



# Tobacco Retailers Act (Northern Ireland) 2014

## 2014 CHAPTER 4

An Act to make provision for a register of tobacco retailers; to make provision for dealing with the persistent commission of tobacco offences; to amend the Health and Personal Social Services (Northern Ireland) Order 1978; to confer additional powers of enforcement in relation to offences under that Order and the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991; and for connected purposes. [25th March 2014]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### *Register of tobacco retailers*

#### **Register of tobacco retailers**

1.—(1) The registration authority must, in accordance with the provisions of this Act, maintain a register of persons carrying on a tobacco business (“the Register”).

(2) On the basis of information contained in the Register, the registration authority must, at all reasonable times, make available for public inspection—

- (a) a list of premises at which tobacco businesses are carried on; and
- (b) such other information as may be prescribed.

(3) The registration authority must make available to each council and the Department such information contained in the Register as that council or the Department may require.

(4) Information made available under subsection (3) to a council may be used by the council only for the purpose of enabling it or assisting it to perform its functions under—

- (a) this Act;
- (b) Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978; and
- (c) the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991.

(5) In any proceedings for an offence under this Act a certificate issued by the registration authority which states that on any date a person was or was not registered in respect of any premises shall be evidence of the facts stated in it; and any such certificate which purports to be issued by the registration authority shall be taken to be so issued unless the contrary is proved.

(6) In this Act—

“registered” means entered in the Register, and “unregistered” is to be construed accordingly;

“the registration authority” means a body which is established or constituted by or under Northern Ireland legislation and is prescribed for the purposes of this Act.

#### Commencement Information

- I1** S. 1 coming into operation (1.5.2014 for specified purposes) by [The Tobacco Retailers \(2014 Act\) \(Commencement No. 1\) Order \(Northern Ireland\) 2014 \(S.R. 2014/125\)](#), **art. 2(a)**
- I2** S. 1 in operation at 6.4.2016 in so far as not already in operation by [S.R. 2016/101](#), **art. 2(a)**, **Sch. 1**

#### Application for registration

**2.—**(1) A person may apply to the registration authority—

- (a) to be registered; or
- (b) to add further premises to the person's entry in the Register.

(2) An application under subsection (1) must—

- (a) state the name and address of the applicant;
- (b) where it is an application under subsection (1)(a), state the address of each of the premises at which the applicant proposes to carry on a tobacco business;
- (c) where it is an application under subsection (1)(b), state the address of each of the further premises at which the applicant proposes to carry on a tobacco business;

- (d) be made in such form and manner as may be prescribed;
  - (e) contain such other information as may be prescribed.
- (3) The registration authority must grant an application under subsection (1) unless—
- (a) it does not comply with subsection (2);
  - (b) the applicant has, within the period of 5 years ending with the day on which the application is made, been convicted of an offence under section 170 or 170B of the Customs and Excise Management Act 1979 in relation to tobacco and been sentenced for that offence to a custodial sentence (whether suspended or not); or
  - (c) at the time the application is made or being considered by the registration authority—
    - (i) a restricted premises order has effect in respect of any premises specified in the application; or
    - (ii) a restricted sale order has effect in respect of the applicant.
- (4) The registration authority must give notice to the applicant of its decision within a period of 28 days beginning on the day on which the application is made.
- (5) On granting an application under subsection (1)(a) the registration authority must enter the following information in the Register—
- (a) the name and address of the applicant;
  - (b) the address of each of the premises at which the applicant proposes to carry on a tobacco business;
  - (c) any other information which the Department may direct the authority to include.
- (6) On granting an application under subsection (1)(b) the registration authority must amend the applicant's entry in the Register so as to include—
- (a) the address of each of the further premises at which the applicant proposes to carry on a tobacco business;
  - (b) any other information which the Department may direct the authority to include.
- (7) Regulations may provide for the charging of fees in connection with making an application under subsection (1).
- (8) In this section “applicant” means a person who makes an application under subsection (1).

