

Age Related Products

Aberdeenshire Council
Trading Standards



Legislation prohibits the sale of certain products to persons under certain ages. The following is designed to guide you through the requirements of the law and assist in compliance.

PRODUCT	ONLY TO BE SOLD TO THOSE:	MAXIMUM PENALTY
Tobacco products	18 and over	£2,500
Knives (domestic)	16 and over	£5,000 & up to 6 months
Knives (non-domestic)	18 and over	
Fireworks	18 and over	£5,000 & up to 6 months
Videos, DVDs and computer games		£5,000 & up to 6 months
Classification 12	12 and over	Imprisonment
15	15 and over	
18	18 and over	
Volatile Substances/solvents	18 and over	£5,000 & up to 6 months
Lighter refills containing Butane	18 and over	£5,000 & up to 6 months
Lottery tickets/Instant win card	16 and over	£5,000 & up to 2 years
Alcohol	18 and over	£1,000 & forfeit of licence

Tobacco and Primary Medical Services (Scotland) Act 2010

Sale of tobacco products to persons under 18:

Under this legislation, it is an offence for any person to sell cigarettes, tobacco products or cigarette papers, to anyone under 18 years of age, even if they look older. This is the case whether or not the cigarettes are for the young person's own use. It is also an offence to sell cigarettes unless they are in quantities of 10 or more and in their original packaging. This means that packets of cigarettes cannot be split to sell lesser quantities. A fixed penalty notice of £200 can be issued to both the seller and the business by Trading Standards for these offences. Alternatively a prosecution may be submitted to the Procurator Fiscal. There is a defence if a request for proof of age is made.

Purchase of tobacco products by persons under 18:

It is now an offence for anyone under the age of 18 years to attempt to buy a tobacco product or cigarette papers unless they are authorised to do so by a council officer or constable for the purpose of test purchasing.

Purchase of tobacco products on behalf of persons under 18:

The legislation also makes it an offence for any person aged 18 or over who knowingly buys or attempts to buy tobacco products or cigarette papers on behalf of anyone under the age of 18, known as a proxy sale. Anyone found guilty of this offence could face a fine of up to £5,000.

Display of warning statements:

The following warning notice must be exhibited in a prominent position, which is clearly visible to anyone purchasing cigarettes at every retail premises at which tobacco is sold. It must not be less than 297mm x 420mm (A3), with no character being less than 36mm in height.

**IT IS ILLEGAL TO
SELL TOBACCO
PRODUCTS TO
ANYONE UNDER
THE AGE OF 18**

The following vending machine notice must be exhibited on every automatic vending machine used for the sale of tobacco.

**THIS MACHINE IS
ONLY FOR THE USE
OF PEOPLE AGED
18 OR OVER**

The notice must not be less than 60mm x 100mm, with characters no less than 6mm high. It must be clearly visible to anyone using the machine.

Failure to exhibit these warning signs is an offence and the owner of machine or the premises maybe liable. **Vending machines are expected to be prohibited as of October 2011.**

Register of tobacco retailers:

The Scottish Government maintains a register of all persons carrying on a tobacco business. A person may apply to be registered, listing **all** premises from which tobacco products and cigarette papers are sold including vehicles, vessels and moveable structures. Once the application has been granted a certificate of registration is issued for each premises stated in the application. Registration must be completed by October 2011. Failure to do so is an offence and may result in a fine of up to £20,000, imprisonment up to 6 months or both.

Tobacco Retail Banning Orders:

A Tobacco Retail Banning Order may be issued prohibiting premises from selling, or allowing to be sold, any tobacco products. This would occur if a premise has been subject to 3 or more relevant enforcement actions within a 3 year period. A relevant enforcement act is having been issued with a Fixed

Penalty Notice or convicted of an offence relating to the legislation. The Banning Order could be for up to 2 years.

Offensive Weapons Act 1996

It is an offence to sell to a person under the age of 18:

- any knife, knife blade or razor blade;
- any axe;
- any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person.

However, it is not an offence if the person is aged 16 and over and the knife or blade is designed for domestic use.

The Pyrotechnic Articles (Safety) Regulation 2010

These Regulations prohibit the supply of fireworks and assemblies to a person under the age of 18. The age limit remains at 16 for Christmas crackers, caps, cracker snaps, novelty matches, party poppers, serpents and throwdowns.

