



Children and Families Act 2014

2014 CHAPTER 6

PART 5

WELFARE OF CHILDREN

Tobacco, nicotine products and smoking

91 Purchase of tobacco etc. on behalf of persons under 18

- (1) A person aged 18 or over who buys or attempts to buy tobacco or cigarette papers on behalf of an individual aged under 18 commits an offence.
- (2) Where a person is charged with an offence under this section it is a defence—
 - (a) that the person had no reason to suspect that the individual concerned was aged under 18, or
 - (b) in a case where the person has bought or attempted to buy cigarette papers, that the person had no reason to suspect that the individual concerned intended to use the papers for smoking.
- (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.
- (4) A local weights and measures authority in England and Wales must enforce the provisions of this section in its area.
- (5) Section 9 of, and Schedule 1 to, the Health Act 2006 (issue of fixed penalty notices in relation to certain smoking related offences) apply in relation to an offence under this section as they apply in relation to an offence under section 6(5) or 7(2) of that Act but with the following modifications—
 - (a) references to an enforcement authority are to be read as references to a local weights and measures authority;
 - (b) references to an authorised officer of an enforcement authority are to be read as references to any person authorised by a local weights and measures authority

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(whether or not an officer of the authority) in writing, either generally or specially, to act in matters arising under this section.

- (6) Section 11 of, and Schedule 2 to, the Health Act 2006 (offence of obstruction of enforcement officers and powers of entry etc) apply for the purposes of this section as they apply for the purposes of Chapter 1 of Part 1 of that Act but with the following modifications—
- (a) references to an enforcement authority are to be read as references to a local weights and measures authority;
 - (b) references to an authorised officer of an enforcement authority are to be read as references to any person (whether or not an officer of the authority) authorised by a local weights and measures authority in writing, either generally or specially, to act in matters arising under this section;
 - (c) references to Chapter 1 of Part 1 of the Act of 2006 are to be read as references to this section;
 - (d) section 11(5) is to be ignored;
 - (e) paragraph 10 of Schedule 2 is to be ignored.
- (7) “Tobacco” has the same meaning in this section as in section 7 of the Children and Young Persons Act 1933 (offence of selling tobacco to children).

92 Prohibition of sale of nicotine products to persons under 18

- (1) The Secretary of State may by regulations make provision prohibiting the sale of nicotine products to persons aged under 18.
- (2) A person who breaches a prohibition in regulations under subsection (1) commits an offence.
- (3) Subsection (2) does not apply if—
- (a) at the time of the sale, the person to whom the nicotine product is sold is employed by a manufacturer of nicotine products to which regulations under subsection (1) apply or by a dealer in such products (whether wholesale or retail), and
 - (b) the purchase of the product is for the purposes of the manufacturer’s or dealer’s business.
- (4) Where a person is charged with an offence under this section it is a defence that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (5) 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.
- (6) The Secretary of State may by regulations—
- (a) amend section 91 (purchase of tobacco etc on behalf of persons under 18) so as to apply it (with or without modifications) in relation to nicotine products, or
 - (b) provide for that section to apply (with or without modifications) in relation to nicotine products.
- (7) Regulations under this section may make provision in relation to—
- (a) all nicotine products,
 - (b) nicotine products of a specified kind, or

- (c) nicotine products subject to specified exceptions.
- (8) The Secretary of State must obtain the consent of the Welsh Ministers before making regulations under this section which would (if contained in an Act of the National Assembly for Wales) be within the legislative competence of that Assembly.
- (9) For the purposes of this section “nicotine product” means—
 - (a) a device which is intended to enable nicotine to be consumed by an individual or otherwise to be delivered into the human body,
 - (b) an item which is intended to form part of a device within paragraph (a), or
 - (c) a substance or item which consists of or contains nicotine and which is intended for human consumption or otherwise to be delivered into the human body.
- (10) It does not matter for the purposes of subsection (9)(a) whether the device is also intended to enable any other substance to be consumed by an individual or otherwise to be delivered into the human body.
- (11) The following are not nicotine products for the purposes of this section—
 - (a) tobacco;
 - (b) cigarette papers;
 - (c) any device which is intended to be used for the consumption of lit tobacco.
- (12) In this section—
 - “specified” means specified in regulations under this section;
 - “tobacco” has the same meaning as in section 7 of the Children and Young Persons Act 1933 (offence of selling tobacco to children).

