

Draft Regulations laid before the Scottish Parliament under section 40(4) of the Tobacco and Primary Medical Services (Scotland) Act 2010, for approval by resolution of the Scottish Parliament. These draft Regulations replace those laid on 22 November 2010 and are being issued free of charge to all known recipients of those draft Regulations.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No.

PUBLIC HEALTH

The Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Regulations 2010

Made - - - -

Coming into force - -

1st April 2011

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 24 and 40(2) of and paragraphs 3 and 4 of schedule 1 to the Tobacco and Primary Medical Services (Scotland) Act 2010(a) and all other powers enabling them to do so.

In accordance with section 40(4) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Regulations 2010 and come into force on 1st April 2011.

(2) In these Regulations—

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

“moveable premises” means premises consisting of a vehicle or other moveable structure from which the applicant proposes to carry on a tobacco business but excluding a vessel.

Application of Chapter 2 of the Act (Register of Tobacco Retailers) to vehicles and other moveable structures (excluding vessels)

2. If premises are moveable premises, Chapter 2 of Part 1 of the Act applies subject to the modifications in regulations 3 and 4.

3.—(1) For—

(a) “the addresses of all premises at which the applicant proposes to carry on a tobacco business” in section 11(2)(b) of the Act; and

(a) 2010 asp 3. Section 35 of the 2010 Act contains a definition of “prescribed” which is relevant to the making of these Regulations.

- (b) “the address of the further premises at which the applicant proposes to carry on a tobacco business” in section 11(2)(c) of the Act,

substitute in accordance with paragraph (2).

(2) Where it is proposed to carry on business from moveable premises—

(a) in a fixed location substitute—

- “:— (i) a description which identifies the location of all premises at which; and
- (ii) the type and registration number of the vehicle or a description and dimensions of the moveable structure being the premises from which, the applicant proposes to carry on a tobacco business”.

(b) in a location which is not fixed substitute—

- “:— (i) a description which identifies each street or area at which; and
- (ii) the type and registration number of the vehicle or a description and dimensions of the moveable structure being the premises from which, the applicant proposes to carry on a tobacco business”.

4. The references in the Act to—

- (i) “addresses” in section 11(4)(b); and
- (ii) “address” in sections 11(5), and 13(1)(b)

are to be read in accordance with the substitutions in regulation 3.

Time after which a fixed penalty notice may not be given

5. The time prescribed for the purpose of paragraph 3 of schedule 1 to the Act is 7 days after the day on which the offence took place.

Amount of fixed penalty and discounted amount for offences under sections 5 and 7 of the Act

6. The amount prescribed for the purposes of paragraph 4(1)(a) and (b) of schedule 1 to the Act for offences under sections 5 and 7 of the Act are respectively—

- (a) £50 (fixed penalty); and
- (b) £30 (discounted amount).

Amount of fixed penalty and discounted amount for all other offences under Chapters 1 and 2 of Part 1 of the Act

7.—(1) Subject to paragraph (2), the amounts prescribed for the purposes of paragraph 4(1)(a) and (b) of schedule 1 to the Act for offences under Chapters 1 and 2 of Part 1 of the Act other than sections 5 and 7 are respectively—

- (a) £200 (fixed penalty); and
- (b) £150 (discounted amount).

(2) Where a person is issued with a fixed penalty notice (“the fixed penalty notice”) and that person has been the subject of previous enforcement action within the prescribed period the amounts prescribed for the purposes of paragraph 4(1)(a) and (b) of schedule 1 to the Act are set out in the table in the Schedule to these Regulations.

(3) The prescribed period is two years ending on the date the fixed penalty notice is issued.

(4) In this regulation, “enforcement action” means the issue of a fixed penalty notice which is not subsequently withdrawn or the conviction of an offence under Chapter 1 or 2 of Part 1 of the Act.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 7(2)

<i>Number of previous enforcement actions within prescribed period</i>	<i>Amount of fixed penalty £</i>	<i>Discounted amount £</i>
One	400	350
Two	600	550
Three	800	750
Four	1000	950
Five	1200	1150

Amounts continuing in increments of £200 for each additional previous enforcement action.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the application to moveable structures of Chapter 2 of Part 1 (Register of Tobacco Retailers) of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the Act”). They also provide in relation to the fixed penalty notice scheme under section 27 and schedule 1 to the Act.

Regulations 2, 3 and 4 make provision in relation to the application of Chapter 2 to moveable premises.

Chapter 2 of Part 1 of the Act makes provision in relation to a Register of Tobacco Retailers which is to be established in accordance with section 10 of the Act. Section 11 of the Act provides in relation to applications to be put on this Register.

These Regulations are made under section 24 of the Act which allows Scottish Ministers to modify Chapter 2 to apply its provisions to moveable structures. Regulations 3 and 4 modify section 11 of the Act to take account of the fact that tobacco businesses carried on from moveable premises will not have a fixed address as is envisaged by section 11.

Regulation 3(2) provides that if the business is carried on from moveable premises in a fixed location then, in the application for registration, it will be necessary to give the following details in relation to those premises:—

- (i) a description which identifies the location of the premises; and
- (ii) the type and registration number of the vehicle or a description and dimensions of the moveable structure.

If the business is carried on from moveable premises which are not in a fixed location then, in the application for registration, it will be necessary to give the following details in relation to those premises:—

- (i) a description which identifies each street or area at which the business is carried on; and
- (ii) the type and registration number of the vehicle or a description and dimensions of the moveable structure.

Regulations 5, 6 and 7 and the Schedule provide in relation to the fixed penalty notice scheme.

Section 27(1) of the Act provides that a council officer or a constable may issue a fixed penalty notice if they have reason to believe that the person has committed an offence under Chapters 1 or 2 of Part 1 of the Act which provide in relation to tobacco.

Regulation 5 provides that a fixed penalty notice cannot be given after 7 days from the date of the offence.

Regulation 6 prescribes the amount of the fixed penalty for offences under sections 5 (purchase of tobacco products by persons under 18) and 7 (confiscation of tobacco products from persons under 18) of the Act as £50. The discounted amount for these offences is £30. This is the amount which will be due provided the penalty is paid within the discounted payment deadline. The deadline will be stated on the fixed penalty notice.

Regulation 7 prescribes the amount and the discounted amount for all other offences under Chapters 1 and 2 of Part 1 of the Act. The amount is £200 and the discounted amount is £150.

If the person receiving the fixed penalty notice has already had a fixed penalty or a conviction for a tobacco offence under the Act within the previous two years, the amounts are escalated in accordance with the Schedule to these Regulations.

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