



Tobacco and Primary Medical Services (Scotland) Act 2010

2010 asp 3

PART 1

TOBACCO PRODUCTS ETC.

CHAPTER 4

MISCELLANEOUS AND SUPPLEMENTARY

33 Presumption as to contents of container

- (1) This section applies for the purpose of any trial in proceedings for an alleged offence under section 1, 4, 5 or 6.
- (2) Any substance displayed, sold or purchased in a container (whether sealed or not) is presumed to conform to the description of the substance on the container.
- (3) At the trial, any party to the proceedings may rebut the presumption mentioned in subsection (2) by proving that, at the time of its display, sale or purchase, the substance in the container did not match the description on the container.
- (4) However, a party may lead evidence for the purpose of rebutting the presumption only if the party has, not less than 7 days before the date of the trial, given notice of the intention to do so to the other parties.

34 Offences by bodies corporate etc.

- (1) Where—
 - (a) an offence under this Act has been committed by—
 - (i) a body corporate,
 - (ii) a Scottish partnership, or
 - (iii) an unincorporated association other than a Scottish partnership, and

Status: This is the original version (as it was originally enacted).

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

- (i) a relevant individual, or
- (ii) an individual purporting to act in the capacity of a relevant individual,

that individual (as well as the body corporate, partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

- (a) in relation to a body corporate (other than a limited liability partnership)—
 - (i) a director, manager, secretary or other similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a limited liability partnership, a member,
- (c) in relation to a Scottish partnership, a partner, and
- (d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

35 Interpretation of Part 1

(1) In this Part—

“area”—

- (a) in relation to a council, means the local government area for which the council is constituted,
- (b) in relation to a council officer, means the area of the council which authorised the officer,

“council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“council officer” means a duly authorised officer of a council,

“fixed penalty notice” is to be construed in accordance with section 27 and schedule 1,

“premises” includes any place and any vehicle, vessel, or moveable structure,

“prescribed” means prescribed in regulations made by the Scottish Ministers (and “prescribe” is to be construed accordingly),

“registered” and “unregistered” have the meaning given in section 10(2),

“tobacco business” means a business involving the sale of tobacco products by retail,

“tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed,

“tobacco retailing banning order” has the meaning given in section 15(6).

(2) For the purposes of this Part, the following are smoking related products—

- cigarette papers
- cigarette tubes
- cigarette filters
- apparatus for making cigarettes
- cigarette holders
- pipes for smoking tobacco products.

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- (3) The Scottish Ministers may by order modify the list in subsection (2) as they consider appropriate.

36 Crown application

- (1) This Part binds the Crown.
- (2) No contravention by the Crown of any provision made by or under this Part makes the Crown criminally liable.
- (3) But the Court of Session may, on the application of the council in whose area the contravention is alleged to have taken place, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) Despite subsection (2), any provision made by or under this Part applies to persons in the public service of the Crown as it applies to other persons.