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**Commencement Information**

- I3** S. 2 coming into operation (1.5.2014 for specified purposes) by [The Tobacco Retailers \(2014 Act\) \(Commencement No. 1\) Order \(Northern Ireland\) 2014 \(S.R. 2014/125\)](#), **art. 2(b)**

- 14** S. 2 in operation at 6.4.2016 in so far as not already in operation by S.R. 2016/101, art. 2(a), Sch. 1

### Duty to notify certain changes

- 3.**—(1) A registered person must give the registration authority notice of—
- (a) any change in the person's name or address;
  - (b) the fact that the person is no longer carrying on a tobacco business at an address noted in the person's entry in the Register.
- (2) The notice must be given within 28 days of the date of the change to which it relates.

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### Commencement Information

- 15** S. 3 in operation at 6.4.2016 by S.R. 2016/101, art. 2(a), Sch. 1

### Changes to and removal from the Register

- 4.**—(1) The registration authority may correct the Register (following notification under section 3 or otherwise) as it considers appropriate.
- (2) The registration authority must amend the Register so as to remove—
- (a) references to registered premises in respect of which a restricted premises order has effect;
  - (b) a person's entry from the Register where that person has, within a period of 5 years ending with the day on which the removal is made, been convicted of an offence under section 170 or 170B of the Customs and Excise Management Act 1979 in relation to tobacco and has been sentenced for that offence to a custodial sentence (whether suspended or not).
- (3) The registration authority may remove a person's entry from the Register if—
- (a) as a result of a correction or an amendment under subsection (1) or (2)(a), there are no premises noted in the person's entry in the Register; or
  - (b) it is not satisfied that the person is carrying on a tobacco business.
- (4) The registration authority must reinstate a person's entry in the Register if—
- (a) the entry was removed under subsection (3)(b); and
  - (b) the person notifies the registration authority, within the period of 28 days from the date of service on that person of the notice of the removal under subsection (5), that the person is still carrying on a tobacco business.

(5) Where the registration authority corrects, amends, removes or reinstates a person's entry in the Register under this section, it must as soon as reasonably practicable serve a notice on the person of the correction, amendment, removal or, as the case may be, reinstatement.

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**Commencement Information**

**I6** S. 4 in operation at 6.4.2016 by S.R. 2016/101, art. 2(a), Sch. 1

*Persistent commission of tobacco [<sup>F1</sup>or nicotine] offences*

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**Textual Amendments**

**F1** Words in [cross-heading](#) heading inserted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 3](#); S.R. 2021/329, art. 2(c)

**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 [<sup>F2</sup>or nicotine] offence; or
- (b) is convicted of a tobacco [<sup>F3</sup>or nicotine] 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 [<sup>F4</sup>, cigarette papers or nicotine products] to any person.

(5) The prohibition applies to sales of tobacco [<sup>F5</sup>, cigarette papers or nicotine products] 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 [<sup>F6</sup>or nicotine] offence in relation to the relevant premises; or
    - (ii) convicted of a tobacco [<sup>F7</sup>or nicotine] 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 [<sup>F8</sup>or nicotine] 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 “ [<sup>F9</sup>tobacco or nicotine 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”); <sup>F10</sup> ...
- (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”).
- <sup>F11</sup>(g) an offence committed under section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 on any premises (which are accordingly “the premises in relation to which the offence is committed”]  
<sup>F12</sup>or
- (h) an offence committed under section 2 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 in respect of any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”]

#### Textual Amendments

- F2** Words in s. 5(1)(a) inserted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 4\(a\)](#); S.R. 2021/329, art. 2(c)
- F3** Words in s. 5(1)(b) inserted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 4\(a\)](#); S.R. 2021/329, art. 2(c)
- F4** Words in s. 5(4) substituted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 4\(b\)](#); S.R. 2021/329, art. 2(c)
- F5** Words in s. 5(5) substituted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 4\(c\)](#); S.R. 2021/329, art. 2(c)
- F6** Words in s. 5(8)(b)(i) inserted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 4\(d\)](#); S.R. 2021/329, art. 2(c)
- F7** Words in s. 5(8)(b)(ii) inserted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 4\(d\)](#); S.R. 2021/329, art. 2(c)

