

# Tobacco Retailers Bill

[AS INTRODUCED]

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TO

Make provision for a register of tobacco retailers; to make provision for dealing with the persistent commission of tobacco offences; to confer additional powers of enforcement in relation to offences under Articles 3 and 4 of the Health and Personal Social Services (Northern Ireland) Order 1978; and for connected purposes.

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

## *Register of tobacco retailers*

### **Register of tobacco retailers**

1.—(1) Every council must, in accordance with the provisions of this Act, maintain a register of persons carrying on a tobacco business in its district (“the Register”).

(2) Any reference in this Act to the Register in relation to a council is a reference to the register maintained by that council under subsection (1).

(3) In this Act “registered” means entered in the Register, and “unregistered” is to be construed accordingly.

### **Application for registration**

2.—(1) A person may apply to the council in whose district the premises at which the person proposes to carry on a tobacco business are situated—

(a) to be registered; or

(b) to add further premises to the person’s entry in the Register.

(2) An application under subsection (1) must—

(a) state the name and address of the applicant;

(b) where it is an application under subsection (1)(a), state the address of each of the premises at which the applicant proposes to carry on a tobacco business;

- (c) where it is an application under subsection (1)(b), state the address of each of the further premises at which the applicant proposes to carry on a tobacco business;
  - (d) be made in such form and manner as may be prescribed;
  - (e) contain such other information as may be prescribed.
- (3) The council must grant an application under subsection (1) unless—
- (a) it does not comply with subsection (2); or
  - (b) at the time the application is made or being considered by the council—
    - (i) a restricted premises order has effect in respect of any premises specified in the application; or
    - (ii) a restricted sale order has effect in respect of the applicant.
- (4) The council must give notice to the applicant of its decision within a period of 28 days beginning on the day on which the application is made.
- (5) On granting an application under subsection (1)(a) the council must enter the following information in the Register—
- (a) the name and address of the applicant;
  - (b) the address of each of the premises at which the applicant proposes to carry on a tobacco business;
  - (c) any other information the council considers appropriate.
- (6) On granting an application under subsection (1)(b) the council must amend the applicant's entry in the Register so as to include—
- (a) the address of each of the further premises at which the applicant proposes to carry on a tobacco business;
  - (b) any other information the council considers appropriate.
- (7) Regulations may provide for the charging of fees in connection with making an application under subsection (1).
- (8) In this section “applicant” means a person who makes an application under subsection (1).

**Duty to notify certain changes**

- 3.—**(1) A registered person must give the council in whose district the registered premises are situated notice of—
- (a) any change in the person's name or address;
  - (b) the fact that the person is no longer carrying on a tobacco business at an address noted in the person's entry in the Register.
- (2) The notice must be given within 3 months of the date of the change to which it relates.

**Changes to and removal from the Register**

- 4.—**(1) A council may correct the Register (following notification under section 3 or otherwise) as it considers appropriate.

(2) Where a restricted premises order is made in respect of registered premises, a council must amend the Register so as to remove references to the premises specified in the order.

(3) A council may remove a person's entry from the Register if—

- (a) as a result of a correction or an amendment under subsection (1) or (2), there are no premises noted in the person's entry in the Register; or
- (b) it is not satisfied that the person is carrying on a tobacco business.

(4) A council must reinstate a person's entry in the Register if—

- (a) the entry was removed under subsection (3)(b); and
- (b) the person notifies the council, within the period of 28 days from the date of service on that person of the notice of the removal under subsection (5), that the person is still carrying on a tobacco business.

(5) Where a council corrects, amends, removes or reinstates a person's entry in the Register under this section, it must as soon as reasonably practicable serve a notice on the person of the correction, amendment, removal or, as the case may be, reinstatement.

### **Inspection of the Register**

**5.**—(1) The Register may be inspected and copies of all or any part of the Register may be taken at all reasonable hours—

- (a) at the offices of the council which maintains the Register; or
- (b) at such other place as that council may consider appropriate.

