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STATUTORY INSTRUMENTS

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**1991 No. 2872 (N.I. 25)**

**The Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991**

- - - - - 19th December 1991

*Introductory*

**Title and commencement**

1.—(1) This Order may be cited as the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint<sup>F1</sup>.

<b>F1</b> fully exercised by SR 1992/252; 1993/34
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**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “the Department” means the Department of Health and Social Services.

**Amendment of Articles 3 and 4 of the Health and Personal Social Services (Northern Ireland) Order 1978**

3.—(1) The Health and Personal Social Services (Northern Ireland) Order 1978 shall be amended as follows.

(2) In Article 3 (prohibition on sale of tobacco, etc., to persons apparently under 16)—

(a) in paragraph (1) the word “apparently” shall be omitted;

(b) after paragraph (1) there shall be inserted—

“(1A) It shall be a defence for a person charged with an offence under paragraph (1) to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.”; and

(c) in paragraph (3) for “£50” there shall be substituted “level 4 on the standard scale”.

(3) In Article 4 (control of automatic machines for sale of tobacco)—

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- (a) in paragraph (1) for “is being extensively used by persons apparently” there shall be substituted “has been used by any person”; and
- (b) in paragraph (2) for the words from “to a fine” onwards there shall be substituted “to a fine not exceeding level 4 on the standard scale”.

### **Sale of unpackaged cigarettes**

4.—(1) It shall be an offence for any person carrying on a retail business to sell cigarettes to any person other than in pre-packed quantities of 10 or more cigarettes in their original package.

(2) Any person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) In this Article “original package” means the package in which the cigarettes were supplied for the purpose of retail sale by the manufacturer or importer; and “package” means any box, carton or other container.

### **Sales from vending machines**

<sup>F2</sup>4A.—(1) The Department may by regulations make provision prohibiting the sale of tobacco from an automatic machine.

(2) The regulations must make provision as to the persons who are liable in the case of any breach of a prohibition.

(3) Where a prohibition contained in the regulations is breached, any person liable in accordance with the regulations is guilty of an offence.

(4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) Sections 13, 14 and 15 of the Tobacco Advertising and Promotion Act 2002 (enforcement etc.) apply for the purposes of this Article and regulations made under it as they apply for the purposes of provisions of that Act.

(6) The power to make regulations under this Article includes power to make supplementary, incidental, consequential or transitional provision.

(7) Regulations may not be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(8) In this Article “tobacco” has the same meaning as in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978.

**F2** Art. 4A inserted (12.11.2009 for specified purposes, 1.3.2012 in so far as not already in operation) by [Health Act 2009 \(c. 21\)](#), **ss. 23, 40(1), (6)(b)**; [S.R. 2012/68, art. 2](#)

### **Display of warning statements in retail premises and on vending machines**

5.—(1) A notice displaying the following statement—

“It is illegal to sell tobacco products to anyone under [<sup>F3</sup>the age of 18”]

shall be exhibited at every premises at which tobacco is sold by retail, and shall be so exhibited in a prominent position where the statement is readily visible to persons at the point of sale of the tobacco; and where—

- (a) any person carries on a business involving the sale of tobacco by retail at any premises, and
- (b) no notice is exhibited at those premises in accordance with this paragraph,

that person shall be guilty of an offence.

(2) A notice displaying the following statement—

“This machine is only for the use of people [<sup>F4</sup>aged 18 or over”]

shall be exhibited on every automatic machine for the sale of tobacco which is kept available for use as such at any premises, and shall be so exhibited in such a way that the statement is readily visible to persons using the machine; and where—

(a) any person is the owner of any such machine which is so kept or the owner of the premises at which any such machine is so kept, and

(b) no notice is exhibited on the machine in accordance with this paragraph,

that person shall be guilty of an offence.

(3) The dimensions of the notice to be exhibited in accordance with paragraph (1) or (2), and the size of the statement to be displayed on it, shall be such as may be prescribed by regulations made by the Department subject to negative resolution.

(4) Any person guilty of an offence under paragraph (1) or (2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) It shall be a defence for a person charged with any such offence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(6) In this Article—

“premises” includes any place and any vehicle, vessel, aircraft, hovercraft, stall or moveable structure; and

“tobacco” (except where it appears in the statement required by paragraph (1)) has the same meaning as in Part II of the Health and Personal Social Services (Northern Ireland) Order 1978.

**F3** Words in art. 5(1) substituted (1.9.2008) by [Children and Young Persons \(Sale of Tobacco etc.\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/306\)](#), **reg. 3(a)**

**F4** Words in art. 5(2) substituted (1.9.2008) by [Children and Young Persons \(Sale of Tobacco etc.\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/306\)](#), **reg. 3(b)**

**Modifications etc. (not altering text)**

**C1** [Art. 5\(1\)\(2\): power to amend conferred \(15.1.2007\) by Smoking \(Northern Ireland\) Order 2006 \(S.I. 2006/2872 \(N.I. 20\)\)](#), arts. 1(3)(h), **14(b)** (with art. 16(1))

**Enforcement action by district councils**

6.—(1) It shall be the duty of every district council—

(a) to consider, at least once in every period of 12 months, the extent to which it is appropriate for the council to carry out in its district a programme of enforcement action relating to Part II of the Health and Personal Social Services (Northern Ireland) Order 1978 and Articles<sup>F5</sup> . . . 4<sup>F5</sup> and 5], and

(b) accordingly to carry out in its district any programme which is for the time being considered by the council to be appropriate under sub-paragraph (a).

(2) In paragraph (1)(a) the reference to a programme of enforcement action relating to the provisions there mentioned is a reference to a programme involving all or any of the following, namely—

(a) the bringing of prosecutions in respect of offences under those provisions;

(b) the investigation of complaints in respect of alleged offences under those provisions;

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- (c) the taking of other measures intended to reduce the incidence of offences under those provisions;
- (d) the making of complaints under Article 4(1) of the Order of 1978 and, with a view to determining whether such complaints should be made, the monitoring of the use of such machines for the sale of tobacco as are mentioned in that provision.

**F5** 1995 NI 2

### **Restriction on application of this Order**

7.—(1) Nothing in Article 3 has effect in relation to any offence committed before the commencement of that Article.

(2) Paragraph (3)(a) of Article 3—

- (a) shall not affect the continued operation of Article 4 of the Health and Personal Social Services (Northern Ireland) Order 1978, as in operation before the date of the coming into operation of that Article 3(3)(a), in a case where the relevant use of which evidence has been or would be given in support of a complaint or application under that Article 4 (as so in operation) took place before that date, and
- (b) accordingly shall, in particular, not affect—
  - (i) any complaint or application made under that Article 4 before that date, or
  - (ii) any order so made;

and no complaint or application shall be made on or after that date under that Article 4 (as for the time being in operation) in respect of any relevant use which took place before that date.

(3) In paragraph (2) “relevant use” means use of any such automatic machine as is mentioned in that Article 4.

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