Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016

2016 asp 14

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 3rd March 2016 and received Royal Assent on 6th April 2016

An Act of the Scottish Parliament to make provision about tobacco, nicotine and related products, in particular to make provision about retailing, to amend the prohibition on smoking in certain areas and to control advertising and promotion; to make provision about a duty of candour following serious incidents in the course of providing care; to make provision about offences applying to ill-treatment or neglect where care is provided; and for connected purposes.

PART 1

TOBACCO, NICOTINE VAPOUR PRODUCTS AND SMOKING

CHAPTER 1

SALE AND PURCHASE OF TOBACCO AND NICOTINE VAPOUR PRODUCTS

Nicotine vapour products

1 Nicotine vapour products

After section 35 of the 2010 Act insert—

"**35A Meaning of "nicotine vapour product"**

(1) In this Part, a "nicotine vapour product" is—

(a) a device which is intended to enable the inhalation of nicotine-containing vapour by an individual,

(b) a device which is intended to enable the inhalation of other vapour by an individual but is intended to resemble and be operated in a similar way to a device within paragraph (a),

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

(c) an item which is intended to form part of a device within paragraph (a) or (b),

(d) a substance which is intended to be vaporised by a device within paragraph (a) or (b) (and any item containing such a substance).

(2) But the following are not nicotine vapour products—

(a) a tobacco product,

(b) a smoking related product,

(c) a medicinal product (within the meaning of the Human Medicines Regulations 2012 (S.I. 2012/1916)),

(d) a medical device (within the meaning of the Medical Devices Regulations 2002 (S.I. 2002/618)).”.

Commencement Information

I1 S. 1 in force at 6.2.2017 by S.S.I. 2017/12, reg. 2, **sch.**

Sale and purchase of tobacco and nicotine vapour products

2 Sale of nicotine vapour products to persons under 18

(1) After section 4 of the 2010 Act insert—

“**4A Sale of nicotine vapour products to persons under 18**

(1) A person who sells a nicotine vapour product to a person under the age of 18 commits an offence.

(2) It is a defence to a charge in proceedings against a person (“the accused”) under subsection (1) that—

(a) the accused believed the person under the age of 18 (“the customer”) to be aged 18 or over, and

(b) the accused had taken reasonable steps to establish the customer's age.

(3) For the purposes of subsection (2)(b), the accused is to be treated as having taken reasonable steps to establish the customer's age if and only if—

(a) the accused was shown any of the documents mentioned in subsection (4), and

(b) that document would have convinced a reasonable person as to the customer's age.

(4) The documents referred to in subsection (3)(a) are any document bearing to be—

(a) a passport,

(b) a European Union photocard driving licence, or

(c) such other document, or a document of such description, as may be prescribed.

(5) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

(2) The italic heading immediately preceding section 4 of the 2010 Act becomes " *Sale and purchase of tobacco and nicotine vapour products* ".

Commencement Information

I2 S. 2 in force at 6.2.2017 for specified purposes by S.S.I. 2017/12, reg. 2, **sch.**

I3 S. 2 in force at 1.4.2017 in so far as not already in force by S.S.I. 2017/12, reg. 2, **sch.**

3 Age verification policy

(1) After section 4A of the 2010 Act (inserted by section 2) insert—

"**4B Age verification policy**

(1) A person commits an offence if the person—

(a) carries on a tobacco or nicotine vapour product business, and

(b) fails to operate an age verification policy in respect of premises at which the person carries on the tobacco or nicotine vapour product business.

(2) Subsection (1) does not apply to premises ("the business premises") from which—

(a) tobacco products, cigarette papers or nicotine vapour products are, in pursuance of a sale, despatched for delivery to different premises, and

(b) no other tobacco or nicotine vapour product business is carried on from the business premises.

(3) An "age verification policy" is a policy that steps are to be taken to establish the age of a person attempting to buy a tobacco product, cigarette papers or a nicotine vapour product on the premises (the "customer") if it appears to the person selling the tobacco product, cigarette papers or nicotine vapour product that the customer may be under the age of 25 (or such older age as may be specified in the policy).

(4) The Scottish Ministers may by regulations amend the age specified in subsection (3).

(5) The Scottish Ministers may publish guidance on matters relating to age verification policies, including, in particular, guidance about—

(a) steps that should be taken to establish a customer's age,

(b) documents that may be shown to the person selling a tobacco product, cigarette papers or a nicotine vapour product as evidence of a customer's age,

(c) training that should be undertaken by the person selling the tobacco product, cigarette papers or nicotine vapour product,

(d) the form and content of notices that should be displayed in the premises,

(e) the form and content of records that should be maintained in relation to an age verification policy.

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

(6) A person who carries on a tobacco or nicotine vapour product business must have regard to guidance published under subsection (5) when operating an age verification policy.

(7) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.”.

(2) In section 40(4) of the 2010 Act (subordinate legislation subject to affirmative procedure) before “section 24” insert— “ section 4B(4) ”.

Commencement Information
I4 S. 3 in force at 1.4.2017 by S.S.I. 2017/12, reg. 2, **sch.**

4 Sale by persons under 18

After section 4B of the 2010 Act (inserted by section 3) insert—

“4C Sale of tobacco or nicotine vapour products by persons under 18

(1) A responsible person who allows a tobacco product, cigarette papers or a nicotine vapour product to be sold by a person under the age of 18 commits an offence.

(2) For the purposes of subsection (1), “responsible person” means—
- (a) where the sale is at premises which are noted in a registered person's entry in the Register, the registered person for those premises,
- (b) where the sale is at premises which are not noted in a registered person's entry in the Register—
  - (i) any employer of the person who made the sale, and
  - (ii) any other person having management or control of those premises.

(3) Subsection (1) does not apply to a sale which—
- (a) is made at premises which are noted in a registered person's entry in the Register, and
- (b) is authorised by the registered person for those premises.