(2) Regulations may provide for the charging of fees in connection with taking copies of all or any part of the Register.

### **Access by Department and councils to the Register**

**6.**—(1) Every council must make available to every other council and the Department such information contained in the Register as the other council or, as the case may be, the Department may require.

(2) Information made available under subsection (1) may be used by a council or the Department only for the purpose of enabling it or assisting it to perform its functions under this Act.

### *Persistent commission of tobacco offences*

### **Restricted premises orders**

**7.**—(1) This section applies where a person (“the offender”)—

- (a) is given a fixed penalty notice in respect of a tobacco offence; or
- (b) is convicted of a tobacco offence.

(2) In the following provisions of this section “the relevant offence” means the offence mentioned in subsection (1)(a) or (b).

(3) A court of summary jurisdiction may, on application made by complaint by the council in whose district the premises in relation to which the relevant offence was committed are situated, make a restricted premises order in respect of those premises (“the relevant premises”).

(4) A restricted premises order is an order prohibiting the sale on the premises to which it relates of any tobacco or cigarette papers to any person.

(5) The prohibition applies to sales of tobacco or cigarette papers to any person whether made—

(a) by the offender or any other person; or

(b) by means of any machine kept on the premises or any other means.

(6) The order has effect for the period specified in the order, but that period may not exceed one year.

(7) The council making the application must, after making reasonable enquiries, give notice of the application to every person appearing to it to be a person affected by the application.

(8) The court may make the order if (and only if) it is satisfied that—

(a) the council has complied with subsection (7); and

(b) on at least 2 other occasions within the period of 3 years ending with the date on which the relevant offence was committed, the offender has been—

(i) given a fixed penalty notice in respect of a tobacco offence in relation to the relevant premises; or

(ii) convicted of a tobacco offence in relation to the relevant premises.

(9) Persons affected by the application may make representations to the court as to why the order should not be made.

(10) If—

(a) a person affected by an application for a restricted premises order was not given notice under subsection (7), and

(b) consequently the person had no opportunity to make representations to the court as to why the order should not be made,

that person may, by complaint, apply to the court for an order varying or discharging it.

(11) On an application under subsection (10) the court may, after hearing—

(a) that person, and

(b) the council which applied for the restricted premises order,

make such order varying or discharging the restricted premises order as it considers appropriate.

(12) While a restricted premises order has effect, the order shall be a statutory charge and shall be binding on every person who is for the time being an owner or occupier of the premises specified in the order.

(13) For the purposes of this section—

(a) a fixed penalty notice which is given to the offender in respect of a tobacco offence is to be disregarded if it is withdrawn or if proceedings are brought against the offender for the offence to which the notice relates;

(b) the persons affected by an application for a restricted premises order in respect of any premises are—

- (i) the occupier of the premises; and
- (ii) any other person who has an estate in the premises.

(14) In this section and section 8 “tobacco offence” means—

- (a) an offence committed under Article 3 of the Health and Personal Social Services (Northern Ireland) Order 1978 on any premises (which are accordingly “the premises in relation to which the offence is committed”);
- (b) an offence committed under Article 4 of the Health and Personal Social Services (Northern Ireland) Order 1978 in respect of an order relating to any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”);
- (c) an offence committed under Article 4A of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 in respect of any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”); or
- (d) an offence committed under section 10 in respect of any premises (which are accordingly “the premises in relation to which the offence is committed”).

### **Restricted sale orders**

**8.**—(1) This section applies where a person (“the offender”)—

- (a) is given a fixed penalty notice in respect of a tobacco offence; or
- (b) is convicted of a tobacco offence.

(2) In the following provisions of this section “the relevant offence” means the offence mentioned in subsection (1)(a) or (b).

(3) A court of summary jurisdiction may, on application made by complaint by the council in whose district the premises in relation to which the relevant offence was committed are situated, make a restricted sale order in respect of the offender.