- F8** Words in s. 5(13)(a) inserted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 4(e)**; S.R. 2021/329, art. 2(c)
- F9** Words in s. 5(14) substituted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 4(f)(i)**; S.R. 2021/329, art. 2(c)
- F10** Word in s. 5(14)(e) repealed (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), Sch. 1 para. 4(f)(ii), **Sch. 2 Pt. 2**; S.R. 2021/329, art. 2(c)(d)
- F11** S. 5(14)(g) added (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 4(f)(iii)**; S.R. 2021/329, art. 2(c)
- F12** S. 5(14)(h) and preceding word added (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 4(f)(iv)**; S.R. 2021/329, art. 2(c)

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**Commencement Information**

- I7** S. 5 in operation at 1.7.2016 by S.R. 2016/101, art. 2(b), **Sch. 2**

**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 [<sup>F13</sup>or nicotine] offence; or
- (b) is convicted of a tobacco [<sup>F14</sup>or nicotine] 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 [<sup>F15</sup>, cigarette papers or nicotine products] 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 [<sup>F16</sup>, cigarette papers or nicotine products] to any person;
- (c) from keeping any cigarette machine on any premises for the purpose of selling tobacco [<sup>F17</sup> or nicotine products] or permitting any <sup>F18</sup>... 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 <sup>F18</sup>... machine kept on the premises for the purpose of selling tobacco [<sup>F17</sup> or nicotine products] .



(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 [<sup>F19</sup>or nicotine] offence; or

(b) convicted of a tobacco [<sup>F20</sup>or nicotine] offence.

(7) For the purposes of this section a fixed penalty notice which is given to the offender in respect of a tobacco [<sup>F21</sup>or nicotine] 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.

[<sup>F22</sup>(8) In this section any reference to a machine is a reference to an automatic machine for the sale of tobacco or nicotine products.]

#### Textual Amendments

- F13** Words in s. 6(1)(a) inserted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 5(a)**; S.R. 2021/329, art. 2(c)
- F14** Words in s. 6(1)(b) inserted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 5(a)**; S.R. 2021/329, art. 2(c)
- F15** Words in s. 6(4)(a) substituted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 5(b)(i)**; S.R. 2021/329, art. 2(c)
- F16** Words in s. 6(4)(b) substituted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 5(b)(ii)**; S.R. 2021/329, art. 2(c)
- F17** Words in s. 6(4)(c)(d) inserted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 5(b)(iv)**; S.R. 2021/329, art. 2(c)
- F18** Word in s. 6(4)(c)(d) repealed (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 5(b)(iii)**, **Sch. 2 Pt. 2**; S.R. 2021/329, art. 2(c)(d)
- F19** Words in s. 6(6)(a) inserted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 5(c)**; S.R. 2021/329, art. 2(c)
- F20** Words in s. 6(6)(b) inserted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 5(c)**; S.R. 2021/329, art. 2(c)
- F21** Words in s. 6(7) inserted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 5(d)**; S.R. 2021/329, art. 2(c)
- F22** S. 6(8) substituted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 5(e)**; S.R. 2021/329, art. 2(c)

#### Commencement Information

- I8** S. 6 in operation at 1.7.2016 by S.R. 2016/101, art. 2(b), **Sch. 2**

### 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.

#### Commencement Information

**19** S. 7 in operation at 1.7.2016 by S.R. 2016/101, art. 2(b), Sch. 2

### 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 [F23, cigarette papers or nicotine products] 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.