(4) Each authorisation mentioned in subsection (3)(b) must be recorded and kept at the premises at which a sale by a person under the age of 18 is made.

(5) The Scottish Ministers may prescribe—
- (a) the form and content of authorisations made under subsection (3)(b),
- (b) the method of recording authorisations for the purposes of subsection (4).

(6) An authorisation is, for the purposes of subsection (3)(b), deemed not to have been made, if—
- (a) it is not recorded and kept in accordance with subsection (4), or
- (b) it is not made in accordance with any provision made under subsection (5).

(7) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.”.

Commencement Information

I5 S. 4 in force at 6.2.2017 for specified purposes by S.S.I. 2017/12, reg. 2, **sch.**

I6 S. 4 in force at 1.4.2017 in so far as not already in force by S.S.I. 2017/12, reg. 2, **sch.**

5 Defence of due diligence for certain offences

After section 4C of the 2010 Act (inserted by section 4) insert—

“4D Defence of due diligence for certain offences

(1) It is a defence for a person charged with an offence to which this section applies to prove that the person (or any employee or agent of the person) took all reasonable precautions and exercised all due diligence to prevent the offence being committed.

(2) This section applies to an offence under any of the following provisions of this Act—

(a) section 4(1),

(b) section 4A(1),

(c) section 4C(1).”.

Commencement Information

I7 S. 5 in force at 1.4.2017 by S.S.I. 2017/12, reg. 2, **sch.**

6 Purchase of nicotine vapour products on behalf of persons under 18

After section 6 of the 2010 Act insert—

“6A Purchase of nicotine vapour products on behalf of persons under 18

(1) A person aged 18 or over who knowingly buys or attempts to buy a nicotine vapour product on behalf of a person under the age of 18 commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

Commencement Information

I8 S. 6 in force at 1.4.2017 by S.S.I. 2017/12, reg. 2, **sch.**

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

7 Extension of vending machine prohibition

(1) The Scottish Ministers may by regulations amend the definition of "vending machine" in section 9(3) of the 2010 Act (prohibition of vending machines) so as to include automatic machines for the sale of nicotine vapour products.

(2) In subsection (1), "nicotine vapour products" has the meaning given in section 35A of the 2010 Act.

Commencement Information
I9 S. 7 in force at 1.4.2017 by S.S.I. 2017/12, reg. 2, **sch.**

Register of tobacco and nicotine vapour product retailers

8 Register of tobacco and nicotine vapour product retailers

(1) In section 10(1) of the 2010 Act (duty to keep Register), after "tobacco" insert " or nicotine vapour product ".

(2) In section 35(1) of the 2010 Act (interpretation)—

(a) after the definition of "fixed penalty notice" insert—

""nicotine vapour product business" means a business involving the sale of nicotine vapour products by retail,", and

(b) after the definition of "tobacco business" insert—

""tobacco or nicotine vapour product business" means a business which involves (either or both) a tobacco business or a nicotine vapour product business,".

Commencement Information
I10 S. 8 in force at 6.2.2017 for specified purposes by S.S.I. 2017/12, reg. 2, **sch.**
I11 S. 8 in force at 1.4.2017 in so far as not already in force by S.S.I. 2017/12, reg. 2, **sch.**

9 Registration and changes to the Register

(1) In section 11 of the 2010 Act (application for registration and addition of premises etc.)—

(a) in subsection (2), after "tobacco", in both places where it occurs, insert " or nicotine vapour product ",

(b) after subsection (2) insert—

"(2A) An application under subsection (1) must state, in relation to each of the premises included in it, whether the applicant proposes to carry on—

(a) a tobacco business at the premises,

(b) a nicotine vapour product business at the premises, or

(c) both a tobacco business and a nicotine vapour product business at the premises.",

(c) in subsection (3)(b), for "retailing banning order, from carrying on a tobacco" substitute " and nicotine vapour product banning order from carrying on a tobacco or nicotine vapour product ",

(d) in subsection (4)(b), for "business" substitute "or nicotine vapour product business, noting, in relation to each of the premises, whether the applicant proposes to carry on—

(i) a tobacco business at the premises,

(ii) a nicotine vapour product business at the premises, or

(iii) both a tobacco business and a nicotine vapour product business at the premises", and

(e) in subsection (5), for "business" substitute "or nicotine vapour product business, noting, in relation to each of the premises, whether the applicant proposes to carry on—

(a) a tobacco business at the premises,

(b) a nicotine vapour product business at the premises, or

(c) both a tobacco business and a nicotine vapour product business at the premises".

(2) In section 12 of the 2010 Act (certificates of registration)—

(a) the existing text becomes subsection (1), and

(b) after that subsection, insert—

"(2) A certificate issued under subsection (1) must state whether the premises are noted in the applicant's entry in the Register as premises at which the person carries on—

(a) a tobacco business,

(b) a nicotine vapour product business, or

(c) both a tobacco business and a nicotine vapour product business.".

(3) In section 13(1) of the 2010 Act (duty to notify certain changes), after paragraph (b) insert—

"(c) the fact that the person is no longer carrying on a nicotine vapour product business at an address noted in the person's entry in the Register.".

(4) In section 14 of the 2010 Act (changes to and removal from Register)—

(a) in subsection (2), for "retailing" substitute " and nicotine vapour product ",

(b) in subsection (3)(b), after "tobacco" insert " or nicotine vapour product ", and

(c) in subsection (5)(b), after "tobacco" insert " or nicotine vapour product ".

