



Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016

2016 asp 14

PART 1 **S**

TOBACCO, NICOTINE VAPOUR PRODUCTS AND SMOKING

CHAPTER 2 **S**

ADVERTISING AND PROMOTION OF NICOTINE VAPOUR PRODUCTS

17 Advertising and brandsharing **S**

- (1) The Scottish Ministers may by regulations make provision prohibiting or restricting an activity, in the course of a business, which relates to—
 - (a) a nicotine vapour product advert,
 - (b) nicotine vapour product brandsharing.
- (2) Regulations under subsection (1) may in particular—
 - (a) make provision for offences and penalties for a person who contravenes a prohibition or restriction on an activity mentioned in subsection (1),
 - (b) provide for exceptions to the offences,
 - (c) provide for defences to the offences,
 - (d) impose on a person a duty to enforce the provisions in the regulations and, in relation to such a duty, apply with modifications, or make provision equivalent to, sections 25 and 26 of Chapter 3 of the 2010 Act,
 - (e) provide powers to a person whose duty it is to enforce the provisions and, in relation to such powers, apply with modifications, or make provision equivalent to, sections 28 to 32 of Chapter 3 of the 2010 Act.
- (3) The maximum penalties that may be provided for in regulations under subsection (1) for a person who commits an offence under those regulations are—
 - (a) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both,

Changes to legislation: There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, CHAPTER 2. (See end of Document for details)

- (b) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine or both.

(4) In this section—

“nicotine vapour product” has the meaning given in section 35A of the 2010 Act,
“nicotine vapour product advert” means a published advertisement or a display whose purpose or effect is to promote a nicotine vapour product,

“nicotine vapour product brandsharing” means the use of any name, emblem or other feature where—

(a) the name, emblem or other feature is used in connection with—

(i) any service or product (other than a nicotine vapour product) and the name, emblem or other feature used is the same as, or similar to, a name, emblem or other feature connected with a nicotine vapour product, or

(ii) any nicotine vapour product and the name, emblem or other feature used is the same as, or similar to, a name, emblem or other feature connected with any service or product other than a nicotine vapour product, and

(b) the purpose or effect of the use is to promote a nicotine vapour product,
“public” means the public at large, or any section of the public or individually selected members of the public,

“published” means published, distributed or otherwise made available to the public, in any form and by any means.

Commencement Information

II S. 17 in force at 31.1.2024 by S.S.I. 2024/1, reg. 2

18 Free distribution and nominal pricing S

(1) The Scottish Ministers may by regulations make provision prohibiting or restricting, in the course of a business—

- (a) giving away to the public any product or coupon (separately or with something else), where the purpose or effect is to promote a nicotine vapour product,
(b) making products or coupons available to the public (separately or with something else) for a nominal sum, where the purpose or effect is to promote a nicotine vapour product.

(2) Regulations under subsection (1) may in particular—

- (a) make provision for offences and penalties for a person who contravenes a prohibition or restriction mentioned in subsection (1),
(b) make further provision about the circumstances in which a product or coupon is to be treated as being made available for a nominal sum,
(c) provide for exceptions to the offences mentioned in paragraph (a),
(d) provide for defences to the offences,
(e) impose on a person a duty to enforce the provisions in the regulations and, in relation to such a duty, apply with modifications, or make provision equivalent to, sections 25 and 26 of the 2010 Act,

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- (f) provide powers to a person whose duty it is to enforce the provisions and, in relation to such powers, apply with modifications, or make provision equivalent to, sections 28 to 32 of the 2010 Act.
- (3) The maximum penalties that may be provided for in regulations under subsection (1) for a person who commits an offence under those regulations are—
- (a) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both,
 - (b) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine or both.
- (4) In this section—
- “coupon” means a document or other thing which, by itself or not, can be redeemed for a product or service or for cash or for any other benefit,
 - “nicotine vapour product” has the meaning given in section 35A of the 2010 Act,
 - “public” means the public at large, or any section of the public or individually selected members of the public.

Commencement Information

I2 S. 18 in force at 31.1.2024 by S.S.I. 2024/1, reg. 2

19 Sponsorship **S**

- (1) The Scottish Ministers may by regulations make provision prohibiting or restricting the entering into, in the course of a business, of a sponsorship agreement, where the purpose or effect of anything done as a result of the agreement is to promote a nicotine vapour product.
- (2) Regulations under subsection (1) may in particular—
- (a) make provision for offences and penalties for a person who contravenes a prohibition or restriction mentioned in subsection (1),
 - (b) provide for exceptions to the offences,
 - (c) provide for defences to the offences,
 - (d) impose on a person a duty to enforce the provisions in the regulations and, in relation to such a duty, apply with modifications, or make provision equivalent to, sections 25 and 26 of the 2010 Act,
 - (e) provide powers to a person whose duty it is to enforce the provisions and, in relation to such powers, apply with modifications, or make provision equivalent to, sections 28 to 32 of the 2010 Act.
- (3) The maximum penalties that may be provided for in regulations under subsection (1) for a person who commits an offence under those regulations are—
- (a) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both,
 - (b) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine or both.
- (4) In this section—
- “nicotine vapour product” has the meaning given in section 35A of the 2010 Act,

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“sponsorship agreement” means an agreement under which a party to it makes a contribution towards something, whether the contribution is in money or takes any other form (for example, the provision of services or of contributions in kind).

Commencement Information

I3 [S. 19](#) in force at 31.1.2024 by [S.S.I. 2024/1](#), [reg. 2](#)

Changes to legislation:

There are currently no known outstanding effects for the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, CHAPTER 2.