#### Textual Amendments

- F23** Words in s. 8(4) substituted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 6](#); S.R. 2021/329, art. 2(c)

#### Commencement Information

- I10** S. 8 coming into operation (1.5.2014 for specified purposes) by [The Tobacco Retailers \(2014 Act\) \(Commencement No. 1\) Order \(Northern Ireland\) 2014 \(S.R. 2014/125\), art. 2\(c\)](#)
- I11** S. 8 in operation at 1.7.2016 in so far as not already in operation by [S.R. 2016/101, art. 2\(b\), Sch. 2](#)

### Restricted premises orders: no tobacco [<sup>F24</sup>or nicotine products] 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 [<sup>F25</sup>, cigarette papers or nicotine products as the case may be] are in the retail area of the relevant premises.

(3) Subsection (2) does not apply to tobacco [<sup>F26</sup>, cigarette papers and nicotine products] 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.

#### Textual Amendments

- F24** Words in [cross-heading](#) heading inserted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 7\(a\)](#); S.R. 2021/329, art. 2(c)
- F25** Words in s. 9(2) substituted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 7\(b\)](#); S.R. 2021/329, art. 2(c)
- F26** Words in s. 9(3) substituted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 7\(c\)](#); S.R. 2021/329, art. 2(c)

#### Commencement Information

- I12** S. 9 in operation at 1.7.2016 by [S.R. 2016/101, art. 2\(b\), Sch. 2](#)

## Offences

### Offences

**10.**—(1) If an unregistered person carries on a tobacco business, the person commits an offence.

(2) If a registered person carries on a tobacco business at premises other than those noted in the person's entry in the Register, the person commits an offence.

(3) If a person fails, without reasonable excuse, to comply with section 3 (duty to notify certain changes), the person commits an offence.

(4) If—

(a) a person sells on any premises any tobacco [<sup>F27</sup>, cigarette papers or nicotine products] in contravention of a restricted premises order, and

(b) the person knew, or ought reasonably to have known, that the sale was in contravention of the order,

the person commits an offence.

(5) If a person fails to comply with a restricted sale order, the person commits an offence.

(6) It is a defence for a person charged with an offence under subsection (5) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(7) If a person fails, without reasonable excuse, to comply with section 8(2), the person commits an offence.

(8) If a person fails, without reasonable excuse, to comply with section 9(2), the person commits an offence.

(9) A person guilty of an offence under—

(a) subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale;

(b) subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale;

(c) subsection (4) or (5) is liable on summary conviction to a fine not exceeding £20,000;

(d) subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale;

(e) subsection (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### Textual Amendments

- F27** Words in s. 10(4)(a) substituted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 8](#); S.R. 2021/329, art. 2(c)

### Commencement Information

- I13** S. 10 in operation at 1.7.2016 by [S.R. 2016/101, art. 2\(b\), Sch. 2](#)

*Enforcement powers, etc.*

### Powers of entry

**11.—(1)** An authorised officer has the right, on producing, if so required, the officer's authorisation—

- (a) at any reasonable hour to enter any premises, other than premises used only as a private dwelling house, which the officer reasonably believes it is necessary to enter for the purpose of ascertaining whether any of the following offences is being or has been committed on the premises and, if so, by whom—
  - (i) an offence under section 10;
  - (ii) an offence under Article 3, 4 or 4A of the Health and Personal Social Services (Northern Ireland) Order 1978;
  - (iii) an offence under Article 4, 4A or 5 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991;
  - <sup>[F28]</sup>(iv) an offence under section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016;]
  - <sup>[F29]</sup>(v) an offence under section 2 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016.]
- (b) to carry out on those premises such inspections and examinations as the officer reasonably believes are necessary for that purpose;
- (c) if the officer reasonably believes it is necessary for that purpose—
  - (i) to require the production of any book, document, data, record (in whatever form it is held) or product; and
  - (ii) to inspect it and take copies of or extracts from it;
- (d) to 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 authorised officer reasonably believes is necessary for that purpose;
- (e) to require any person to give the officer such information, or afford the officer such facilities and assistance, as the officer reasonably believes is necessary for that purpose.