(4) A restricted sale order is an order prohibiting the person to whom it relates—

- (a) from selling any tobacco or cigarette papers to any person;
- (b) from having any management functions in respect of any premises in so far as those functions relate to the sale on the premises of tobacco or cigarette papers to any person;
- (c) from keeping any cigarette machine on any premises for the purpose of selling tobacco or permitting any cigarette machine to be kept on any premises by any other person for that purpose; and
- (d) from having any management functions in respect of any premises in so far as those functions relate to any cigarette machine kept on the premises for the purpose of selling tobacco.

(5) The order has effect for the period specified in the order, but that period may not exceed one year.

(6) The court may make the order if (and only if) it is satisfied that, on at least 2 other occasions within the period of 3 years ending with the date on which the relevant offence was committed, the offender has been—

- (a) given a fixed penalty notice in respect of a tobacco offence; or
- (b) convicted of a tobacco offence.

(7) For the purposes of this section a fixed penalty notice which is given to the offender in respect of a tobacco offence is to be disregarded if it is withdrawn or if proceedings are brought against the offender for the offence to which the notice relates.

(8) In this section any reference to a cigarette machine is a reference to an automatic machine for the sale of tobacco.

### **Appeal against the making of an order under section 7 or 8**

**9.**—(1) Any person aggrieved by an order made by a court of summary jurisdiction under section 7 or 8 may, within the period of 21 days from the day the order is made, appeal against the order to the county court in accordance with magistrates' courts rules.

(2) Where an order is made under section 7 or 8, the order shall not have effect—

- (a) until the period mentioned in subsection (1) has expired; or
- (b) if the order is the subject of an appeal, until the appeal has been determined or withdrawn.

### *Offences*

#### **Offences**

**10.**—(1) If an unregistered person carries on a tobacco business, the person commits an offence.

(2) If a registered person carries on a tobacco business at premises other than those noted in the person's entry in the Register, the person commits an offence.

(3) If a person fails, without reasonable excuse, to comply with section 3 (duty to notify certain changes), the person commits an offence.

(4) If—

- (a) a person sells on any premises any tobacco or cigarette papers in contravention of a restricted premises order, and
- (b) the person knew, or ought reasonably to have known, that the sale was in contravention of the order,

the person commits an offence.

(5) If a person fails to comply with a restricted sale order, the person commits an offence.

(6) It is a defence for a person charged with an offence under subsection (5) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(7) A person guilty of an offence under—

- (a) subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale;

- (b) subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale;
- (c) subsection (4) or (5) is liable on summary conviction to a fine not exceeding £20,000.

*Enforcement powers, etc.*

**Enforcement by councils**

**11.** It is the duty of every council to enforce within its district the provisions of or made under this Act.

**Powers of entry**

**12.—**(1) An authorised officer has the right, on producing, if so required, the officer's authorisation—

- (a) at any reasonable hour to enter any premises, other than premises used only as a private dwelling house, which the officer reasonably believes it is necessary to enter for the purpose of the proper exercise of the authorised officer's functions under this Act;
- (b) to carry out on those premises such inspections and examinations as the officer reasonably believes are necessary for that purpose;
- (c) if the officer reasonably believes it is necessary for that purpose—
  - (i) to require the production of any book, document, data, record (in whatever form it is held) or product; and
  - (ii) to inspect it and take copies of or extracts from it;
- (d) to take possession of any book, document, data, record (in whatever form it is held) or product which is on the premises and retain it for as long as the authorised officer reasonably believes is necessary for that purpose;
- (e) to require any person to give the officer such information, or afford the officer such facilities and assistance, as the officer reasonably believes is necessary for that purpose.

(2) A person is not required under subsection (1) to answer any question or to produce any item mentioned in subsection (1)(c)(i) which the person would be entitled to refuse to answer or produce in or for the purpose of proceedings in a court in Northern Ireland.

(3) An authorised officer may make such purchases and secure the provision of such services as the authorised officer reasonably believes are necessary for the purpose of the proper exercise of the authorised officer's functions under this Act.

