



# Tobacco and Primary Medical Services (Scotland) Act 2010

2010 asp 3

## PART 1

### TOBACCO PRODUCTS ETC.

## CHAPTER 2

### REGISTER OF TOBACCO RETAILERS

#### *Establishment*

#### **10 Register of tobacco retailers**

- (1) The Scottish Ministers must keep a register of persons carrying on a tobacco business (referred to in this Part as “the Register”).
- (2) In this Part, “registered” means entered in the Register, and “unregistered” is to be construed accordingly.

#### *Registration*

#### **11 Application for registration and addition of premises etc.**

- (1) A person may apply to the Scottish Ministers—
  - (a) to be registered, or
  - (b) to add further premises to the person’s entry in the Register.
- (2) The application must—
  - (a) state the name and address of the applicant,
  - (b) where it is an application under subsection (1)(a), state the addresses of all premises at which the applicant proposes to carry on a tobacco business,

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*Status: This is the original version (as it was originally enacted).*

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- (c) where it is an application under subsection (1)(b), state the address of the further premises at which the applicant proposes to carry on a tobacco business,
  - (d) contain such other information as is prescribed, and
  - (e) be made in such form and manner as is determined by the Scottish Ministers.
- (3) The Scottish Ministers must grant the application unless—
  - (a) it does not comply with the requirements in subsection (2), or
  - (b) at the time the application is made, the applicant is banned, under a tobacco retailing banning order, from carrying on a tobacco business at any premises specified in the application.
- (4) On granting an application under subsection (1)(a), the Scottish Ministers must enter the following information in the Register—
  - (a) the name and address of the applicant,
  - (b) the addresses of the premises at which the applicant proposes to carry on a tobacco business, and
  - (c) any other information which the Scottish Ministers consider appropriate.
- (5) On granting an application under subsection (1)(b), the Scottish Ministers must amend the applicant's entry in the Register so as to include the address of the further premises at which the applicant proposes to carry on a tobacco business.

## **12 Certificates of registration**

On granting an application under section 11(3) the Scottish Ministers must issue to the applicant a certificate of registration in respect of each premises stated in the application.

### *Changes to register*

## **13 Duty to notify certain changes**

- (1) A registered person must give the Scottish Ministers notice of—
  - (a) a change in the person's name or address,
  - (b) the fact that the person is no longer carrying on a tobacco business at an address noted in the person's entry in the Register.
- (2) A notice under subsection (1) must be given within 3 months of the date of the change to which it relates.

## **14 Changes to and removal from Register**

- (1) The Scottish Ministers may correct the Register (following notification under section 13 or otherwise) as they consider appropriate.
- (2) Where a tobacco retailing banning order is made against a registered person, the Scottish Ministers must amend the person's entry in the Register so as to remove references to the premises specified in the order.
- (3) The Scottish Ministers may remove a person's entry from the Register if—

- (a) as a result of a correction or amendment under subsection (1) or (2), there are no premises noted in the person's entry in the Register, or
  - (b) they are not satisfied that the person is carrying on a tobacco business.
- (4) Where the Scottish Ministers correct, amend or remove a person's entry in the Register under this section, they must—
  - (a) as soon as reasonably practicable notify the person of the correction, amendment or, as the case may be, removal, and
  - (a) if it is appropriate to do so, issue at the same time to the person a revised certificate of registration.
- (5) The Scottish Ministers must reinstate a person's entry in the register if—
  - (a) the entry was removed under subsection (3)(b), and
  - (b) the person notifies them no later than 28 days after notice of the removal is given under subsection (4)(a) that the person is still carrying on a tobacco business.
- (6) A notice under subsection (4)(a) may be given—
  - (a) by delivering it to the person,
  - (b) by leaving it at the person's usual or last known address,
  - (c) by sending it by post to the person at that address.

### *Tobacco retailing banning orders*

## **15 Tobacco retailing banning orders**

- (1) A council may apply to the sheriff for an order banning a person from carrying on a tobacco business from premises within the council's area.
- (2) An application under subsection (1) must specify the premises from which the person is to be banned from carrying on a tobacco business.
- (3) The sheriff may make an order banning the person from carrying on a tobacco business at the premises specified in the order if satisfied, on the balance of probabilities, that—
  - (a) the person has been the subject of 3 or more relevant enforcement actions in respect of each premises specified in the order,
  - (b) at least one of the actions occurred in the period of 2 months ending on the date the application was made,
  - (c) the conduct to which the actions relate took place within a period of 2 years, and
  - (d) the making of the order is necessary to prevent the commission of further offences under Chapter 1 or 2.
- (4) A person is the subject of a relevant enforcement action if the person is—
  - (a) issued with a fixed penalty notice (which is not subsequently withdrawn), or
  - (b) convicted of an offence under Chapter 1 or 2.
- (5) An order made under this section has effect for the period (not exceeding 24 months) specified in the order beginning with the day the order is granted.
- (6) In this Part, an order made under this section is referred to as a “tobacco retailing banning order”.