(2) A person is not required under subsection (1) to answer any question or to produce any item mentioned in subsection (1)(c)(i) which the person would be entitled to refuse to answer or produce in or for the purpose of proceedings in a court in Northern Ireland.

(3) An authorised officer may make such purchases and secure the provision of such services as the authorised officer reasonably believes are necessary for the purpose mentioned in subsection (1)(a).

(4) A lay magistrate may exercise the power in subsection (6) if he or she is satisfied on a complaint in writing substantiated on oath—

(a) that for the purpose mentioned in subsection (1)(a) there are reasonable grounds for entry into any premises, other than premises used only as a private dwelling house; and

(b) of either or both of the matters mentioned in subsection (5).

(5) The matters are—

(a) that admission 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;

(b) that an application for admission, or the giving of such notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his or her return.

(6) The lay magistrate may by warrant signed by him or her authorise an authorised officer to enter the premises, if need be by force.

(7) The warrant under subsection (6) shall continue in force until the end of the period of one month beginning with the date on which the magistrate signs it.

(8) An authorised officer entering any premises under this section may take with the officer such other persons and such equipment as the officer reasonably believes are necessary.

(9) If premises which an authorised officer is authorised to enter under this section are unoccupied, or if the occupier is temporarily absent, then on leaving them that officer must leave the premises as effectively secured against unauthorised entry as the officer found them.

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**Textual Amendments**

**F28** S. 11(1)(a)(iv) added (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 9\(a\)](#); S.R. 2021/329, art. 2(c)

**F29** S. 11(1)(a)(v) added (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 9\(b\)](#); S.R. 2021/329, art. 2(c)

**Commencement Information**

**I14** S. 11 in operation at 6.4.2016 by S.R. 2016/101, art. 2(a), Sch. 1

**Fixed penalties for certain offences**

**12.**—(1) Where an authorised officer of a council has reason to believe that a person has committed—

- (a) an offence under section 10(1), (2), (3), (7) or (8),
- (b) an offence under Article 3, 4 or 4A of the Health and Personal Social Services (Northern Ireland) Order 1978,
- (c) an offence under Article 4, 4A or 5 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991,
- [<sup>F30</sup>(d) an offence under section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016;]
- [<sup>F31</sup>(e) an offence under section 2 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016.]

the officer may give that person a fixed penalty notice in respect of the offence.

(2) A fixed penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this section.

(3) Where a person is given a notice under this section in respect of an offence—

- (a) no proceedings may be brought for that offence before the expiration of the period of 28 days following the date of the notice; and
- (b) the person shall not be convicted of that offence if the person pays the fixed penalty before the expiration of that period.

(4) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence.

(5) A notice under this section must also state—

- (a) the period during which, by virtue of subsection (3)(a), proceedings will not be brought for the offence;
- (b) the amount of the fixed penalty; and
- (c) the person to whom and the address at which—
  - (i) the fixed penalty may be paid;
  - (ii) any representations relating to the notice may be made.

(6) The person mentioned in subsection (5)(c) must be the council on whose behalf the authorised officer was acting when he or she gave the notice.

(7) The form of a notice under this section shall be such as may be prescribed.

(8) The fixed penalty payable to a council under this section shall be such amount as may be prescribed.

(9) But if payment is made within the first 14 days of the period mentioned in subsection (3)(a) the amount payable is reduced by 25%.

(10) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (5) (c)(i) at the address so mentioned.