(4) A lay magistrate may exercise the power in subsection (6) if he or she is satisfied on a complaint in writing substantiated on oath—

- (a) that for the purpose of the proper exercise of an authorised officer's functions under this Act there are reasonable grounds for entry into any premises, other than premises used only as a private dwelling house; and
- (b) of either or both of the matters mentioned in subsection (5).

(5) The matters are—

(a) that admission to the premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant under this section has been given to the occupier;

(b) that an application for admission, or the giving of such notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return.

(6) The lay magistrate may by warrant signed by him or her authorise an authorised officer to enter the premises, if need be by force.

(7) The warrant under subsection (6) shall continue in force until the end of the period of one month beginning with the date on which the magistrate signs it.

(8) An authorised officer entering any premises under this section may take with the officer such other persons and such equipment as the officer reasonably believes are necessary.

(9) If premises which an authorised officer is authorised to enter under this section are unoccupied, or if the occupier is temporarily absent, then on leaving them that officer must leave the premises as effectively secured against unauthorised entry as the officer found them.

#### **Fixed penalties for certain offences**

**13.—**(1) Where an authorised officer of a council has reason to believe that a person has committed an offence—

(a) under section 10(1) or (2) in the district of that council, or

(b) under section 10(3) in relation to registered premises in the district of that council,

the officer may give that person a fixed penalty notice in respect of the offence.

(2) A fixed penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this section.

(3) Where a person is given a notice under this section in respect of an offence—

(a) no proceedings may be brought for that offence before the expiration of the period of 28 days following the date of the notice; and

(b) the person shall not be convicted of that offence if the person pays the fixed penalty before the expiration of that period.

(4) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence.

(5) A notice under this section must also state—

(a) the period during which, by virtue of subsection (3)(a), proceedings will not be brought for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which—

(i) the fixed penalty may be paid;

(ii) any representations relating to the notice may be made.

(6) The person mentioned in subsection (5)(c) must be the council on whose behalf the authorised officer was acting when he or she gave the notice.

(7) The form of a notice under this section shall be such as may be prescribed.

(8) The fixed penalty payable to a council under this section shall be such amount as may be prescribed.

(9) But if payment is made within the first 14 days of the period mentioned in subsection (3)(a) the amount payable is reduced by 25%.

(10) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (5)(c)(i) at the address so mentioned.

(11) Where a letter is sent in accordance with subsection (10) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(12) In any proceedings a certificate which—

(a) purports to be signed on behalf of the clerk of the council, and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

#### **Use of fixed penalty receipts**

**14.—**(1) A council may use any sums it receives in respect of fixed penalties payable in pursuance of notices given under section 13 (its “fixed penalty receipts”) only for the purposes of—

(a) its functions under this Act; or

(b) such other functions (if any) as are prescribed.

(2) A council shall supply the Department with such information relating to its use of its fixed penalty receipts as the Department may require.

(3) Regulations may—

(a) make provision for what a council is to do with its fixed penalty receipts—

(i) pending their being used for the purposes mentioned in subsection (1);

(ii) if they are not so used before such time after their receipt as may be specified in the regulations;

(b) make provision for accounting arrangements in respect of a council’s fixed penalty receipts.

(4) The provision that may be made under subsection (3)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the council.

(5) Before making regulations under this section the Department shall consult—

(a) councils; and

- (b) such other persons or bodies as the Department considers appropriate.

### **Withdrawal of fixed penalty notices**

**15.**—(1) This section applies if a council considers that a penalty notice which an authorised officer acting on its behalf has given to a person under section 13 ought not to have been given.

(2) The council may give notice to that person withdrawing the penalty notice.

(3) If it does so—

(a) it must repay to that person any amount which has been paid by way of penalty in pursuance of the penalty notice; and

(b) no proceedings may be brought or continued against that person for the offence in question.

(4) The council must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

### **Obstruction, etc. of authorised officers**

**16.**—(1) A person who—

(a) intentionally obstructs an authorised officer who is acting in the proper exercise of the officer's functions under this Act, or

(b) without reasonable cause fails to comply with any requirement made of the person by such an officer who is so acting,

commits an offence.

