



## FALKLAND ISLANDS

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### **Children and Young Persons (Tobacco) Ordinance 2007**

#### **(ORDINANCE No. 8 OF 2007)**

#### ARRANGEMENT OF SECTIONS

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### Children and Young Persons (Tobacco) Ordinance 2007

AN ORDINANCE To make new provision in relation to the possession of tobacco by children and young persons and the sale or supply of tobacco to children and young persons and for connected purposes.

*[DATE OF COMMENCEMENT: 10TH AUGUST 2007]  
(Unless otherwise indicated)*

#### **1 Title**

This Ordinance is the Children and Young Persons (Tobacco) Ordinance 2007.

#### **2 Commencement**

- (1) Subject to subsection (2), this Ordinance comes into force on publication in the Gazette.
- (2) Sections 8 and 9 will not come into force until further resolution of the Legislative Council.

#### **3 Interpretation**

(1) In this Ordinance-

**"cigarette"** includes cut tobacco rolled up in paper, tobacco leaf or other material in such form as to be capable of immediate use for smoking;

**"original package"**, in relation to cigarettes, means the package in which the cigarettes were supplied for the purpose of retail sale by the manufacturer or importer and "package" means any box, carton or other container;

**"premises"** include any place and any vehicle, vessel, aircraft, hovercraft, stall or moveable structure;

**"public place"** means any place to which the public or a section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

**"school premises"** includes any building used for the purpose of providing education to which the Education Ordinance 1989 applies and any land adjoining such a building which is used together with it, the stand of trees and land in the vicinity of the Falkland Islands Community School commonly known as "The Forest" and the Sports Centre during school hours; and "school" has a corresponding meaning; and

*[Revision w.e.f. 31/07/2017]*

**"teacher"** includes teaching assistants and learning support assistants;

*[S. 2(a)(ii)/Ord. 11/2007/w.e.f. 30/11/2007.]*

**"tobacco"** includes cigars, cigarettes, any product containing tobacco intended for nasal or oral use and smoking mixtures intended as a substitute for tobacco.

*[S. 2(a)(i)/Ord. 11/2007/w.e.f. 30/11/2007.]*

(2) For the purposes of this Ordinance school premises are deemed to be a public place.

#### **4 Sale etc of tobacco or cigarette papers to a person under the age of 18**

*[S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2009 and S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2010.]*

(1) It is unlawful for any person to sell, give or supply any tobacco or cigarette papers to any person under the age of 18 whether for use by the person under the age of 18 or for the use by any other person.

*[S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2009 and S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2010.]*

(2) A person who contravenes subsection (1) commits an offence on conviction of which the person is liable to a fine not exceeding level 4 on the standard scale.

(3) It is a defence for a person charged with an offence under subsection (2) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence or that, in the case of cigarette papers, the person charged reasonably believed that the person to whom they were sold, given or supplied intended to use the cigarette papers for a legitimate purpose not involving the smoking of any substance.

(4) If on a complaint to a court of summary jurisdiction it is proved to the satisfaction of the court that any automatic machine for the sale of tobacco kept on any premises has been used by any person under the age of 18, the court will order the owner of the machine, or the person on whose premises the machine is kept, to take such precautions to prevent the machine being so used as may be specified in the order, and if any person against whom an order has been made fails to comply with it the person commits an offence on conviction of which the person is liable to a fine not exceeding level 4 on the standard scale.

*[S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2009 and S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2010.]*

(5) An appeal at the instance of the person against whom an order has been made lies against an order under subsection (4).

- (a) where the order was made by the Summary Court, to the Magistrate's Court;
- (b) where the order was made by the Magistrate's Court, to the Supreme Court.

- (6) On determination of an appeal under subsection (5) the court to which the appeal lies may.
- (a) quash the order;
  - (b) confirm the order without variation;
  - (c) confirm the order subject to such variation of the order as the court thinks fit;
  - (d) make such order as it thinks fit in relation to the costs of the appeal.

## **5 Provisions as to sale of cigarettes by retail businesses**

(1) The sale of cigarettes other than in quantities of ten or more in their original package by or on behalf of any person carrying on a retail business is prohibited.

(2) At all premises where tobacco is sold by retail a notice displaying the statement "It is illegal to sell tobacco products to persons under the age of 18" must be exhibited by the person carrying on the business in a prominent position where the statement is readily visible to persons at the point of sale of the tobacco.

