



# Public Health (Wales) Act 2017

2017 anaw 2

PROSPECTIVE

## PART 3

### TOBACCO AND NICOTINE PRODUCTS

#### CHAPTER 1

##### SMOKING

###### *Introduction*

#### **4 Smoking**

In this Chapter, references to smoking are to smoking tobacco or anything which contains tobacco, or to smoking any other substance; and smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked.

###### *Offences*

#### **5 Offence of smoking in smoke-free premises or vehicle**

- (1) A person commits an offence if the person smokes—
  - (a) in smoke-free premises;
  - (b) in a smoke-free vehicle.
- (2) For provision about smoke-free premises, see sections 7 to 14.
- (3) For provision about smoke-free vehicles, see section 15.

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- (4) It is a defence for a person charged with an offence under this section to show that the person did not know, and could not reasonably have been expected to know, that the premises or vehicle concerned were smoke-free premises or a smoke-free vehicle.
- (5) If a person charged with an offence under this section relies on the defence in subsection (4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

## **6 Offence of failing to prevent smoking in smoke-free premises**

- (1) A person who controls or is concerned in the management of premises which are smoke-free by virtue of section 7 (workplaces) or 8 (premises that are open to the public) must take reasonable steps to cause a person smoking there to stop smoking.
- (2) A person who controls or is concerned in the management of premises within section 9(3) (registered day care premises) that are smoke free by virtue of section 9 must take reasonable steps to cause a person smoking there to stop smoking.
- (3) A person registered to act as a child minder under Part 2 of the Children and Families (Wales) Measure 2010 (nawm 1) must take reasonable steps to cause a person smoking in premises within subsection (4) to stop smoking.
- (4) Premises are within this subsection if—
  - (a) they form part of premises that are the usual place of residence of the registered person referred to in subsection (3), and
  - (b) they are smoke free by virtue of section 9.
- (5) Regulations may provide for a duty corresponding to that mentioned in subsection (1) in relation to—
  - (a) premises which are smoke-free by virtue of section 10, 11 or 12,
  - (b) premises which are treated as smoke-free by virtue of section 13, or
  - (c) vehicles which are treated as smoke-free by virtue of section 15,
 to be imposed on a person, or description of person, specified in the regulations.
- (6) A person who fails to comply with a duty in subsection (1), (2) or (3), or any corresponding duty in regulations under subsection (5), commits an offence.
- (7) It is a defence for a person (“D”) charged with an offence under this section to show that D did not know, and could not reasonably have been expected to know, that the person in question was smoking.
- (8) If a person charged with an offence under this section relies on the defence in subsection (7), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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### *Smoke-free premises*

#### **7 Workplaces**

- (1) Premises in Wales are smoke-free for the purposes of this Chapter if they are workplaces.
- (2) A “workplace” means premises that are—
  - (a) used as a place of work by more than one person (even if the persons who work there do so at different times, or only intermittently), or
  - (b) used as a place of work by no more than one person but where members of the public might attend for the purpose of seeking or receiving goods or services from the person working there (even if members of the public are not always present).
- (3) If only part of the premises is used as a place of work, the premises are smoke-free by virtue of this section only to that extent.
- (4) The premises are smoke-free by virtue of this section only in those areas that are enclosed or substantially enclosed.
- (5) The premises are smoke-free by virtue of this section all the time (including when not used as a place of work), except that premises used to any extent as a dwelling, that are smoke-free by virtue of this section, are smoke-free only when used as a place of work.
- (6) “Work”, in subsection (2), includes voluntary work.
- (7) See section 16 for exemptions.

#### **8 Premises that are open to the public**

- (1) So far as they are not smoke-free by virtue of section 7 (workplaces), premises in Wales are smoke-free for the purposes of this Chapter if they are open to the public.
- (2) Premises are open to the public for the purposes of this section if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not.
- (3) If only part of the premises is open to the public, the premises are smoke-free by virtue of this section only to that extent.
- (4) The premises are smoke-free by virtue of this section only in those areas that are enclosed or substantially enclosed.
- (5) The premises are smoke-free by virtue of this section only when open to the public.
- (6) See section 16 for exemptions.

#### **9 Outdoor care settings for children**

- (1) Outdoor care settings in Wales are smoke free for the purposes of this Chapter.
- (2) Premises are an outdoor care setting so far as—
  - (a) they are not enclosed or substantially enclosed, and
  - (b) they are within subsection (3) or (4).

