

(a) amend this Schedule so as to modify its application in relation to penalty notices issued by an authorised officer of an enforcement authority of a particular kind,

(b) provide for this Schedule to apply with modifications in relation to such notices”

(8) The Department may by regulations make provision prohibiting the use of nicotine products in a private vehicle where a person under the age of 18 is present in the vehicle, and such regulations may for that purpose amend, or apply with modifications, the provisions of the Smoking (Northern Ireland) Order 2006 to nicotine products.

Review

6.—(1) The Department must not later than 3 years after the commencement of this section review and publish a report on the implementation of Part 1.

(2) Regulations made by the Department under this section shall set out the terms of the review.

Interpretation of Part 1

7.—(1) For the purposes of this Part “nicotine product” means—

- (a) a device which is intended to enable nicotine to be consumed by an individual or otherwise to be delivered into the human body;
- (b) an item which is intended to form part of a device within paragraph (a); or
- (c) a substance or item which consists of or contains nicotine and which is intended for human consumption or otherwise to be delivered into the human body.

(2) It does not matter for the purposes of subsection (1)(a) whether the device is also intended to enable any other substance to be consumed by an individual or otherwise to be delivered into the human body.

(3) The following are not nicotine products for the purposes of this Part—

- (a) tobacco;
- (b) cigarette papers;
- (c) any device which is intended to be used for the consumption of lit tobacco.

(4) In this section “tobacco” has the same meaning as in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978.

PART 2

Levy on sugar sweetened drinks

Levy on sugar sweetened drinks

8.—(1) The Department must carry out a study on a levy on sugar sweetened drinks within two years of enactment of this Act.

(2) The study required by subsection (1) should include—

- (a) a definition of sugar sweetened drinks;
- (b) which sugar sweetened drinks should be subject to a levy;
- (c) factors to be considered in determining and administering a levy;
- (d) the financial rate at which a levy may be set;
- (e) the anticipated health and economic impacts of the levy; and
- (f) the options for funding measures to address adverse health conditions associated with the consumption of sugary drinks derived from the levy revenue.

PART 3

Miscellaneous Provisions

Persons performing primary dental services

9.—(1) Section 2(2) of the Act of 2008, which substitutes new Articles 61 to 61F of the Order of 1972, is amended as follows.

(2) Before the new Article 61F (persons providing general dental services), insert new cross-heading “Persons performing primary dental services”.

(3) In the new Article 61F—

(a) for the heading substitute “Persons performing primary dental services”;

(b) for paragraph (1) substitute—

“(1) Regulations may provide that a health care professional of a prescribed description may not perform any primary dental service for which the Regional Board is responsible unless that professional is included in a list maintained under the regulations by the Regional Board.”;

(c) for paragraph (2)(b) substitute—

“(b) the Regional Board is responsible for a primary dental service if it provides the service, or secures provision of the service, under or by virtue of Article 60A.”.

Ophthalmic services

10.—(1) In Article 62(2) of the Order of 1972 (arrangements for general ophthalmic services), after “shall include provision” insert—

“(a) for the preparation and publication of lists of medical practitioners, and ophthalmic opticians respectively, who undertake to provide general ophthalmic services;

(b) for conferring a right, subject to any provision made under Article 64C and to the provisions of this Order relating to the disqualification of persons providing services, on any medical practitioner having the prescribed qualifications or ophthalmic optician who wishes to be included in the appropriate list, to be so included;

(c) for conferring on any medical practitioner, who is dissatisfied with a determination that he or she does not possess the qualifications prescribed under this Article, a right of appeal to a committee appointed by the Department, and for making provision for any matter for which it appears to the Department to be necessary or expedient to make provision in consequence of the conferring of that right;”.

(2) Omit Article 62A of the Order of 1972.

Pharmaceutical services

11.—(1) Article 63AA of the Order of 1972 (persons providing pharmaceutical services) is amended as follows.

(2) Omit paragraph (1).

(3) In paragraphs (2) and (3), for “Regulations under paragraph (1)” substitute “Regulations under Article 63”.

(4) In paragraph (2), before sub-paragraph (a) insert—

“(za) for the preparation, publication and maintenance of lists of persons, other than medical practitioners or dental practitioners, who undertake to provide pharmaceutical services;”.

(5) After paragraph (3) insert—

“(3A) Regulations under Article 63 shall include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of paragraph (2) or (3).

(3B) Regulations under Article 63 shall be framed as to preclude—

(a) a person included in a list under paragraph (2)(za), and

(b) an employee of such a person,

from taking part in the decision whether an application such as is mentioned in paragraph (2)(b) should be granted or an appeal against such a decision brought by virtue of paragraph (3A) should be allowed.”.