Commencement Information

I12 S. 9(1) in force at 6.2.2017 for specified purposes by S.S.I. 2017/12, reg. 2, **sch.**

I13 S. 9(1) in force at 1.4.2017 in so far as not already in force by S.S.I. 2017/12, reg. 2, **sch.**

I14 S. 9(2)-(4) in force at 1.4.2017 by S.S.I. 2017/12, reg. 2, **sch.**

10 Tobacco and nicotine vapour product banning orders

(1) In section 15 of the 2010 Act (banning orders)—

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

(a) in subsection (1), after "tobacco" insert " or nicotine vapour product ",
(b) in subsection (2), after "tobacco" insert " or nicotine vapour product ",
(c) in subsection (3)—
(i) after "tobacco" insert " or nicotine vapour product ",
(ii) in paragraph (a), for "the person has been the subject of" substitute " there have been ", and
(iii) in paragraph (d), the word "further" is repealed,
(d) in subsection (4)—
(i) for "person is the subject of a relevant enforcement action if the person", substitute " relevant enforcement action occurs where a person mentioned in subsection (4A) ",
(ii) the word "or" immediately following paragraph (a) is repealed,
(iii) after paragraph (b), insert ", or
(c) convicted of an offence under section 92(1)(b) or (c) of the Trade Marks Act 1994 (unauthorised use of trade mark in relation to goods) in circumstances where the goods in question are, or include, tobacco products, smoking related products or nicotine vapour products.",
(e) after subsection (4), insert—

"(4A) The persons are—
(a) the person who is the subject of the application,
(b) an employee or agent of that person.", and
(f) in subsection (6), for "retailing" substitute " and nicotine vapour product ".

(2) In section 16 of the 2010 Act (ancillary orders)—
(a) in subsection (1), for "retailing", in both places where it occurs, substitute " and nicotine vapour product ",
(b) in subsection (2), after "tobacco", in each place where it occurs, insert " or nicotine vapour product ",
(c) in subsection (3)(b), for "retailing" substitute " and nicotine vapour product ",
(d) in subsection (4), for "retailing" substitute " and nicotine vapour product ", and
(e) in subsection (5), for "retailing" substitute " and nicotine vapour product ".

(3) In section 17 of the 2010 Act (appeals), for "retailing", in both places where it occurs, substitute " and nicotine vapour product ".

(4) In section 18(1) of the 2010 Act (notification to Scottish Ministers), for "retailing" substitute " and nicotine vapour product ".

(5) In section 19 of the 2010 Act (display of notices)—
(a) in subsection (1)(a), for "retailing" substitute " and nicotine vapour product ",
(b) in subsection (3), for "retailing", in both places where it occurs, substitute " and nicotine vapour product ", and
(c) for subsection (4), for "or smoking related products" substitute " , smoking related products or nicotine vapour products ".

Commencement Information

I15 S. 10 in force at 6.2.2017 for specified purposes by S.S.I. 2017/12, reg. 2, **sch.**

I16 S. 10 in force at 1.10.2017 in so far as not already in force by S.S.I. 2017/12, reg. 2, **sch.**

11 Offences relating to the Register

In section 20 of the 2010 Act (offences relating to the Register)—

(a) in subsection (1), after "tobacco" insert " or nicotine vapour product ",

(b) in subsection (2), after "Register" insert " as premises at which the person carries on a tobacco business (or both a tobacco business and a nicotine vapour product business) ",

(c) after subsection (2) insert—

"(2A) A registered person who carries on a nicotine vapour product business at premises other than those noted in the person's entry in the Register as premises at which the person carries on a nicotine vapour product business (or both a tobacco business and a nicotine vapour product business) commits an offence.",

(d) in subsection (4), for "retailing" substitute " and nicotine vapour product ", and

(e) in subsection (6)(a), after "(2)" insert " , (2A) ".

Commencement Information

I17 S. 11 in force at 1.10.2017 by S.S.I. 2017/12, reg. 2, **sch.**

12 Public inspection of the Register

In section 21(1) of the 2010 Act (public inspection of the Register), for "at which tobacco businesses are carried on or proposed to be carried on" substitute ", specifying for each of those premises whether there is carried on, or there is proposed to be carried on—

(a) a tobacco business,

(b) a nicotine vapour product business, or

(c) both a tobacco business and a nicotine vapour product business".

Commencement Information

I18 S. 12 in force at 1.4.2017 by S.S.I. 2017/12, reg. 2, **sch.**

The 2010 Act: miscellaneous

13 Power to exclude certain premises

In section 35(1) of the 2010 Act (interpretation), in the definition of "premises", for ", vessel, or moveable structure" substitute " or moveable structure (and, for this purpose, "vehicle" includes any aircraft or ship, boat or other water-going vessel, other than one of a prescribed description) ".

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

Commencement Information

I19 S. 13 in force at 6.2.2017 by S.S.I. 2017/12, reg. 2, **sch.**

14 Presumption as to contents of container

In section 33(1) of the 2010 Act (presumption as to contents of container), for "5 or 6" substitute " 4A, 4B, 4C, 5, 6, 6A or 9 ".

Commencement Information

I20 S. 14 in force at 1.4.2017 by S.S.I. 2017/12, reg. 2, **sch.**

15 Part 1 of the 2010 Act: miscellaneous

(1) The title of Chapter 1 of Part 1 of the 2010 Act becomes " DISPLAY, SALE AND PURCHASE ".

(2) The title of section 10 of the 2010 Act becomes " Register of tobacco and nicotine vapour product retailers ".

(3) The title of section 15 of the 2010 Act becomes " Tobacco and nicotine vapour product banning orders ".

(4) The title of section 16 of the 2010 Act becomes " Tobacco and nicotine vapour product banning orders: ancillary orders ".

(5) The title of section 17 of the 2010 Act becomes " Tobacco and nicotine vapour product banning orders etc.: appeals ".

(6) The title of section 18 of the 2010 Act becomes " Tobacco and nicotine vapour product banning orders etc.: notification to Scottish Ministers ".

