

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

POLICY NOTE

The Sale of Nicotine Vapour Products (Prescribed Documents) (Scotland) Regulations 2017

SSI 2017/13

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 4A(4)(c) of the Tobacco and Primary Medical Services (Scotland) Act 2010 “the 2010 Act”. This instrument is subject to negative procedure.

Policy Objectives

2. These regulations are required to help bring the changes made to 2010 Act through the Health (Tobacco, Nicotine etc. and Care) (Scotland) act 2016 fully into effect. Section 4A of the 2010 Act makes it an offence to sell nicotine vapour products to anyone under 18. It is a defence if the retailer, or employee of the retailer, took all reasonable steps to establish the age of the customer and had been shown a document as proof of the customer’s age. Section 4A(4) lists those documents and section 4A(4)(c) allows that list to be expanded by regulations. Section 4A is introduced by the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. These Regulations prescribe the additional documents which can be used to provide proof of age for the purchase of such products. The documents are the same as those used to provide proof of age for the purchase of tobacco products and alcohol.

Consultation

3. A full public consultation was carried out prior to the introduction of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill (“the Bill”). The proposal to restrict sales to those 18 or older was agreed by 84% of consultation respondents. As a result it was decided to introduce this provision. To help protect retailers from inadvertently committing offences by selling to those who are under 18, it was decided that proof of age documentation would be helpful. The documents listed for demonstrating the proof of age of a person seeking to purchase these products is the same as those for other age restricted products. This will make it easier for retailers and members of the public to comply. The permitted products are a:

- Passport,
- European photo-card driving licence,
- Ministry of Defence Form 90 (Defence Identity Card),

- Photographic identity card bearing the national Proof of Age Standards Scheme (PASS),
- EU identity card, and
- Biometric Immigration Document.

Impact Assessment

4. For the purchase of nicotine vapour products, the impact of introducing an already-familiar scheme for proof of age was discussed and examined in the Business and Regulatory Impact Assessment for the Bill. The impact assessment concluded that using the same documents for proof of age, as were used for tobacco and alcohol, would be a benefit to retailers and young people who would likely already be familiar with using these as proof of age for other purchases.

Financial Effects

5. All costs associated with these regulations were set out in the Financial Memorandum for the Bill and will be absorbed within existing budgets.

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