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- (3) Premises are within this subsection if—
  - (a) they are registered under Part 2 of the Children and Families (Wales) Measure 2010 (nawm 1) (the “2010 Measure”) as being premises at which a person is authorised to provide day care for children, or
  - (b) they form part of premises that are so registered.
- (4) Premises are within this section if they form part of premises (the “domestic premises”) that are the usual place of residence of a person registered to act as a child minder under Part 2 of the 2010 Measure.
- (5) An outdoor care setting within subsection (3) is smoke free by virtue of this section only when day care for children is being provided—
  - (a) in the outdoor care setting, or
  - (b) in premises registered under Part 2 of the 2010 Measure (whether or not enclosed or substantially enclosed) of which the outdoor care setting forms part.
- (6) An outdoor care setting within subsection (4) is smoke free by virtue of this section only when—
  - (a) the child minder is acting as a child minder in the domestic premises (whether or not in a part of them that is enclosed or substantially enclosed) for at least one child, and
  - (b) that child or, as the case may be, at least one of those children is in the outdoor care setting.
- (7) For the purposes of this section, references to providing day care and acting as a child minder have the same meaning as in the 2010 Measure.
- (8) Premises are not to be treated as being within subsection (3) or (4) so far as they consist of the grounds of a school (for which see section 10 (school grounds)).

## **10 School grounds**

- (1) Premises in Wales are smoke-free for the purposes of this Chapter so far as they consist of the grounds of a school.
- (2) In the case of premises consisting of grounds that adjoin the school concerned, the premises are smoke-free by virtue of this section only when either or both of—
  - (a) the grounds, or any part of the grounds, or
  - (b) the school, or any part of it,
 are being used for the purpose of education or childcare.
- (3) In the case of premises consisting of grounds that do not adjoin the school concerned, the premises are smoke-free by virtue of this section only when the grounds, or any part of the grounds, are being used for the purpose of education or childcare.
- (4) The grounds of a school, for the purposes of this section, are premises that—
  - (a) are used exclusively or mainly by the school, for purposes that include educational, sporting or recreational purposes, and
  - (b) are not enclosed or substantially enclosed.
- (5) In the case of a school that provides residential accommodation to pupils, the person in charge of the school may designate any area in the grounds as being an area in which

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smoking is to be permitted, and to that extent the premises are to be treated as not being smoke-free for the purposes of this Chapter.

- (6) Regulations may make provision—
  - (a) specifying conditions to be met before an area may be designated under subsection (5),
  - (b) requiring the keeping of records of designations, and
  - (c) about the circumstances in which a designation is to cease to have effect.
- (7) Premises used to any extent as a dwelling are not smoke-free by virtue of this section.

## **11 Hospital grounds**

- (1) Premises in Wales are smoke-free premises for the purposes of this Chapter so far as they consist of hospital grounds.
- (2) The premises are smoke-free by virtue of this section at all times.
- (3) The grounds of a hospital, for the purposes of this section, are premises that—
  - (a) adjoin the hospital, and
  - (b) are used or occupied by it, but
  - (c) are not enclosed or substantially enclosed.
- (4) The person in charge of a hospital may designate any area in the grounds as being an area in which smoking is to be permitted, and to that extent the premises are to be treated as not being smoke-free for the purposes of this Chapter.
- (5) Regulations may make provision—
  - (a) specifying conditions to be met before an area may be designated under subsection (4),
  - (b) requiring the keeping of records of designations, and
  - (c) about the circumstances in which a designation is to cease to have effect.
- (6) Premises consisting of an adult care home or of an adult hospice, or premises used to any extent as a dwelling, are not smoke-free by virtue of this section.

## **12 Public playgrounds**

- (1) Premises in Wales are smoke-free premises for the purposes of this Chapter so far as they consist of a public playground.
- (2) The premises are smoke-free—
  - (a) if the premises are within clearly marked boundaries, in the whole of the area within those boundaries;
  - (b) otherwise, only so far as within five metres of any item of playground equipment.
- (3) The premises are smoke-free by virtue of this section at all times.
- (4) Premises consist of a public playground for the purposes of this section if—
  - (a) they are designed or adapted for the use, by children, of one or more items of playground equipment,
  - (b) a local authority or community council, or a person acting by virtue of arrangements made with a local authority or community council, controls

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- them or is to any extent engaged in their management or maintenance, or makes arrangements in respect of their control or management or maintenance,
- (c) they are open to the public, for the purpose (or the primary purpose) of the provision of play facilities for children, and
- (d) they are not enclosed or substantially enclosed.

### **13 Additional smoke-free premises**

- (1) Regulations may provide for any place in Wales, or description of place in Wales, that is not smoke-free by virtue of sections 7 to 12 to be treated as smoke-free premises for the purposes of this Chapter.
- (2) The place, or places falling within the description, need not be enclosed or substantially enclosed.
- (3) The regulations may provide for a place or description of place to be treated as smoke-free premises only if the Welsh Ministers are satisfied that doing so is likely to contribute towards the promotion of the health of the people of Wales.
- (4) The regulations may provide for such places, or places falling within the description, to be treated as smoke-free premises only—
  - (a) in specified circumstances,
  - (b) at specified times,
  - (c) if specified conditions are satisfied, or
  - (d) in specified areas,
 or any combination of these.
- (5) The regulations may also provide for exemptions, including the imposition of specified conditions to be satisfied in order for an exemption to apply.
- (6) The conditions that may be specified under subsection (5) may include a condition that the person in charge of the place, or place falling within the description, has designated, in accordance with the regulations, any areas in which smoking is to be permitted.
- (7) Regulations under this section may not make provision in respect of premises used wholly or mainly as a dwelling; and to the extent that they make provision for premises used partly as a dwelling to be treated as smoke-free premises, regulations under this section must comply with section 14.