93 Amendments consequential on section 92

- (1) The Children and Young Persons Act 1933 is amended in accordance with subsections (2) to (6).
- (2) In the italic heading before section 12A, after “tobacco” insert “or nicotine products”.
- (3) In section 12A (restricted premises orders)—
 - (a) in subsection (1), after “tobacco” insert “or nicotine”,
 - (b) in subsection (3), for “or cigarette papers” substitute “, cigarette papers or nicotine product”, and
 - (c) in subsection (7)(a), after “tobacco” insert “or nicotine”.
- (4) In section 12B (restricted sale orders)—
 - (a) in subsection (1), after “tobacco” insert “or nicotine”,
 - (b) in subsection (3)—
 - (i) in paragraph (a), for “or cigarette papers” substitute “, cigarette papers or nicotine product”,
 - (ii) in paragraph (b), for “or cigarette papers” substitute “, cigarette papers or nicotine products”,
 - (iii) in each of paragraphs (c) and (d) omit “cigarette” in each place, and
 - (iv) in each of those paragraphs, after “tobacco” insert “or nicotine products”,
 - (c) in subsection (5), after “tobacco” insert “or nicotine”, and

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- (d) in subsection (6)—
 - (i) omit “cigarette”, and
 - (ii) after “tobacco” insert “or nicotine products”.
- (5) In section 12C(1)(a) (enforcement), for “or cigarette papers” substitute “, cigarette papers or nicotine product”.
- (6) In section 12D (interpretation)—
 - (a) in subsection (1), in the opening words, for ““tobacco offence”” substitute ““tobacco or nicotine offence””,
 - (b) in that subsection omit the “or” at the end of paragraph (b) and at the end of paragraph (c) insert “, or
 - (d) an offence committed under section 92 of the Children and Families Act 2014 on any premises (which are accordingly “the premises in relation to which the offence is committed”).”, and
 - (c) after subsection (2) insert—
 - “(2A) In sections 12A to 12C “nicotine product” means a nicotine product within the meaning of section 92 of the Children and Families Act 2014 the sale of which to persons aged under 18 is for the time being prohibited by regulations under subsection (1) of that section.”
- (7) In section 5 of the Children and Young Persons (Protection from Tobacco) Act 1991 (enforcement action by local authorities in England and Wales)—
 - (a) in subsection (1)(a), for “and sections 3 and 4 above” substitute “, sections 3 and 4 above and section 92 of the Children and Families Act 2014 (prohibition of sale of nicotine products to persons under 18)”, and
 - (b) after subsection (1) insert—
 - “(1A) Subsection (1) applies in relation to section 92 of the Children and Families Act 2014 only if regulations under subsection (1) of that section are for the time being in force.”
- (8) The Secretary of State may by regulations make provision amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (whenever passed or made) in connection with provision made by or under section 92.
- (9) In subsection (8) “enactment” includes a Measure or Act of the National Assembly for Wales.

94 Regulation of retail packaging etc of tobacco products

- (1) The Secretary of State may make regulations under subsection (6) or (8) if the Secretary of State considers that the regulations may contribute at any time to reducing the risk of harm to, or promoting, the health or welfare of people under the age of 18.
- (2) Subsection (1) does not prevent the Secretary of State, in making regulations under subsection (6) or (8), from considering whether the regulations may contribute at any time to reducing the risk of harm to, or promoting, the health or welfare of people aged 18 or over.