(11) Where a letter is sent in accordance with subsection (10) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(12) In any proceedings a certificate which—

(a) purports to be signed on behalf of the clerk of the council, and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

#### Textual Amendments

**F30** S. 12(1)(d) added (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 10\(a\)](#); S.R. 2021/329, art. 2(c)

**F31** S. 12(1)(e) added (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 10\(b\)](#); S.R. 2021/329, art. 2(c)

#### Commencement Information

**I15** S. 12 coming into operation (1.5.2014 for specified purposes) by [The Tobacco Retailers \(2014 Act\) \(Commencement No. 1\) Order \(Northern Ireland\) 2014 \(S.R. 2014/125\), art. 2\(d\)](#)

**I16** S. 12 in operation at 1.7.2016 in so far as not already in operation by [S.R. 2016/101, art. 2\(b\), Sch. 2](#)

#### Use of fixed penalty receipts

**13.—**(1) A council may use any sums it receives in respect of fixed penalties payable in pursuance of notices given under section 12 (its “fixed penalty receipts”) only for the purposes of—

(a) its functions under this Act; or

(b) such other functions (if any) as are prescribed.

(2) A council shall supply the Department with such information relating to its use of its fixed penalty receipts as the Department may require.



## (3) Regulations may—

- (a) make provision for what a council is to do with its fixed penalty receipts—
  - (i) pending their being used for the purposes mentioned in subsection (1);
  - (ii) if they are not so used before such time after their receipt as may be specified in the regulations;
- (b) make provision for accounting arrangements in respect of a council's fixed penalty receipts.

(4) The provision that may be made under subsection (3)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the council.

(5) Before making regulations under this section the Department shall consult—

- (a) councils; and
- (b) such other persons or bodies as the Department considers appropriate.

**Commencement Information**

- I17** S. 13 coming into operation (1.5.2014 for specified purposes) by [The Tobacco Retailers \(2014 Act\) \(Commencement No. 1\) Order \(Northern Ireland\) 2014 \(S.R. 2014/125\)](#), [art. 2\(e\)](#)
- I18** S. 13 in operation at 1.7.2016 in so far as not already in operation by [S.R. 2016/101](#), [art. 2\(b\)](#), [Sch. 2](#)

**Withdrawal of fixed penalty notices**

**14.—(1)** This section applies if a council considers that a penalty notice which an authorised officer acting on its behalf has given to a person under section 12 ought not to have been given.

- (2) The council may give notice to that person withdrawing the penalty notice.
- (3) If it does so—
  - (a) it must repay to that person any amount which has been paid by way of penalty in pursuance of the penalty notice; and
  - (b) no proceedings may be brought or continued against that person for the offence in question.

(4) The council must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

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**Commencement Information**

**I19** S. 14 in operation at 1.7.2016 by S.R. 2016/101, art. 2(b), Sch. 2

**Obstruction, etc. of authorised officers**

15.—(1) A person who—

- (a) intentionally obstructs an authorised officer who is acting in the proper exercise of the officer's functions under this Act, or
- (b) without reasonable cause fails to comply with any requirement made of the person by such an officer who is so acting,

commits an offence.

(2) A person who, in giving any information which is properly required of the person by an authorised 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
- (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 5 on the standard scale.

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**Commencement Information**

**I20** S. 15 in operation at 6.4.2016 by S.R. 2016/101, art. 2(a), Sch. 1

**Council's duty to share information about enforcement**

16.—(1) Every council must make available to every other council, the registration authority and the Department such information relating to—

- (a) fixed penalty notices given in respect of tobacco [<sup>F32</sup>or nicotine] offences committed in the district of that council,
- (b) convictions in respect of tobacco [<sup>F33</sup>or nicotine] offences committed in the district of that council, and
- (c) restricted premises orders and restricted sale orders made on an application by that council,

as the other council, the registration authority or, as the case may be, the Department may require.

(2) Information made available under subsection (1) to a council or the registration authority may be used by the council or the registration authority

only for the purpose of enabling it or assisting it to perform its functions under this Act.

(3) In this section “tobacco [<sup>F34</sup>or nicotine] offence” has the meaning given in section 5(14).

