

# **PUBLIC HEALTH (WALES) ACT 2017**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 3**

#### **Tobacco and Nicotine Products**

##### ***Chapter 2 - Retailers of Tobacco and Nicotine Products***

57. This Chapter contains provisions to establish a national register of retailers of tobacco and nicotine products. All retailers who sell either tobacco products, nicotine products or both from premises to the general public in Wales will be required to register in order to sell them. This includes those selling from moveable structures. The register will not capture businesses which only sell to other retailers, traders or businesses.

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

58. This section establishes a register of retailers of tobacco and nicotine products, which will contain details of businesses with premises in Wales selling those products to the general public. The section places a duty on the registration authority to maintain the register. Regulations made by the Welsh Ministers will specify a body, for example a local authority, to act as the registration authority.
59. The register may include other appropriate information provided within the application form for entry onto the register (see section 31).

##### ***Sections 31 and 32 - Application for entry in the register and Grant of application***

60. **Section 31** enables retailers to apply to be on the register of retailers of tobacco and nicotine products, and outlines the information required in any application. The registration authority can only refuse an application if the applicant is subject to a Restricted Sales Order under section 12B of the Children and Young Person's Act 1933. Premises cannot be added to the register if they are currently subject to a Restricted Premises Order under section 12A of the Children and Young Persons Act 1933. If the application covers multiple premises then only the premises not subject to a Restricted Premises Order will be added to the register.
61. A Restricted Premises Order is an order made by a magistrates' court that prohibits retail premises from selling tobacco or nicotine products for a period of up to 12 months. A court can only issue a Restricted Premises Order if it is satisfied that a person convicted of a tobacco or nicotine offence on the premises in question has also committed other tobacco or nicotine offences on at least two previous occasions within a period of two years. A tobacco offence is defined in section 12D of the Children and Young Persons Act 1933 and includes selling tobacco to a person under the age of 18. On 1 October 2015 the definition of tobacco offences was amended to include an offence under section 92 of the Children and Families Act 2014 (prohibition of sale of nicotine products to persons under 18).

62. A Restricted Sales Order prohibits a named person who has been convicted of a tobacco offence from selling tobacco or nicotine products for a period up to 12 months. As with a Restricted Premises Order, a magistrates' court can only make a Restricted Sales Order if it is satisfied that the named person has also committed other tobacco or nicotine offences on at least two previous occasions within a period of two years.
63. The Welsh Ministers may, through regulations, require additional information to be provided when submitting an application for inclusion in the register, and may make provisions for a fee to be paid when submitting an application.

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

64. This section places a duty on retailers to inform the registration authority within 28 days of changes in circumstances which are relevant to an entry contained in the register, for example if they no longer sell tobacco or nicotine products from the premises included on the register. In addition, if a local authority becomes aware of any relevant changes to the retailers of these products, it must inform the registration authority.

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

65. This section sets out details of when the registration authority must make changes to the register and the process it must follow in doing this.
66. The Welsh Ministers may, by regulations, allow the registration authority to charge a fee for revising the register.

### ***Section 35 - Access to the register***

67. Under this section the registration authority must publish a list of all the persons and premises on the register of retailers of tobacco and nicotine products. Where the business is carried on from a vehicle, stall, tent or other moveable structure, the list must indicate each local authority in which it operates.

### ***Section 36 - Excepted premises***

68. This section gives the Welsh Ministers a regulation-making power to exempt premises from having to register on the register of retailers of tobacco and nicotine products. For example, this power could be used to exempt members clubs where membership is restricted to over-18s and sale of tobacco or nicotine products is restricted to full members only.

### ***Section 37 - Moveable structures etc.***

69. This section gives the Welsh Ministers a regulation-making power to modify how this Chapter applies in relation to premises which consist of a vehicle, stall, tent or moveable structure. For example, this could be to require additional information (perhaps a vehicle number-plate, or other identification) to be provided when submitting an application for inclusion in the register in relation to these types of premises.

### ***Section 38 - Offences***

70. This section creates offences in relation to the register. Subsections (6) and (7) set out the different levels of penalty for the offences. The fine for the offence of carrying on a tobacco or nicotine business without being registered is not limited by any levels on the standard scale, so its amount will be determined by the magistrates' court. The other offences are punishable by a fine not exceeding level 2 on the standard scale. The levels on the standard scale are set out in section 37 of the Criminal Justice Act 1982. A fixed penalty notice may be issued by an authorised officer in place of a fine. Section 49 contains more details on fixed penalty notices.

### ***Section 39 - Authorised officers***

71. This section clarifies that any references to authorised officers in this Chapter are to an officer authorised by a local authority, whether or not they are an officer of the local authority.