### **14 Further provision about additional smoke-free premises: dwellings**

- (1) Regulations under section 13 that provide for premises used partly as a dwelling to be treated as smoke-free premises for the purposes of this Chapter must comply with the following requirements.
- (2) The regulations may only make provision in relation to those areas of such premises that are not enclosed or substantially enclosed.
- (3) The regulations may not provide for those areas to be treated as smoke-free premises unless—
  - (a) they are workplaces (within the meaning of section 7(2)), or
  - (b) they are open to the public (within the meaning of section 8(2)).

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- (4) The regulations must provide that—
- (a) those areas are to be treated as smoke-free premises only when they are used as a place of work or open to the public, and
  - (b) if only part of an area is used as a place of work or is open to the public, the area is to be treated as smoke-free only to that extent.

#### *Smoke-free vehicles*

### **15 Smoke-free vehicles**

- (1) A vehicle in Wales is smoke-free for the purposes of this Chapter if regulations under this section provide for it to be treated as a smoke-free vehicle.
- (2) The regulations may provide for a vehicle to be treated as a smoke-free vehicle only if the Welsh Ministers are satisfied that doing so is likely to contribute towards the promotion of the health of the people of Wales.
- (3) The regulations may, among other things, make provision—
  - (a) for the descriptions of vehicles that are to be treated as smoke-free;
  - (b) for the circumstances in which vehicles are to be treated as smoke-free (including by reference to the age of any person in the vehicle);
  - (c) for vehicles to be treated as smoke-free only in specified areas, or except in specified areas;
  - (d) for exemptions.
- (4) The power to make regulations under this section may not be exercised so as to provide for a ship or hovercraft within subsection (5) to be treated as a smoke-free vehicle.
- (5) A ship or hovercraft is within this subsection if regulations could be made in relation to it under section 85 of the Merchant Shipping Act 1995 (c.21) including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968 (c.59).

#### *Smoke-free premises: exemptions*

### **16 Smoke-free premises: exemptions**

- (1) Regulations may provide for premises—
  - (a) that would otherwise be smoke-free premises by virtue of section 7 (workplaces) or 8 (premises that are open to the public), and
  - (b) that are not smoke-free premises by virtue of any other provision of this Chapter,to be treated as not being smoke-free premises for the purposes of this Chapter.
- (2) The regulations may make provision in relation to specified descriptions of premises or specified areas within specified descriptions of premises.
- (3) The regulations may provide, in relation to any description of premises or areas of premises specified in the regulations, that the premises or areas are to be treated as not being smoke-free premises—
  - (a) in specified circumstances,

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- (b) at specified times, or
  - (c) if specified conditions are satisfied,
- or any combination of these.

- (4) The conditions that may be specified under subsection (3)(c) may include a condition that the person in charge of the premises has designated, in accordance with the regulations, areas in which smoking is to be permitted.

### *Signs*

#### **17 Signs: smoke-free premises**

- (1) A person who occupies or is concerned in the management of smoke-free premises must make sure that signs are displayed in those premises in accordance with regulations under this subsection.
- (2) Regulations under subsection (1) may make provision as to how the signs are to be displayed and may specify requirements to which the signs must conform (for example, requirements as to content, size, design, colour or wording).
- (3) Regulations under this subsection may provide for a duty corresponding to that mentioned in subsection (1) in relation to—
  - (a) premises which are treated as smoke-free by virtue of section 13,
  - (b) vehicles which are treated as smoke-free by virtue of section 15,
 to be imposed on a person, or person of a description, specified in the regulations.
- (4) Regulations under subsection (1) or (3) may include provision about the signs to be displayed in premises, areas of premises or vehicles that, by virtue of regulations under section 13(5), 15(3)(d) or 16, are to be treated as not being smoke-free, but that would otherwise be smoke-free under or by virtue of this Chapter.
- (5) A person who fails to comply with the duty in subsection (1), or any corresponding duty in regulations under subsection (3), commits an offence.
- (6) It is a defence for a person charged with an offence under this section to show—
  - (a) that the person did not know, and could not reasonably have been expected to know, that the premises were smoke-free (or, as the case may be, that the place or vehicle was to be treated as smoke-free),
  - (b) that the person did not know, and could not reasonably have been expected to know, that signs complying with the requirements of this section were not being displayed in accordance with the requirements of this section, or
  - (c) that on other grounds it was reasonable for the person not to comply with the duty.
- (7) If a person charged with an offence under this section relies on a defence in subsection (6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (8) 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.



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- (9) Regulations under this section may not make provision in respect of premises used to any extent as a dwelling.