(7) The title of section 19 of the 2010 Act becomes " Tobacco and nicotine vapour product banning orders: display of notices ".

(8) The italic heading immediately preceding section 15 of the 2010 Act becomes " *Tobacco and nicotine vapour product banning orders* ".

(9) The italic heading immediately preceding section 21 of the 2010 Act becomes " Register of tobacco and nicotine vapour product retailers: miscellaneous and supplementary ".

(10) The title of Chapter 2 of Part 1 of the 2010 Act becomes " REGISTER OF TOBACCO AND NICOTINE VAPOUR PRODUCT RETAILERS ".

(11) The title of Part 1 of the 2010 Act becomes " TOBACCO AND NICOTINE VAPOUR PRODUCTS ETC. ".

Commencement Information

I21 S. 15(1)(2)(9)-(11) in force at 1.4.2017 by S.S.I. 2017/12, reg. 2, **sch.**

I22 S. 15(3)-(8) in force at 1.10.2017 by S.S.I. 2017/12, reg. 2, **sch.**

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

Interpretation

16 Meaning of "the 2010 Act"

In this Part, "the 2010 Act" means the Tobacco and Primary Medical Services (Scotland) Act 2010.

Commencement Information
I23 S. 16 in force at 6.2.2017 by S.S.I. 2017/12, reg. 2, **sch.**

VALID FROM 31/01/2024

CHAPTER 2

ADVERTISING AND PROMOTION OF NICOTINE VAPOUR PRODUCTS

17 Advertising and brandsharing

(1) The Scottish Ministers may by regulations make provision prohibiting or restricting an activity, in the course of a business, which relates to—
- (a) a nicotine vapour product advert,
- (b) nicotine vapour product brandsharing.

(2) Regulations under subsection (1) may in particular—
- (a) make provision for offences and penalties for a person who contravenes a prohibition or restriction on an activity mentioned in subsection (1),
- (b) provide for exceptions to the offences,
- (c) provide for defences to the offences,
- (d) impose on a person a duty to enforce the provisions in the regulations and, in relation to such a duty, apply with modifications, or make provision equivalent to, sections 25 and 26 of Chapter 3 of the 2010 Act,
- (e) provide powers to a person whose duty it is to enforce the provisions and, in relation to such powers, apply with modifications, or make provision equivalent to, sections 28 to 32 of Chapter 3 of the 2010 Act.

(3) The maximum penalties that may be provided for in regulations under subsection (1) for a person who commits an offence under those regulations are—
- (a) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both,
- (b) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine or both.

(4) In this section—

"nicotine vapour product" has the meaning given in section 35A of the 2010 Act,

"nicotine vapour product advert" means a published advertisement or a display whose purpose or effect is to promote a nicotine vapour product,

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Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

"nicotine vapour product brandsharing" means the use of any name, emblem or other feature where—

(a) the name, emblem or other feature is used in connection with—

(i) any service or product (other than a nicotine vapour product) and the name, emblem or other feature used is the same as, or similar to, a name, emblem or other feature connected with a nicotine vapour product, or

(ii) any nicotine vapour product and the name, emblem or other feature used is the same as, or similar to, a name, emblem or other feature connected with any service or product other than a nicotine vapour product, and

(b) the purpose or effect of the use is to promote a nicotine vapour product,

"public" means the public at large, or any section of the public or individually selected members of the public,

"published" means published, distributed or otherwise made available to the public, in any form and by any means.

18 Free distribution and nominal pricing

(1) The Scottish Ministers may by regulations make provision prohibiting or restricting, in the course of a business—

(a) giving away to the public any product or coupon (separately or with something else), where the purpose or effect is to promote a nicotine vapour product,

(b) making products or coupons available to the public (separately or with something else) for a nominal sum, where the purpose or effect is to promote a nicotine vapour product.

(2) Regulations under subsection (1) may in particular—

(a) make provision for offences and penalties for a person who contravenes a prohibition or restriction mentioned in subsection (1),

(b) make further provision about the circumstances in which a product or coupon is to be treated as being made available for a nominal sum,

(c) provide for exceptions to the offences mentioned in paragraph (a),

(d) provide for defences to the offences,

(e) impose on a person a duty to enforce the provisions in the regulations and, in relation to such a duty, apply with modifications, or make provision equivalent to, sections 25 and 26 of the 2010 Act,

(f) provide powers to a person whose duty it is to enforce the provisions and, in relation to such powers, apply with modifications, or make provision equivalent to, sections 28 to 32 of the 2010 Act.

(3) The maximum penalties that may be provided for in regulations under subsection (1) for a person who commits an offence under those regulations are—

(a) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both,

(b) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine or both.

(4) In this section—

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

"coupon" means a document or other thing which, by itself or not, can be redeemed for a product or service or for cash or for any other benefit,

"nicotine vapour product" has the meaning given in section 35A of the 2010 Act,

"public" means the public at large, or any section of the public or individually selected members of the public.

19 Sponsorship

(1) The Scottish Ministers may by regulations make provision prohibiting or restricting the entering into, in the course of a business, of a sponsorship agreement, where the purpose or effect of anything done as a result of the agreement is to promote a nicotine vapour product.

(2) Regulations under subsection (1) may in particular—

(a) make provision for offences and penalties for a person who contravenes a prohibition or restriction mentioned in subsection (1),

(b) provide for exceptions to the offences,

(c) provide for defences to the offences,

(d) impose on a person a duty to enforce the provisions in the regulations and, in relation to such a duty, apply with modifications, or make provision equivalent to, sections 25 and 26 of the 2010 Act,

(e) provide powers to a person whose duty it is to enforce the provisions and, in relation to such powers, apply with modifications, or make provision equivalent to, sections 28 to 32 of the 2010 Act.

(3) The maximum penalties that may be provided for in regulations under subsection (1) for a person who commits an offence under those regulations are—

(a) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both,

(b) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine or both.

