



# Tobacco and Primary Medical Services (Scotland) Act 2010

2010 asp 3

## PART 1

### TOBACCO PRODUCTS ETC.

## CHAPTER 2

### REGISTER OF TOBACCO RETAILERS

#### *Tobacco retailing banning orders*

#### **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—

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*Status: This is the original version (as it was originally enacted).*

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- (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 the 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.