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**Textual Amendments**

**F32** Words in s. 16(1)(a) inserted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 11**; S.R. 2021/329, art. 2(c)

**F33** Words in s. 16(1)(b) inserted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 11**; S.R. 2021/329, art. 2(c)

**F34** Words in s. 16(3) inserted (1.2.2022) by Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26), s. 20(3), **Sch. 1 para. 11**; S.R. 2021/329, art. 2(c)

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**Commencement Information**

**I21** S. 16 in operation at 6.4.2016 by S.R. 2016/101, art. 2(a), **Sch. 1**

**Offences by bodies corporate**

**17** For the purposes of this Act, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with that member's functions of management as if that member were a director of the body corporate.

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**Commencement Information**

**I22** S. 17 in operation at 6.4.2016 by S.R. 2016/101, art. 2(a), **Sch. 1**

*Supplementary*

**Amendment of the Order of 1978**

**18.—(1)** The Health and Personal Social Services (Northern Ireland) Order 1978 is amended as follows.

(2) In Article 3(3) (prohibition on sale of tobacco, etc. to persons under 18) for “level 4” substitute “ level 5 ”.

(3) After Article 4 insert—

### “Purchase of tobacco on behalf of persons under 18

**4A.**—(1) A person aged 18 or over who knowingly buys or attempts to buy tobacco or cigarette papers on behalf of a person under the age of 18 shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

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#### Commencement Information

**I23** S. 18 in operation at 6.4.2016 by S.R. 2016/101, art. 2(a), Sch. 1

### Statutory charges

**19** In Schedule 11 to the Land Registration Act (Northern Ireland) 1970 (statutory charges) at the end add—

“**51** Any order under section 5 of the Tobacco Retailers Act (Northern Ireland) 2014.”.

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#### Commencement Information

**I24** S. 19 in operation at 1.7.2016 by S.R. 2016/101, art. 2(b), Sch. 2

### Vehicles, vessels, etc.

**20** Regulations may provide for this Act to apply in relation to any vehicle, vessel, stall or moveable structure subject to such modifications as the Department considers necessary or expedient.

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#### Commencement Information

**I25** S. 20 coming into operation (1.5.2014 for specified purposes) by [The Tobacco Retailers \(2014 Act\) \(Commencement No. 1\) Order \(Northern Ireland\) 2014 \(S.R. 2014/125\)](#), art. 2(f)

### General

### Service of notices in electronic form

**21.**—(1) The delivery of a relevant notice to a person (the “recipient”) may be effected for the purposes of this Act by transmitting it electronically, but only if it is transmitted in accordance with subsection (2).

(2) A relevant notice is transmitted electronically in accordance with this subsection if—

- (a) the recipient has agreed that the relevant notice may be delivered to the recipient by being transmitted to an electronic address and in an electronic form specified by the recipient for that purpose; and
- (b) the relevant notice is a notice to which that agreement applies and is transmitted to that address in that form.

(3) A relevant notice which is transmitted in accordance with subsection (2) by means of an electronic communications network shall, unless the contrary is proved, be treated as having been delivered at 9 a.m. on the working day immediately following the day on which it is transmitted.

(4) Regulations may amend this section by modifying the circumstances in which, and the conditions subject to which, the delivery of a relevant notice for the purposes of this Act may be effected by transmitting the notice electronically.

(5) Regulations may also amend this section by modifying the day on which and the time at which a relevant notice which is transmitted electronically is to be treated as having been delivered.

(6) Regulations under subsection (4) or (5) may make such consequential amendments of this Act as the Department considers appropriate.

(7) In this section—

“electronic address” includes any number or address used for the purposes of receiving electronic communications;

“electronic communication” means an electronic communication within the meaning of the Electronic Communications Act (Northern Ireland) 2001 the processing of which on receipt is intended to produce writing;

“electronic communications network” means an electronic communications network within the meaning of the Communications Act 2003;

“electronically” means in the form of an electronic communication;

“relevant notice” means a notice given or served under section 2(4), 3 or 4(5);

“working day” means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971.

