

## **Explanatory Memorandum to the Proxy Purchasing of Tobacco, Nicotine Products etc. (Fixed Penalty Notice)(Wales) Regulations 2015**

This Explanatory Memorandum has been prepared by The Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Proxy Purchasing of Tobacco, Nicotine Products etc. (Fixed Penalty Notice)(Wales) Regulations 2015.

Mark Drakeford AM  
Minister for Health and Social Services

4 September 2015

## **1. Description**

1.1 The Proxy Purchase of Tobacco, Nicotine Products etc. (Fixed Penalty Notice)(Wales) Regulations 2015 will set the form of the fixed penalty notice that is to be issued for the offence of proxy purchasing tobacco and nicotine products for persons aged under 18 years.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

2.1 These Regulations complete the enforcement regime for the offence of proxy purchasing tobacco and nicotine products under section 91 of the Children and Families Act 2014 (as extended by SI 2015/896).

## **3. Legislative background**

3.1 Section 91 of the UK Parliament's Children and Families Act 2014 created a new offence of a person aged 18 or over purchasing, or attempting to purchase, tobacco products on behalf of an individual aged under 18. This is known as the 'proxy purchase' offence. Section 91 will come into force on 1 October 2015.

3.2 The National Assembly passed a Legislative Consent Motion in relation to the relevant sections of the Children and Families Act 2014 on 4<sup>th</sup> February 2014.

3.3 The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 (SI 2015/895) were made by the UK Government on 25<sup>th</sup> March 2015. They apply to England and Wales. Regulation 2 amended section 91 of the Children and Families Act 2014 to extend the proxy purchase offence to cover nicotine products. The definition of a nicotine product covers devices that are intended to enable the inhalation of nicotine.

3.4 The Proxy Purchasing of Tobacco, Nicotine Products etc. (Fixed Penalty Amount) Regulations 2015 (SI 2015/896) were made by the UK Government on 26<sup>th</sup> March 2015 and they apply to England and Wales. These Regulations set the fixed penalty amount in relation to the proxy purchase offence. These Regulations will come into force on 1<sup>st</sup> October 2015.

3.5 This instrument will follow the negative resolution procedure. This means that it will be made and laid before the Assembly but should not be brought into force until at least 21 (calendar) days from the date of laying. However, Standing Orders also specify a 40 (calendar) day period (not including periods when the Assembly is in recess) which also commences from the date of laying during which the Assembly may resolve that the instrument be annulled. Unless an annulment motion is tabled, there shall be no debate of this instrument in Plenary.

#### **4. Purpose & intended effect of the legislation**

4.1 The purpose of these Regulations is to set the content of the form to be used when issuing a fixed penalty notice in relation to the proxy purchase of tobacco or nicotine products. The form, which is set out in the Schedule to the Regulations, is bilingual.

#### **5. Consultation**

5.1 These Regulations are required to come into force on 1 October 2015 to complete the enforcement regime for the proxy purchase offence. The requirements for effective enforcement, including the content of the fixed penalty notice form, have been discussed with the relevant enforcement bodies.

#### **6. Regulatory Impact Assessment**

6.1 The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. It was not considered necessary to carry out a regulatory impact assessment as these regulations only set the content of the form; they impose no additional costs or savings.