



Tobacco and Primary Medical Services (Scotland) Act 2010

2010 asp 3

PART 1

TOBACCO PRODUCTS ETC.

CHAPTER 1

DISPLAY, SALE AND PURCHASE OF TOBACCO PRODUCTS

Display of tobacco products etc.

1 Prohibition of tobacco displays etc.

- (1) A person who in the course of business displays or causes to be displayed tobacco products or smoking related products in a place where tobacco products are offered for sale commits an offence.
- (2) A person does not commit an offence under subsection (1) if the display—
 - (a) is in a specialist tobacconist,
 - (b) does not include cigarettes or hand-rolling tobacco, and
 - (c) complies with any prescribed requirements.
- (3) A person does not commit an offence under subsection (1) if—
 - (a) the tobacco products or smoking related products are displayed in the course of a business involving the sale of tobacco products only to persons who carry on a tobacco business (or their employees), and
 - (b) the display complies with any prescribed requirements.
- (4) The Scottish Ministers may provide in regulations that no offence is committed under subsection (1) in relation to a display of tobacco products or smoking related products which complies with requirements specified in the regulations.

- (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.
- (6) For the purposes of subsection (1), a website is not a place.
- (7) In subsection (2), “specialist tobacconist” has the meaning given by section 6(2) of the Tobacco Advertising and Promotion Act 2002 (c.36).

2 **Displays which are also advertisements**

The Scottish Ministers may by regulations provide that a display of tobacco products or smoking related products which also amounts to an advertisement is to be treated for the purposes of offences under this Act and the Tobacco Advertising and Promotion Act 2002—

- (a) as an advertisement and not as a display, or
- (b) as a display and not as an advertisement.

3 **Regulation of display of prices**

- (1) The Scottish Ministers may by regulations impose requirements in relation to the display in the course of business of prices of tobacco products or smoking related products in a place where tobacco products are offered for sale.
- (2) For the purposes of subsection (1), a website is not a place but the regulations may otherwise provide for the meaning of “place” in that subsection.
- (3) A person who displays or causes to be displayed prices of tobacco products or smoking related products in breach of a requirement contained in the regulations commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) The regulations may provide that a display of prices which also amounts to an advertisement is to be treated for the purposes of offences under this Act and the Tobacco Advertising and Promotion Act 2002—
 - (a) as an advertisement and not as a display of prices, or
 - (b) as a display of prices and not as an advertisement.

Sale and purchase of tobacco products

4 **Sale of tobacco products to persons under 18**

- (1) A person who sells a tobacco product or cigarette papers 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.

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

- (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.

5 Purchase of tobacco products by persons under 18

- (1) A person under the age of 18 who buys or attempts to buy a tobacco product or cigarette papers commits an offence.
- (2) It is not an offence under subsection (1) for a person under the age of 18 to buy or attempt to buy a tobacco product or cigarette papers if the person is authorised to do so by a council officer or a constable for the purpose of determining whether an offence is being committed under section 4.
- (3) A council officer or a constable may authorise a person under the age of 18 to buy or attempt to buy a tobacco product or cigarette papers only if satisfied that all reasonable steps have been or will be taken to avoid any risk to the welfare of the person.
- (4) 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.

6 Purchase of tobacco products on behalf of persons under 18

- (1) A person aged 18 or over who knowingly buys or attempts to buy a tobacco product or cigarette papers 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.

Miscellaneous

7 Confiscation of tobacco products from persons under 18

- (1) Where a constable has reasonable grounds for suspecting that a person in a public place—
- (a) is under the age of 18, and
 - (b) is in possession of a tobacco product or cigarette papers,
- the constable may require the person to surrender the tobacco product or, as the case may be, the cigarette papers to the constable.
- (2) A constable making a requirement under subsection (1) may also require the person to supply the constable with the person's name and address.

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

- (3) Where a constable makes a requirement under subsection (1) the constable must inform the person concerned—
 - (a) of the constable’s suspicion, and
 - (b) of the fact that failure to comply with a requirement made under subsection (1) or (2) is an offence.
- (4) A constable may arrest without warrant any person who fails to comply with a requirement made under subsection (1).
- (5) A person who fails to comply with a requirement made under subsection (1) or (2) commits an offence.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (7) The constable may dispose of any tobacco product or cigarette papers surrendered to the constable in such manner as the constable considers appropriate.
- (8) In this section “public place” includes—
 - (a) any place to which the public have access for the time being (whether on payment of a fee or otherwise), and
 - (b) any place to which the public do not have access but to which the person mentioned in subsection (1) has unlawfully gained access.

8 Display of warning statements

- (1) A person who carries on a tobacco business must display a notice in accordance with subsection (2) in any premises where that business is carried on.
- (2) The notice must—
 - (a) contain the following statement—

“It is illegal to sell tobacco products to anyone under the age of 18”, and
 - (b) be displayed in a prominent position in the premises where the statement is readily visible to persons at the point of sale of the tobacco products.
- (3) A person who fails, without reasonable excuse, to comply with subsection (1) commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) The Scottish Ministers may prescribe the dimensions of the notice to be displayed in accordance with this section and the size of the statement to be displayed on it.

9 Prohibition of vending machines for the sale of tobacco products

- (1) A person who has the management or control of premises on which a vending machine is available for use commits an offence.
- (2) 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.
- (3) In this section, “vending machine” means an automatic machine for the sale of tobacco products (regardless of whether the machine also sells other products).