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- (3) The Secretary of State may treat regulations under subsection (6) or (8) as capable of contributing to reducing the risk of harm to, or promoting, the health or welfare of people under the age of 18 if the Secretary of State considers that—
- (a) at least some of the provisions of the regulations are capable of having that effect, or
 - (b) the regulations are capable of having that effect when taken together with other regulations that were previously made under subsection (6) or (8) and are in force.
- (4) Regulations under subsection (6) or (8) are to be treated for the purposes of subsection (1) or (2) as capable of contributing to reducing the risk of harm to, or promoting, people's health or welfare if (for example) they may contribute to any of the following—
- (a) discouraging people from starting to use tobacco products;
 - (b) encouraging people to give up using tobacco products;
 - (c) helping people who have given up, or are trying to give up, using tobacco products not to start using them again;
 - (d) reducing the appeal or attractiveness of tobacco products;
 - (e) reducing the potential for elements of the packaging of tobacco products other than health warnings to detract from the effectiveness of those warnings;
 - (f) reducing opportunities for the packaging of tobacco products to mislead consumers about the effects of using them;
 - (g) reducing opportunities for the packaging of tobacco products to create false perceptions about the nature of such products;
 - (h) having an effect on attitudes, beliefs, intentions and behaviours relating to the reduction in use of tobacco products.
- (5) Regulations under subsection (6) or (8) are to be treated for the purposes of subsection (1) as capable of contributing to reducing the risk of harm to, or promoting, the health or welfare of people under the age of 18 if—
- (a) they may contribute to reducing activities by such people which risk harming their health or welfare after they reach the age of 18, or
 - (b) they may benefit such people by reducing the use of tobacco products among people aged 18 or over.
- (6) The Secretary of State may by regulations make provision about the retail packaging of tobacco products.
- (7) Regulations under subsection (6) may in particular impose prohibitions, requirements or limitations relating to—
- (a) the markings on the retail packaging of tobacco products (including the use of branding, trademarks or logos);
 - (b) the appearance of such packaging;
 - (c) the materials used for such packaging;
 - (d) the texture of such packaging;
 - (e) the size of such packaging;
 - (f) the shape of such packaging;
 - (g) the means by which such packaging is opened;
 - (h) any other features of the retail packaging of tobacco products which could be used to distinguish between different brands of tobacco product;

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- (i) the number of individual tobacco products contained in an individual packet;
 - (j) the quantity of a tobacco product contained in an individual packet.
- (8) The Secretary of State may by regulations make provision imposing prohibitions, requirements or limitations relating to—
 - (a) the markings on tobacco products (including the use of branding, trademarks or logos);
 - (b) the appearance of such products;
 - (c) the size of such products;
 - (d) the shape of such products;
 - (e) the flavour of such products;
 - (f) any other features of tobacco products which could be used to distinguish between different brands of tobacco product.
- (9) The Secretary of State may by regulations—
 - (a) create offences which may be committed by persons who produce or supply tobacco products the retail packaging of which breaches prohibitions, requirements or limitations imposed by regulations under subsection (6);
 - (b) create offences which may be committed by persons who produce or supply tobacco products which breach prohibitions, requirements or limitations imposed by regulations under subsection (8);
 - (c) provide for exceptions and defences to such offences;
 - (d) make provision about the liability of others to be convicted of such offences if committed by a body corporate or a Scottish partnership.
- (10) The Secretary of State may by regulations—
 - (a) provide that regulations under subsection (6) or (8) are to be treated for the purposes specified in regulations under this subsection as safety regulations within the meaning of the Consumer Protection Act 1987;
 - (b) make provision for the appropriate minister to direct, in relation to cases of a particular description or a particular case, that any duty imposed on a local weights and measures authority in Great Britain or a district council in Northern Ireland by virtue of provision under paragraph (a) is to be discharged instead by the appropriate minister.
- (11) The Secretary of State may by regulations make provision amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (whenever passed or made) in connection with provision made by regulations under any of subsections (6), (8), (9) or (10).
- (12) The Secretary of State must—
 - (a) obtain the consent of the Scottish Ministers before making regulations under any of subsections (6), (8), (9) or (10) containing provision which would (if contained in an Act of the Scottish Parliament) be within the legislative competence of that Parliament;
 - (b) obtain the consent of the Welsh Ministers before making regulations under any of those subsections containing provision which would (if contained in an Act of the National Assembly for Wales) be within the legislative competence of that Assembly;
 - (c) obtain the consent of the Office of the First Minister and deputy First Minister in Northern Ireland before making regulations under any of those subsections

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containing provision which would (if contained in an Act of the Northern Ireland Assembly) be within the legislative competence of that Assembly.

