

Changes to legislation: There are currently no known outstanding effects for the Tobacco and Primary Medical Services (Scotland) Act 2010. (See end of Document for details)

SCHEDULE 1 (introduced by section 27)

FIXED PENALTIES

Preliminary

- 1 In this schedule, unless the context requires otherwise—
- “notice” means a fixed penalty notice given under section 27(1),
 - “the offence” means the offence to which the notice relates,
 - “the council” means the council in whose area the offence was alleged to have been committed.

Commencement Information

II Sch. 1 para. 1 in force at 1.4.2011 by S.S.I. 2010/345, art. 2, Sch.

Content of fixed penalty notice

- 2 (1) A notice must give reasonable particulars of the circumstances alleged to constitute the offence.
- (2) A notice must also contain the following information—
- (a) the amount of the fixed penalty,
 - (b) the payment deadline,
 - (c) the discounted amount and the discounted payment deadline,
 - (d) the name of the council (or the person acting on the council's behalf) to which payment should be made,
 - (e) the address at which payment should be made,
 - (f) the method by which payment should be made.
- (3) A notice must state the following—
- (a) any liability to conviction of the offence is discharged if the person makes payment of—
 - (i) the fixed penalty before the payment deadline, or
 - (ii) the discounted amount before the discounted payment deadline,
 - (b) the payment of a fixed penalty is not a conviction nor may it be recorded as such,
 - (c) no proceedings may be commenced against the person in respect of the offence unless the payment deadline has passed and the fixed penalty has not been paid.

Commencement Information

I2 Sch. 1 para. 2 in force at 1.4.2011 by S.S.I. 2010/345, art. 2, Sch.

Period in which notice can be given

- 3 A notice may not be given after such time relating to the offence as may be prescribed.

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Commencement Information

- I3** Sch. 1 para. 3 in force at 24.10.2010 for specified purposes and 1.4.2011 in so far as not already in force by S.S.I. 2010/345, art. 2, Sch.

Amount of penalty

- 4 (1) The—
- (a) amount of the fixed penalty, and
 - (b) discounted amount,
- are such amounts as may be prescribed.
- (2) Regulations under sub-paragraph (1) may provide for the amount to be different depending on whether, during a prescribed period, the offender has been—
- (a) issued with a fixed penalty notice or notices in respect of any offence or offences of a prescribed description, or
 - (b) convicted of any offence or offences of a prescribed description.

Commencement Information

- I4** Sch. 1 para. 4 in force at 24.10.2010 for specified purposes and 1.4.2011 in so far as not already in force by S.S.I. 2010/345, art. 2, Sch.

Deadlines for payment

- 5 (1) The payment deadline is the first working day at least 28 days after the day on which the notice is given.
- (2) But the council may extend the payment deadline in any particular case after the notice is given if it considers it appropriate to do so.
- (3) On extending the payment deadline under sub-paragraph (2), the council must notify the recipient of the fixed penalty notice.
- (4) The discounted payment deadline is the first working day at least 14 days after the day on which notice is given.

Commencement Information

- I5** Sch. 1 para. 5 in force at 1.4.2011 by S.S.I. 2010/345, art. 2, Sch.

Method of payment

- 6 The fixed penalty (and the discounted payment amount) is payable—
- (a) to the council or the person acting on its behalf specified in the notice,
 - (b) at the address specified in the notice,
 - (c) by the method specified in the notice.

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I6 Sch. 1 para. 6 in force at 1.4.2011 by S.S.I. 2010/345, art. 2, Sch.

Restriction on proceedings and effect of payment

- 7 (1) The earliest date that proceedings for the offence may be commenced is the day after the payment deadline.
- (2) But no such proceedings may be commenced against a person if—
- (a) the person makes payment of the discounted amount on or before the discounted payment deadline, or
 - (b) the person makes payment of the fixed penalty on or before the payment deadline.
- (3) In proceedings for the offence, a certificate which—
- (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the council, and
 - (b) states that payment of an amount specified in the certificate was or was not received by a date so specified,
- is sufficient evidence of the facts stated.

Commencement Information

I7 Sch. 1 para. 7 in force at 1.4.2011 by S.S.I. 2010/345, art. 2, Sch.

Withdrawal of fixed penalty notice

- 8 (1) A recipient of a notice may make representations to the council as to why the notice ought not to have been given.
- (2) If, having considered any representations made under sub-paragraph (1), the council considers that a fixed penalty notice ought not to have been given, it may give to the person a notice withdrawing the fixed penalty notice.
- (3) Where a notice under sub-paragraph (2) is given—
- (a) the council must repay any amount which has been paid in pursuance of the fixed penalty notice, and
 - (b) no proceedings are to be commenced against the person for the offence.

