



# Public Health (Wales) Act 2017

2017 anaw 2

## PART 3

### TOBACCO AND NICOTINE PRODUCTS

#### CHAPTER 2

##### RETAILERS OF TOBACCO AND NICOTINE PRODUCTS

PROSPECTIVE

#### *Enforcement*

#### **39 Authorised officers**

References in this Chapter to an authorised officer are to any person (whether or not an officer of the local authority) authorised by a local authority for the purposes of this Chapter.

#### **40 Powers of entry**

- (1) An authorised officer may enter premises in Wales at any reasonable time if the officer—
  - (a) has reasonable grounds for believing that an offence under section 38(1), (2) or (4) has been committed in the area of the local authority, and
  - (b) considers it necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed.
- (2) But this does not apply in relation to premises used wholly or mainly as a dwelling.
- (3) An authorised officer may not enter premises by force under this section.

*Status: This version of this cross heading contains provisions that are prospective.*

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- (4) An authorised officer must, if asked to do so, before entering premises under this section show evidence of the authorisation referred to in section 39.

#### **41 Warrant to enter dwelling**

- (1) A justice of the peace may exercise the power in subsection (2) in relation to premises in Wales used wholly or mainly as a dwelling if satisfied on sworn information in writing—
- (a) that there are reasonable grounds for believing that an offence under section 38(1), (2) or (4) has been committed in the area of a local authority, and
  - (b) that it is necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed.
- (2) The justice may issue a warrant authorising an authorised officer of the local authority to enter the premises, if need be by force.
- (3) The warrant continues in force until the end of the period of 28 days beginning with the date on which it was issued.

#### **42 Warrant to enter other premises**

- (1) A justice of the peace may exercise the power in subsection (4) in relation to premises in Wales other than premises used wholly or mainly as a dwelling if satisfied on sworn information in writing—
- (a) that there are reasonable grounds for believing that an offence under section 38(1), (2) or (4) has been committed in the area of a local authority,
  - (b) that it is necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed, and
  - (c) that a requirement set out in subsection (2) or (3) is met.
- (2) The requirement is that—
- (a) a request to enter the premises has been, or is likely to be, refused, and
  - (b) notice of intention to apply for a warrant under this section has been given to the occupier or a person who reasonably appears to the local authority to be concerned in the management of the premises.
- (3) The requirement is that requesting to enter the premises, or the giving of notice of intention to apply for a warrant under this section, is likely to defeat the purpose of the entry.
- (4) The justice may issue a warrant authorising an authorised officer of the local authority to enter the premises, if need be by force.
- (5) The warrant continues in force until the end of the period of 28 days beginning with the date on which it was issued.

#### **43 Supplementary provision about powers of entry**

- (1) An authorised officer entering premises under section 40, or by virtue of a warrant under section 41 or 42, may take such other persons and such equipment as the officer considers appropriate.

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- (2) If the occupier of premises that an authorised officer is authorised to enter by a warrant under section 41 or 42 is present at the time the authorised officer seeks to execute the warrant—
  - (a) the occupier must be told the officer's name;
  - (b) the officer must produce to the occupier documentary evidence that the officer is an authorised officer;
  - (c) the officer must produce the warrant to the occupier;
  - (d) the officer must supply the occupier with a copy of it.
- (3) If premises that an authorised officer is authorised to enter by a warrant under section 41 or 42 are unoccupied, or if the occupier is temporarily absent, then on leaving the premises the officer must leave them as effectively secured against unauthorised entry as when the officer found them.