(13) For the purposes of this section a person produces a tobacco product if, in the course of a business and with a view to the product being supplied for consumption in the United Kingdom or through the travel retail sector, the person—

- (a) manufactures the product,
- (b) puts a name, trademark or other distinguishing mark on it by which the person is held out to be its manufacturer or originator, or
- (c) imports it into the United Kingdom.

(14) For the purposes of this section a person supplies a tobacco product if in the course of a business the person—

- (a) supplies the product,
- (b) offers or agrees to supply it, or
- (c) exposes or possesses it for supply.

(15) In this section—

“appropriate minister”—

- (a) in relation to England, means the Secretary of State,
- (b) in relation to Wales, means the Welsh Ministers,
- (c) in relation to Northern Ireland, means the Department of Health, Social Services and Public Safety, and
- (d) in relation to Scotland, means the Scottish Ministers;

“enactment” includes—

- (a) an Act of the Scottish Parliament,
- (b) a Measure or Act of the National Assembly for Wales, or
- (c) Northern Ireland legislation;

“external packaging”, “internal packaging” and “wrapper” have the meanings given by regulations under subsection (6);

“packaging”, in relation to a tobacco product, means—

- (a) the external packaging of that product,
- (b) any internal packaging of that product,
- (c) any wrapper of that product, or
- (d) any other material attached to or included with that product or anything within paragraphs (a) to (c);

“retail packaging”, in relation to a tobacco product, means the packaging in which it is, or is intended to be, presented for retail sale;

“retail sale” means sale otherwise than to a person who is acting in the course of a business which is part of the tobacco trade;

“tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed;

“travel retail sector” means retail outlets in the United Kingdom at which tobacco products may be purchased only by people travelling on journeys to destinations outside the United Kingdom.

95 Smoking in a private vehicle

(1) The Health Act 2006 is amended as follows.

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- (2) In section 5 (smoke-free vehicles)—
- (a) after subsection (1) insert—
- “(1A) Regulations under this section may in particular provide for a private vehicle to be smoke-free where a person under the age of 18 is present in the vehicle.”, and
- (b) in subsection (2), for “The regulations” substitute “Regulations under this section”.
- (3) In section 9 (fixed penalties), after subsection (1) insert—
- “(1A) The appropriate national authority may by regulations provide that, in the circumstances specified in the regulations, an authorised officer of an enforcement authority (see section 10) who has reason to believe that a person has committed an offence under section 8(4) in relation to a vehicle in relation to which the authorised officer has functions may give the person a penalty notice in respect of the offence.”
- (4) In section 10(1) (power to designate bodies or descriptions of body as enforcement authorities)—
- (a) after “designating the” insert “persons or”, and
- (b) after “descriptions of” insert “person or”.
- (5) In section 79 (orders and regulations)—
- (a) in subsection (4) (powers to which affirmative procedure applies), in paragraph (a) (powers in Part 1), for “or 8(7)” substitute “, 8(7) or 9(1A)”,
- (b) in that subsection, in paragraph (f) (powers in Schedule 1), for “or 8” substitute “, 8 or 17”, and
- (c) after that subsection insert—
- “(4A) No statutory instrument containing regulations under section 9(1A) or paragraph 17 of Schedule 1 may be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.”
- (6) In Schedule 1 (fixed penalties), after paragraph 16 insert—

“Power to amend or modify Schedule

- 17 The appropriate national authority may by regulations—
- (a) amend this Schedule so as to modify its application in relation to penalty notices issued by an authorised officer of an enforcement authority of a particular kind, or
- (b) provide for this Schedule to apply with modifications in relation to such notices.”