(2) A person who, in giving any information which is properly required of the person by an authorised officer, makes a statement which is false in a material particular commits an offence.

(3) A person does not commit an offence under subsection (2) if—

(a) the person did not know the material particular was false; and

(b) the person had reasonable grounds to believe that it was true.

(4) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Offences by bodies corporate**

**17.** For the purposes of this Act, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with that member's functions of management as if that member were a director of the body corporate.

### *Supplementary*

### **Amendment of the Order of 1978**

**18.**—(1) The Health and Personal Social Services (Northern Ireland) Order 1978 is amended as follows.

(2) After Article 6 (exemption for persons employed in trade) insert—

**“Powers of entry**

6A.—(1) An authorised officer has the right, on producing, if so required, his authorisation—

- (a) at any reasonable hour to enter any premises, other than premises used only as a private dwelling house, which the officer reasonably believes it is necessary to enter for the purpose of ascertaining whether an offence under Article 3 or 4 is being or has been committed on the premises;
- (b) to carry out on those premises such inspections and examinations as the officer reasonably believes are necessary for that purpose;
- (c) if the officer reasonably believes it is necessary for that purpose—
  - (i) to require the production of any book, document, data, record (in whatever form it is held) or product; and
  - (ii) to inspect it and take copies of or extracts from it;
- (d) to take possession of any book, document, data, record (in whatever form it is held) or product which is on the premises and retain it for as long as the authorised officer reasonably believes is necessary for that purpose;
- (e) to require any person to give the officer such information, or afford the officer such facilities and assistance, as the officer reasonably believes is necessary for that purpose.

(2) A person is not required under paragraph (1) to answer any question or to produce any item mentioned in paragraph (1)(c)(i) which he would be entitled to refuse to answer or produce in or for the purpose of proceedings in a court in Northern Ireland.

(3) An authorised officer may make such purchases and secure the provision of such services as he reasonably believes are necessary for the purpose of ascertaining whether an offence under Article 3 or 4 is being or has been committed on the premises.

(4) A lay magistrate may exercise the power in paragraph (6) if he is satisfied on a complaint in writing substantiated on oath—

- (a) that for the purpose of ascertaining whether an offence under Article 3 or 4 is being or has been committed on the premises, there are reasonable grounds for entry into any premises, other than premises used only as a private dwelling house; and
- (b) of either or both of the matters mentioned in paragraph (5).

(5) The matters are—

- (a) that admission to the premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant under this Article has been given to the occupier;
- (b) that an application for admission, or the giving of such notice, would defeat the object of the entry, or that the premises are

unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return.

(6) The lay magistrate may by warrant signed by him authorise an authorised officer to enter the premises, if need be by force.

(7) The warrant under paragraph (6) shall continue in force until the end of the period of one month beginning with the date on which the magistrate signs it.

(8) An authorised officer entering any premises under this Article may take with him such other persons and such equipment as he reasonably believes are necessary.

(9) If premises which an authorised officer is authorised to enter under this Article are unoccupied, or if the occupier is temporarily absent, then on leaving them that officer must leave the premises as effectively secured against unauthorised entry as the officer found them.

### **Fixed penalties for certain offences**

6B.—(1) Where an authorised officer of a council has reason to believe that a person has committed an offence under Article 3 or 4 in the district of that council, the officer may give that person a fixed penalty notice in respect of the offence.

(2) A fixed penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this Article.

(3) Where a person is given a notice under this Article in respect of an offence—

- (a) no proceedings may be brought for that offence before the expiration of the period of 28 days following the date of the notice; and
- (b) the person shall not be convicted of that offence if the person pays the fixed penalty before the expiration of that period.

(4) A notice under this Article must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence.