**16 Tobacco retailing banning orders: ancillary orders**

- (1) This section applies where—
  - (a) a council has applied for a tobacco retailing banning order in respect of a person (“P”), or
  - (b) a tobacco retailing banning order has been made in respect of P.
- (2) A council may apply to the sheriff for an ancillary order—
  - (a) banning P from—
    - (i) being connected to a person carrying on a tobacco business at the specified premises,
    - (ii) seeking to control a person carrying on a tobacco business at the specified premises,
  - (b) where P is not an individual, banning any person connected to P from—
    - (i) carrying on a tobacco business at the specified premises,
    - (ii) being connected to a person carrying on a tobacco business at the specified premises,
    - (iii) seeking to control a person carrying on a tobacco business at the specified premises.
- (3) A sheriff may make the ancillary order if—
  - (a) the sheriff is satisfied, on the balance of probabilities, that the order is necessary to prevent the commission of further offences under Chapter 1 or 2, and
  - (b) where this section applies by virtue of subsection (1)(a), the sheriff makes the tobacco retailing banning order.
- (4) An ancillary order made under this section ceases to have effect when the tobacco retailing banning order to which it relates ceases to have effect.
- (5) In subsection (2), “the specified premises” means the premises specified in the tobacco retailing banning order to which the ancillary order relates.
- (6) For the purposes of this section, a person is connected to a partnership, a limited liability partnership, a company or other body (whether incorporated or unincorporated) if the person—
  - (a) in the case of a partnership, is a partner,
  - (b) in the case of a limited liability partnership, is a member,
  - (c) in the case of a company—
    - (i) is a director, or
    - (ii) has control of the company,
  - (d) in any other case, is concerned in the management or control of the body.
- (7) For the purposes of subsection (6)(c)(ii), a person is taken to have control of a company if—
  - (a) any of the directors of the company, or of any other company having control of the company, is accustomed to act in accordance with the person’s directions or instructions, or
  - (b) the person is entitled to exercise, or to control the exercise of, at least one third of the voting power at any general meeting of the company or of any other company having control of the company.

**17 Tobacco retailing banning orders etc.: appeals**

- (1) A person against whom a tobacco retailing banning order or an ancillary order under section 16 is made may appeal to the sheriff principal, whose decision is final.
- (2) An appeal under this section must be made within 21 days of the order being made.
- (3) Where the appeal is against a tobacco retailing banning order, the sheriff principal may determine the appeal by—
  - (a) quashing the order (and any ancillary order under section 16 relating to the order),
  - (b) substituting for the period specified in the order under section 15(5) such other period of effect (ending no later than 24 months after the day the order was granted) as the sheriff principal considers appropriate, or
  - (c) refusing the appeal.
- (4) Where the appeal is against an ancillary order under section 16, the sheriff principal may determine the appeal by—
  - (a) quashing the order, or
  - (b) refusing the appeal.

**18 Tobacco retailing banning orders etc.: notification to Scottish Ministers**

- (1) On making a tobacco retailing banning order or an ancillary order under section 16, the sheriff must notify the Scottish Ministers.
- (2) On determining an appeal under section 17, the sheriff principal must notify the Scottish Ministers.

**19 Tobacco retailing banning orders: display of notices**

- (1) This section applies where—
  - (a) a tobacco retailing banning order has effect in respect of a person, and
  - (b) the person carries on a retail business at the premises specified in the order.
- (2) The person must display a notice in the premises in accordance with subsection (3).
- (3) The notice must—
  - (a) state that the premises have been specified in a tobacco retailing banning order and the period for which the order has effect,
  - (b) be displayed in a prominent position in the premises where it is readily visible to persons at every relevant point of sale, and
  - (c) be displayed no later than 14 days after the tobacco retailing banning order is made.
- (4) A relevant point of sale is one that was used for the sale of tobacco products or smoking related products at any time during the period of 2 months ending with the making of the banning order.
- (5) The Scottish Ministers may prescribe—
  - (a) the dimensions of the notice to be displayed in accordance with this section,
  - (b) the wording of the statement to be displayed on the notice, and
  - (c) the size of the statement.

## *Offences*

### **20 Offences relating to the Register**

- (1) An unregistered person who carries on a tobacco business commits an offence.
- (2) A registered person who carries on a tobacco business at premises other than those noted in the person's entry in the Register commits an offence.
- (3) A person who fails, without reasonable excuse, to comply with section 13(1) (duty to notify certain changes) commits an offence.
- (4) A person who breaches a tobacco retailing banning order or an ancillary order made under section 16 commits an offence.
- (5) A person who fails, without reasonable excuse, to comply with section 19(2) (duty to display notice) commits an offence.
- (6) A person guilty of an offence under—
  - (a) subsection (1), (2) or (4) is liable on summary conviction to—
    - (i) a fine not exceeding £20,000,
    - (ii) imprisonment for a term not exceeding 6 months, or
    - (iii) both,
  - (b) subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale,
  - (c) subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *Register of tobacco retailers: miscellaneous and supplementary*

### **21 Public inspection of Register**

- (1) On the basis of information contained in the Register, the Scottish Ministers must make available for public inspection a list of premises at which tobacco businesses are carried on or proposed to be carried on.
- (2) The list must be made available free of charge at all reasonable times.

### **22 Council access to Register**

- (1) The Scottish Ministers must make available to councils the information contained in the Register.
- (2) Information disclosed under subsection (1) may be used by councils only for the purpose of enabling or assisting them to perform their functions under this Part.

### **23 Delegation of functions relating to Register**

- (1) The Scottish Ministers may, to such extent and subject to such conditions as they think appropriate, delegate any of their functions under this Chapter (other than excepted functions) to such person as they may determine.
- (2) An excepted function is a function relating to—

- (a) the making of regulations, or
  - (b) the determination under section 11(2)(e) of the form and manner of an application.
- (3) A delegation under subsection (1) may be varied or revoked at any time.

## **24 Vehicles, vessels and moveable structures**

The Scottish Ministers may by regulations provide for this Chapter to apply in relation to vessels, vehicles and other moveable structures subject to such modifications as they consider necessary or expedient.