(6) Omit paragraphs (4) and (5).

Disqualification by the Tribunal

12.—(1) Schedule 11 to the Order of 1972 (disqualification of persons providing Part 6 services) is amended as follows—

(a) for paragraph 1(2) substitute—

“(2) Subject to the provisions of this paragraph, if the Tribunal receives from the Regional Board representations that a person who has applied to be included in any list, or who is included in any list, meets any of the conditions for disqualification which may apply in that person’s case, the Tribunal must inquire into the case.”;

(b) for paragraph 1(6) substitute—

“(6) The first condition for disqualification is that—

(a) in relation to a list referred to in sub-paragraph (8)(a) or (c), the inclusion or continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list perform; or

- (b) in relation to a list referred to in sub-paragraph (8)(d) or (e), the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide.”;
- (c) in paragraph 1(7A), at the beginning insert “Subject to sub-paragraph (7B),”;
- (d) after paragraph 1(7A) insert—
 “(7B) The third condition for disqualification only applies to cases where a person is included in, or has applied to be included in, a list referred to in paragraph (8)(a) or (c).”;
- (e) in paragraph 1(8)(c), omit “and bodies corporate”;
- (f) for paragraph 1(8)(d) substitute—
 “(d) a list of medical practitioners and ophthalmic opticians undertaking to provide general ophthalmic services;”;
- (g) for paragraph 1(8)(e) substitute—
 “(e) a list of persons undertaking to provide pharmaceutical services;”;
- (h) in paragraph 1(8A), for “sub-paragraph (8)(a)” substitute “sub-paragraph (8)”;
- (i) in paragraph 2(1), omit “or, as the case may be, the third condition for disqualification”;
- (j) omit paragraph 2(1A);
- (k) in paragraph 2(3)(a), omit “, assisting in providing,”;
- (l) in paragraph 2(3)(b), omit “assistance in the provision”;
- (m) for paragraph 3(2) substitute—
 “(2) The Tribunal must disqualify the person for inclusion in the list to which the case relates.”;
- (n) in paragraph 4(2)(c)(i), omit “, undertakes to provide or assists in providing”;
- (o) in paragraph 4(5)(aa), for “, 61F, 62A or 63AA” substitute “ or 61F”;
- (p) in paragraph 5(4), after “providing,” insert “approved to assist in providing”;
- (q) in paragraph 7(1)(a), for “, approved to assist in providing or approved to perform” substitute “or approved to assist in providing”;
- (r) in paragraph 9(8), for “61F, 62A or 63A,” substitute “or 61F,”.

(2) Until the coming into operation of section 2 of the Act of 2008, Schedule 11 to the Order of 1972 (as amended by subsection (1)) has effect with the following modifications—

- (a) in paragraph 1(6)(a), omit “or (c)”;
- (b) in paragraph 1(6)(b), for “(d) or (e)” substitute “(c), (d) or (e)”;
- (c) in paragraph 1(7B), omit “or (c)”;
- (d) for paragraph 1(8)(c) substitute—
 - “(c) a list of dental practitioners undertaking to provide general dental services”

Provision of medical or dental services: Article 15B arrangements

13.—(1) In Article 15B(4) of the Order of 1972, after “in relation to” insert “primary medical services or”.

(2) For Article 15C(1)(b)(iii) of the Order of 1972 substitute—

“(iii) an individual who is providing services—

- (A) under a general medical services contract or a general dental services contract;
- (B) in accordance with Article 15B arrangements, section 92 arrangements, section 107 arrangements, section 50 arrangements, section 64 arrangements or section 17C arrangements; or
- (C) under section 17J or 25 of the National Health Service (Scotland) Act 1978, section 84 or 100 of the National Health Service Act 2006 or section 42 or 57 of the National Health Service (Wales) Act 2006;

or has so provided them within such period as may be prescribed;”.

(3) In Article 15C(2) of the Order of 1972—

- (a) in the definition of “HSC employee”—
 - (i) in paragraph (bc) for “(1)(bc)(iii)” substitute “(1)(b)(iii)(C)”;
 - (ii) at the end of paragraph (bc) add “or (1)(c)(iii)(C)”;
- (b) in the definition of “qualifying body”, in paragraph (b) for “personal dental services” substitute “primary dental services”;
- (c) at the appropriate place alphabetically insert—
 - ““section 17C arrangements” means arrangements for the provision of services under section 17C of the National Health Service (Scotland) Act 1978;”;
 - ““section 92 arrangements” means arrangements for the provision of services under section 92 of the National Health Service Act 2006;”;
 - ““section 107 arrangements” means arrangements for the provision of services under section 107 of the National Health Service Act 2006;”;

““section 50 arrangements” means arrangements for the provision of services under section 50 of the National Health Service (Wales) Act 2006;”;

““section 64 arrangements” means arrangements for the provision of services under section 64 of the National Health Service (Wales) Act 2006;”;

(d) omit the definition of “section 28C employee”.

