



# Public Health (Wales) Act 2017

2017 anaw 2

## PART 3

### TOBACCO AND NICOTINE PRODUCTS

#### CHAPTER 4

##### HANDING OVER TOBACCO ETC. TO PERSONS UNDER 18

#### **52 Offence of handing over tobacco etc. to persons under 18**

- (1) A person (“A”) commits an offence if—
- (a) in connection with arrangements under section 53, A hands over in Wales tobacco, cigarette papers or nicotine products to a person aged under 18 (“B”),
  - (b) the handing over does not take place either—
    - (i) in the course of B’s trade, profession, business or employment, or
    - (ii) in the presence of another person who is aged 18 or over,
  - (c) at the time of the handing over, A knows that tobacco or cigarette papers or nicotine products (whichever is the case) are being handed over, and
  - (d) when handed over, the tobacco, cigarette papers or nicotine products are not contained in a package that—
    - (i) is sealed, and
    - (ii) has an address on it, for the purpose of its delivery to that address in accordance with arrangements within section 53.
- (2) “Package” in subsection (1)(d) means a package in addition to the original package in which the tobacco, cigarette papers or nicotine products were supplied for the purpose of retail sale by their manufacturer or importer.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Where a person (“the accused”) is charged with an offence under this section by reason of the accused’s own conduct (and otherwise than by virtue of section 44 of the [Magistrates’ Courts Act 1980 \(c.43\)](#) (aiders and abettors)) it is a defence for the accused to show—
- (a) that the accused believed, when the handing over took place, that the person to whom the tobacco, cigarette papers or nicotine products were handed over, or another person present at the time of the handing over, was aged 18 or over, and
  - (b) either—
    - (i) that the accused had taken reasonable steps to establish the age of that person, or
    - (ii) that nobody could reasonably have suspected from that person’s appearance that the person was aged under 18.
- (5) For the purposes of subsection (4)(b), the accused is to be treated as having taken reasonable steps to establish the age of a person if—
- (a) the accused asked that person for evidence of that person’s age, and
  - (b) the evidence would have convinced a reasonable person.
- (6) Where a person is charged with an offence under this section by reason of the act or default of another person, or by virtue of the application of section 44 of the [Magistrates’ Courts Act 1980 \(c.43\)](#) (aiders and abettors), it is a defence to show that the person took reasonable precautions and exercised due diligence to avoid committing the offence.
- (7) In this section, “employment” means any employment, whether paid or unpaid, and includes—
- (a) work under a contract for services or as an office holder, and
  - (b) work experience provided pursuant to a training course or programme or in the course of training for employment.

### **53 Arrangements in connection with handing over tobacco etc.**

- (1) Arrangements are within this section if, in relation to the handing over of tobacco, cigarette papers or nicotine products—
- (a) they are arrangements for the tobacco, cigarette papers or nicotine products to be delivered to premises in Wales, and
  - (b) they are made in connection with the sale of the tobacco, cigarette papers or nicotine products concerned.
- (2) Arrangements are also within this section if, in relation to the handing over of tobacco, cigarette papers or nicotine products—
- (a) they are arrangements for the tobacco, cigarette papers or nicotine products to be collected from premises in Wales, and
  - (b) they are made in connection with the sale of the tobacco, cigarette papers or nicotine products concerned.
- (3) But subsection (2) applies only where the sale concerned is effected by telephone, the internet or any other kind of electronic or other technology.

## **54 Enforcement**

In section 5 of the [Children and Young Persons \(Protection from Tobacco\) Act 1991 \(c.23\)](#) (enforcement action by local authorities in England and Wales), in subsection (1)(a), after “persons under 18)” insert “, and in the case of a local authority in Wales, section 52 of the Public Health (Wales) Act 2017 (offence of handing over tobacco etc. to persons under 18)”.

## **55 Interpretation of this Chapter**

In this Chapter—

“nicotine product” (“*cynnyrch nicotin*”) means a nicotine product the sale of which is for the time being prohibited in respect of the person to whom it is handed over by regulations under section 92 of the [Children and Families Act 2014 \(c.6\)](#) (prohibition of sale of products to persons under 18);

“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.