#### Commencement Information

- I26** S. 21 coming into operation (1.5.2014 for specified purposes) by [The Tobacco Retailers \(2014 Act\) \(Commencement No. 1\) Order \(Northern Ireland\) 2014 \(S.R. 2014/125\)](#), **art. 2(g)**
- I27** S. 21 in operation at 6.4.2016 in so far as not already in operation by [S.R. 2016/101](#), **art. 2(a)**, **Sch. 1**

## Interpretation

### 22.—(1) In this Act—

“authorised officer”, in relation to a council, means any person (whether or not an officer of the council) who is authorised by it in writing, either generally or specifically, to act in matters arising under this Act;

“cigarettes” has the same meaning as in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978;

“clerk of the council”, in relation to a council, means the clerk appointed in accordance with section 41 of the Local Government Act (Northern Ireland) 1972;

“council” means a district council;

“the Department” means the Department of Health, Social Services and Public Safety;

[<sup>F35</sup>“nicotine product” means a nicotine product within the meaning of section 7 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 the sale of which to persons aged under 18 is for the time being prohibited by regulations under section 1(1) of that Act;]

“notice” means notice in writing;

“premises” includes any place and any vehicle, vessel, stall or moveable structure;

“prescribed” means prescribed by regulations;

“the Register” has the meaning given in section 1(1);

“registered”, “unregistered” and “the registration authority” have the meanings given in section 1(6);

“regulations” means regulations made by the Department;

“restricted premises order” means an order made under section 5;

“restricted sale order” means an order made under section 6;

“tobacco” has the same meaning as in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978;

“tobacco business” means a business involving the sale of tobacco or cigarette papers by retail.

(2) In its application to this Act, the Interpretation Act (Northern Ireland) 1954 has effect as if in section 24(1) (notice by post) the word “registering” were omitted.

### Textual Amendments

- F35** Words in s. 22(1) inserted (1.2.2022) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\), s. 20\(3\), Sch. 1 para. 12](#); S.R. 2021/329, art. 2(c)

### Transitional provision

**23.—(1)** Section 5 does not apply where any of the offences mentioned in that section were committed before the commencement of that section.

(2) Section 6 does not apply where any of the offences mentioned in that section were committed before the commencement of that section.

(3) Paragraph (b) of section 2(3) does not apply in relation to an offence mentioned in that paragraph which is committed before the commencement of that paragraph.

(4) Paragraph (b) of section 4(2) does not apply in relation to an offence mentioned in that paragraph which is committed before the commencement of that paragraph.

(5) Section 11 does not apply in relation to an offence mentioned in section 11(1)(a) which is committed before the commencement of that section.

(6) Section 12 does not apply in relation to an offence mentioned in section 12(1) which is committed before the commencement of that section.

(7) Subsection (2) of section 18 does not apply in relation to an offence which is committed before the commencement of that subsection.

### Commencement Information

- I28** [S. 23](#) in operation at 6.4.2016 by [S.R. 2016/101, art. 2\(a\), Sch. 1](#)

### Regulations and orders

**24.—(1)** Except as provided by subsection (2), regulations under this Act shall be subject to negative resolution.

(2) No regulations shall be made under section 2(7), 12(8), 20 or 21(4) or (5) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(3) Regulations and orders made by the Department under this Act may contain such incidental, supplementary, transitional, transitory and savings provisions as appear to the Department to be necessary or expedient.

**Commencement**

**25.**—(1) This section and sections 22, 24 and 26 come into operation on the day after the day on which this Act receives Royal Assent.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

**Short title**

**26** This Act may be cited as the Tobacco Retailers Act (Northern Ireland) 2014.



**Changes to legislation:**

There are currently no known outstanding effects for the Tobacco Retailers Act (Northern Ireland) 2014.