(4) Omit Article 15D(3)(j) of the Order of 1972.

(5) In section 5(3) of the Act of 2008, in the substituted Article 15C(1)(c) of the Order of 1972, for head (iii) substitute—

“(iii) an individual who is providing services—

(A) under a general dental services contract or a general medical services contract;

(B) in accordance with Article 15B arrangements, section 92 arrangements, section 107 arrangements, section 50 arrangements, section 64 arrangements or section 17C arrangements; or

(C) under section 17J or 25 of the National Health Service (Scotland) Act 1978, section 84 or 100 of the National Health Service Act 2006 or section 42 or 57 of the National Health Service (Wales) Act 2006;

or has so provided them within such period as may be prescribed;”.

Charges for services provided to persons not ordinarily resident in Northern Ireland

14. In Article 42(2) of the Order of 1972 (provision of services to persons not ordinarily resident in Northern Ireland), after “the Department may,” insert “subject to such exemptions as may be prescribed and”.

PART 4

Human Transplantation

Duty to promote transplantation

15.—(1) The Department must—

(a) promote transplantation, and

(b) provide information and increase awareness about transplantation and the donation for transplantation of parts of the human body.

(2) The duty under subsection (1) includes in particular a duty to promote a campaign informing the public at least once a year.

Annual report on transplantation

16.—(1) The Department must lay before the Assembly, in respect of each financial year, a report about transplantation in that year.

(2) The report must include—

(a) the steps taken by the Department to fulfil the duties set out in section 15, and

(b) the number and nature of transplantations carried out.

(3) At least once every five financial years, the report must include—

(a) the opinion of the Department as to whether this Act has been effective in promoting transplantation, and

(b) any recommendations the Department considers appropriate for amending the law so as to promote transplantation.

PART 5

General

Interpretation

17. In this Act—

“the Act of 2008” means the Health (Miscellaneous Provisions) Act (Northern Ireland) 2008;

“the Department” means the Department of Health, Social Services and Public Safety;

“the Order of 1972” means the Health and Personal Social Services (Northern Ireland) Order 1972;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Regulations and orders

18.—(1) No regulations shall be made under this Act unless a draft of the regulations has been laid before, and approved by, a resolution of the Assembly.

(2) Regulations and orders made by the Department under this Act may contain such incidental, supplementary, transitional, transitory or saving provisions as appear to the Department to be necessary or expedient.

Repeals

19. The statutory provisions set out in Schedule 2 are hereby repealed to the extent specified in the second column of that Schedule.

Commencement

20.—(1) This section and sections 17, 18 and 21 come into operation on the day after the day on which this Act receives Royal Assent.

(2) The following provisions come into operation on the expiration of the period of one month from the day on which this Act receives Royal Assent—

- (a) sections 9 to 12;
- (b) section 13(3)(a)(i) and (5);
- (c) section 14; and
- (d) Part 1 of Schedule 2 and section 19 so far as it relates to that Part of that Schedule.

(3) The remaining provisions of this Act come into operation on such day or days as the Department may by order appoint.

Short title

21. This Act may be cited as the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016.

SCHEDULES

SCHEDULE 1

Section 3(1).

AMENDMENTS CONSEQUENTIAL ON SECTIONS 1 AND 2

The Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (NI 25)

1. In Article 6 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (enforcement action by district councils)—

(a) in paragraph (1)(a), for “and Articles 4 and 5” substitute “, Articles 4 to 5 and sections 1 and 2 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016,”;

(b) after paragraph (1) insert—

“(1A) Paragraph (1) applies in relation to section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 only if regulations under subsection (1) of that section are for the time being in operation.”;

(c) after paragraph (1A) insert—

“(1B) Paragraph (1) applies in relation to section 2 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 only if regulations under subsection (1) of that section are for the time being in operation.”.