### *Enforcement*

#### **18 Enforcement authorities**

- (1) Each local authority is authorised to act as an enforcement authority in relation to premises, places and vehicles that are within its area.
- (2) Regulations may make provision for the chief officer of police for a police area, in addition, to be authorised to act as an enforcement authority in relation to vehicles that are in that police area.
- (3) An enforcement authority must enforce the provisions of this Chapter and regulations made under it as respects the premises, places and vehicles in relation to which, by virtue of this section, it is authorised to act.
- (4) An enforcement authority may make arrangements with another enforcement authority for a case being dealt with by it in the exercise of its functions for the purposes of this Chapter to be transferred (or further transferred, or transferred back) to, and taken over by that other authority.
- (5) References in this Chapter to an authorised officer are to any person (whether or not an officer of the enforcement authority) authorised by an enforcement authority for the purposes of this Chapter.

#### **19 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 5, 6 or 17 has been committed at the premises, 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.
- (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 18(5).
- (5) This section applies to a vehicle as if it were premises.

#### **20 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 5 or 6 has been committed at the premises, and

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- (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 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.
- (4) This section applies to a vehicle as if it were premises.

## **21 Warrant to enter other premises**

- (1) A justice of the peace may exercise the power in subsection (2) 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 5, 6 or 17 has been committed at the premises,
  - (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 (3) or (4) is met.
- (2) The justice may issue a warrant authorising an authorised officer to enter the premises, if need be by force.
- (3) 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 enforcement authority to be concerned in the management of the premises.
- (4) 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.
- (5) The warrant continues in force until the end of the period of 28 days beginning with the date on which it was issued.
- (6) This section applies to a vehicle as if it were premises.

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

- (1) An authorised officer entering premises under section 19, or by virtue of a warrant under section 20 or 21, may take such other persons and such equipment as the officer considers appropriate.
- (2) If the occupier of premises that an authorised officer is authorised to enter by a warrant under section 20 or 21 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.

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- (3) If premises that an authorised officer is authorised to enter by a warrant under section 20 or 21 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.
- (4) This section applies to a vehicle as if it were premises.

### **23 Powers of inspection etc.**

- (1) An authorised officer entering premises under section 19, or by virtue of a warrant under section 20 or 21, may do any of the following if the officer considers it necessary for the purpose of ascertaining whether an offence under section 5, 6 or 17 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 5, 6 or 17 has been committed, the officer may arrange for anything produced under subsection (1)(b) or anything which the officer has taken possession of 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
  - (b) documents stored elsewhere that can be accessed by computers or other electronic devices on the premises.
- (6) This section applies to a vehicle as if it were premises.
- (7) 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.

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## **24 Obstruction etc. of officers**

- (1) Any person who intentionally obstructs an authorised officer exercising functions under sections 19 to 23 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 23(1), or
  - (b) to comply with a requirement under section 23(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 23(7).

## **25 Retained property: appeals**

- (1) A person (“P”) with an interest in anything taken away under section 23(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 5, 6 or 17 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).

## **26 Appropriated property: compensation**

- (1) A person (“P”) with an interest in anything of which an authorised officer of an enforcement authority has taken possession under section 23(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 5, 6 or 17 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 enforcement authority to pay compensation to P.

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## **27 Fixed penalty notices**

- (1) Where an authorised officer has reason to believe that a person has committed either of the following offences on premises or in a place or vehicle in relation to which the enforcement authority is authorised to act—
  - (a) an offence under section 5(1);
  - (b) an offence under section 17(5),the officer may give that person a fixed penalty notice in respect of the offence.
- (2) Where an authorised officer has reason to believe that a person has committed an offence under section 6(6) in relation to a vehicle being used for the purposes mentioned in subsection (4), in relation to which the enforcement authority is authorised to act, the officer may give that person a fixed penalty notice in respect of the offence.
- (3) 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.
- (4) The purposes are the social, domestic or other private purposes of the person believed by the authorised officer to have committed the offence.
- (5) In the case of an offence that an authorised officer has reason to believe has been committed by a partnership, the references in subsections (1) and (2) to the person to whom a fixed penalty notice may be given are to be treated as references to the partnership.
- (6) 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 references in subsections (1) and (2) to the person to whom a fixed penalty notice may be given are to be treated as references to the association.
- (7) 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).
- (8) For further provision about fixed penalties, see Schedule 1.

