

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

POLICY NOTE

The Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Amendment Regulations 2017

SSI 2017/

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 24 and 40(2) of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the Act”). The instrument is subject to the affirmative procedure.

Policy Objectives

2. These Regulations are necessary to help give full effect to amendments made to the Act in 2016. The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (“the 2016 Act”) makes amendments to the Act to include provision for nicotine vapour products which will be subject to the same registration requirements in chapter 2, Part 1 of the Act. It also introduced new offences in respect of sales.

3. These Regulations specifically amend the Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Regulations 2011 (S.S.I 2011/23) (“the 2011 Regulations”). Those Regulations modify and apply provisions in chapter 2, Part 1 of the Act which creates a registration process in respect of tobacco sales. The modifications were made to take account of the different circumstances surrounding the sale of products in moveable structures. In addition, the 2011 Regulations make provision in respect of fixed penalty notices for offences under chapters 1 and 2 of Part 1 of the Act.

4. Through these Regulations, the sales of nicotine vapour products from moveable premises (such as market stalls or sales vans) will be subject to the same registration requirements as for sales of tobacco products already in place. These Regulations amend the definition of “moveable premises” in the 2011 Regulations to include those premises selling nicotine vapour products.

5. The 2011 Regulations, at regulation 3, modify section 11 of the Act in respect of the application process for registration for businesses which are carried on from moveable premises. Regulation 2(3) of these Regulations amend regulation 3 of the 2011 Regulations to include nicotine vapour product businesses in those modified provisions at section 11 so the requirements in regulation 3 at paragraphs (1)(a) and (b) and (2)(a) and (b) of the 2011 Regulations will apply in respect of nicotine vapour products. Retailers will identify the location of premises, streets or areas in which the business will operate.

6. Section 27 of the Act provides that fixed penalty notices may be issued where a council officer or constable has reason to suspect that an offence has been committed under chapter 1 or 2 of Part 1 of the Act. The 2016 Act introduces new offences at chapter 1, Part 1 in relation to nicotine vapour products and tobacco products. New section 4A makes it an offence to sell nicotine vapour products to persons under 18. New section 4B provides that a person who carries on a tobacco or nicotine vapour product business who fails to operate an age verification policy commits an offence. And new section 4C provides that a responsible person who allows a person under the age of 18 to sell tobacco or nicotine vapour products commits an offence unless the sale is made at registered premises and authorisation requirements are complied with. These offences are all subject to the fixed penalty notice regime under the Act by means of section 27.

7. The 2011 Regulations make provision in respect of the fixed penalty notice regime. A fixed penalty notice cannot be issued after seven days from the date the offence occurred (regulation 5). The amount of the fixed penalty is set at £200 with a discounted rate of £150 (regulation 7). Those amounts apply to offences under chapter 1 or 2 of Part 1 of the Act with the exception of the offences at sections 5 and 7 of the Act where lower rates apply (regulation 6). Regulation 7 also prescribes escalated rates where a person has already been issued with a fixed penalty notice or has been convicted of an offence under chapter 1 or 2 of Part 1. Regulation 7 automatically applies to the offences at sections 4A, 4B and 4C of the Act and therefore no amendments are made to that provision.

Consultation

8. A full public consultation was carried out prior to the introduction of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill which resulted in the 2016 Act. Responses were received from academic groups, industry groups, public health groups as well as from concerned individuals, members of the public and retailers. On the need to register premises of nicotine vapour product retailers, 65% of respondents to the question in that consultation agreed on the need to register. On the question of whether fixed penalties for nicotine vapour product offences should mirror existing tobacco product offences, 68% of respondents agreed. On this basis it was decided to proceed with the proposals in the Bill and with the consequential amendments in these regulations.

9. This consultation also sought views on the introduction of restrictions on the sale of Nicotine Vapour Products (NVPs) to under 18s as well as introducing mandatory age verification policies for the sale of tobacco and NVPs and banning unauthorised sales of these products by under 18s.

Impact Assessment

10. The Bill for the 2016 Act was subject to a full range of impact assessments, including a Business and Regulation Impact Assessment. Those assessments concluded that this policy will have a limited impact on retailers.

Financial Effects

11. As the regulations covering the sale of NVPs mirror those for the sale of tobacco products we anticipate that this should result in little additional costs for those retailing from moveable structures. Additional resources have been made available to local authorities to enforce the new registration requirement for moveable structures.

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