



# Sale of cigarettes to children

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The purpose of this short note is to provide an outline of the new legislation which has, from 1 October 2007, raised the legal age limit to buy tobacco products from 16 to 18 years. This note also considers whether or not it is legal for an 18 year old adult to buy cigarettes on behalf of a 16 year old child or to give them cigarettes.

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## 1 Current legal position

### 1.1 Prohibition on the sale of tobacco products to children

On 1st October 2007 the legal age limit to buy tobacco products rose from 16 to 18 years.<sup>1</sup> It is now an offence for any retailer to sell cigarettes to anyone under 18 years old, even if they look older. This is the case whether or not the cigarettes are for the young person's own use. The new controls apply to 'face to face' shop sales and purchases from vending machines or on the internet.

The power to increase the age of sale of tobacco products is conferred on the Secretary of State by virtue of Section 13 of the *Health Act 2006*. The relevant Order is the *Children and Young Persons (Sale of Tobacco etc) Order 2007*, which amends the *Children and Young Persons Act 1933* and the *Children and Young Persons (Protection from Tobacco) Act 1991*. The offences remain the same. Local authority trading standards officers are responsible for enforcing the new law and a business found selling tobacco products to a person under 18 could face a fine of up to £2,500.

### 1.2 Scope of the prohibition – proxy purchases

The legislation is only concerned with the sale of tobacco products to someone under the age of 18 by a retailer (i.e. someone acting in the course of a business). If someone over the age of 18 has legally purchased cigarettes, what he then does with the cigarettes is up to him. In practice, this means:

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<sup>1</sup> For the purposes of the legislation, tobacco products include cigarettes, cigars, loose rolling tobacco and rolling papers.

- it is not illegal for someone under the age of eighteen to smoke;
- it is not illegal for an eighteen year old to buy cigarettes on behalf of a sixteen year old; and
- it is not illegal for an 18 year old adult to give cigarettes to a child (i.e. someone under the age of 18).

The legislation does not deal with proxy purchases and it is not illegal for a retailer to sell cigarettes to an 18 year old person even if he suspects that the cigarettes will be passed on to children.

### **1.3 Comparison with the sale of alcohol products**

The situation is different for alcohol. Whilst the legal age for the purchase of alcohol is also 18 years, section 149 of the *Licensing Act 2003* makes it an offence for a person to purchase or attempt to purchase alcohol for a child (i.e. someone under 18), other than a parent or legal guardian for supervised consumption in the home. However, this offence, known as 'proxy purchase', applies only to alcohol – there is no similar offence for tobacco products.