

PUBLIC HEALTH (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3

Tobacco and Nicotine Products

Chapter 4: Handing Over of Tobacco Etc. to Persons under 18

Sections 52 and 53 - Offence of handing over tobacco etc. to persons under 18 and Arrangements in connection with handing over tobacco etc.

85. **Section 52** makes it an offence to hand over tobacco, cigarette papers or nicotine products during the course of a delivery of goods, to a person who is under the age of 18. The offence applies unless they are accompanied by someone who is aged 18 or older, or the handing over takes place as part of their trade, profession, business or employment (for example, where an employee hands tobacco or nicotine products to a colleague aged under 18 to take to another part of a shop).
86. In order to avoid committing an offence, where tobacco, cigarette papers or nicotine products are included in a purchase of goods (whether on their own or as part of a larger purchase), the person delivering the goods might, for example, need to remove any tobacco, cigarette papers or nicotine products from the delivery if not satisfied the person receiving the goods is aged 18 or over.
87. The offence also covers any tobacco, cigarette papers or nicotine products which have been purchased remotely (for example by telephone or via the internet) for collection from premises in Wales (often referred to as “click and collect”).
88. The offence may only be tried in the magistrates’ court and is punishable on conviction by a fine not exceeding level 4 on the standard scale. The levels on the standard scale are set out in section 37 of the Criminal Justice Act 1982.
89. No offence is committed if the tobacco, cigarette papers or nicotine products are wrapped and sealed or the accused could not reasonably have suspected from the person’s appearance that they were under the age of 18. For example the products could be sealed in an envelope, or wrapped in brown paper and sealed with tape. The parcel must also have on it the address of the person to whom the parcel should be delivered.

Section 54 - Enforcement

90. Section 5 of the Children and Young Persons (Protection from Tobacco) Act 1991 requires local authorities to consider, at least once a year, whether it is appropriate for them to carry out a programme of enforcement action relating to various tobacco related offences. A programme of enforcement involves bringing prosecutions, investigating complaints and taking measures to reduce offences.

91. [Section 54](#) amends section 5 of the 1991 Act to make the offence of handing over tobacco, cigarette papers or nicotine products to a person under the age of 18, as detailed in section 52, one of the offences in respect of which a local authority in Wales must consider a programme of enforcement.

Section 55 - Interpretation of this Chapter

92. This section sets out the meaning of key terms used in this Chapter.
93. “Nicotine product” is defined by reference to regulations made under section 92 of the Children and Families Act 2014. That provision allows the Secretary of State to make regulations prohibiting the sale of nicotine products to persons aged under 18 in England and Wales. The offence under section 52 applies to nicotine products that, in accordance with those regulations, are prohibited for sale to those under 18.
94. Regulations under section 92 of the 2014 Act may make different provision in respect of certain nicotine products. For example, some nicotine products may be prohibited for sale to those under 16 only. Defining “nicotine product” by reference to regulations under section 92 of the 2014 Act ensures that the offence under section 52 is committed only if the nicotine product in question is prohibited for sale to the person under 18 to whom it is handed over.