

SCOTTISH STATUTORY INSTRUMENTS

**2010 No. 77**

**PUBLIC HEALTH**

**The Tobacco and Primary Medical Services (Scotland)  
Act 2010 (Ancillary Provisions) Order 2010**

*Made* - - - - at 2.00 p.m. on 3rd  
March 2010  
*Laid before the Scottish  
Parliament* - - - - 3rd March 2010  
at 2.00 p.m. on 3rd  
*Coming into force* - - March 2010

The Scottish Ministers make the following Order in exercise of the powers conferred by section 42 of the Tobacco and Primary Medical Services (Scotland) Act 2010<sup>(1)</sup> and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Tobacco and Primary Medical Services (Scotland) Act 2010 (Ancillary Provisions) Order 2010 and comes into force at 2pm on 3rd March 2010.

(2) In this Order—

“the 2010 Act” means the Tobacco and Primary Medical Services (Scotland) Act 2010;

“the 1991 Act” means the Children and Young Persons (Protection from Tobacco) Act 1991<sup>(2)</sup>.

**Ancillary provisions**

2. An Act modified by a provision of schedule 2 to the 2010 Act which is specified in the first column of the table below shall have effect for all purposes, as it had effect immediately before being so modified, but only until the coming into force for all purposes of the section of the 2010 Act specified in the corresponding entry in the second column of that table—

<i>Provision of schedule 2</i>	<i>Section of 2010 Act</i>
paragraph 1	section 4
paragraph 2(a) as it relates to section 2 of the 1991 Act	section 4
paragraph 2(a) as it relates to section 4 of the 1991 Act	section 9
paragraph 2(b)	section 26

(1) 2010 asp 3.

(2) 1991 c.23.

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**Status:** This is the original version (as it was originally made). Scottish  
Statutory Instruments are not carried in their revised form on this site.

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<i>Provision of schedule 2</i>	<i>Section of 2010 Act</i>
paragraph 2(c)	section 4
paragraph 3	section 1
paragraph 4	section 1
paragraph 5	Section 4
paragraph 6	section 38
paragraph 7	section 38

St Andrew's House, Edinburgh  
at 2 p.m. on 3rd March 2010

*NICOLA STURGEON*  
A member of the Scottish Executive

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under section 42 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the 2010 Act”) which received Royal Assent on 3rd March 2010. Section 42 gives the Scottish Ministers power to make ancillary provision in connection with any provisions of the 2010 Act.

Section 41 of the 2010 Act gives effect to schedule 2 to that Act. Schedule 2 modifies certain Acts in consequence of the provisions of the 2010 Act. In accordance with section 43(2) of the 2010 Act, section 41 came into force on Royal Assent but the provisions of the 2010 Act of which the modifications in schedule 2 are in consequence do not come into force until a day appointed by the Scottish Ministers.

This Order makes provisions replicating the law before section 41 took effect until the relevant provisions of the 2010 Act are in force.

Article 2 of the Order provides that the Acts which are modified by schedule 2 are to have effect as if they had not been so modified until the coming into force of specified sections of the 2010 Act.

Paragraph 1 of Schedule 2 to the 2010 Act repeals section 18 of the Children and Young Persons (Scotland) Act 1937 (“1937 Act”). The main provision in section 18 is the offence of selling tobacco to persons under 18. The effect of article 2 of the Order is that the 1937 Act is to take effect as if section 18 had not been repealed until the coming into force of section 4 of the 2010 Act. Section 4 of the 2010 Act makes it an offence to sell a tobacco product or cigarette papers to a person under 18.

Paragraph 2(a) of schedule 2 repeals sections 2 and 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 (“the 1991 Act”). Section 2 of the 1991 Act amends section 18 of the 1937 Act. The effect of article 2 of the Order is that the 1991 Act is to take effect as if section 2 had not been repealed until the coming into force of section 4 of the 2010 Act (sale of tobacco to under 18s). Section 4 of the 1991 Act requires the display of statements in retail premises and on vending machines warning that it is illegal to sell to under 18s. Section 4 of the 2010 Act provides in relation to sales to under 18s from retail premises and section 9 of the 2010 Act provides in relation to sales from vending machines. Until both sections are commenced the provisions in section 4 of the 1991 Act will be required. Section 9 is to be commenced after section 4 and therefore article 2 of the Order provides that the 1991 Act is to take effect as if section 4 of that Act had not been repealed until the coming into force of section 9 of the 2010 Act.

Paragraph 2(b) of schedule 2 amends section 6 of the 1991 Act. Section 6 provides in relation to Councils’ duty to carry out an enforcement action programme in relation to tobacco offences. The amendments to section 6 mean that this provision now only deals with the Councils’ duty in relation to section 3 of the 1991 Act (sale of unpackaged cigarettes). Section 26 of the 2010 Act provides in relation to the Council’s duty of enforcement in relation to tobacco offences under the new regime. Article 2 of the Order has the effect that the 1991 Act is to take effect as if section 6 had not been amended until the coming into force of section 26 of the 2010 Act.

Paragraph 2(c) of schedule 2 amends section 8 of the 1991 Act. This is consequential on the repeal of section 2 of that Act. The effect of article 2 of the Order is that the 1991 Act is to take effect as if section 8 had not been amended until section 4 of the 2010 Act is commenced.

Paragraph 3 of schedule 2 amends section 6 of the Tobacco Advertising and Promotion Act 2002 (“TAPA”). The effect of the amendment is to restrict the exemption which specialist tobacconists have under that Act to advertisements which are inside their premises. This is to bring the position on advertisements in line with the position on displays of tobacco products which are allowed in

specialist tobacconists. Section 1 of the 2010 Act provides in relation to displays. The effect of article 2 of the Order is that TAPA is to take effect as if section 6 had not been amended until the coming into force of section 1 of the 2010 Act.

Paragraph 4 of schedule 2 amends section 8 of TAPA so that that provision only regulates displays of tobacco products on websites. Other displays are to be regulated by section 1 of the 2010 Act and so article 2 of the Order has the effect that TAPA is to take effect as if section 8 had not been amended until section 1 of the 2010 Act is in force.

Paragraph 5 of schedule 2 repeals section 9 of the Smoking, Health and Social Care (Scotland) Act 2005. This is the power of the Scottish Ministers to increase the age required before a person can be sold tobacco products in section 18 of the 1937 Act. Article 2 of the order has the effect that the 2005 Act will have effect as if section 9 had not been repealed until the coming into force of section 4 of the 2010 Act.

Paragraph 6 of schedule 2 amends section 17D of the National Health Service (Scotland) Act 1978 (“the 1978 Act”). Section 17D currently specifies the persons with whom Health Boards can enter into agreements made under section 17C of the 1978 Act for the provision of primary medical services and personal dental services. As section 38 of the 2010 Act introduces a new section 17 CA into the 1978 Act, making new provision for who is eligible to enter into a section 17C Agreement to perform primary medical services, paragraph 6 of schedule 2 of the 2010 Act amends section 17D of the 1978 Act so that it will relate only to personal dental services. The effect of article 2 of the Order is that the 1978 Act is to take effect as if section 17D had not been amended until section 38 of the 2010 Act is in force.

Paragraph 7 of schedule 2 is a consequential amendment to the Primary Medical Services (Scotland) Act 2004. The effect of article 2 is that this Act will have effect as if section 2(3) had not been amended until the coming into force of section 38 of the 2010 Act.