(4) In this section—

"nicotine vapour product" has the meaning given in section 35A of the 2010 Act,

"sponsorship agreement" means an agreement under which a party to it makes a contribution towards something, whether the contribution is in money or takes any other form (for example, the provision of services or of contributions in kind).

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

VALID FROM 02/03/2022

CHAPTER 3

SMOKING OUTSIDE HOSPITALS

20 Smoking outside hospitals

(1) The Smoking, Health and Social Care (Scotland) Act 2005 is modified as follows.

(2) After section 4 insert—

"**4A Offence of permitting others to smoke outside hospital building**

(1) A person who, having the management and control of the no-smoking area outside a hospital building, knowingly permits another to smoke there commits an offence.

(2) A person accused of an offence under this section is to be regarded as having knowingly permitted another to smoke in the no-smoking area outside a hospital building if that person ought to have known that the other person was smoking there.

(3) It is a defence for an accused charged with an offence under this section to prove—

(a) that the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence not to commit the offence, or

(b) that there were no lawful and reasonably practicable means by which the accused could prevent the other person from smoking in the no-smoking area outside a hospital building.

(4) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

4B Offence of smoking outside hospital building

(1) A person who smokes within the no-smoking area outside a hospital building commits an offence.

(2) It is a defence for an accused charged with an offence under this section to prove that the accused did not know, and could not reasonably be expected to have known, that the place in which it is alleged the accused was smoking was within the no-smoking area outside a hospital building.

(3) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

4C Display of warning notices in hospital buildings and on hospital grounds

(1) The Health Board for the area in which a hospital is situated must conspicuously display no-smoking notices at every entrance to the hospital grounds.

(2) The person having the management and control of a hospital building must conspicuously display no-smoking notices at every entrance to the building.

(3) A no-smoking notice is a notice stating that it is an offence to smoke in the no-smoking area outside a hospital building or knowingly to permit smoking there.

(4) The Scottish Ministers may by regulations make further provision as to the manner of display, form and content of no-smoking notices.

(5) A person who fails to display no-smoking notices in accordance with subsection (2) (and regulations made under subsection (4) insofar as they relate to the duty under subsection (2)) commits an offence.

(6) A person who commits an offence under subsection (5) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

4D Meaning of "no-smoking area outside a hospital building" and related expressions

(1) For the purposes of this Part, the "no-smoking area outside a hospital building" is the area—
  (a) lying immediately outside the hospital building, and
  (b) bounded by a perimeter the specified distance from the building,

but only insofar as the area forms part of hospital grounds.

(2) The Scottish Ministers may by regulations—
  (a) specify the distance for the purposes of subsection (1)(b),
  (b) make further provision about determining the perimeter around a building for the purposes of that subsection.

(3) In this Part—

"hospital" means a health service hospital (as defined in section 108(1) of the National Health Service (Scotland) Act 1978),

"hospital building" means a building situated on hospital grounds,

"hospital grounds", in relation to a hospital, means land in the vicinity of the hospital and associated with it.

(4) The Scottish Ministers may by regulations—
  (a) provide that hospitals of a specified description are not hospitals for the purposes of this Part,
  (b) provide that land of a specified description is or is not to be considered "hospital grounds" and otherwise make further provision to elaborate the meaning of "hospital grounds" for the purposes of this Part,

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

(c) provide that buildings of a specified description are not hospital buildings for the purposes of this Part,

(d) provide that land of a specified description does not form part of the no-smoking area outside a hospital building for the purposes of this Part.

(5) Regulations under subsection (4) may modify the application of section 4C as the Scottish Ministers consider appropriate.”.

(3) In section 5(1) (proceedings for offences), for “or 3” substitute “ , 3, 4A, 4B or 4C(5) ”.

(4) The section title of section 5 becomes “ **Proceedings for offences under sections 1 to 3 and 4A to 4C** ”.

(5) In section 6(2) (fixed penalties), for “or 3” substitute “ , 3, 4A, 4B or 4C(5) ”.

(6) In section 7 (powers to enter and require identification)—

(a) after subsection (1) insert—

“(1A) An authorised officer of the appropriate council may enter and search any hospital grounds to ascertain whether an offence under section 4A, 4B or 4C(5) has been or is being committed there.”,

(b) in subsection (3)(a)(i), for “or 3” substitute “ , 3, 4A, 4B or 4C(5) ”,

(c) in subsection (5), in the definition of “the appropriate council”—

(i) the words “in relation to no-smoking premises, the council of the area in which those premises are” become paragraph (a),

(ii) after that paragraph insert—

“(b) in relation to a no-smoking area outside a hospital building, the council of the area in which the hospital is.”.

(7) In section 40(3)(a) (regulations or orders), for “or 4(2) or (8)” substitute “ , 4(2) or (8) or 4D(2)(a) or (4)(a) ”.

(8) In schedule 1—

(a) in paragraph 1(1), after “premises” insert “ or under section 4A within the no-smoking area outside a hospital ”,

(b) in paragraph 1(2), for “or 3” substitute “ , 3, 4A, 4B or 4C(5) ”,

(c) in paragraph 1(3), for “or 3” substitute “ , 3, 4A, 4B or 4C(5) ”,

(d) in paragraph 2, for “or 3” substitute “ , 3, 4A, 4B or 4C(5) ”,

(e) in paragraph 4(1), for “or 3” substitute “ , 3, 4A, 4B or 4C(5) ”,

(f) the title becomes “ FIXED PENALTY FOR OFFENCES UNDER SECTIONS 1, 2, 3, 4A, 4B AND 4C(5) ”.