### *General*

## **28 Interpretation of this Chapter**

- (1) In this Chapter—

“adult care home” (“*cartref gofal i oedolion*”) means premises at which a care home service within the meaning given by paragraph 1 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) is provided to persons aged 18 or over;

“adult hospice” (“*hosbis i oedolion*”) means premises wholly or mainly used for the provision of palliative care to persons aged 18 or over, who are suffering from a progressive disease in its final stages, by or behalf of an establishment the primary function of which is the provision of such care;

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“authorised officer” (“*swyddog awdurdodedig*”) has the meaning given by section 18(5);

“child” (“*plentyn*”) means a person aged under 18;

“childcare” (“*gofal plant*”) means (subject to subsection (2)) any form of care for a child, other than care provided for a child by a parent, relative or foster parent of the child, and includes—

- (a) education for a child, and
- (b) any other supervised activity for a child;

“enforcement authority” (“*awdurdod gorfodi*”) is to be interpreted in accordance with section 18;

“hospital” (“*ysbyty*”) has the meaning given by section 206 of the National Health Service (Wales) Act 2006 (c.42);

“parent” (“*rhiant*”) includes any person who has parental responsibility (within the meaning of section 3 of the Children Act 1989 (c.41)) for a child;

“playground equipment” (“*cyfarpar maes chwarae*”) includes (for example) a swing, slide, sand-pit, or ramp, but does not include powered equipment (such as equipment powered by electric motor);

“premises” (“*mangre*”) includes—

- (a) any place;
- (b) a moveable structure other than a vehicle;
- (c) a stall;
- (d) a tent;
- (e) an offshore installation within the meaning given in the Mineral Workings (Offshore Installations) Act 1971 (c.61) (see section 12 of that Act);

“registered pupil” (“*disgybl cofrestredig*”) has the meaning given by section 434(5) of the Education Act 1996 (c.56);

“relative” (“*perthynas*”), in relation to a child, means a step-parent, grandparent, aunt, uncle, brother or sister (including any person who is in that relationship by virtue of a marriage or civil partnership or an enduring family relationship);

“school” (“*ysgol*”) has the meaning given by section 4 of the Education Act 1996 (c.56);

“smoking” and “smokes” (“*ysmygu*”) are to be read in accordance with section 4;

“vehicle” (“*cerbyd*”) includes a train, tram, vessel, hovercraft and aircraft;

“Wales” (“*Cymru*”) has the meaning given by section 158(1) of the Government of Wales Act 2006 (c.32).

(2) References in this Chapter to “childcare” do not include—

- (a) education (or any other supervised activity) provided by a school during school hours for a registered pupil, or
- (b) any form of health care for a child.

(3) For the purposes of subsection (1) a person is a foster parent in relation to a child if the person—

- (a) is a local authority foster parent (within the meaning given by section 197 of the Social Services and Well-being (Wales) Act 2014 (anaw 4)), or
- (b) fosters the child privately.

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- (4) References in this Chapter to a “dwelling” include land enjoyed with premises where the premises themselves constitute a dwelling, unless the land is agricultural land (within the meaning given by section 246 of the Renting Homes (Wales) Act 2016 (anaw 1)) exceeding 0.809 hectares.
- (5) References in this Chapter, however expressed, to premises or vehicles which are (or are not) smoke-free (or treated as smoke-free), are to those premises or vehicles so far as they are (or are not) smoke-free (or treated as smoke-free) under or by virtue of this Chapter.
- (6) Premises may be smoke-free by virtue of more than one section in this Chapter.
- (7) Regulations may specify for the purpose of this Chapter what “enclosed”, “substantially enclosed” and “not enclosed or substantially enclosed” mean.

## **29 Consequential amendments**

For amendments consequential on this Chapter, see Schedule 2.

## **CHAPTER 2**

### **RETAILERS OF TOBACCO AND NICOTINE PRODUCTS**

#### *Register of retailers of tobacco and nicotine products*

## **30 Duty to maintain register of retailers of tobacco and nicotine products**

- (1) The registration authority must maintain a register of persons carrying on a tobacco or nicotine business at premises in Wales (“the register”).
- (2) The registration authority for this purpose is a person specified as such in regulations.
- (3) For the purposes of this Chapter “tobacco or nicotine business” means a business involving the sale by retail of tobacco or cigarette papers or nicotine products.
- (4) Each entry in the register in respect of a person carrying on a tobacco or nicotine business in Wales must state—
  - (a) the person's name and address;
  - (b) the address of each of the premises at which a tobacco or nicotine business is carried on by that person;
  - (c) whether the person is selling—
    - (i) tobacco or cigarette papers,
    - (ii) nicotine products, or
    - (iii) any combination of those items,at those premises;
  - (d) in the case of premises consisting of a moveable structure, a stall, a tent or a vehicle, the name of each local authority in whose area the business is carried on.
- (5) For the purpose of subsection (4)(a), a person's name and address is—
  - (a) in the case of an individual—

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- (i) the individual's name and, if different, the individual's trading name, and
  - (ii) the address of the individual's usual place of residence;
  - (b) in the case of a company—
    - (i) its name and, if different, its trading name, and
    - (ii) the address of its registered office;
  - (c) in the case of a partnership other than a limited liability partnership—
    - (i) the name of each partner and, if different, the partnership's trading name, and
    - (ii) the address of each partner's usual place of residence;
  - (d) in the case of a limited liability partnership—
    - (i) its registered name and, if different, its trading name, and
    - (ii) the address of its registered office.
- (6) The register may include any other information that is information of a description required, by regulations under section 31(3)(b), to be included in an application for registration.
- (7) For the purposes of this Chapter—
- (a) a person is registered if the person's name is entered in the register, and other related expressions are to be construed accordingly;
  - (b) references to a person's entry in the register are to the entry relating to that person in the register.
- (8) Regulations under subsection (2) may specify the Welsh Ministers as the registration authority.
- (9) In the case of premises consisting of a moveable structure, a stall, a tent or a vehicle, the address to be entered in the register in accordance with subsection (4)(a) is to be treated as the address of the premises for the purpose of subsection (4)(b).

