



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

2016 asp 14

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 3rd March 2016 and received Royal Assent on 6th April 2016

An Act of the Scottish Parliament to make provision about tobacco, nicotine and related products, in particular to make provision about retailing, to amend the prohibition on smoking in certain areas and to control advertising and promotion; to make provision about a duty of candour following serious incidents in the course of providing care; to make provision about offences applying to ill-treatment or neglect where care is provided; and for connected purposes.

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),

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 is up to date with all changes known to be in force on or before 11 February 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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)).”.

Commencement Information

II [S. 1](#) in force at 6.2.2017 by [S.S.I. 2017/12, reg. 2, sch.](#)

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.”.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 is up to date with all changes known to be in force on or before 11 February 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) The italic heading immediately preceding section 4 of the 2010 Act becomes “ *Sale and purchase of tobacco and nicotine vapour products* ”.

Commencement Information

- I2** [S. 2](#) in force at 6.2.2017 for specified purposes by [S.S.I. 2017/12](#), [reg. 2](#), [sch.](#)
I3 [S. 2](#) in force at 1.4.2017 in so far as not already in force by [S.S.I. 2017/12](#), [reg. 2](#), [sch.](#)

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
 - (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.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 is up to date with all changes known to be in force on or before 11 February 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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) ”.

Commencement Information

I4 [S. 3](#) in force at 1.4.2017 by [S.S.I. 2017/12](#), reg. 2, [sch.](#)

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).

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 is up to date with all changes known to be in force on or before 11 February 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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.”.

Commencement Information

- I5** [S. 4](#) in force at 6.2.2017 for specified purposes by [S.S.I. 2017/12, reg. 2, sch.](#)
I6 [S. 4](#) in force at 1.4.2017 in so far as not already in force by [S.S.I. 2017/12, reg. 2, sch.](#)

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),
 - (c) section 4C(1).”.

Commencement Information

- I7** [S. 5](#) in force at 1.4.2017 by [S.S.I. 2017/12, reg. 2, sch.](#)

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.”.

Commencement Information

- I8** [S. 6](#) in force at 1.4.2017 by [S.S.I. 2017/12, reg. 2, sch.](#)