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**Changes to legislation:** Health Act 2009, Cross Heading: Tobacco Advertising and Promotion Act 2002 (c. 36) is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

### SCHEDULE 4

#### TOBACCO: MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Tobacco Advertising and Promotion Act 2002 (c. 36)*

VALID FROM 06/04/2012

2 The Tobacco Advertising and Promotion Act 2002 is amended as follows.

VALID FROM 06/04/2015

3 (1) Section 6 (exclusion from advertising offence for specialist tobacconists) is amended as follows.

(2) In subsection (1), at the end of paragraph (a), insert “ in Scotland ”.

(3) In subsection (4), after “ “premises” in subsections” insert “ (A1), ”.

4 (1) Section 8 (displays) is amended as follows.

(2) In subsection (1), after “causes to be displayed” insert “ in Scotland ”.

(3) After subsection (1) insert—

“(1A) A service provider established in Scotland is guilty of an offence if, in the course of providing information society services, the provider does anything in an EEA State other than the United Kingdom which, if done in Scotland, would constitute an offence under subsection (1).”

(4) For subsection (2) substitute—

“(2) Nothing in subsection (1) makes it an offence for a service provider established outside the United Kingdom to do anything in the course of providing information society services.”

(5) In the heading, at the end insert “ : Scotland ”.

(6) In relation to a time before section 21 of this Act comes fully into force the references to Scotland in subsection (1A) inserted into section 8 of the 2002 Act by subparagraph (3) are to be read as references to the United Kingdom.

#### **Commencement Information**

**II** Sch. 4 para. 4 partly in force; Sch. 4 para.4(3)(4)(6) in force at 12.1.2010 see s. 40(7)(b)

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- 5 (1) Section 9 (prohibition of free distributions) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) A service provider established in the United Kingdom is guilty of an offence if, in the course of providing information society services, the provider does anything in an EEA State other than the United Kingdom which, if done in the United Kingdom, would constitute an offence under subsection (1).”
- (3) After subsection (5) insert—
- “(5A) Nothing in subsection (1) makes it an offence for a service provider established outside the United Kingdom to do anything in the course of providing information society services.”
- 6 (1) Section 11 (brandsharing) is amended as follows.
- (2) In subsection (3), after “3,” insert “ 3A, 7A, 7C, 7D, ”.
- (3) After subsection (4) insert—
- “(5) A service provider established in the United Kingdom is guilty of an offence if, in the course of providing information society services, the provider does anything in an EEA State other than the United Kingdom which, if done in the United Kingdom, would constitute an offence under subsection (4).
- (6) Nothing in subsection (4) makes it an offence for a service provider established outside the United Kingdom to do anything in the course of providing information society services.”

#### Commencement Information

**I2** Sch. 4 para. 6 partly in force; Sch. 4 para. 6(3) in force at 12.1.2010 see s. 40(7)(b)

- 7 (1) Section 13 (enforcement) is amended as follows.
- (2) In subsection (1)(a), after “Wales, a” insert “ local ”.
- (3) In subsection (3), after “Wales” insert “ , Northern Ireland ”.
- (4) Omit subsection (4).
- (5) In subsection (5), after “proceedings” insert “which are—
- (a) in respect of an offence committed in England, and
- (b)”.
- (6) After subsection (5) insert—
- “(5A) The Welsh Ministers may take over the conduct of any proceedings which are—
- (a) in respect of an offence committed in Wales, and
- (b) instituted in England and Wales by another person under any provision of this Act or regulations made under it.”

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#### Commencement Information

**I3** Sch. 4 para. 7 partly in force; Sch. 4 para. 7(2) in force at 12.1.2010 see s. 40(7)(b)

VALID FROM 01/06/2012

- 8 (1) Section 14 (powers of entry etc.) is amended as follows.
- (2) Omit subsection (11).
- (3) In subsection (12)—
- (a) omit “or” at the end of paragraph (a),
  - (b) after paragraph (a) insert—
    - “(aa) the Welsh Ministers take over any proceedings by virtue of section 13(5A), or”, and
  - (c) after “(as the case may be)” insert “ the Welsh Ministers or ”.
- 9 (1) Section 16 (penalties) is amended as follows.
- (2) Subsection (1A) (limitation of penalty for certain offences relating to information society services) ceases to have effect.
- (3) In subsection (2)(a), for “level 5 on the standard scale” substitute “ the statutory maximum ”.
- (4) Sub-paragraph (2) does not apply to offences committed before the coming into force of that sub-paragraph.

#### Commencement Information

**I4** Sch. 4 para. 9 partly in force; Sch. 4 para. 9(2)(4) in force at Royal Assent and Sch. 4 para. 9(3) in force at 12.1.2010 see s. 40(5)(a)(7)(b)

VALID FROM 06/04/2012

- 10 In section 17(1) (defences: burden of proof) after “6(1),” insert “ 7B(5) and (7), ”.
- 11 (1) Section 19 (regulations) is amended as follows.
- (2) In subsection (1), after “Powers” insert “ of the Secretary of State, the Welsh Ministers and the Scottish Ministers ”.
- (3) After subsection (1) insert—
  - “(1A) Powers of the Department of Health, Social Services and Public Safety to make regulations under this Act are exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.”
- (4) For subsections (3) to (5) substitute—
  - “(3) No statutory instrument containing an order under section 7 or regulations under sections 7C, 7D, 8, 9 or 11 is to be made—

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- (a) by the Secretary of State unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament;
  - (b) by the Welsh Ministers unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales;
  - (c) by the Scottish Ministers unless a draft of the instrument has been laid before and approved by a resolution of the Scottish Parliament.
- (4) In any other case, a statutory instrument containing regulations made under this Act—
- (a) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales;
  - (c) by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) The Department of Health, Social Services and Public Safety may not make regulations under section 7C unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (6) In any other case, regulations made by the Department of Health, Social Services and Public Safety under this Act are to be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.”

#### Commencement Information

**I5** Sch. 4 para. 11 partly in force; Sch. 4 para. 11 in force for specified purposes at Royal Assent see s. 40(6)(c)

12 In section 21(1) (interpretation), for the definition of “appropriate Minister” substitute—

“appropriate Minister”—

- (a) in relation to England, means the Secretary of State,
- (b) in relation to Wales, means the Welsh Ministers,
- (c) in relation to Northern Ireland, means the Department of Health, Social Services and Public Safety, and
- (d) in relation to Scotland, means the Scottish Ministers,”.

#### Commencement Information

**I6** Sch. 4 para. 12 partly in force; Sch. 4 para. 12 in force for specified purposes at Royal Assent see s. 40(6)(c)

13 In the Schedule (information society service providers), in paragraph 1, in the definition of “relevant offence”, for “or 9” substitute “, 7D, 8, 9 or 11”.

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**Commencement Information**

**I7** Sch. 4 para. 13 partly in force; Sch. 4 para. 13 in force for specified purposes on 12.1.2010 see s. 40(7)(c)

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