(5) A notice under this Article must also state—

- (a) the period during which, by virtue of paragraph (3)(a), proceedings will not be brought for the offence;
- (b) the amount of the fixed penalty; and
- (c) the person to whom and the address at which—
  - (i) the fixed penalty may be paid;
  - (ii) any representations relating to the notice may be made.

(6) The person mentioned in paragraph (5)(c) must be the council on whose behalf the authorised officer was acting when he gave the notice.

(7) The form of a notice under this Article shall be such as the Department may prescribe by regulations.

(8) The fixed penalty payable to the council under this Article shall be such amount as the Department may prescribe by regulations.

(9) But if payment is made within the first 14 days of the period mentioned in paragraph (3)(a) the amount payable is reduced by 25%.

(10) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in paragraph (5)(c)(i) at the address so mentioned.

(11) Where a letter is sent in accordance with paragraph (10) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(12) In any proceedings a certificate which—

- (a) purports to be signed on behalf of the clerk of the council, and
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(13) Regulations made under paragraph (7) shall be subject to negative resolution.

(14) No regulations shall be made under paragraph (8) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

#### **Use of fixed penalty receipts**

6C.—(1) A council may use any sums it receives in respect of fixed penalties payable in pursuance of notices given under Article 6B (its “fixed penalty receipts”) only for the purposes of—

- (a) its functions under this Part; or
- (b) such other functions (if any) as are specified in regulations made by the Department.

(2) A council shall supply the Department with such information relating to its use of its fixed penalty receipts as the Department may require.

(3) The Department may by regulations—

- (a) make provision for what a council is to do with its fixed penalty receipts—
  - (i) pending their being used for the purposes mentioned in paragraph (1);
  - (ii) if they are not so used before such time after their receipt as may be specified in the regulations;
- (b) make provision for accounting arrangements in respect of a council’s fixed penalty receipts.

(4) The provision that may be made under paragraph (3)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the council.

(5) Before making regulations under this Article the Department shall consult—

- (a) councils; and
- (b) such other persons or bodies as the Department considers appropriate.

(6) Regulations made under this Article shall be subject to negative resolution.

#### **Withdrawal of fixed penalty notices**

6D.—(1) This Article applies if a council considers that a penalty notice which an authorised officer acting on its behalf has given to a person under Article 6B ought not to have been given.

(2) The council may give notice to that person withdrawing the penalty notice.

(3) If it does so—

- (a) it must repay to that person any amount which has been paid by way of penalty in pursuance of the penalty notice; and
- (b) no proceedings may be brought or continued against that person for the offence in question.

(4) The council must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

#### **Obstruction, etc. of authorised officers**

6E.—(1) A person who—

- (a) intentionally obstructs an authorised officer who is acting in the proper exercise of his functions under this Part, or
- (b) without reasonable cause fails to comply with any requirement made of the person by such an officer who is so acting,

commits an offence.

(2) A person who, in giving any information which is properly required of him by an authorised officer, makes a statement which is false in a material particular commits an offence.

(3) A person does not commit an offence under paragraph (2) if—

- (a) he did not know the material particular was false; and
- (b) he had reasonable grounds to believe that it was true.

(4) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(3) In Article 7 (interpretation) in the appropriate places insert—

““authorised officer”, in relation to a council, means any person (whether or not an officer of the council) who is authorised by it in

writing, either generally or specifically, to act in matters arising under this Part;”;

““clerk of the council”, in relation to a council, means the clerk appointed in accordance with section 41 of the Local Government Act (Northern Ireland) 1972;”;

““council” means a district council;”;

““notice” means notice in writing;”;

““premises” includes any place and any vehicle, vessel, stall or moveable structure;”.

### **Statutory charges**

**19.** In Schedule 11 to the Land Registration Act (Northern Ireland) 1970 (statutory charges) at the end add—

“51. Any order under section 7 of the Tobacco Retailers Act (Northern Ireland) 2013.”.

### **Vehicles, vessels, etc.**

**20.** Regulations may provide for this Act to apply in relation to any vehicle, vessel, stall or moveable structure subject to such modifications as the Department considers necessary or expedient.

