
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 345 (C. 20)

PUBLIC HEALTH

**The Tobacco and Primary Medical Services
(Scotland) Act 2010 (Commencement No. 1,
Consequential and Saving Provisions) Order 2010**

Made - - - - 27th September 2010

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 40(1) and (2) and 43(3) of the Tobacco and Primary Medical Services (Scotland) Act 2010(a).

Citation and interpretation

1.—(1) This Order may be cited as the Tobacco and Primary Medical Services (Scotland) Act 2010 (Commencement No. 1, Consequential and Saving Provisions) Order 2010.

(2) In this Order—

“the 2010 Act” means the Tobacco and Primary Medical Services (Scotland) Act 2010; and

“the 1991 Act” means the Children and Young Persons (Protection from Tobacco) Act 1991(b).

Commencement of sections 4 to 8, 10 to 36 and Schedule 1 of the 2010 Act

2.—(1) Subject to paragraph (2), the day appointed for the coming into force of the provisions of the 2010 Act specified in column 1 of the table in the Schedule to this Order (the subject matter of which is specified in column 2 of that table) is the day specified in column 3 of that table.

(2) Where a purpose is specified in column 4 of that table, a provision mentioned in column 1 comes into force in accordance with paragraph (1) only for that purpose.

Consequential amendment of section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991

3. On the coming into force, for all purposes, of section 8 of the 2010 Act, section 4 of the 1991 Act is amended as follows—

- (a) omit subsection (1);
- (b) in subsections (3) and (4) omit “(1) or”; and
- (c) in subsection (8) omit “(except where it appears in the statement required by subsection (1))”.

Saving section 18 of the Children and Young Persons (Scotland) Act 1937

4. Notwithstanding the coming into force for all purposes of section 4 of the 2010 Act, section 18 of the Children and Young Persons (Scotland) Act 1937(c) shall continue to apply for the purposes of the definition of “tobacco” in section 4(8) of the 1991 Act.

St Andrew’s House,Edinburgh
27th September 2010

SHONA ROBISON
Authorised to sign by the Scottish Ministers

SCHEDULE

Articles 2(1) and (2)

| <i>Column 1</i> <i>(provisions of the 2010 Act)</i> | <i>Column 2</i> <i>(subject matter)</i> | <i>Column 3</i> <i>(appointed day)</i> | <i>Column 4</i> <i>(purpose)</i> |
|--|--|---|---|
| Section 4 | Sale of tobacco products to persons under 18 | 24th October 2010 | For purpose of prescribing under section 4(4)(c) |
| Section 4 | Sale of tobacco products to persons under 18 | 1st April 2011 | For all other purposes |
| Section 5 | Purchase of tobacco products by persons under 18 | 1st April 2011 | |
| Section 6 | Purchase of tobacco products on behalf of persons under 18 | 1st April 2011 | |
| Section 7 | Confiscation of tobacco products from persons under 18 | 1st April 2011 | |
| Section 8 | Display of Warning Statements | 24th October 2010 | For purpose of prescribing under section 8(5) |
| Section 8 | Display of Warning Statements | 1st April 2011 | For all other purposes |
| Section 10 | Register of tobacco retailers | 1st April 2011 | |
| Section 11 | Application for registration and addition of premises etc. | 24th October 2010 | For purpose of prescribing under section 11(2)(d) |
| Section 11 | Application for registration and addition of premises etc. | 1st April 2011 | For all other purposes |
| Section 12 | Certificates of Registration | 1st April 2011 | |
| Section 13 | Duty to notify certain changes to the Register | 1st April 2011 | |
| Section 14 | Changes to and removal from the Register | 1st April 2011 | |

| <i>Column 1</i> <i>(provisions of the 2010 Act)</i> | <i>Column 2</i> <i>(subject matter)</i> | <i>Column 3</i> <i>(appointed day)</i> | <i>Column 4</i> <i>(purpose)</i> |
|--|---|---|---|
| Section 15 | Tobacco retailing banning orders | 1st October 2011 | |
| Section 16 | Tobacco retailing banning orders: ancillary orders | 1st October 2011 | |
| Section 17 | Tobacco retailing banning orders etc.: appeals | 1st October 2011 | |
| Section 18 | Tobacco retailing banning orders etc.: notification to Scottish Ministers | 1st October 2011 | |
| Section 19 | Tobacco retailing banning orders: display of notices | 24th October 2010 | For purpose of prescribing under section 19(5) |
| Section 19 | Tobacco retailing banning orders: display of notices | 1st October 2011 | For all other purposes |
| Section 20 | Offences relating to the Register | 1st October 2011 | |
| Section 21 | Public inspection of Register | 1st October 2011 | |
| Section 22 | Council access to Register | 1st October 2011 | |
| Section 23 | Delegation of functions relating to Register | 1st October 2011 | |
| Section 24 | Vehicles, vessels and moveable structures | 24th October 2010 | |
| Section 25 | Enforcement | 1st April 2011 | |
| Section 26 | Programmes of Enforcement | 1st April 2011 | |
| Section 27 | Fixed penalties | 24th October 2010 | For purpose of giving effect to Schedule 1 for the purpose of prescribing under paragraphs 3 and 4 of that Schedule |
| Section 27 | Fixed penalties | 1st April 2011 | For all other purposes |

| <i>Column 1</i> <i>(provisions of the 2010 Act)</i> | <i>Column 2</i> <i>(subject matter)</i> | <i>Column 3</i> <i>(appointed day)</i> | <i>Column 4</i> <i>(purpose)</i> |
|--|--|---|---|
| Sections 28, 29, 30, 31 and 32 | Powers of entry etc. | 1st April 2011 | |
| Sections 33, 34, 35 and 36 | Miscellaneous and Supplementary | 1st April 2011 | |
| Schedule 1 | Fixed penalties | 24th October 2010 | For purpose of prescribing under paragraphs 3 and 4 |
| Schedule 1 | Fixed penalties | 1st April 2011 | For all other purposes |

