



# Tobacco and Primary Medical Services (Scotland) Act 2010

## 2010 asp 3

### PART 1

[<sup>F1</sup>TOBACCO AND NICOTINE VAPOUR PRODUCTS ETC.]

### CHAPTER 4

MISCELLANEOUS AND SUPPLEMENTARY

#### 33 Presumption as to contents of container

- (1) This section applies for the purpose of any trial in proceedings for an alleged offence under section 1, 4, [<sup>F1</sup>4A, 4B, 4C, 5, 6, 6A or 9 ] .
- (2) Any substance displayed, sold or purchased in a container (whether sealed or not) is presumed to conform to the description of the substance on the container.
- (3) At the trial, any party to the proceedings may rebut the presumption mentioned in subsection (2) by proving that, at the time of its display, sale or purchase, the substance in the container did not match the description on the container.
- (4) However, a party may lead evidence for the purpose of rebutting the presumption only if the party has, not less than 7 days before the date of the trial, given notice of the intention to do so to the other parties.

#### Textual Amendments

- F1** Words in s. 33(1) substituted (1.4.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 14, 36(2)**; [S.S.I. 2017/12](#), **reg. 2**, **sch.**

#### Commencement Information

- II** S. 33 in force at 1.4.2011 by [S.S.I. 2010/345](#), **art. 2**, **Sch.**

*Status: Point in time view as at 01/04/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Tobacco and Primary Medical Services (Scotland) Act 2010, Chapter 4. (See end of Document for details)*

### 34 Offences by bodies corporate etc.

(1) Where—

- (a) an offence under this Act has been committed by—
  - (i) a body corporate,
  - (ii) a Scottish partnership, or
  - (iii) an unincorporated association other than a Scottish partnership, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual, or
  - (ii) an individual purporting to act in the capacity of a relevant individual, that individual (as well as the body corporate, partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

- (a) in relation to a body corporate (other than a limited liability partnership)—
  - (i) a director, manager, secretary or other similar officer of the body,
  - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a limited liability partnership, a member,
- (c) in relation to a Scottish partnership, a partner, and
- (d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

#### Commencement Information

**I2** S. 34 in force at 1.4.2011 by [S.S.I. 2010/345](#), art. 2, [Sch.](#)

### 35 Interpretation of Part 1

(1) In this Part—

“area”—

- (a) in relation to a council, means the local government area for which the council is constituted,
- (b) in relation to a council officer, means the area of the council which authorised the officer,

“council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“council officer” means a duly authorised officer of a council,

“fixed penalty notice” is to be construed in accordance with section 27 and schedule 1,

[<sup>F2</sup>“nicotine vapour product business” means a business involving the sale of nicotine vapour products by retail,]

“premises” includes any place and any vehicle [<sup>F3</sup>or moveable structure (and, for this purpose, “vehicle” includes any aircraft or ship, boat or other water-going vessel, other than one of a prescribed description)] ,

“prescribed” means prescribed in regulations made by the Scottish Ministers (and “prescribe” is to be construed accordingly),

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“registered” and “unregistered” have the meaning given in section 10(2),  
“tobacco business” means a business involving the sale of tobacco products by retail,  
[<sup>F4</sup>“tobacco or nicotine vapour product business” means a business which involves (either or both) a tobacco business or a nicotine vapour product business,]  
“tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed,  
“tobacco retailing banning order” has the meaning given in section 15(6).

- (2) For the purposes of this Part, the following are smoking related products—  
cigarette papers  
cigarette tubes  
cigarette filters  
apparatus for making cigarettes  
cigarette holders  
pipes for smoking tobacco products.
- (3) The Scottish Ministers may by order modify the list in subsection (2) as they consider appropriate.

#### Textual Amendments

- F2** Words in s. 35(1) inserted (6.2.2017 for specified purposes, 1.4.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 8(2)(a)**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F3** Words in s. 35(1) substituted (6.2.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 13**, 36(2); S.S.I. 2017/12, reg. 2, sch.
- F4** Words in s. 35(1) inserted (6.2.2017 for specified purposes, 1.4.2017 in so far as not already in force) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), **ss. 8(2)(b)**, 36(2); S.S.I. 2017/12, reg. 2, sch.

#### Commencement Information

- I3** S. 35 in force at 1.4.2011 by [S.S.I. 2010/345](#), art. 2, [Sch.](#)

### [<sup>F5</sup>35A Meaning of “nicotine vapour product”

- (1) In this Part, a “nicotine vapour product” is—  
(a) a device which is intended to enable the inhalation of nicotine-containing vapour by an individual,  
(b) a device which is intended to enable the inhalation of other vapour by an individual but is intended to resemble and be operated in a similar way to a device within paragraph (a),  
(c) an item which is intended to form part of a device within paragraph (a) or (b),  
(d) a substance which is intended to be vaporised by a device within paragraph (a) or (b) (and any item containing such a substance).
- (2) But the following are not nicotine vapour products—  
(a) a tobacco product,  
(b) a smoking related product,

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- (c) a medicinal product (within the meaning of the Human Medicines Regulations 2012 (S.I. 2012/1916)),
- (d) a medical device (within the meaning of the Medical Devices Regulations 2002 (S.I. 2002/618)).]

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**Textual Amendments**

**F5** S. 35A inserted (6.2.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\)](#), [ss. 1, 36\(2\)](#); [S.S.I. 2017/12](#), [reg. 2](#), [sch.](#)

**36 Crown application**

- (1) This Part binds the Crown.
- (2) No contravention by the Crown of any provision made by or under this Part makes the Crown criminally liable.
- (3) But the Court of Session may, on the application of the council in whose area the contravention is alleged to have taken place, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) Despite subsection (2), any provision made by or under this Part applies to persons in the public service of the Crown as it applies to other persons.

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**Commencement Information**

**I4** S. 36 in force at 1.4.2011 by [S.S.I. 2010/345](#), [art. 2](#), [Sch.](#)

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Tobacco and Primary Medical Services (Scotland) Act 2010, Chapter 4.