

PUBLIC HEALTH (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3

Tobacco and Nicotine Products

Chapter 1 - Smoking

12. This Chapter contains provisions that make enclosed and substantially enclosed public premises and shared workplaces smoke-free, as well as some specific non-enclosed premises. These are referred to as ‘smoke-free premises’. For the purpose of this Chapter, ‘smoke-free’ means that smoking is not permitted, unless the premises are exempted by regulations made under section 16 of the Act.
13. This Chapter restates Chapter 1 of Part 1 of the Health Act 2006 (“Smoke-Free Premises, Places and Vehicles”) in relation to Wales, with some minor modifications. It also brings additional settings into the smoke-free regime in Wales, namely outdoor care settings for children, school grounds, hospital grounds and public playgrounds.
14. Regulations can also provide for additional premises to be smoke-free in certain circumstances. These additional smoke-free premises do not need to be enclosed or substantially enclosed. Regulations may also provide for vehicles to be smoke-free; such vehicles are referred to as ‘smoke-free vehicles’ in this Chapter.

Section 4 - Smoking

15. This section provides the definition of “smoking” for Chapter 1 of Part 3 of the Act. The definition covers the smoking of cigarettes, pipes, cigars, herbal cigarettes and waterpipes (often known as hookah or shisha pipes) etc. It does not encompass “e-cigarettes”.

Section 5 - Offence of smoking in smoke-free premises or vehicle

16. This section makes it a criminal offence to smoke in smoke-free premises or in a smoke-free vehicle. The offence may only be tried in the magistrates’ court and is punishable on conviction by a fine not exceeding level 1 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 instead of prosecution (see section 27).

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

17. This section requires managers of smoke-free workplaces, public premises and outdoor care settings for children to take reasonable steps to prevent smoking in those places. The Welsh Ministers may make regulations imposing corresponding duties in respect of smoke-free school grounds, hospital grounds and public playgrounds, and any additional smoke-free premises and smoke-free vehicles designated by the Welsh Ministers under sections 13 or 15. Any person who fails to comply with these duties

is committing an offence. 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.

Section 7 - Workplaces

18. This section details what is meant by “workplaces” in the context of the smoke-free premises in this Chapter. A “workplace” is a place that is used as a place of work by more than one person (irrespective of whether such people work there at the same time), or is a place of work for one person but is somewhere that the public may have access to for certain purposes. For instance, a shop where only one person works would be a workplace for the purposes of the Chapter. Where only parts of the premises are used as a place of work, only those parts are smoke-free. In all cases, only those areas that are enclosed or substantially enclosed are smoke-free. All workplaces are smoke-free all of the time, except that a dwelling used as a workplace is smoke-free only when being used as such. So for instance if a person uses their home as a workplace, and members of the public might come to it to obtain the goods or services offered, his/her home will be smoke-free only in the parts of it used as a workplace, and only when those parts are being used by the person for work.

Section 8 - Premises that are open to the public

19. This section details what is meant by “premises that are open to the public” in the context of smoke-free premises in this Chapter. It includes all premises that are open to the public or a section of the public (irrespective of whether this is by invitation or not, or whether there is a charge for entry or not). So, for example, places of worship, private members' clubs and all licensed premises would be open to the public for the purposes of this Chapter. Where only parts of the premises are open to the public, only those parts are smoke-free. All such premises are smoke-free only when open to the public and only in those areas that are enclosed or substantially enclosed.

Section 9 - Outdoor care settings for children

20. This section provides that outdoor care settings for children in Wales are smoke-free premises. It provides details about what is meant by “outdoor care settings for children” in the context of smoke-free premises in this Chapter.
21. The areas covered by this section are the outdoor areas of those premises which are covered by Part 2 of the Children and Families (Wales) Measure 2010. These are premises which provide day care or child minding for a child or children under the age of 12.
22. The outdoor areas are only smoke-free when the premises are being used for day care or child minding. In the case of child minders providing care in their own homes, the outdoor areas are only smoke-free if one or more of the children are in the outdoor area.

Section 10 - School grounds

23. This section provides that school grounds in Wales are smoke-free premises. It provides details about what is meant by “school grounds” in the context of smoke-free premises in this Chapter.
24. Grounds being used by a school but that do not adjoin the school are smoke-free only when, and in those parts, being used for the provision of education or childcare (subsection (3)). So for example, if a school has a sports field that is for its sole use, but which is across the road from the school, the sports field will be smoke-free only when being used for educational or childcare purposes. “Childcare” is defined in section 28.
25. But if the sports field adjoins the school, it will be smoke-free when it is being used for the purpose of education or childcare, or when the school itself is being used for

education or childcare (subsection (2)). So, in this instance the sports field will be smoke-free both during school hours, and if (for example) there is an after-school club in the school hall, while the club is being held.