EXPLANATORY NOTE

(This note is not part of the Order)

Sections 40, 41, 42 and 43 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the 2010 Act”) came into force on Royal Assent.

The commencement of section 41 which gave effect to Schedule 2 to the 2010 Act must be read subject to the Tobacco and Primary Medical Services (Scotland) Act 2010 (Ancillary Provisions) Order 2010 (S.S.I. 2010/77) (“the Ancillary Order”) which provides that the modifications in that Schedule shall not take effect until the coming into force for all purposes of specified sections of the 2010 Act.

This Order brings into force certain other provisions including sections 4 and 26 referred to in the Ancillary Order.

The Schedule to this Order sets out a table specifying the day certain provisions in the 2010 Act are to come into force. Some provisions come into force on one day for the limited purpose of allowing Scottish Ministers to exercise a power to make subordinate legislation. They then come into force in full on a later day.

Article 2 of the Order provides that the provisions specified in column 1 of the table come into force on the day specified in column 3 of the table. If a purpose is specified in column 4, the provision only comes into force for that purpose.

The following provisions of the 2010 Act come into force for the limited purpose of prescribing on 24th October 2010.

Section 4 — to allow Scottish Ministers to prescribe a document which can be shown to prove that a person is 18 or over when tobacco is being sold. This is in addition to a passport and EU photo card driving licence which are provided for in the 2010 Act.

Section 8 — to allow the Scottish Ministers to prescribe the dimensions of the warning notice to be displayed in premises where a tobacco business is carried on and the size of the statement on it.

Section 11 — to allow the Scottish Ministers to prescribe the information which must be on an application for registration as a tobacco retailer in addition to that required by section 11 of the 2010 Act.

Section 19 — to allow the Scottish Ministers to prescribe the dimensions of and wording and size of the statement on the notice which a person must display under section 19 of the 2010 Act if they are subject to a tobacco retailing banning order.

Section 24 — to allow the Scottish Ministers to make regulations to modify Chapter 2 of the 2010 Act (Register of Tobacco Retailers) to apply it to moveable premises.

Section 27 and paragraphs 3 and 4 of Schedule 1 to the 2010 Act — to allow the Scottish Ministers to prescribe the period after which in relation to an offence, a fixed penalty notice may not be given and the amount and discounted amount of fixed penalties.

The following provisions of the 2010 Act come into force for all purposes on 1st April 2011.

Section 4 — which provides that it is an offence to sell a tobacco product or cigarette papers to a person under the age of 18.

Section 5 — which makes it an offence for a person under the age of 18 to buy or attempt to buy a tobacco product or cigarette papers.

Section 6 — which makes it an offence to buy or attempt to buy a tobacco product or cigarette papers on behalf of a person under 18.

Section 7 — which gives the police power to confiscate tobacco products or cigarette papers from a person under 18 in a public place.

Section 8 — which requires tobacco retailers to display a warning notice in their premises.

Section 10 — which requires the Scottish Ministers to set up a register of tobacco retailers.

Sections 11, 12, 13 and 14 — which make further provision regarding the register of tobacco retailers.

Sections 25 and 26 — section 25 gives Councils the duty to enforce the provisions under Chapters 1 and 2 of the 2010 Act (sales of tobacco and the register); section 26 requires Councils to carry out a programme of enforcement action once a year.

Section 27 and Schedule 1 — which provide for fixed penalties for offences under Chapters 1 and 2 of the 2010 Act.

Sections 28 to 32 — which provide in relation to powers of entry.

Sections 33 to 36 — which make miscellaneous and supplementary provision.

The following provisions of the 2010 Act come into force, for all purposes, on 1st October 2011.

Sections 15, 16, 17, 18 and 19 — which make provision in relation to tobacco retailing banning orders.

Section 20 — which provides in relation to the offences relating to the register of tobacco retailers. In particular it is an offence to retail tobacco if not registered.

Sections 21, 22 and 23 — which make provision about access to the register of tobacco retailers and delegation of functions relating to the register.

Article 3 of the Order amends section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 (“the 1991 Act”) consequential on the coming into force of section 8 of the 2010 Act which is commenced in this Order. Article 3(2) amends section 4 of the 1991 Act to limit its application to warning notices on vending machines. On the commencement of section 8 of the 2010 Act, regulation of warning notices in retail premises will be governed by that section.

In terms of the ancillary Order, section 18 of the Children and Young Persons (Scotland) Act 1937 (c.37) is repealed on the coming into force for all purposes of section 4 of the 2010 Act. Article

4 of this Order saves section 18 for the purpose of the definition of “tobacco” in section 4 of the 1991 Act which regulates the display of warning notices on vending machines.