### **31 Application for entry in the register**

- (1) An application may be made to the registration authority—
- (a) for a person to be registered in respect of the carrying on of a tobacco or nicotine business, or
  - (b) if the applicant is already a registered person—
    - (i) to add further premises to the person's entry in the register, or
    - (ii) in the case of premises consisting of a moveable structure, a stall, a tent or a vehicle, to add another local authority to the person's entry in the register.
- (2) An application under subsection (1) must—
- (a) state the applicant's name and address (for which see section 30(5));
  - (b) if the application is made under subsection (1)(a), state the address of each of the premises at which the applicant proposes to carry on a tobacco or nicotine business;
  - (c) if the application is made under subsection (1)(b)(i), state the address of each of the further premises at which the applicant proposes to carry on a tobacco or nicotine business;
  - (d) state whether the applicant proposes to sell—



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- (i) tobacco or cigarette papers,
    - (ii) nicotine products, or
    - (iii) any combination of those items,at the premises stated in accordance with paragraph (b) or (c);
  - (e) state whether the applicant proposes to carry on business in a way that involves the making of arrangements for tobacco, cigarette papers or nicotine products—
    - (i) to be delivered to premises in Wales, or
    - (ii) following a sale effected by telephone, the internet or other kind of electronic or other technology, to be collected from premises in Wales;
  - (f) in the case of premises consisting of a moveable structure, a stall, a tent or a vehicle—
    - (i) if the application is made under subsection (1)(a), state the name of each local authority in whose area the applicant proposes to carry on the tobacco or nicotine business, and
    - (ii) if the application is made under subsection (1)(b)(ii), state the name of each additional local authority in whose area the applicant proposes to carry on a tobacco or nicotine business.
- (3) Regulations may make provision—
- (a) about the form of an application under subsection (1) and the way in which it is to be made;
  - (b) about other information that is to be included in an application (including, in the case of an application by a person who proposes to carry on a tobacco or nicotine business as described in subsection (2)(e), information relating to the nature of the arrangements concerned);
  - (c) requiring payment of a fee to accompany an application under subsection (1) (a) or (1)(b)(i).
- (4) Before making regulations under this section, the Welsh Ministers must—
- (a) consider whether there are persons who appear to be representative of the interests of those likely to be affected by the regulations (“representative persons”), and
  - (b) carry out consultation with any representative persons whom the Welsh Ministers consider it appropriate to consult.
- (5) If the premises at which the applicant proposes to carry on a tobacco or nicotine business consist of a moveable structure, a stall, a tent or a vehicle, the address stated in the application in accordance with subsection (2)(a) is to be stated as the address of the premises for the purpose of subsection (2)(b) and (c).

## **32 Grant of application**

- (1) The registration authority must grant an application made under section 31 unless subsection (2) or (3) applies.
- (2) The registration authority must not grant the application in so far as it relates to premises specified in the application in respect of which a restricted premises order made under section 12A of the Children and Young Persons Act 1933 (c.12) has effect.

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- (3) The registration authority must not grant the application if a restricted sale order made under section 12B of the Children and Young Persons Act 1933 (c.12) has effect in respect of the applicant.
- (4) On granting an application made under section 31, the registration authority must make the appropriate entry or amendment to an entry in the register.

### **33 Duty to give notice of certain changes**

- (1) A registered person must give the registration authority notice of any of the following matters—
  - (a) any change in the person's name or address from that stated in the register in accordance with section 30(4)(a);
  - (b) any change in what the person is selling from that stated in the person's entry in the register in accordance with section 30(4)(c);
  - (c) if the person stops carrying on a tobacco or nicotine business at premises stated in the person's entry in the register;
  - (d) in the case of a tobacco or nicotine business carried on from premises consisting of a moveable structure, a stall, a tent or a vehicle, if the person stops carrying on the business in the area of a local authority stated in the person's entry in the register.
- (2) A person stops carrying on a business for the purpose of subsection (1)(c) or (d) when that person stops doing so for a continuous period of no less than 28 days.
- (3) The notification referred to in subsection (1) must be given within a period of 28 days beginning with whichever of the following is applicable—
  - (a) the date of the change referred to in subsection (1)(a) or (b);
  - (b) the date on which the registered person stops carrying on the business at the premises in question or in the area of the local authority in question.
- (4) If a local authority becomes aware of any of the matters referred to in subsection (1) (a) to (d) in respect of a registered person carrying on a tobacco or nicotine business in its area, the local authority must give notice to the registration authority of that matter.