The Tobacco Retailers Act (Northern Ireland) 2014 (c. 4)

2. The Tobacco Retailers Act (Northern Ireland) 2014 is amended as follows.

3. In the italic heading before section 5, after “tobacco” insert “or nicotine”.

4. In section 5 (restricted premises orders)—

(a) in subsection (1)(a) and (b), after “tobacco” insert “or nicotine”;

(b) in subsection (4), for “or cigarette papers” substitute “, cigarette papers or nicotine products”;

(c) in subsection (5), for “or cigarette papers” substitute “, cigarette papers or nicotine products”;

(d) in subsection (8)(b)(i) and (ii), after “tobacco” insert “or nicotine”;

(e) in subsection (13)(a), after “tobacco” insert “or nicotine”;

(f) in subsection (14)—

(i) for “tobacco offence” substitute “tobacco or nicotine offence”;

(ii) at the end of paragraph (e), omit the word “or”;

(iii) at the end of paragraph (f), add—

“(g) an offence committed under section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 on any premises (which are accordingly “the premises in relation to which the offence is committed”);

(iv) at the end of paragraph (g), add—

“or

(h) an offence committed under section 2 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 in respect of any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”.”.

5. In section 6 (restricted sale orders)—

(a) in subsection (1)(a) and (b), after “tobacco” insert “or nicotine”;

(b) in subsection (4)—

(i) in paragraph (a), for “or cigarette papers” substitute “, cigarette papers or nicotine products”;

(ii) in paragraph (b), for “or cigarette papers” substitute “, cigarette papers or nicotine products”;

(iii) in each of paragraphs (c) and (d), omit “cigarette” in each place;

(iv) in each of those paragraphs, after “tobacco” insert “or nicotine products”;

(c) in subsection (6)(a) and (b), after “tobacco” insert “or nicotine”;

(d) in subsection (7), after “tobacco” insert “or nicotine”;

(e) for subsection (8) substitute—

“(8) In this section any reference to a machine is a reference to an automatic machine for the sale of tobacco or nicotine products.”.

6. In section 8(4) (restricted premises orders: display of notices), for “or cigarette papers” substitute “, cigarette papers or nicotine products”.

7. In section 9 (restricted premises orders: no tobacco in retail area)—

(a) in the heading, after “tobacco” insert “or nicotine products”;

(b) in subsection (2), for “or cigarette papers” substitute “, cigarette papers or nicotine products as the case may be”;

- (c) in subsection (3), for “and cigarette papers” substitute “, cigarette papers and nicotine products”.
- 8.** In section 10(4)(a) (offences), for “or cigarette papers” substitute “, cigarette papers or nicotine products”.
- 9.** In section 11(1)(a) (powers of entry)—
- (a) after sub-paragraph (iii) add—
- “(iv) an offence under section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016;”;
- (b) after sub-paragraph (iv) add—
- “(v) an offence under section 2 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016.”.
- 10.** In section 12(1) (fixed penalties for certain offences)—
- (a) after paragraph (c) add—
- “(d) an offence under section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016;”;
- (b) after paragraph (d) add—
- “(e) an offence under section 2 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016.”.
- 11.** In section 16 (council’s duty to share information about enforcement), in subsections (1)(a) and (b) and (3), after “tobacco” insert “or nicotine”;
- 12.** In section 22(1) (interpretation), insert at the appropriate place—
- ““nicotine product” means a nicotine product within the meaning of section 7 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 the sale of which to persons aged under 18 is for the time being prohibited by regulations under section 1(1) of that Act;”.

SCHEDULE 2

Section 19.

REPEALS

Part 1

Repeals coming into operation under section 20(2)

Short Title	Extent of Repeal
The Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14)	Article 62A. Article 63AA(1), (4) and (5). In Schedule 11— (a) in paragraph 1(8)(c), the words “and bodies corporate”; (b) in paragraph 2(1), the words “or, as the case may be, the third condition for disqualification”; (c) paragraph 2(1A); (d) in paragraph 2(3)(a), the words “, assisting in providing”; (e) in paragraph 2(3)(b), the words “assistance in the provision”; (f) in paragraph 4(2)(c)(i), the words “, undertakes to provide or assists in providing”.
The Primary Medical Services (Northern Ireland) Order 2004 (NI 2)	Article 6(8)(c).
The Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 (c. 2)	Section 8. In Schedule 1— (a) paragraph 1(2) and (4); (b) paragraph 2(2) and (3).

Part 2

Repeals coming into operation under section 20(3)

Short Title	Extent of Repeal
The Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14).	In Article 15C(2), the definition of “section 28C employee”. Article 15D(3)(j).

Status: This is the original version (as it was originally enacted).

Short Title	Extent of Repeal
The Tobacco Retailers Act (Northern Ireland) 2014 (c. 4)	In section 5(14)(e), the word “or”. In section 6(4)(c) and (d), the word “cigarette”.