



Tobacco and Primary Medical Services (Scotland) Act 2010

2010 asp 3

PART 1

TOBACCO PRODUCTS ETC.

CHAPTER 3

ENFORCEMENT AND FIXED PENALTIES

Enforcement

25 Enforcement

- (1) It is the duty of a council to enforce within its area the provisions of Chapters 1 and 2 and regulations made under them.
- (2) The Scottish Ministers may direct, in relation to a particular case or cases of a particular description, that any duty imposed on a council by subsection (1) is to be discharged by the Scottish Ministers and not by the council.
- (3) Where a direction has effect under subsection (2), sections 27 to 31 apply, in relation to the particular case, or cases of the description, specified in the direction—
 - (a) as if references to a council officer were references to a person acting on behalf of the Scottish Ministers, and
 - (b) with references to a person's area being read in accordance with any modifications specified in the direction.

26 Programmes of enforcement

- (1) A council must, at least once in every period of 12 months, carry out a programme of enforcement action in its area.

Status: This is the original version (as it was originally enacted).

- (2) For the purposes of subsection (1), a programme of enforcement action is a programme involving one or both of the following—
- (a) the investigation of complaints in respect of alleged offences under Chapter 1 or 2,
 - (b) the taking of other measures intended to reduce the incidence of offences under those Chapters.

Fixed penalties

27 Fixed penalties

- (1) An enforcement officer may give a person a fixed penalty notice if the officer has reason to believe that the person has committed an offence under Chapter 1 or 2.
- (2) But a person may be given a fixed penalty notice only if the person is aged 16 or over.
- (3) An enforcement officer is—
 - (a) a council officer for the area in which the offence is believed to have been committed, or
 - (b) a constable.
- (4) Schedule 1 makes further provision about fixed penalties.

Powers of entry etc.

28 Powers of entry etc.

- (1) For the purpose of carrying out a council's functions under this Part, a council officer is entitled to—
 - (a) enter any premises (other than premises used only as a private dwelling house),
 - (b) inspect and examine the premises,
 - (c) require the production of any book, document, data, record (in whatever form it is held) or product and inspect it, and take copies of or extracts from it,
 - (d) take possession of any book, document, data, record (in whatever form it is held) or product which is on the premises and retain it for as long as the officer considers necessary,
 - (e) require any person to give the officer such information, or afford the officer such facilities and assistance, as the officer considers necessary.
- (2) A person is not required by subsection (1) to answer any question or produce any document which the person would be entitled to refuse to answer or produce in proceedings in a court in Scotland.

29 Warrants for entry

- (1) A sheriff may by warrant authorise a council officer to enter (if necessary using reasonable force) any premises (other than premises used only as a private dwelling house) for the purpose of carrying out a council's functions under this Part.

- (2) A warrant may be granted under subsection (1) only if the sheriff is satisfied by evidence on oath—
- (a) that there are reasonable grounds for entering the premises in question, and
 - (b) that—
 - (i) entry to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this section has been given to the occupier,
 - (ii) a request for entry, or the giving of such notice, would defeat the object of the entry,
 - (iii) the premises are unoccupied, or
 - (iv) the occupier is temporarily absent and it might defeat the object of the entry to await the occupier's return.
- (3) A warrant granted under this section continues in force until the end of the period of one month beginning with the date on which it is granted.

30 Powers of entry and warrants for entry: supplementary

- (1) A council officer entering any premises under section 28 or in accordance with a warrant granted under section 29 may take on to the premises such other persons and such equipment as the officer considers necessary.
- (2) A right to enter any premises conferred by section 28 may be exercised only at a reasonable time.
- (3) A council officer exercising a right conferred by section 28 must, if required to do so, produce written evidence of the officer's authorisation to exercise that right.
- (4) On leaving any premises which a council officer is authorised to enter by a warrant granted under section 29, the officer must, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as the officer found them.
- (5) A council officer who takes possession of any item under section 28(1)(d) must leave a statement on the premises from which the item was removed—
- (a) giving particulars of what has been taken, and
 - (b) stating that the officer has taken possession of it.

31 Obstruction, etc. of council officers

- (1) A person who—
- (a) intentionally obstructs a council officer who is acting in the proper exercise of the officer's functions under this Part, or
 - (b) without reasonable cause fails to comply with any requirement made by such an officer who is so acting,
- commits an offence.
- (2) A person who, in giving any information which is properly required by a council officer, makes a statement which is false in a material particular commits an offence.
- (3) A person does not commit an offence under subsection (2) if—
- (a) the person did not know the material particular was false, and

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(b) the person had reasonable grounds to believe that it was true.

(4) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

32 Powers of entry: constables

(1) A constable who suspects with reasonable cause that any person is committing or has committed an offence under Chapter 1 or 2 may enter any premises (other than premises used only as a private dwelling house) for the purpose of obtaining evidence of the offence.

(2) A right to enter any premises conferred by subsection (1) may be exercised only at a reasonable time.

(3) A sheriff may by warrant authorise a constable authorised to exercise the power conferred by subsection (1) to do so (if necessary using reasonable force) in accordance with the warrant.

(4) A warrant may be granted under subsection (3) only if the sheriff is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an offence under Chapter 1 or 2 is or has been committed on the premises.