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

PART 2

DUTY OF CANDOUR

Duty of candour procedure

21 Incident which activates duty of candour procedure

(1) A responsible person must follow the duty of candour procedure set out in section 22 as soon as reasonably practicable after becoming aware that subsection (2) applies to a person who has received—
- (a) a health service from the responsible person,
- (b) a care service from the responsible person, or
- (c) a social work service from the responsible person.

(2) This subsection applies to a person if—
- (a) an unintended or unexpected incident occurred in the provision of a health service, a care service or a social work service to the person, and
- (b) in the reasonable opinion of a registered health professional—
  - (i) that incident appears to have resulted in or could result in an outcome mentioned in subsection (4), and
  - (ii) that outcome relates directly to the incident rather than to the natural course of the person's illness or underlying condition.

(3) For the purposes of subsection (2)(b), a responsible person must ensure that the registered health professional who gives the opinion following an unintended or unexpected incident is not an individual who was involved in the incident.

(4) The outcomes are—
- (a) the death of the person,
- (b) a permanent lessening of bodily, sensory, motor, physiologic or intellectual functions (including removal of the wrong limb or organ or brain damage) ("severe harm"),
- (c) harm which is not severe harm but which results in—
  - (i) an increase in the person's treatment,
  - (ii) changes to the structure of the person's body,
  - (iii) the shortening of the life expectancy of the person,
  - (iv) an impairment of the sensory, motor or intellectual functions of the person which has lasted, or is likely to last, for a continuous period of at least 28 days,
  - (v) the person experiencing pain or psychological harm which has been, or is likely to be, experienced by the person for a continuous period of at least 28 days,
- (d) the person requiring treatment by a registered health professional in order to prevent—
  - (i) the death of the person, or
  - (ii) any injury to the person which, if left untreated, would lead to one or more of the outcomes mentioned in paragraph (b) or (c).

(5) The Scottish Ministers may by regulations modify subsection (4).

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

Commencement Information

I24 S. 21 in force at 1.10.2017 for specified purposes by S.S.I. 2017/294, reg. 2, **sch.**

22 Duty of candour procedure

(1) The "duty of candour procedure" means the actions to be taken by the responsible person in accordance with regulations made by the Scottish Ministers.

(2) Regulations under subsection (1) may in particular make provision about—

(a) the notification to be given by the responsible person,

(b) the apology to be provided by the responsible person to the relevant person,

(c) the actions to be taken by the responsible person to offer and arrange a meeting with the relevant person, including asking the relevant person whether the relevant person wishes to receive an account of the incident as mentioned in section 21(2) or information about further steps taken,

(d) the actions which must be taken at, and following, such a meeting,

(e) an account of the incident as mentioned in section 21(2), information about further steps taken and any other information to be provided by the responsible person,

(f) the form and manner in which information must be provided,

(g) the circumstances in which the responsible person is to make available, or provide information about, support to persons affected by the incident,

(h) the keeping of information by the responsible person,

(i) steps to be taken by the responsible person—

(i) to review the circumstances leading to the incident, and

(ii) following such a review,

even if the relevant person has advised that the relevant person does not wish to receive an account of the incident as mentioned in section 21(2) or information about further steps taken,

(j) training to be undertaken by a responsible person,

(k) training, supervision and support to be provided by a responsible person to any person carrying out any part of the procedure on behalf of the responsible person.

(3) In this section "relevant person" means—

(a) the person who has received the health service, the care service or the social work service, or

(b) where that person—

(i) has died, or

(ii) is, in the opinion of the responsible person, lacking in capacity or otherwise unable to make decisions about the service provided,

a person acting on behalf of that person.

Commencement Information

I25 S. 22 in force at 1.10.2017 for specified purposes by S.S.I. 2017/294, reg. 2, **sch.**

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

23 Apologies

(1) For the purposes of this Part, an "apology" means a statement of sorrow or regret in respect of the unintended or unexpected incident.

(2) An apology or other step taken in accordance with the duty of candour procedure under section 22 does not of itself amount to an admission of negligence or a breach of a statutory duty.

Commencement Information

I26 S. 23 in force at 1.10.2017 for specified purposes by S.S.I. 2017/294, reg. 2, **sch.**

VALID FROM 01/04/2018

24 Reporting and monitoring

(1) A responsible person who provides a health service, a care service or a social work service during a financial year must prepare an annual report on the duty of candour as soon as reasonably practicable after the end of that financial year.

(2) The report must set out in relation to the financial year—

(a) information about the number and nature of incidents to which the duty under section 21(1) has applied in relation to a health service, a care service or a social work service provided by the responsible person,

(b) an assessment of the extent to which the responsible person carried out the duty under section 21(1),

(c) information about the responsible person's policies and procedures in relation to the duty under section 21(1), including information about—

(i) procedures for identifying and reporting incidents, and

(ii) support available to staff and to persons affected by incidents,

(d) information about any changes to the responsible person's policies and procedures as a result of incidents to which the duty under section 21(1) has applied, and

(e) such other information as the responsible person thinks fit.

(3) A report must not—

(a) mention the name of any individual, or

(b) contain any information which, in the responsible person's opinion, is likely to identify any individual.

(4) The responsible person must publish a report prepared under subsection (1) in such manner as the responsible person thinks appropriate.

(5) On publishing a report, the responsible person must notify—

(a) Healthcare Improvement Scotland, in the case of a report published by a responsible person which provides an independent health care service (within the meaning of section 10F(1) of the 1978 Act),

(b) the Scottish Ministers, in the case of a report published by any other responsible person which provides a health service,

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

(c) Social Care and Social Work Improvement Scotland, in the case of a report published by a responsible person which provides a care service or a social work service.

(6) A person mentioned in subsection (7) may, for the purpose of monitoring compliance with the provisions of this Part, serve a notice on a responsible person requiring—

(a) the responsible person to provide the person serving the notice with information about any matter mentioned in subsection (2) as specified in the notice, and

(b) that information to be provided within the time specified in the notice.