### **34 Duty to revise the register**

- (1) The registration authority must revise the register—
  - (a) on receiving notice under section 33, to reflect the notice;
  - (b) to correct any inaccuracies in the register of which it becomes aware otherwise than by receiving notice under section 33.
- (2) But if the registration authority proposes to revise the register by amending or removing a person's entry, it must give notice of the proposed revision to the person.
- (3) The notice must give reasons for the proposed revision.
- (4) The registration authority must not amend or remove a person's entry in the register if the authority is satisfied, on the basis of information provided by the person to the authority within the period mentioned in subsection (5), that the person's entry is accurate.

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- (5) The period is the period of 28 days beginning with the date of the notice given under subsection (2).
- (6) Regulations may provide for the registration authority to charge a fee in connection with revising the register under this section.

### **35 Access to the register**

- (1) The registration authority must publish a list that sets out the name of each registered person and the address of each of the premises stated in the person's entry in the register as being premises at which a tobacco or nicotine business is carried on.
- (2) But in respect of a registered person carrying on a tobacco or nicotine business at premises consisting of a moveable structure, a stall, a tent or a vehicle, the list published under subsection (1) must, instead of the address of the premises, set out the name of each local authority stated in the person's entry in the register.
- (3) The registration authority must also make available to a local authority all other information contained in the register in so far as it relates to premises in the authority's area.

### **36 Excepted premises**

The provisions of this Chapter do not apply in relation to a tobacco or nicotine business so far as carried on at premises of a description specified in regulations.

### **37 Moveable structures etc.**

Regulations may provide for the application of this Chapter in relation to premises consisting of a moveable structure, a stall, a tent or a vehicle to be subject to such modifications as the Welsh Ministers consider necessary or expedient.

## *Offences*

### **38 Offences**

- (1) A person who carries on a tobacco or nicotine business at premises in Wales without being registered commits an offence.
- (2) A registered person who carries on a tobacco or nicotine business at premises in Wales other than premises stated in the person's entry in the register commits an offence.
- (3) Subsection (2) does not apply in the case of a tobacco or nicotine business carried on at premises consisting of a moveable structure, a stall, a tent or a vehicle.
- (4) A registered person who carries on a tobacco or nicotine business at premises consisting of a moveable structure, a stall, a tent or a vehicle in the area of a local authority other than one stated in the person's entry in the register commits an offence.
- (5) A registered person who fails, without reasonable excuse, to comply with section 33 (duty to notify certain changes) commits an offence.
- (6) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine.

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- (7) A person guilty of an offence under subsection (2), (4) or (5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### *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.
- (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

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(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.

(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.

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- (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
  - (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.

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#### **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).

#### **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.

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- (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.

### *Interpretation*

## **50 Interpretation of this Chapter**

- (1) In this Chapter—

“authorised officer” (“*swyddog awdurdodedig*”) has the meaning given in section 39;

“limited liability partnership” (“*partneriaeth atebolrwydd cyfyngedig*”) means a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c.12);

“premises” (“*mangre*”) includes any place and any moveable structure, stall, tent or vehicle (other than a train, vessel, aircraft or hovercraft);

“the register” (“*y gofrestr*”) means the register maintained under section 30(1);

“registered” (“*cofrestredig*” and “*wedi ei gofrestru*”) has the meaning given in section 30(7);

“registration authority” (“*awdurdod cofrestru*”) means the person specified in regulations made under section 30(2);

“tobacco” (“*tybaco*”) includes cigarettes, any product containing tobacco and intended for oral or nasal use, and smoking mixtures intended as a substitute for tobacco; and “cigarette” (“*sigarét*”) includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking;

“tobacco or nicotine business” (“*busnes tybaco neu nicotin*”) has the meaning given in section 30(3);

“trading name” (“*enw masnachu*”) means a name under which a person carries on a tobacco or nicotine business.

- (2) “Nicotine product”, for the purposes of this Chapter, means a product or description of product specified in regulations, but the following are not to be treated as being nicotine products—
- (a) tobacco;
  - (b) cigarette papers;
  - (c) any device which is intended to be used for the consumption of lit tobacco.



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

*Changes to legislation: Public Health (Wales) Act 2017, PART 3 is up to date with all changes known to be in force on or before 22 December 2017. 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)*

## CHAPTER 3

### PROHIBITION ON SALE OF TOBACCO AND NICOTINE PRODUCTS

#### 51 Restricted premises orders: tobacco or nicotine offence

In section 12D of the Children and Young Persons Act 1933 (c.12), after subsection (1) insert—

“(1A) In section 12A a “tobacco or nicotine offence” also means an offence specified in regulations made by the Welsh Ministers which is committed on any premises in Wales (which are accordingly “the premises in relation to which the offence is committed”).

(1B) An offence may be specified in regulations under subsection (1A) only if—

- (a) the Welsh Ministers are satisfied that the offence is one that relates to the supply, sale, transport, display, offer for sale, advertising or possession of tobacco or nicotine products, and
- (b) in the case of an offence that is triable only summarily, it is punishable by a fine of an amount corresponding to, or greater than, level 4 on the standard scale.

