



Public Health (Wales) Act 2017

2017 anaw 2

PART 3

TOBACCO AND NICOTINE PRODUCTS

PROSPECTIVE

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,

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- 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—
 - (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));

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- (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—
 - (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).

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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.
- (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.

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- (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.
- (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.

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- (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.
- (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.

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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.
- (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—

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- (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
 - (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).

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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).

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.

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- (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.

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.

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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](#)