Commencement Information

I8 Sch. 1 para. 8 in force at 1.4.2011 by S.S.I. 2010/345, art. 2, Sch.

Effect of prosecution on fixed penalty notice

- 9 Where proceedings for an offence in respect of which a notice has been given are commenced, the notice is to be treated as withdrawn.

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I9 Sch. 1 para. 9 in force at 1.4.2011 by S.S.I. 2010/345, art. 2, Sch.

General and supplemental

- 10 The Scottish Ministers may make regulations about—
- (a) the application by councils of payments received under this schedule,
 - (b) the keeping of accounts, and the preparation and publication of statements of account, in relation to payments received under this schedule.

Commencement Information

I10 Sch. 1 para. 10 in force at 1.4.2011 by S.S.I. 2010/345, art. 2, Sch.

- 11 (1) The Scottish Ministers may prescribe—
- (a) the form of notices,
 - (b) the circumstances in which notices may not be given, and
 - (c) the method or methods by which fixed penalties may be paid.
- (2) The Scottish Ministers may by regulations modify sub-paragraphs (1) and (4) of paragraph 5 so as to substitute a different deadline for the deadline for the time being specified there.

Commencement Information

I11 Sch. 1 para. 11 in force at 1.4.2011 by S.S.I. 2010/345, art. 2, Sch.

SCHEDULE 2

(introduced by section 41)

MINOR AND CONSEQUENTIAL MODIFICATIONS

PART 1

TOBACCO PRODUCTS ETC.

Children and Young Persons (Scotland) Act 1937 (c.37)

- 1 Section 18 of the Children and Young Persons (Scotland) Act 1937 is repealed.

Children and Young Persons (Protection from Tobacco) Act 1991 (c.23)

- 2 The Children and Young Persons (Protection from Tobacco) Act 1991 is amended as follows—
- (a) sections 2 and 4 are repealed,
 - (b) in section 6—

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- (i) in subsection (1)(a), for the word from “18” to “4” substitute “ 3 ”,
 - (ii) in subsection (2), for “provisions” substitute “ provision ”,
 - (iii) in subsection (2)(a), for “those provisions” substitute “ that provision ”,
 - (iv) in subsection (2)(b), for “those provisions” substitute “ that provision ”,
 - (v) subsection (2)(c) is repealed,
- (c) in section 8—
- (i) in subsection (3), the words “or 2” are repealed,
 - (ii) in subsection (4), the words “or 2” are repealed,
 - (iii) in subsection (5), in the definition of “the relevant provision”, paragraph (b) is repealed.

Tobacco Advertising and Promotion Act 2002 (c.36)

- 3 In section 6(1)(a) of the Tobacco Advertising and Promotion Act 2002 (c.36), the words “, or fixed to the outside of the premises of,” are repealed.
- 4 In section 8 of that Act—
- (a) in subsection (1), the words “in a place or” are repealed,
 - (b) subsection (3) is repealed.

Smoking, Health and Social Care (Scotland) Act 2005 (asp 13)

- 5 Section 9 of the Smoking, Health and Social Care (Scotland) Act 2005 is repealed.

PART 2

PRIMARY MEDICAL SERVICES

National Health Service (Scotland) Act 1978 (c.29)

- 6 (1) Section 17D of the National Health Service (Scotland) Act 1978 is amended as follows—
- (a) in subsection (1), after “section 17C” insert “ under which personal dental services are provided ”,
 - (b) in subsection (1)(b), for “in the case of an agreement under which primary medical services are provided” substitute “ a company which is limited by shares all of which are legally and beneficially owned by persons falling within the following sub-paragraphs and paragraphs (c) to (d) ”,
 - (c) in subsection (1)(c)—
 - (i) the words “in the case of an agreement under which personal dental services are provided” are repealed, and
 - (ii) sub-paragraphs (i) and (ii) become paragraphs (c) and (ca) respectively of subsection (1),
 - (d) in subsection (1)(d)—
 - (i) after “section 17C employee,” insert “ or ”,

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- (ii) the words “or (in the case of an agreement under which primary medical services are provided) an Article 15B employee” are repealed,
 - (e) subsections (1A) and (1B) are repealed,
 - (f) in subsection (2), in the definition of “qualifying body”—
 - (i) paragraph (a) and the words “and also” immediately following it are repealed,
 - (ii) in paragraph (b), the words “in the case of an agreement under which person dental services are provided,” are repealed.
- (2) In the section title of section 17D of that Act, for “Persons” substitute “ Personal dental services: persons ”.

Primary Medical Services (Scotland) Act 2004 (asp 1)

- 7 In section 2(3) of the Primary Medical Services (Scotland) Act 2004, paragraph (c) is repealed.

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