

These notes refer to the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c.26) which received Royal Assent on 12 May 2016

Health (Miscellaneous Provisions) Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

Commentary on Sections in Part 1 of the Act

Section 1: Prohibition of sale of nicotine products to persons under 18

Provides a regulation-making power for the Department to prohibit the sale of nicotine products to a person under 18. The penalty for committing this offence is a fine not exceeding level 5 on the standard scale. There is an exemption for persons employed in the industry and a due diligence defence. Section 1 also includes a regulation-making power for the creation of an offence in relation to the proxy purchasing of nicotine products.

Section 2: Prohibition of sale of nicotine products from vending machines

Provides a regulation-making power for the Department to prohibit the sale of nicotine products from an automatic vending machine. Regulations made under this power must state who would be responsible for breaching the ban, the penalty for which is a fine not exceeding level 5 on the standard scale.

Section 3: Amendments consequential on sections 1 and 2

This section makes consequential amendments to integrate the new age of sale offence for nicotine products into the existing age of sale legislation for tobacco products. Consequential amendments to Article 6 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 apply the enforcement regime for tobacco age of sale offences to offences under sections 1 and 2. Consequential amendments to sections 5, 6, 8, 9, 10, 11, 12, 16 and 22 of the Tobacco Retailers (Northern Ireland) Act 2014 integrate the offences under sections 1 and 2 into the existing regime for repeated tobacco age of sale offences.

Section 4: Amendment of the Order of 1991

Increases the penalty for selling tobacco from an automatic vending machines from a level 4 offence to a level 5 offence. This is in line with similar offences for underage sales of tobacco products.

Section 5: Prohibition of use of tobacco or nicotine products in enclosed vehicles

This section seeks to amend Article 6 of the Smoking (Northern Ireland) Order 2006 in relation to smokefree vehicles, to allow offences to apply to private vehicles where under eighteens are present in the vehicle. It also provides that regulations may be made in relation to prohibiting the use of nicotine products in cars when persons under the age of 18 are present.

Section 6: Review

This section requires the Department to publish a report on the implementation of Part 1 of the Act not later than 3 years after the commencement of Section 6 of the Act.

Section 7: Interpretation of Part 1

“Nicotine product” is defined in this section. Examples include an electronic cigarette and part of an electronic cigarette. Tobacco products, which are already subject to a prohibition on sale to persons aged under 18, are not nicotine products for the purposes of this clause. Through subordinate legislation, the Department may provide for exceptions or make provision in relation to nicotine products of a specified kind, such as licensed NRT products, or all nicotine products.

Commentary on Sections in Part 2 of the Act

Section 8: Levy on sugar sweetened drinks

This section places a duty on the Department to carry out a study on a levy on sugar sweetened drinks within two years of the enactment of the Act. The section also sets out what should be included in the study.

Commentary on Sections in Part 3 of the Act

Section 9: Persons performing primary dental services

The purpose of this section is to provide the Department with the necessary legal powers to introduce the new dental contract provisions including the introduction of performers’ lists for dentists. By changing certain wording (so that the words “providing” and “provide” now read “performing” and “perform”) it gives full effect to the 2008 Act policy intention. Changes to other references (so that Article 61 now reads Article 60A) are also made.

Section 10: Ophthalmic services

This section revokes the provisions in the 2008 Act and restores the pre 2008 Act listing provisions.

Section 11: Pharmaceutical services

This section revokes the provisions in the 2008 Act and restores the pre 2008 Act listing provisions.

Section 12: Disqualification by the Tribunal

This section amends Schedule 11 to the 1972 Order (disqualification of persons providing Part 6 services) which sets out the powers of a Tribunal to consider a case against a listed individual or body. As the Act will restore the pre 2008 Act position of listing only general ophthalmic services and pharmaceutical services providers, the Tribunal's powers are to revert to pre 2008 Act position. The Tribunal's extended powers for performers will not apply to general ophthalmic services or pharmaceutical services. Consequently, the Tribunal will have to consider cases from two different types of lists:

- lists of those who have an arrangement with the HSCB to provide general dental services (until primary dental services are introduced), general ophthalmic services and pharmaceutical services; and
- lists of primary medical services (and future primary dental services) performers.

The powers of the Tribunal vary, depending on the type of list, and the amendments in section 12 address these differing situations.

Section 13: Provision of medical or dental services: Article 15B arrangements

Article 15B sets out an alternative system for providing primary dental services other than through general dental services contracts. This section amends Article 15B of the 1972 Order to ensure it gives full effect to the 2008 Act policy intention.

Section 14: Charges for services provided to persons not ordinarily resident in Northern Ireland

This section makes specific reference to the power to prescribe exemptions.

Commentary on Sections in Part 4 of the Act

Section 15: Duty to promote transplantation

This section places a duty on the Department to promote transplantation and to provide information and increase awareness about transplantation.

Section 16: Annual report on transplantation

This section requires the Department to produce a report once a year on transplantation activities. The report must be given to the Assembly. Once every five years, the Department must report on whether the Act has been effective in promoting transplantation activities, and on any potential ways in which the law could be amended to increase transplantations.

Commentary on Sections in Part 5 of the Act and Schedules

Sections 17 – 21 and the Schedules support the main provisions of both Part 1 and Part 2 of the Act. They define the meaning of certain phrases (section 17, Interpretation); provide detail on subordinate legislation processes (section 18, Regulations and Orders); provide for repeals (section 19, Repeals); commencement dates for the introduction of specific powers (section 20, Commencement) and set out the title of the Act (section 21, Short title). The Schedules deal with amendments and repeals.