26. Schools that provide residential accommodation to pupils may designate an area where smoking is allowed. The Welsh Ministers may specify in regulations conditions relating to any such designation, for example about the size or location of the designated area. Premises which are used to any extent as a dwelling are not smoke-free under this section, so, for instance, the garden of a caretaker's house within the school grounds would not be smoke-free.

Section 11 - Hospital grounds

27. This section provides that hospital grounds in Wales are smoke-free premises. It provides details about what is meant by "hospital grounds" in the context of smoke-free premises in this Chapter. It includes all grounds that adjoin the hospital, are used by or occupied by it, and are not enclosed or substantially enclosed. An area may be designated within the hospital grounds where smoking is allowed. The Welsh Ministers may specify in regulations conditions relating to any designation, for example about the size or location of any designated area.
28. There is an exemption from the smoke-free requirements for the grounds of adult care homes and of adult hospices, and for dwellings. So if, for instance, a member of staff has accommodation provided within the grounds of the hospital, the garden of his/her home will not be smoke-free. Nor will the garden of an adult hospice be smoke free.

Section 12 - Public playgrounds

29. This section provides that outdoor public playgrounds in Wales are smoke-free premises. It provides details about what is meant by "public playgrounds" in the context of smoke-free premises in this Chapter. Outdoor premises will amount to a playground if they meet the requirements specified in subsection (4). These requirements focus on local authority involvement, the purpose for which the premises are used, and the presence of playground equipment. Premises that amount to a playground are smoke-free within a boundary if there is one, or in the absence of a boundary, then within 5 metres of playground equipment. "Playground equipment" is defined in section 28.

Section 13 - Additional smoke-free premises

30. This section gives the Welsh Ministers a power to make regulations to designate additional smoke-free premises. These premises do not need to be enclosed or substantially enclosed (i.e. they may be open spaces). The Welsh Ministers can only designate additional smoke-free premises if they are satisfied that designating those premises as smoke-free is likely to contribute towards the promotion of the health of the people of Wales.
31. The regulations made by the Welsh Ministers may also provide for exemptions to the smoke-free status of any additional smoke-free premises. The regulations may, for example, allow the person in charge of the premises to designate areas in which smoking is to be permitted. The designation would have to be in accordance with any conditions set out in the regulations.
32. Premises used wholly or mainly as a dwelling cannot be made smoke-free using this regulation-making power.

Section 14 - Further provision about additional smoke-free premises: dwellings

33. This section limits the Welsh Ministers' power to designate premises used partly as dwellings as additional smoke-free premises. Dwellings may only be designated as smoke-free by the Welsh Ministers to the extent that they are not enclosed or

substantially enclosed and are workplaces or open to the public. They may only be made smoke-free when being used as workplaces or are open to the public; and in those areas which are being used as workplaces or are open to the public.

Section 15 - Smoke-free vehicles

34. This section gives the Welsh Ministers a power to make regulations providing for vehicles to be smoke-free.
35. An equivalent power to make regulations applying to vehicles for the purposes of smoke-free premises under the Health Act 2006 is included at section 5 of that Act. Regulation 4 of the Smoke-free Premises etc. (Wales) Regulations 2007, made in exercise of the power at section 5 of the Health Act 2006, sets out that enclosed vehicles shall be smoke-free if used for transport of members of the public, or as a workplace for more than one person. These regulations stay in place until regulations are made using the powers in this section of this Act.
36. The Welsh Ministers can only designate a vehicle as being smoke-free where they are satisfied that designating that vehicle is likely to contribute towards the promotion of the health of the people of Wales.

Section 16 - Smoke-free premises: exemptions

37. This section gives the Welsh Ministers a power to make regulations to exempt premises or places in Wales from the requirement to be smoke-free. These regulations may exempt defined premises or specific areas within premises. For example, a designated bedroom within a hotel or a designated room in a research or testing facility could be exempted from the smoke-free requirements.
38. An equivalent power to exempt premises, for the purposes of smoke-free premises under the Health Act 2006, is included at section 3 of that Act. Regulation 3 of the Smoke-free Premises etc. (Wales) Regulations 2007, made in exercise of the power at section 3 of the Health Act 2006, sets out the premises within which managers may designate smoking rooms (i.e. may designate rooms as being exempt from the smoke-free requirements of the Health Act 2006). Exemptions currently apply to specific rooms within care homes, adult hospices, mental health units, research or testing facilities, hotels, guesthouses, inns, hostels and members' clubs. These regulations stay in place until regulations are made using the powers in this section of this Act.