### ***Section 40 - Powers of entry***

72. This section outlines the circumstances when an authorised officer may enter premises in Wales for the purpose of enforcing provisions relating to the register of retailers of tobacco and nicotine products.
73. Authorised officers must not use force to enter premises when exercising their power under this section. If they are asked to do so, authorised officers must present evidence of their authority before entering any premises. Section 67(9) of the Police and Criminal Evidence Act 1984 provides that, while acting in the course of their enforcement functions, authorised officers of the enforcement authority must have regard to the relevant code of practice made under that Act. Therefore, authorised officers must have regard to the PACE Code of Practice B in the exercise of their enforcement functions.

### ***Sections 41 and 42 - Warrant to enter dwelling and Warrant to enter other premises***

74. These sections set out the circumstances in which a justice of the peace may issue a warrant to enter domestic premises or business premises in Wales for the purpose of enforcing provisions relating to the register of retailers of tobacco and nicotine products. A warrant remains in force for 28 days commencing on the date the justice of the peace issued it, and entry may be obtained by force if need be. A warrant can be issued in a format other than a hard copy document, such as an electronic version.

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

75. This section enables an authorised officer entering premises under section 40, 41 or 42 to take with them any other persons or equipment as the officer considers appropriate. It also requires that if the occupier of premises that an authorised officer is authorised to enter under sections 41 or 42 is present at the time the authorised officer seeks to execute the warrant, the occupier must be told the officer's name; the officer must produce documentary evidence that the officer is an authorised officer; the officer must produce the warrant and supply the occupier with a copy of it. If the premises are unoccupied or the occupier is temporarily absent, there is a requirement that the authorised officer must leave the premises as effectively secured against unauthorised entry as the officer found them. The provisions in this section also apply to a vehicle.

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

76. This section allows for authorised officers to carry out inspections on premises. In doing so authorised officers may request and inspect items, take samples from them and/or take the item(s), documents or copies of documents from the premises. They may also request information and help from any person that may help them carry out their functions, but that person is not required to answer any questions or produce any document which they would be entitled to refuse to answer or produce in the course of court proceedings in England and Wales. The authorised officer may analyse any samples taken. The authorised officer must leave a statement detailing any items that have been taken and identifying the person to whom a request for the return of the property may be made.

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

77. This section provides that any person who intentionally obstructs an authorised officer from carrying out their function under this Chapter is committing an offence. Any person who fails without reasonable cause to provide the officer with facilities that are

reasonably required by the officer to carry out their functions, fails to give information without reasonable cause, or gives a false or misleading statement is also committing an offence. However, a person is not required to answer any questions or produce any document which they would be entitled to refuse to answer or produce in the course of court proceedings in England and Wales. The offence may only be tried in the magistrates' court and is punishable on conviction by a fine not exceeding level 3 on the standard scale. The levels on the standard scale are set out in section 37 of the Criminal Justice Act 1982.

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

78. This section provides that an authorised officer may make purchases and secure the provision of services if the officer considers it necessary for the purpose of enforcement in relation to this Chapter.

#### ***Section 47 - Retained property: appeals***

79. This section provides an additional safeguard relating to the powers of entry and inspection provisions. It enables a person with an interest in anything taken away from the premises by an authorised officer under section 44(1)(c) to apply to a magistrates' court for an order requesting the release of the property. Depending on the court's consideration of an application, it may make an order requiring the release of the retained property.

#### ***Section 48 - Appropriated property: compensation***

80. This section provides a right for a person affected by the taking possession of property under section 44(1)(c) to apply to a magistrates' court for compensation. Where the circumstances set out in subsection (2) are satisfied (i.e. that the person has suffered loss or damage as a consequence of the property being taken, and the loss or damage is not due to their neglect or failure to act, the court may order the local authority to pay compensation to the applicant.

#### ***Section 49 - Fixed penalty notices***

81. This section provides details about when an authorised officer can issue a fixed penalty notice (FPN) in respect of an offence associated with the register. A fixed penalty can be issued for the following offences:-
- A registered person carrying on a tobacco or nicotine business in premises other than those noted in the person's entry on the register;
  - A registered person carrying on a tobacco or nicotine business at premises consisting of a moveable structure, such as a stall or vehicle, in a local authority area other than the ones noted in the person's entry on the register; and
  - A registered person failing to comply with section 33 (duty to give notice of certain changes).
82. FPNs may be issued to a person, partnership or an unincorporated association. Payment of the FPN discharges the person believed to have committed an offence from being convicted for the offence in court. The section also refers to Schedule 1 on fixed penalties (for commentary on this, see Schedule 1 below).

#### ***Section 50 - Interpretation of this Chapter***

83. This section sets out the meaning of key terms used in this Chapter.