### *General*

### **Service of notices in electronic form**

**21.—(1)** The delivery of a relevant notice to a person (the “recipient”) may be effected for the purposes of this Act by transmitting it electronically, but only if it is transmitted in accordance with subsection (2).

(2) A relevant notice is transmitted electronically in accordance with this subsection if—

- (a) the recipient has agreed that the relevant notice may be delivered to the recipient by being transmitted to an electronic address and in an electronic form specified by the recipient for that purpose; and
- (b) the relevant notice is a notice to which that agreement applies and is transmitted to that address in that form.

(3) A relevant notice which is transmitted in accordance with subsection (2) by means of an electronic communications network shall, unless the contrary is proved, be treated as having been delivered at 9 a.m. on the working day immediately following the day on which it is transmitted.

(4) Regulations may amend this section by modifying the circumstances in which, and the conditions subject to which, the delivery of a relevant notice for the purposes of this Act may be effected by transmitting the notice electronically.

(5) Regulations may also amend this section by modifying the day on which and the time at which a relevant notice which is transmitted electronically is to be treated as having been delivered.

(6) Regulations under subsection (4) or (5) may make such consequential amendments of this Act as the Department considers appropriate.

(7) In this section—

“electronic address” includes any number or address used for the purposes of receiving electronic communications;

“electronic communication” means an electronic communication within the meaning of the Electronic Communications Act (Northern Ireland) 2001 the processing of which on receipt is intended to produce writing;

“electronic communications network” means an electronic communications network within the meaning of the Communications Act 2003;

“electronically” means in the form of an electronic communication;

“relevant notice” means a notice given or served under section 2(4), 3 or 4(5);

“working day” means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971.

## **Interpretation**

**22.**—(1) In this Act—

“authorised officer”, in relation to a council, means any person (whether or not an officer of the council) who is authorised by it in writing, either generally or specifically, to act in matters arising under this Act;

“cigarettes” has the same meaning as in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978;

“clerk of the council”, in relation to a council, means the clerk appointed in accordance with section 41 of the Local Government Act (Northern Ireland) 1972;

“council” means a district council;

“the Department” means the Department of Health, Social Services and Public Safety;

“notice” means notice in writing;

“premises” includes any place and any vehicle, vessel, stall or moveable structure;

“prescribed” means prescribed by regulations;

“the Register” has the meaning given in section 1(1) and (2);

“registered” and “unregistered” have the meaning given in section 1(3);

“regulations” means regulations made by the Department;

“restricted premises order” means an order made under section 7;

“restricted sale order” means an order made under section 8;

“tobacco” has the same meaning as in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978;

“tobacco business” means a business involving the sale of tobacco or cigarette papers by retail.

(2) In its application to this Act, the Interpretation Act (Northern Ireland) 1954 has effect as if in section 24(1) (notice by post) the word “registering” were omitted.

### **Transitional provision**

**23.**—(1) Section 7 does not apply where any of the offences mentioned in that section were committed before the commencement of that section.

(2) Section 8 does not apply where any of the offences mentioned in that section were committed before the commencement of that section.

(3) The new Articles 6A, 6B and 6E inserted into the Health and Personal Social Services (Northern Ireland) Order 1978 by section 18 do not apply where any of the offences mentioned in those new Articles were committed before the commencement of that section.

### **Regulations and orders**

**24.**—(1) Except as provided by subsection (2), regulations under this Act shall be subject to negative resolution.

(2) No regulations shall be made under section 2(7), 5(2), 13(8), 20 or 21(4) or (5) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(3) Regulations and orders made by the Department under this Act may contain such incidental, supplementary, transitional, transitory and savings provisions as appear to the Department to be necessary or expedient.

### **Commencement**

**25.**—(1) This section and sections 22, 24 and 26 come into operation on the day after the day on which this Act receives Royal Assent.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

### **Short title**

**26.** This Act may be cited as the Tobacco Retailers Act (Northern Ireland) 2013.