



2014 CHAPTER 4

Persistent commission of tobacco offences

Restricted premises orders

5.—(1) This section applies where a person (“the offender”)—

- (a) is given a fixed penalty notice in respect of a tobacco offence; or
- (b) is convicted of a tobacco offence.

(2) In the following provisions of this section “the relevant offence” means the offence mentioned in subsection (1)(a) or (b).

(3) A court of summary jurisdiction may, on application made by complaint by the council in whose district the premises in relation to which the relevant offence was committed are situated, make a restricted premises order in respect of those premises (“the relevant premises”).

(4) A restricted premises order is an order prohibiting the sale on the premises to which it relates of any tobacco or cigarette papers to any person.

(5) The prohibition applies to sales of tobacco or cigarette papers to any person whether made—

- (a) by the offender or any other person; or
- (b) by means of any machine kept on the premises or any other means.

(6) The order has effect for the period specified in the order, but that period must not be less than 28 days or more than 3 years.

(7) The council making the application must, after making reasonable enquiries, give notice of the application to every person appearing to it to be a person affected by the application.

(8) The court may make the order if (and only if) it is satisfied that—

- (a) the council has complied with subsection (7); and
 - (b) on at least 2 other occasions within the period of 5 years ending with the date on which the relevant offence was committed, the offender has been—
 - (i) given a fixed penalty notice in respect of a tobacco offence in relation to the relevant premises; or
 - (ii) convicted of a tobacco offence in relation to the relevant premises.
- (9) Persons affected by the application may make representations to the court as to why the order should not be made.
- (10) If—
- (a) a person affected by an application for a restricted premises order was not given notice under subsection (7), and
 - (b) consequently the person had no opportunity to make representations to the court as to why the order should not be made,
- that person may, by complaint, apply to the court for an order varying or discharging it.
- (11) On an application under subsection (10) the court may, after hearing—
- (a) that person, and
 - (b) the council which applied for the restricted premises order,
- make such order varying or discharging the restricted premises order as it considers appropriate.
- (12) While a restricted premises order has effect, the order shall be a statutory charge and shall be binding on every person who is for the time being an owner or occupier of the premises specified in the order.
- (13) For the purposes of this section—
- (a) a fixed penalty notice which is given to the offender in respect of a tobacco offence is to be disregarded if it is withdrawn or if proceedings are brought against the offender for the offence to which the notice relates;
 - (b) the persons affected by an application for a restricted premises order in respect of any premises are—
 - (i) the occupier of the premises; and
 - (ii) any other person who has an estate in the premises.
- (14) In this section and section 6 “tobacco offence” means—
- (a) an offence committed under Article 3 of the Health and Personal Social Services (Northern Ireland) Order 1978 on any premises (which are accordingly “the premises in relation to which the offence is committed”);
 - (b) an offence committed under Article 4 of the Health and Personal Social Services (Northern Ireland) Order 1978 in respect of an order relating to

- any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”);
- (c) an offence relating to tobacco committed under section 170 or 170B of the Customs and Excise Management Act 1979 on any premises in Northern Ireland (which are accordingly “the premises in relation to which the offence is committed”);
 - (d) an offence committed under section 8F, 8G or 8H of the Tobacco Products Duty Act 1979 on any premises in Northern Ireland (which are accordingly “the premises in relation to which the offence is committed”);
 - (e) an offence committed under Article 4A of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 in respect of any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”); or
 - (f) an offence committed under section 10 in respect of any premises (which are accordingly “the premises in relation to which the offence is committed”).

Restricted sale orders

- 6.—(1) This section applies where a person (“the offender”)—
- (a) is given a fixed penalty notice in respect of a tobacco offence; or
 - (b) is convicted of a tobacco offence.
- (2) In the following provisions of this section “the relevant offence” means the offence mentioned in subsection (1)(a) or (b).
- (3) A court of summary jurisdiction may, on application made by complaint by the council in whose district the premises in relation to which the relevant offence was committed are situated, make a restricted sale order in respect of the offender.
- (4) A restricted sale order is an order prohibiting the person to whom it relates—
- (a) from selling any tobacco or cigarette papers to any person;
 - (b) from having any management functions in respect of any premises in so far as those functions relate to the sale on the premises of tobacco or cigarette papers to any person;
 - (c) from keeping any cigarette machine on any premises for the purpose of selling tobacco or permitting any cigarette machine to be kept on any premises by any other person for that purpose; and
 - (d) from having any management functions in respect of any premises in so far as those functions relate to any cigarette machine kept on the premises for the purpose of selling tobacco.

(5) The order has effect for the period specified in the order, but that period must not be less than 28 days or more than 3 years.

(6) The court may make the order if (and only if) it is satisfied that, on at least 2 other occasions within the period of 5 years ending with the date on which the relevant offence was committed, the offender has been—

- (a) given a fixed penalty notice in respect of a tobacco offence; or
- (b) convicted of a tobacco offence.

(7) For the purposes of this section a fixed penalty notice which is given to the offender in respect of a tobacco offence is to be disregarded if it is withdrawn or if proceedings are brought against the offender for the offence to which the notice relates.

(8) In this section any reference to a cigarette machine is a reference to an automatic machine for the sale of tobacco.

Appeal against the making of an order under section 5 or 6

7.—(1) Any person aggrieved by an order made by a court of summary jurisdiction under section 5 or 6 may, within the period of 21 days from the day the order is made, appeal against the order to the county court in accordance with magistrates' courts rules.

(2) Where an order is made under section 5 or 6, the order shall not have effect—

- (a) until the period mentioned in subsection (1) has expired; or
- (b) if the order is the subject of an appeal, until the appeal has been determined or withdrawn.

Restricted premises orders: display of notices

8.—(1) This section applies where—

- (a) a restricted premises order has effect in respect of premises (“the relevant premises”); and
- (b) a person (“P”) carries on a retail business at the relevant premises.

(2) P must display a notice in the relevant premises in accordance with subsection (3).

(3) The notice must—

- (a) state that a restricted premises order has been made in respect of the relevant premises and the period for which the order has effect;
- (b) be displayed in a prominent position in the relevant premises where it is readily visible to persons at every relevant point of sale; and

- (c) be displayed no later than 5 days after the date on which the restricted premises order has effect.
- (4) A relevant point of sale is one that was used for the sale of tobacco or cigarette papers at any time during the period of 2 months ending with the date on which the restricted premises order was made.
- (5) Regulations may specify—
 - (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.

Restricted premises orders: no tobacco in retail area

- 9.—**(1) This section applies where—
- (a) a restricted premises order has effect in respect of premises (“the relevant premises”); and
 - (b) a person (“P”) carries on a retail business at the relevant premises.
- (2) P must, no later than the day after the date on which the restricted premises order has effect, ensure that no tobacco or cigarette papers are in the retail area of the relevant premises.
- (3) Subsection (2) does not apply to tobacco and cigarette papers in the retail area of the relevant premises which an individual may have for his or her own use.
- (4) In this section “retail area” means any part of the relevant premises used for the serving of customers or the display of goods.