*[S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2009 and S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2010.]*

(3) Nothing in subsection (2) prevents a person carrying on a retail business refusing to sell tobacco products to persons unless they have attained an age greater than 18.

*[S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2009 and S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2010.]*

(4) A person contravening subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding level 4 on the standard scale.

## **6 Possession of tobacco or cigarette papers by a person under the age of 18**

*[S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2009 and S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2010.]*

(1) It is unlawful for a person under the age of 18 to be in possession of tobacco or cigarette papers whether for the person's own use or the use by any other person.

*[S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2009 and S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2010.]*

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding level 2 on the standard scale.

(3) It is a defence for a person charged with an offence under subsection (2) of being in possession of cigarette papers to prove that the person was in possession of them for some lawful purpose not involving the smoking of any substance by the person or any other person.

## **7 Powers of police officer in uniform**

(1) A police officer in uniform may stop a person in any public place whom the police officer reasonably suspects may be committing, or may have just committed in that place, an offence under section 4(1), and may require the person reasonably to satisfy the police officer that.

- (a) the person to whom the first mentioned person was observed by the police officer to be apparently selling giving or supplying tobacco was not under the age of 18, or

*[S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2009 and S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2010.]*

- (b) the first mentioned person was not selling, giving or supplying tobacco to that other person,

and if the police officer is not so satisfied as to one or other of those things the police officer may arrest the first mentioned person.

(2) If a police officer in uniform reasonably suspects that a person in a public place is under the age of 18 and that the person is in possession of tobacco or cigarette papers contrary to section 6(1) the police officer may stop the person and require the person to.

*[S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2009 and S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2010.]*

- (a) reasonably satisfy the police officer that the person is not under the age of 18; or

*[S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2009 and S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2010.]*

- (b) reasonably satisfy the police officer, if the person is under the age of 18, that the person has no tobacco or cigarette papers in the person's possession and if the person has cigarette papers in the person's possession that the person possesses the cigarette papers for a legitimate purpose other than smoking any substance,

*[S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2009 and S. 3/S.R. & O. 12/2008/w.e.f. 31/7/2010.]*

and if the police officer is not reasonably satisfied by the person that the person was not at the time in question committing an offence under section 6(1) the police officer may arrest the person and seize any thing the police officer reasonably believes to be tobacco or cigarette papers in the person's possession at the time of the arrest.

## **8 Powers of teachers**

(1) A teacher at any school who reasonably suspects that a pupil under the age of 18 years at that school has any tobacco or cigarette papers in the pupil's possession upon school premises may require the pupil to hand over that tobacco or those cigarette papers and upon them being handed over shall confiscate them and deal with them in accordance with the directions of the head teacher at that school.

(2) In the circumstances mentioned in subsection (1) a teacher of the same sex as the pupil may also require the pupil, in the teacher's presence, to empty the pupil's pockets and any bag, brief case or satchel or container of a like kind the pupil has the upon school premises as well as any locker, desk or cupboard used by the pupil and any clothing or shoes kept by the pupil in any cloakroom or other place upon the school premises so as to satisfy the teacher present that the pupil has not tobacco or cigarette papers in the pupil's possession.

(3) A teacher making a requirement under subsection (2) will ensure that the only persons present when the requirement is performed are-

- (a) the teacher (of the same sex as the pupil);
- (b) any other teacher of the same sex as the pupil;
- (c) the pupil; and
- (d) any other person who the pupil may reasonably request to be present at the time.

*[S. 3(b)/Ord. 11/2007/w.e.f. 30/11/2007.]*

(3A) The teacher will determine whether the pupil's request to have another person present is reasonable, and will seek to comply with a reasonable request so far as is practicable.

*[S. 3(b)/Ord. 11/2007/w.e.f. 30/11/2007.]*

(4) Any tobacco or cigarette papers found as the result of the performance of a request under subsection (2) will be confiscated by a teacher and dealt with in accordance with the directions of the head teacher of the school.

*[Date of commencement of s. 8: 1 September 2008.<sup>i</sup>]*

## **9     ...**

*[Revision w.e.f. 31/07/2017]*

*[S. 3(c)/Ord. 11/2007/w.e.f. 30/11/2007.]*

*[Date of commencement of s. 9: 1 September 2008.<sup>ii</sup>]*

## **10    Repeal**

Section 90 of the Licensing Ordinance 1994 is repealed.

*[Revision w.e.f. 31/07/2017]*

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<sup>i</sup> Notice 43 of 30.6.2008.

<sup>ii</sup> Notice 43 of 30.6.2008.