(7) The persons are—

(a) Healthcare Improvement Scotland, in relation to a responsible person which provides an independent health care service (within the meaning of section 10F(1) of the 1978 Act),

(b) the Scottish Ministers, in relation to any other responsible person which provides a health service,

(c) Social Care and Social Work Improvement Scotland, in relation to a responsible person which provides a care service or a social work service.

(8) The Scottish Ministers, Healthcare Improvement Scotland and Social Care and Social Work Improvement Scotland may publish a report on compliance with the provisions of this Part by responsible persons.

Interpretation

25 Interpretation of Part 2

(1) In this Part—

"the 1978 Act" means the National Health Service (Scotland) Act 1978,

"care service" has the meaning given by section 47(1) of the Public Services Reform (Scotland) Act 2010, except that it does not include a service mentioned in paragraph (k) of that section (child minding),

"health service" means—

(a) services under the health service continued under section 1 of the 1978 Act, and

(b) an independent health care service mentioned in section 10F(1) of the 1978 Act,

"provide" in relation to a health service, a care service and a social work service means to carry on or manage such a service,

"registered health professional" means a member of a profession to which section 60(2) of the Health Act 1999 applies,

"responsible person" means—

(a) a Health Board constituted under section 2(1) of the 1978 Act,

(b) a person (other than an individual) who has entered into a contract, agreement or arrangement with a Health Board to provide a health service,

(c) the Common Services Agency for the Scottish Health Service constituted under section 10(1) of the 1978 Act,

(d) a person (other than an individual) providing an independent health care service mentioned in section 10F(1) of the 1978 Act,

(e) a local authority,

(f) a person (other than an individual) who provides a care service,

(g) an individual who provides a care service and who employs, or has otherwise made arrangements with, other persons to assist with the provision of that service (unless the assistance in providing that service is merely incidental to the carrying out of other activities),

(h) a person (other than an individual) who provides a social work service,

"social work services" has the meaning given by section 48 of the Public Services Reform (Scotland) Act 2010.

(2) The Scottish Ministers may by regulations modify the definition of "responsible person" in subsection (1).

Commencement Information

I27 S. 25(1) in force at 1.10.2017 for specified purposes by S.S.I. 2017/294, reg. 2, **sch.**

PART 3

ILL-TREATMENT AND WILFUL NEGLECT

Offences by care workers and care providers

26 Care worker offence

(1) An individual commits an offence if the individual—

(a) has the care of another individual by virtue of being a care worker, and

(b) ill-treats or wilfully neglects that individual.

(2) An individual who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

Commencement Information

I28 S. 26 in force at 1.10.2017 by S.S.I. 2017/294, reg. 2, **sch.**

27 Care provider offence

(1) A care provider commits an offence if—

(a) an individual who has the care of another individual by virtue of being part of the care provider's arrangements ill-treats or wilfully neglects that individual,

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

(b) the care provider's activities are managed or organised in a way which amounts to a gross breach of a relevant duty of care owed by the care provider to the individual who is ill-treated or neglected, and

(c) in the absence of the breach, the ill-treatment or wilful neglect would not have occurred or would have been less likely to occur.

(2) An individual is "part of a care provider's arrangements" where the individual—

(a) is not the care provider, but

(b) provides adult health care or adult social care as part of the adult health care or adult social care provided or arranged for by the care provider,

including where the individual is not the care provider but supervises or manages individuals providing adult health care or adult social care as described in paragraph (b) or is a director or similar officer of an organisation which provides adult health care or adult social care as described there.

(3) In this section—

(a) a "relevant duty of care" means a duty owed in connection with providing, or arranging for the provision of, adult health care or adult social care,

(b) a breach of a relevant duty of care is a "gross" breach if the conduct alleged to amount to the breach falls far below what can reasonably be expected of the care provider in the circumstances.

(4) A care provider who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

Commencement Information

I29 S. 27 in force at 1.10.2017 by S.S.I. 2017/294, reg. 2, **sch.**

28 Meaning of "care worker" and "care provider" etc.

(1) In this Part, "care worker" means—

(a) an employee who provides adult health care or adult social care,

(b) a volunteer who provides adult health care or adult social care,

(c) an individual who supervises or manages employees or volunteers providing adult health care or adult social care,

(d) a director or similar officer of an organisation whose employees or volunteers provide adult health care or adult social care.

(2) For the purposes of subsection (1)—

(a) "employee" means an individual in paid employment, whether under a contract of service or apprenticeship or under a contract for services,

(b) "volunteer" means a volunteer for a body, other than a public or local authority, the activities of which are not carried on for profit.

(3) In this Part, "care provider" means—

(a) a body corporate, a partnership or an unincorporated association which provides or arranges for the provision of—

(i) adult health care, or

(ii) adult social care, or

(b) an individual who provides that care and employs, or has otherwise made arrangements with, other persons to assist with the provision of that care.

(4) In this section—

(a) references to a person providing adult health care or adult social care do not include a person whose provision of that care is merely incidental to the carrying out of other activities by the person, and

(b) references to a person arranging for the provision of that care do not include a person who makes arrangements under which the provision of care is merely incidental to the carrying out of other activities.

(5) In this Part—

"adult health care" means a service for or in connection with the prevention, diagnosis or treatment of illness provided to an individual aged 18 or over—

(a) under the health service continued under section 1 of the National Health Service (Scotland) Act 1978, or

(b) by persons providing an independent health care service mentioned in section 10F(1) of that Act,

"adult social care" means a service—

(a) in section 47(1)(a), (b), (d) or (m) of the Public Services Reform (Scotland) Act 2010 to the extent that the service is provided to an individual aged 18 or over, or

(b) in section 47(1)(g) or (j) of that Act to the extent that the service is provided to an individual aged 16 or over.