(1C) Regulations under subsection (1A) may include incidental, consequential or transitional provision.

(1D) Before making regulations under subsection (1A), the Welsh Ministers must

- (a) consider whether there are persons who appear to be representative of the interests of those likely to have an interest in the regulations (“representative persons”), and
- (b) carry out consultation with any representative persons whom the Welsh Ministers consider it appropriate to consult.

(1E) The power of the Welsh Ministers to make regulations under subsection (1A) is exercisable by statutory instrument.

(1F) A statutory instrument containing regulations made by the Welsh Ministers under subsection (1A) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.”

## CHAPTER 4

### HANDING OVER TOBACCO ETC. TO PERSONS UNDER 18

#### 52 Offence of handing over tobacco etc. to persons under 18

(1) A person (“A”) commits an offence if—

- (a) in connection with arrangements under section 53, A hands over in Wales tobacco, cigarette papers or nicotine products to a person aged under 18 (“B”),
- (b) the handing over does not take place either—
  - (i) in the course of B's trade, profession, business or employment, or

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- (ii) in the presence of another person who is aged 18 or over,
- (c) at the time of the handing over, A knows that tobacco or cigarette papers or nicotine products (whichever is the case) are being handed over, and
- (d) when handed over, the tobacco, cigarette papers or nicotine products are not contained in a package that—
  - (i) is sealed, and
  - (ii) has an address on it, for the purpose of its delivery to that address in accordance with arrangements within section 53.
- (2) “Package” in subsection (1)(d) means a package in addition to the original package in which the tobacco, cigarette papers or nicotine products were supplied for the purpose of retail sale by their manufacturer or importer.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) Where a person (“the accused”) is charged with an offence under this section by reason of the accused's own conduct (and otherwise than by virtue of section 44 of the Magistrates' Courts Act 1980 (c.43) (aiders and abettors)) it is a defence for the accused to show—
  - (a) that the accused believed, when the handing over took place, that the person to whom the tobacco, cigarette papers or nicotine products were handed over, or another person present at the time of the handing over, was aged 18 or over, and
  - (b) either—
    - (i) that the accused had taken reasonable steps to establish the age of that person, or
    - (ii) that nobody could reasonably have suspected from that person's appearance that the person was aged under 18.
- (5) For the purposes of subsection (4)(b), the accused is to be treated as having taken reasonable steps to establish the age of a person if—
  - (a) the accused asked that person for evidence of that person's age, and
  - (b) the evidence would have convinced a reasonable person.
- (6) Where a person is charged with an offence under this section by reason of the act or default of another person, or by virtue of the application of section 44 of the Magistrates' Courts Act 1980 (c.43) (aiders and abettors), it is a defence to show that the person took reasonable precautions and exercised due diligence to avoid committing the offence.
- (7) In this section, “employment” means any employment, whether paid or unpaid, and includes—
  - (a) work under a contract for services or as an office holder, and
  - (b) work experience provided pursuant to a training course or programme or in the course of training for employment.

### **53 Arrangements in connection with handing over tobacco etc.**

- (1) Arrangements are within this section if, in relation to the handing over of tobacco, cigarette papers or nicotine products—

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- (a) they are arrangements for the tobacco, cigarette papers or nicotine products to be delivered to premises in Wales, and
  - (b) they are made in connection with the sale of the tobacco, cigarette papers or nicotine products concerned.
- (2) Arrangements are also within this section if, in relation to the handing over of tobacco, cigarette papers or nicotine products—
- (a) they are arrangements for the tobacco, cigarette papers or nicotine products to be collected from premises in Wales, and
  - (b) they are made in connection with the sale of the tobacco, cigarette papers or nicotine products concerned.
- (3) But subsection (2) applies only where the sale concerned is effected by telephone, the internet or any other kind of electronic or other technology.

#### **54 Enforcement**

In section 5 of the Children and Young Persons (Protection from Tobacco) Act 1991 (c.23) (enforcement action by local authorities in England and Wales), in subsection (1)(a), after “persons under 18)” insert “, and in the case of a local authority in Wales, section 52 of the Public Health (Wales) Act 2017 (offence of handing over tobacco etc. to persons under 18) ”.

#### **55 Interpretation of this Chapter**

In this Chapter—

“nicotine product” (“*cynnyrch nicotin*”) means a nicotine product the sale of which is for the time being prohibited in respect of the person to whom it is handed over by regulations under section 92 of the Children and Families Act 2014 (c.6) (prohibition of sale of products to persons under 18);

“tobacco” (“*tybaco*”) includes cigarettes, any product containing tobacco and intended for oral or nasal use, and smoking mixtures intended as a substitute for tobacco; and “cigarette” (“*sigarét*”) includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking.

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

Public Health (Wales) Act 2017, PART 3 is up to date with all changes known to be in force on or before 22 December 2017. 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.

**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](#)