



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

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 - (a) issued with a fixed penalty notice (which is not subsequently withdrawn), or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 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.

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.

Status: *This is the original version (as it was originally enacted).*

- (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.