The Video Recordings Act 1984 and 2010

It is an offence to supply, or offer to supply, a video recording to any person who has not attained the age specified on the recording. This legislation applies to video films, video games and computer games.

The Classifications are as follows:

ABBREVIATION	CLASSIFICATION	ONLY TO BE SOLD TO:
U	Universal	Unrestricted
Uc	Universal – particularly suitable for children	Unrestricted
PG	Parental Guidance – general viewing but some scenes may be unsuitable for young children	Unrestricted
12	Suitable only for persons 12 years and over	12 years and over
15	Suitable only for persons 15 years and over	15 years and over
18	Suitable only for persons 18 years and over	18 years and over

The Cigarette Lighter Refill (Safety) Regulations 1999

It is an offence to supply cigarette lighter refill canisters containing butane to anyone under the age of 18.

National Lottery, etc Act 1993

National Lottery Regulations 1994

It is an offence to sell National Lottery tickets and Instant Win cards (scratch cards) to any person under 16. The Regulations also require anyone selling such products to be 16 or over.

Petroleum Consolidation Act 1928

It may be a licensing condition that anyone in charge of a petrol station must be at least 18, and anyone dispensing petrol or operating a petrol dispensing system must be at least 16.

It is also an offence to sell petrol to a person under the age of 16. Pumps should not be authorised if it is suspected the purchaser is under 16.

Due Diligence and Reasonable Precautions

Some of the above legislation has defences available, namely that the accused took all reasonable precautions and exercised all due diligence to avoid committing an offence. In relation to video recordings, as well as these defences you will also need to show that the offence was due to the act or default of another person other than the accused. Even where no due diligence defences are available, it is recommended that the guidelines below are followed as best practice.

Most of the above offences are of strict liability which means it does not require you to have deliberately or knowingly sold to a young person and can occur even when the owner is not in the shop. To avoid committing these offences, it is advised that the legislation and the checks and precautions that should be taken be brought to the attention of all staff via regular training. It is important that you can prove that your staff understood what is required of them under the legislation.

This can be done by keeping a record of the training and asking the member of staff to sign to say that they have understood it. These should then be checked and signed on a regular basis by management or the owner.

Members of staff should be advised that they themselves may be personally liable if they sell to young persons in breach of the legal requirements. If there is any doubt about a person's age, proof of age should be requested. This could be a passport, photo driving licence or PASS photo proof of age card. If there is still doubt, the sale should not be allowed to take place. All refusals should be recorded on a Refusal Sales Sheet or a Refusal Book. Maintaining a Refusal Book will strengthen a case for due diligence.

Although the law does not always specify a minimum age for being able to sell certain goods, the age of the member of staff may be considered in any claims of due diligence.

If you operate an EPOS system, it may be possible to use it to remind staff via a prompt. Alternatively, warning stickers can be used over certain product bar codes.

Posters showing age limits should be displayed and contain a statement regarding the refusal of such sales. This would then deter potential purchasers and act as a reminder to members of staff.

False Identification

It is possible that some young people may attempt to purchase age restricted products using someone else's ID card, a false ID card or an altered ID card.

Sales staff should ensure they diligently check identification to ensure it is genuine and has not had any alterations made relating to e.g. the photograph or the date of birth.

Only driving licences, passports and PASS approved proof of age cards bearing the PASS hologram should be accepted.

It is an offence to attempt to purchase goods using a false identification and should staff experience this, the card should be detained and Trading Standards should be notified who will investigate the matter.

FURTHER ADVICE IS AVAILABLE FROM:

Aberdeenshire Council
Trading Standards.
Gordon House, Blackhall Road, Inverurie,
AB51 3WA
Tel: 01467 628323 Fax: 01467 628117

Aberdeenshire Council
Trading Standards.
10 Commerce Street, Fraserburgh
AB43 9AQ
Tel: 01346 510505 Fax: 01346 510484

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These notes have been prepared by Aberdeenshire Council Trading Standards Service. They are provided for the guidance of traders and are not intended to be a definitive statement of the law. Only the courts can give an authoritative interpretation of legislation.