Commencement Information

I30 S. 28 in force at 1.10.2017 by S.S.I. 2017/294, reg. 2, **sch.**

29 Disclosure of conviction for offence under section 26

In schedule 8A of the Police Act 1997 (offences which must always be disclosed), after paragraph 55 insert—

"55A An offence under section 26 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (care worker offence).".

Commencement Information

I31 S. 29 in force at 1.10.2017 by S.S.I. 2017/294, reg. 2, **sch.**

Remedial orders and publicity orders

30 Power to order offence to be remedied or publicised

(1) This section applies where a care provider is convicted by a court of an offence under section 27(1).

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

(2) The court may, instead of or in addition to dealing with the care provider in any other way, make either or both of the following orders—
  (a) a remedial order,
  (b) a publicity order.

(3) A "remedial order" is an order requiring the care provider to take specified steps to remedy one or more of the following—
  (a) the breach mentioned in section 27(1)(b) (the "relevant breach"),
  (b) any matter that appears to the court to have resulted from the relevant breach and to be connected with the ill-treatment or neglect,
  (c) any deficiency in the care provider's policies, systems or practices of which the relevant breach appears to the court to be an indication.

(4) A "publicity order" is an order requiring the care provider to publicise in a specified manner—
  (a) the fact that the care provider has been convicted of the offence,
  (b) specified particulars of the offence,
  (c) the amount of any fine imposed,
  (d) the terms of any remedial order made.

(5) An order made under subsection (2) is to be taken to be a sentence for the purposes of an appeal.

(6) The court may make an order under subsection (2)—
  (a) at its own instance, or
  (b) on the motion of the prosecutor.

(7) An order made under subsection (2) must specify a period (the "compliance period") within which the requirements specified in the order must be complied with.

(8) On an application by the care provider in respect of whom the order under subsection (2) was made, the court may—
  (a) extend the compliance period,
  (b) vary the steps specified in a remedial order.

(9) An application under subsection (8) must be made before the end of the compliance period.

(10) A care provider who fails to comply with an order made under subsection (2) commits an offence.

(11) A care provider who commits an offence under subsection (10) is liable—
  (a) on summary conviction, to a fine not exceeding the statutory maximum,
  (b) on conviction on indictment, to a fine.

Commencement Information
I32 S. 30 in force at 1.10.2017 by S.S.I. 2017/294, reg. 2, **sch.**

31 Remedial and publicity orders: prosecutor's right of appeal

(1) The Criminal Procedure (Scotland) Act 1995 is amended in accordance with this section.

(2) In section 108 (Lord Advocate's right of appeal against disposal)—

(a) in subsection (1), after paragraph (cd) insert—

"(ce) a decision under section 30(2) of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 not to make a remedial order,

(cf) a decision under section 30(2) of that Act not to make a publicity order,",

(b) in subsection (2)(b)(ii), for the words "or (cd)" substitute " , (cd), (ce) or (cf) ".

(3) In section 175 (right of appeal from summary proceedings)—

(a) in subsection (4), after paragraph (cd) insert—

"(ce) a decision under section 30(2) of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 not to make a remedial order,

(cf) a decision under section 30(2) of that Act not to make a publicity order,",

(b) in subsection (4A)(b)(ii), for "or (cd)" substitute " , (cd), (ce) or (cf) ".

Commencement Information

I33 S. 31 in force at 1.10.2017 by S.S.I. 2017/294, reg. 2, **sch.**

Ill-treatment and wilful neglect of mentally disordered person

32 Penalty for ill-treatment and wilful neglect of mentally disordered person

In section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (ill-treatment and wilful neglect of mentally disordered person)—

(a) in subsection (3)(b), for "2" substitute " 5 ",

(b) for subsection (4), substitute—

"(4) In subsection 1(c), "provides care services" means anything done—

(a) by a care service,

(b) by an employee of a care service, or

(c) in the course of a service provided or supplied by a care service,

whether by virtue of a contract of employment or any other contract or in circumstances as may be prescribed by regulations.",

(c) after subsection (4), insert—

"(5) For the purposes of subsection (4), "care service" means a service mentioned in section 47(1)(a), (b), (d), (f), (g), (j) or (m) of the Public Services Reform (Scotland) Act 2010.".

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

Commencement Information

I34 S. 32 in force at 1.10.2017 by S.S.I. 2017/294, reg. 2, **sch.**

VALID FROM 19/03/2018

PART 4

PROVISION OF COMMUNICATION EQUIPMENT

33 Duty to provide or secure communication equipment

After section 46 of the National Health Service (Scotland) Act 1978, insert—

"**46A Provision of communication equipment**

The Scottish Ministers must, to such extent as they consider necessary to meet all reasonable requirements, provide or secure the provision of—

(a) communication equipment, and

(b) support in using that equipment,

to any person who has lost their voice or has difficulty speaking.".

PART 5

FINAL PROVISIONS

34 Regulations

(1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—

(a) different provision for different purposes,

(b) incidental, supplementary, consequential, transitional, transitory or saving provision.

(2) Regulations—

(a) under section 17(1),

(b) under section 18(1),

(c) under section 19(1),

(d) under section 21(5),

(e) under section 25(2),

(f) under section 35(1) which contain provisions that add to, replace or omit any part of the text of an Act,

are subject to the affirmative procedure.

(3) All other regulations under this Act are subject to the negative procedure.

Status: *Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. (See end of Document for details)*

(4) This section does not apply to regulations under section 36.

35 Ancillary provision

(1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Act.

(2) Regulations under subsection (1) may modify any enactment (including this Act).

36 Commencement

(1) This section and sections 34, 35 and section 37 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Different days may be appointed for different purposes.

(4) Regulations under subsection (2) may contain transitional, transitory or saving provision.

37 Short title

The short title of this Act is the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016.

Status:
Point in time view as at 01/10/2017. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016.