



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

2016 asp 14

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),
 - (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)).”.

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*”.

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

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- (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.
 - (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)”.

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.”.

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),

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(c) section 4C(1).”.

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.”.

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.

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.”.

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,

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- (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”.

10 Tobacco and nicotine vapour product banning orders

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

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- (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”.

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)”.

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”.

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)”.

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”.

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”.

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- (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.”.

Interpretation

16 Meaning of “the 2010 Act”

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