

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

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 1 – Tobacco, Nicotine Vapour Products and Smoking

Chapter 1 – Sale of Tobacco and Nicotine Vapour Products

Sale and purchase of tobacco and nicotine vapour products

Section 3 – Age verification policy

14. **Section 3(1)** of the Act inserts section 4B (age verification policy) into the 2010 Act.
15. Section 4B(1) and (2) require a person who carries on a tobacco or NVP business to operate an age verification policy at every premises where such a business is being carried on, but it does not include distance sales (for example, it does not apply to premises, such as a warehouse used to service internet sales, which are used only to despatch tobacco or NVPs). Section 35 (interpretation) of the 2010 Act contains a definition of “tobacco business”. Section 8(2) of the Act inserts into section 35 of the 2010 Act definitions of “nicotine vapour product business” and “tobacco or nicotine vapour product business”. The businesses referred to by these definitions only involve the sale of products by retail.
16. Section 4B(3) defines an “age verification policy”. It involves the person selling taking steps to challenge the age of a customer buying a tobacco product or an NVP who appears to that person to be under the age of 25 or such older age as may be specified in the policy. Section 4A(4) provides the Scottish Ministers with a power to make regulations to amend the age (up or down) referred to in subsection (3).
17. Section 4B(5) provides that the Scottish Ministers may issue guidance on matters relating to age verification policies. It sets out a number of things which, in particular, the guidance may contain. The guidance is intended to assist retailers to operate an age verification policy e.g. by setting out appropriate identification which young-looking customers should be asked to produce. Guidance can also cover related matters e.g. training. Section 4B(6) requires a person operating a policy to have regard to the guidance; this means a person must have regard to the guidance when establishing a policy and thereafter during the operation of the policy.
18. Section 4B(7) provides that a person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 2 on the standard scale (currently £500).
19. **Section 3(2)** of the Act amends section 40(4) (orders and regulations) of the 2010 Act to make any regulations made under section 4B(4) subject to affirmative procedure.