

Draft Order laid before the Scottish Parliament under section 40(4) of the Tobacco and Primary Medical Services (Scotland) Act 2010 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No. (C.)

PUBLIC HEALTH

**The Tobacco and Primary Medical Services (Scotland) Act 2010
(Incidental Provision and Commencement No. 4) Order 2013**

*Made - - - -
Coming into force in accordance with article 1(1) and
(2)*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 40(2), 42 and 43(3) of the Tobacco and Primary Medical Services (Scotland) Act 2010⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 40(4)(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Tobacco and Primary Medical Services (Scotland) Act 2010 (Incidental Provision and Commencement No. 4) Order 2013 and except for article 4 comes into force on the day after the day on which it is made.

(2) In article 4—

(a) paragraphs (a) and (b) come into force on 29th April 2013; and

(b) paragraph (c) comes into force on 6th April 2015.

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

Amendment of the Tobacco and Primary Medical Services (Scotland) Act 2010

2.—(1) The 2010 Act is amended as follows.

(1) 2010, asp 3.

(2) Section 40(4) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). Section 33 of that Act allows powers which are subject to different procedures to be combined in the same instrument. This instrument is subject to the affirmative procedure in accordance with section 33(3) of that Act because the exercise of section 42 of the Tobacco and Primary Medical Services (Scotland) Act 2010 in this instrument is subject to the affirmative procedure.

- (2) Section 9 is repealed.
- (3) After section 8 insert—

“9. Prohibition of vending machines for the sale of tobacco products

(1) A person who has the management or control of premises on which a vending machine is available for use commits an offence.

(2) 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.

(3) In this section “vending machine” means an automatic machine for the sale of tobacco products (regardless of whether the machine also sells other products).”

Appointed day

- 3. The day appointed for the coming into force of section 9 of the 2010 Act is 29th April 2013.

Revocations

- 4. The following are revoked—
 - (a) articles 3 and 4 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (Commencement No. 1, Consequential and Saving Provisions) Order 2010(3);
 - (b) the Tobacco and Primary Medical Services (Scotland) Act 2010 (Commencement No. 1, Consequential and Saving Provisions) Amendment Order 2011(4); and
 - (c) the Tobacco and Primary Medical Services (Scotland) Act 2010 (Ancillary Provisions) Order 2010(5).

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(3) [S.S.I. 2010/345](#), article 4 (which saves section 18 of the Children and Young Persons (Scotland) Act 1937 for certain purposes) was amended by the Tobacco and Primary Medical Services (Scotland) Act 2010 (Commencement No. 1, Consequential and Saving Provisions) Amendment Order 2011 ([S.S.I. 2011/131](#)).

(4) [S.S.I.2011/131](#).

(5) [S.S.I.2010/77](#).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings section 9 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the 2010 Act”) into force on 29th April 2013 (article 3). Section 9 makes it an offence for a person who has the management or control of premises to have an automatic vending machine for the sale of tobacco products available for use.

Article 2 of the Order repeals section 9 and re-enacts it in identical terms. This provision is required as a procedural step incidental to the commencement of section 9 to comply with the requirements of the notification procedure under [Directive 98/34/EC](#) of the European Parliament and of the Council (OJ No. L 204, 21.7.98, p.37) as amended by [Directive 98/48/EC](#) of the same institutions (OJ No. L 217, 5.8.98, p.18), which lays down a procedure for the provision of information in the field of technical standards and regulations (the technical standards Directive) so that section 9 is brought into force with full effect.

Article 2 of the Order was notified in draft to the European Commission in accordance with the technical standards Directive (Notification No. 2010/699/UK on 28th October 2010).

The Bill for the 2010 Act received Royal Assent on 3rd March 2010. Sections 40, 41, 42 and 43 of the 2010 Act came into force on Royal Assent.