Section 17 - Signs: smoke-free premises

39. This section requires a person who occupies or manages smoke-free premises to display smoke-free signs in accordance with regulations. Requirements for smoke-free signs may include details about how they are to be displayed, specifications regarding the dimensions of the sign, the minimum text size and font, any graphic or symbol that must be included and any mandatory warning message that must be included. The Welsh Ministers may also make regulations that place a corresponding duty on those who occupy or manage additional smoke-free premises (section 13) and smoke-free vehicles (section 15). Regulations may also require signs to be displayed in areas designated as not smoke-free. Regulations made under this section cannot require smoke-free signs to be displayed in premises used as dwellings.
40. Failure to comply with these requirements is an offence. 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. A fixed penalty notice may be issued by an authorised officer instead of prosecution. Section 27 contains more details on fixed penalty notices.

Section 18 - Enforcement authorities

41. This section names local authorities as the enforcement authorities for this Chapter. It also allows for the police to be named in regulations as an additional enforcement authority in relation to the smoking restrictions for vehicles.
42. The section also places a duty on enforcement authorities to enforce the smoke-free provisions in this Chapter. Enforcement authorities may arrange to transfer a particular case to another enforcement authority, for example, where those enforcement authorities are investigating the same person for offences relating to smoke-free premises and vehicles.
43. The meaning of the term “authorised officer” is also set out in this section. An authorised officer is any person authorised by the enforcement authority to carry out its enforcement functions. An authorised officer may or may not be an officer of the enforcement authority.

Section 19 - Powers of entry

44. This section confers powers on an authorised officer to enter any premises in Wales, apart from premises used wholly or mainly as a dwelling, at any reasonable time if they consider it necessary to investigate an offence in this Chapter. The section applies to a vehicle as if it were premises.
45. Authorised officers must not use force to enter premises or vehicles when exercising their power under this section. Authorised officers must present evidence of their authority before entering any premises or vehicles if they are asked to do so. 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.

Section 20 - Warrant to enter dwelling

46. This section provides that a justice of the peace may issue a warrant to enable an authorised officer to enter a premises used wholly or mainly as a dwelling in certain circumstances. A warrant may be issued only where the justice of the peace is satisfied that there are reasonable grounds to believe that an offence has been committed at the premises, and that it is necessary to enter the premises for the purpose of establishing whether such an offence has been committed. Entry may be obtained by force if need be. This section applies to a vehicle as if it were premises.

Section 21 - Warrant to enter other premises

47. This section provides that a justice of the peace may issue a warrant to enable an authorised officer to enter any premises, including vehicles, in Wales, if they consider it necessary in relation to an offence in this Chapter. This excludes premises used wholly or mainly as dwellings which are dealt with in section 20. The section sets out the circumstances in which a warrant may be issued. Entry may be obtained by force if need be.

Section 22 - Supplementary provision about powers of entry

48. This section enables an authorised officer entering premises under section 19, 20 or 21 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 20 or 21 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. It also requires that if the premises are unoccupied or the occupier is temporarily absent, 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 23 - Powers of inspection etc.

49. This section confers power on authorised officers to carry out inspections of premises and vehicles. Officers may request items, inspect them, take samples from them and/or take the item(s) and/or samples from the premises. For example, officers may wish to review CCTV footage of the premises, retain smoking debris for evidence purposes, or take documents or copies of documents. They may also request information and help from any person 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 property may be made. The provisions in this section also apply to a vehicle.

Section 24 - Obstruction etc. of officers

50. This section provides that any person who intentionally obstructs an authorised officer from carrying out their functions 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 is 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 at section 37 of the Criminal Justice Act 1982.

Section 25 - Retained property: appeals

51. 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 premises by an authorised officer under section 23(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 26 - Appropriated property: compensation

52. This section provides a right for a person affected by the taking possession of property under section 23(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 enforcement authority to pay compensation to the applicant.

Section 27 - Fixed penalty notices

53. This section allows authorised officers to issue fixed penalty notices (FPNs) to persons believed to have committed certain offences under this Chapter. A fixed penalty can be issued for the following offences:
- smoking in smoke-free premises or vehicles;
 - failing to comply with signage requirements.

54. 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 introduces Schedule 1 on fixed penalties (for commentary on this, see Schedule 1 below).

Section 28 - Interpretation of this Chapter

55. This section sets out the meaning of key terms used in this Chapter.
56. The section also provides that the Welsh Ministers may make regulations to define what is meant by “enclosed”, “substantially enclosed” and “not enclosed or substantially enclosed” for the purposes of this Chapter.

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.

Chapter 3: Prohibition on Sale of Tobacco and Nicotine Products

Section 51 - Restricted premises orders: tobacco or nicotine offence

84. This section amends section 12D of the Children and Young Persons Act 1933. That provision sets out a number of offences that are a "tobacco or nicotine offence" for the purposes of section 12A of that Act. Restricted premises orders and restricted sale orders may be made in respect of persons who have been convicted of tobacco or nicotine offences. The amendment to section 12D provides the Welsh Ministers with a

regulation-making power to add new offences to those which may be used to support an application to make a restricted premises order.

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

*These notes refer to the Public Health (Wales) Act
2017 (c.2) which received Royal Assent on 3 July 2017*

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.