

## **POLICY NOTE**

### **THE PUBLIC HEALTH AND TOBACCO (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019**

#### **SSI 2019/142**

1. The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the instrument. This instrument is being made in order to address deficiencies in legislation arising from the withdrawal of the United Kingdom (UK) from the European Union (EU).

#### **Policy Objectives**

2. The policy objective is to ensure that the relevant legislation continues to operate effectively following the UK's exit from the EU in the event of no deal.

#### **Explanation of the law being amended by the regulations**

3. The Public Health etc. (Scotland) Act 2008 includes provisions that prohibit the use of sunbeds by, or sale or hire of sunbeds to, anyone under 18 years old. It provides for offences relating to permitting anyone under 18 years to use, buy or hire a sunbed.

4. The Tobacco and Primary Medical Services (Scotland) Act 2010 includes provisions that prohibit the sale of tobacco products, cigarette papers and nicotine vapour products to anyone under 18 years old. It provides for offences relating to permitting anyone under 18 years old to buy any of these products.

5. Each of these Acts provides for a defence where the person can show that they believed that the child or young person was aged 18 or over and that they had taken reasonable steps to establish that person's age. Acceptable proof of age currently includes "a European Union photocard driving licence". These Regulations add a "UK driving licence" as proof of age to the relevant legislation to ensure both driving licences issued in the UK as well as those issued in EU Member States are recognised as proof of age when the UK leaves the EU.

6. The Public Health etc. (Scotland) Act 2008 (Sunbed) Regulations 2009, the Tobacco (Prescribed Documents) (Scotland) Regulations 2013 and the Sale of Nicotine Vapour Products (Prescribed Documents) (Scotland) Regulations 2017, prescribe acceptable proof of age documentation in addition to that provided for in the primary legislation. In each case the Regulations prescribe a "national identity card issued by an EU state (other than the UK)" as a valid form of proof of age. As the UK will no longer be a member state of the EU following EU Exit, the words "other than the United Kingdom" are no longer necessary and will be removed by these Regulations.

## **Reasons for and effect of the proposed change or changes on retained EU law**

7. These minor technical changes to existing legislation correct legislative deficiencies arising as a result of the UK leaving the EU. They have been made to ensure that the legislation continues to operate effectively following EU Exit.

## **Statements required by European Union (Withdrawal) Act 2018**

### **Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate**

The Minister for Public Health, Sport and Wellbeing Joe FitzPatrick has made the following statement.

“In my view the Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate as they simply ensure that a driving licence issued in the United Kingdom can continue to be accepted as a valid form of proof of age. This is the case because they ensure that the relevant legislation includes a UK Driving Licence as an additional appropriate form of identification.”

### **Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action**

The Minister for Public Health, Sport and Wellbeing Joe FitzPatrick has made the following statement.

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action as they enable the relevant legislation to operate effectively following the UK’s exit from the EU. The changes made by the Regulations fall within the parameters of the enabling powers in the EU (Withdrawal) Act 2018.”

### **Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation**

The Minister for Public Health, Sport and Wellbeing Joe FitzPatrick has made the following statement.

“In my view the Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations 2019 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

**Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010**

The Minister for Public Health, Sport and Wellbeing Joe FitzPatrick has made the following statement.

“In my view the Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

**Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament**

**Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare**

Not applicable.

**Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)**

Not applicable.

**An indication of how the regulations should be categorised in relation to the significance of the change proposed.**

Medium - These amendments are minor and technical; however, if they are not made this may lead to uncertainty and concerns amongst those involved in selling tobacco, nicotine vapour products or selling, hiring or allowing customers to use sunbeds as well as difficulties for young people in purchasing or using these products if they cannot use their driving licence as a valid proof of age.

**Statement setting out the Scottish Ministers’ reasons for their choice of procedure**

The Minister for Public Health, Sport and Wellbeing Joe FitzPatrick has made the following statement regarding the use of negative procedure for the Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations 2019.

“Negative procedure is considered appropriate as these minor and technical amendments to relevant legislation do no more than is necessary to ensure that the legislation continues to operate effectively following the UK’s exit from the EU and they do not impose any additional financial burdens on local authorities or businesses. The Regulations do not include provision which falls within paragraph 1(2) of schedule 7 to the European Union (Withdrawal) Act 2018.”

## **Further information**

### **Consultation**

No consultation was carried out in relation to the Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations as they do not change existing policy. However, the UK Government did confirm the term “UK driving licence” was appropriate. As mentioned above, these Regulations are required to ensure that the legislation continues to operate effectively following EU Exit.

### **Impact Assessments**

Full impact assessments have not been prepared for this instrument as it does not make any changes to existing policy. The regulations are required to ensure continuity of practice following EU Exit and the impact is thought to be positive as the regulations will ensure that the relevant legislation continues to operate effectively.

### **Financial Effects**

The Minister for Public Health, Sport and Wellbeing is content that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government Population Health Directorate  
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