#### **44 Powers of inspection etc.**

- (1) An authorised officer entering premises under section 40, or by virtue of a warrant under section 41 or 42, may do any of the following if the officer considers it necessary for the purpose of ascertaining whether an offence under section 38(1), (2) or (4) has been committed—
  - (a) carry out inspections and examinations on the premises;
  - (b) require the production of anything on the premises, inspect it, and take and retain samples of or extracts from it;
  - (c) take possession of anything on the premises, and retain it for as long as the officer considers necessary for that purpose;
  - (d) require any person to give information, or afford facilities and assistance with respect to matters within the person's control.
- (2) If the authorised officer considers it necessary for the purpose of ascertaining whether an offence under section 38(1), (2) or (4) has been committed, the officer may arrange for anything produced under subsection (1)(b), or of which the officer has taken possession under subsection (1)(c), to be analysed.
- (3) If by virtue of subsection (1)(c) the authorised officer takes anything away from the premises, the officer must leave on the premises from which it was taken a statement—
  - (a) giving particulars of what has been taken and stating that the officer has taken possession of it, and
  - (b) identifying the person to whom a request for the return of the property may be made.
- (4) The powers conferred by this section include the power—
  - (a) to copy documents found on the premises;
  - (b) to impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents found on the premises that are stored electronically).
- (5) For this purpose, “documents” includes information recorded in any form; and references to documents found on the premises include—
  - (a) documents stored on computers or other electronic devices on the premises, and

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(b) documents stored elsewhere that can be accessed by computers or other electronic devices on the premises.

(6) A person is not required by this section to answer any question or produce any document which the person would be entitled to refuse to answer or produce in or for the purposes of proceedings in a court in England and Wales.

#### **45 Obstruction etc. of officers**

(1) Any person who intentionally obstructs an authorised officer exercising functions under sections 40 to 44 commits an offence.

(2) Any person who without reasonable cause fails—

(a) to provide an authorised officer with facilities that the authorised officer reasonably requires for the purpose of a requirement under section 44(1), or

(b) to comply with a requirement under section 44(1)(b) or (d),

commits an offence.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) This section is subject to section 44(6).

#### **46 Power to make test purchases**

An authorised officer may make such purchases and arrangements, and secure the provision of such services, as the officer considers necessary for the purposes of this Chapter.

#### **47 Retained property: appeals**

(1) A person (“P”) with an interest in anything taken away under section 44(1)(c) (“retained property”) may apply by way of complaint to any magistrates' court for an order requiring it to be released, either to P or another person.

(2) If on an application under this section the court is satisfied that the continued retention of the retained property is not necessary for the purpose of ascertaining whether an offence under section 38(1), (2) or (4) has been committed, it may make an order requiring the release of the retained property.

(3) An order under this section may contain whatever provision the court thinks appropriate for delaying its coming into force pending the making and determination of an appeal (including an application under section 111 of the Magistrates' Courts Act 1980 (c.43)).

(4) If the court adjourns the hearing of an application under this section, it may make an order in respect of the retained property that lasts until the final hearing of the application or until any further order is made, if it considers it appropriate to do so.

(5) Nothing in this section affects any other power of the court to make an order in respect of the retained property, including any power to make an order under section 1 of the Police (Property) Act 1897 (c.30).

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#### **48 Appropriated property: compensation**

- (1) A person (“P”) with an interest in anything which an authorised officer of a local authority has taken possession of under section 44(1)(c) (“appropriated property”) may apply by way of complaint to any magistrates' court for compensation.
- (2) Subsection (3) applies if on an application under this section the court is satisfied that
  - (a) P has suffered loss or damage in consequence of the authorised officer's taking possession of the appropriated property, or retaining it, in circumstances where doing so was not necessary for the purpose of ascertaining whether an offence under section 38(1), (2) or (4) had been committed, and
  - (b) the loss or damage is not attributable to the neglect or default of P.
- (3) The court may order the local authority to pay compensation to P.

#### **49 Fixed penalty notices**

- (1) Where an authorised officer has reason to believe that a person has committed an offence under section 38(2), (4) or (5) in the local authority's area, 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 fixed penalty.
- (3) In the case of an offence that an authorised officer has reason to believe has been committed by a partnership, the reference in subsection (1) to the person to whom a fixed penalty notice may be given is to be treated as a reference to the partnership.
- (4) In the case of an offence that an authorised officer has reason to believe has been committed by an unincorporated association other than a partnership, the reference in subsection (1) to the person to whom a fixed penalty notice may be given is to be treated as a reference to the association.
- (5) In this section, “partnership” means—
  - (a) a partnership within the Partnership Act 1890 (c.39), or
  - (b) a limited partnership registered under the Limited Partnerships Act 1907 (c.24).
- (6) For further provision about fixed penalties, see Schedule 1.

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2017/949, art. 3 by [S.I. 2017/967 art. 2](#)