

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

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## EXPLANATORY NOTES

### THE ACT – OVERVIEW

#### **Part 1 – Tobacco, Nicotine Vapour Products and Smoking**

##### *Chapter 1 – Sale of Tobacco and Nicotine Vapour Products*

#### **Register of tobacco and nicotine vapour product retailers**

##### *Section 10 – Tobacco and nicotine vapour product banning orders*

40. **Section 10(1)** of the Act amends section 15 (tobacco retailing banning orders) of the 2010 Act to allow a person carrying on a tobacco or NVP business to be the subject of an application for a retailing banning order, now renamed a “tobacco and nicotine vapour product banning order”. Applications are made by a local authority to the sheriff. Where an order is made a person is banned from carrying on a tobacco business and a NVP business at the premises specified in the order for the period of time stated in the order (which cannot exceed 24 months). A sheriff may make an order where, in addition to other prerequisites in section 15(3), there have been three or more “relevant enforcement actions” in respect of each premises specified in the order. At present, section 15(3) requires the person who is the subject of the application for an order to have been the subject of the relevant enforcement actions. Now, as amended, a relevant enforcement action can relate to an offence committed by, or fixed penalty notice issued to, an employee or agent of the person who is the subject of the application in addition to that person. Additionally, the Act adds to the list of “relevant enforcement actions” in section 15(4) a conviction for an offence under section 92(1)(b) or (c) of the Trade Marks Act 1994 (unauthorised use of a trade mark) where the goods in question include tobacco products, smoking related products or NVPs.
41. **Section 10(2)** of the Act amends section 16 (tobacco retailing banning orders: ancillary orders) of the 2010 Act so that reference is now made to a tobacco and NVP banning order. Section 16 as amended allows local authorities to apply to the sheriff for an ancillary order in respect of NVP businesses as well as tobacco businesses.
42. The application for an ancillary order can be made along with an application for a tobacco and NVP banning order or it can be made at a later date once a banning order is in place. The order can be sought against “P” who is the person against whom the banning order is being sought or has already been made. An ancillary order can be sought by the local authority banning P from being connected to or seeking to control another person carrying on a NVP or tobacco business at the premises to which the banning order relates.
43. In addition, where P is not an individual (e.g. where P is a company or partnership), an ancillary order can be sought to ban any person connected to P from carrying on

*These notes relate to the Health (Tobacco, Nicotine etc. and Care)  
(Scotland) Act 2016 (asp 14) which received Royal Assent on 06 April 2016*

a tobacco or NVP business at the premises or from being connected to a person who carries on such a business at those premises.

44. **Section 10(3)** of the Act amends section 17 (tobacco retailing banning orders etc.: appeals) of the 2010 Act to change references from “tobacco retailing banning order” to “tobacco and nicotine vapour product banning order”. This allows for an appeal to be made against such an order to the sheriff principal (or when established, the Sheriff Appeal Court).
45. **Section 10(4)** of the Act amends section 18 (tobacco retailing banning orders etc.: notification to Scottish Ministers) of the 2010 Act to change the reference from “tobacco retailing banning order” to “tobacco and nicotine vapour product banning order”. Section 18 requires the sheriff to notify the Scottish Ministers on making a tobacco and NVP banning order or an ancillary order. The sheriff principal must notify the Scottish Ministers of the outcome of any appeal (or when established, the Sheriff Appeal Court).
46. **Section 10(5)** of the Act amends section 19 (tobacco retailing banning orders: display of notices) of the 2010 Act to change references from “tobacco retailing banning order” to “tobacco and nicotine vapour product banning order” and adjust the signage requirements so that they include reference to the point of sale of NVPs. Section 19 requires retailers of tobacco or NVPs, in respect of whom a tobacco and NVP banning order has been granted, to display a notice in the premises specified in the order if the person continues to carry on a retail business at those premises. Section 19 sets out specific requirements of the notice, including its content, where it must be displayed on the premises (it must be readily visible to persons at every relevant point of sale) and the period of time it must be displayed.