The commencement of section 41 which gives effect to schedule 2 to the 2010 Act (Minor and Consequential Modifications) must be read subject to the Tobacco and Primary Medical Services (Scotland) Act 2010 (Ancillary Provisions) Order 2010 ([S.S.I. 2010/77](#)) (“the Ancillary Order”). It provides that the modifications in that schedule shall not take effect until the coming into force for all purposes of specified sections of the 2010 Act. Article 2 of the Ancillary Order specifies that the modification in paragraph 2(a) of schedule 2 to the 2010 Act as it relates to section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 has effect on the coming into force for all purposes of section 9 of the 2010 Act. Section 4 of the 1991 Act (Display of warning statements in retail premises and on vending machines) is therefore repealed on the coming into force of section 9.

Article 4 of the Order revokes articles 3 and 4 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (Commencement No. 1, Consequential and Saving Provisions) Order 2010 and the Order which amended article 4 of that Order. These articles made provision in relation to the legislation regulating tobacco vending machines. In view of the commencement of section 9 they are no longer required. On 6th April 2015 (when section 1 of the 2010 Act comes into force for all purposes) all of the sections specified in the Ancillary Order will be in force for all purposes. It is therefore revoked with effect from that date.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the 2010 Act have been brought into force by commencement orders made before the date of this Order:—

<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 1, 2 and 3 (partially)	26th February 2013	S.S.I. 2013/
Section 1, 2 and 3 (partially)	29th April 2013	S.S.I. 2013/

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Tobacco and Primary Medical Services (Scotland) Act 2010 (Incidental Provision and Commencement No. 4) Order 2013 No. 106*

<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 1, 2 and 3	6th April 2015	S.S.I. 2013/
Section 4 (partially)	24th October 2010	S.S.I. 2010/345
Section 4	1st April 2011	S.S.I. 2010/345
Section 5	1st April 2011	S.S.I. 2010/345
Section 6	1st April 2011	S.S.I. 2010/345
Section 7	1st April 2011	S.S.I. 2010/345
Section 8 (partially)	24th October 2010	S.S.I. 2010/345
Section 8	1st April 2011	S.S.I. 2010/345
Section 10	1st April 2011	S.S.I. 2010/345
Section 11 (partially)	24th October 2010	S.S.I. 2010/345
Section 11	1st April 2011	S.S.I. 2010/345
Section 12	1st April 2011	S.S.I. 2010/345
Section 13	1st April 2011	S.S.I. 2010/345
Section 14	1st April 2011	S.S.I. 2010/345
Section 15	1st October 2011	S.S.I. 2010/345
Section 16	1st October 2011	S.S.I. 2010/345
Section 17	1st October 2011	S.S.I. 2010/345
Section 18	1st October 2011	S.S.I. 2010/345
Section 19 (partially)	24th October 2010	S.S.I. 2010/345
Section 19	1st October 2011	S.S.I. 2010/345
Section 20	1st October 2011	S.S.I. 2010/345
Section 21	1st October 2011	S.S.I. 2010/345
Section 22	1st October 2011	S.S.I. 2010/345
Section 23	1st October 2011	S.S.I. 2010/345
Section 24	24th October 2010	S.S.I. 2010/345
Section 25	1st April 2011	S.S.I. 2010/345
Section 26	1st April 2011	S.S.I. 2010/345
Section 27 (partially)	24th October 2010	S.S.I. 2010/345
Section 27	1st April 2011	S.S.I. 2010/345
Sections 28, 29, 30, 31 and 32	1st April 2011	S.S.I. 2010/345
Sections 33, 34, 35 and 36	1st April 2011	S.S.I. 2010/345
Section 37	22nd December 2010	S.S.I. 2010/372
Section 38 (partially)	8th November 2010	S.S.I. 2010/372
Section 38	22nd December 2010	S.S.I. 2010/372

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<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 39 (partially)	8th November 2010	S.S.I. 2010/372
Section 39	22 December 2010	S.S.I. 2010/372
Schedule 1 (partially)	24th October 2010	S.S.I. 2010/345
Schedule 1	1st April 2011	S.S.I. 2010/345