

*Draft Order laid before the Scottish Parliament under section 40(3) of the Smoking, Health and Social Care (Scotland) Act 2005, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2007 No.**

**PUBLIC HEALTH**

**The Smoking, Health and Social Care (Scotland) Act  
2005 (Variation of Age Limit for Sale of Tobacco  
etc. and Consequential Modifications) Order 2007**

Made - - - - 2007

*Coming into force in accordance with article 1*

The Scottish Ministers, in exercise of the powers conferred by sections 9 and 39 of the Smoking, Health and Social Care (Scotland) Act 2005(1) and of all other powers enabling them in that behalf, after consulting such persons as they consider appropriate on a draft of the order in accordance with section 9(2) of that Act, hereby make the following Order, a draft of which has, in accordance with section 40(3) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**Citation and commencement**

1. This Order may be cited as the Smoking, Health and Social Care (Scotland) Act 2005 (Variation of Age Limit for Sale of Tobacco etc. and Consequential Modifications) Order 2007 and shall come into force on 1st October 2007.

**Modification of the Children and Young Persons (Scotland) Act 1937**

2. Section 18 of the Children and Young Persons (Scotland) Act 1937 (offence of selling tobacco etc. to under age persons and other preventative measures)(2) is modified by substituting “eighteen” for “sixteen” where it occurs in its subsections (1) and (2).

**Modification of the Children and Young Persons (Protection from Tobacco) Act 1991**

3. Section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 (display of warning statements in retail premises and on vending machines)(3) is modified by substituting for the number “16” where it occurs in its subsections (1) and (2) the number “18”.

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(1) 2005, asp 13.  
(2) 1937, c. 37.  
(3) 1991, c. 23.

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**Draft Legislation:** *This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Smoking, Health and Social Care (Scotland) Act 2005 (Variation of Age Limit for Sale of Tobacco etc. and Consequential Modifications) Order 2007 No. 437*

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St Andrew's House,  
Edinburgh  
2007

Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

By virtue of section 9(1) of the Smoking, Health and Social Care (Scotland) Act 2005 (“the 2005 Act”) the Scottish Ministers may, by order, modify section 18 of the Children and Young Persons (Scotland) Act 1937 (offence of selling tobacco etc. to under age persons and other preventative measures) (“the 1937 Act”) so as to substitute for the age specified in any of its provisions (at the making of this Order, 16) such other higher age or ages as they consider appropriate. Section 39 of the 2005 Act enables the Scottish Ministers, by order, to make such incidental, supplemental or consequential provision as they consider necessary or expedient for the purposes, or in consequence, of that Act. Any order under section 39 may make different provision for different purposes, and may modify any enactment, instrument or document.

Article 2 amending section 18 of the 1937 Act invokes the power under section 9 of the 2005 Act so as to substitute the age of eighteen for the current age of sixteen in each of subsections (1) and (2) of section 18. It will now be an offence under section 18(1) to sell to a person under the age of eighteen years any tobacco or cigarette papers, whether for his own use or not. Under subsection (2) of section 18 its provisions relating to use of an automatic machine for the sale of tobacco kept on any premises will now be triggered in relation to the use by any person under the age of eighteen years.

Article 3 invokes the power under section 39 of the 2005 Act so as to make provision consequential on the amendments under article 2 to the 1937 Act, by modifying the age in section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 (c. 23) (display of warning statements in retail premises and on vending machines). This ancillary amendment ensures that the age in notices in retail premises and on vending machines is also raised at the same time that the age for offences of selling tobacco etc. is raised.

Any order made by the Scottish Ministers under section 9 is subject to prior consultation (section 9(2)), which consultation has been carried out, whilst there is a further requirement in relation to any order made under either section 9 or under section 39 which modifies the text of an Act, that it is to be made under the affirmative procedure (section 40(3) of the 2005 Act).

A Regulatory Impact Assessment has been prepared for this Order.