

Dundalk Institute of Technology 17/02/2011

No Smoking In and Adjacent to Buildings Policy:

The Institute wishes to promote a healthy lifestyle and actively discourage smoking. Smoking inside building is not permitted under the Public Health (Tobacco Act) 2002 and the Public Health (Amendment Act) 2004 (copies attached). The **Institute** has extended this to include vaping and e-cigarettes. Smoking outside or adjacent to building is not permitted within a 15-metre perimeter of any of the Institute Buildings. Signage at main entrances to building will be erected, stating this policy. There shall be **NO** designated smoking areas on the campus.

General Considerations for determining Policy

- 1) Due to the legislative prohibition of smoking in public buildings, smokers must now leave the buildings and smoke outside.
- 2) Smokers generally congregate around the Building Entrances most notably Whitaker Building, North Building, Carrolls Building, Restaurant Building, South Building (South Entrance) & Faulkner Building (South Entrance). The RDC Building does not have a significant difficulty due to its low population. In the Muirhevna Building, the behaviour is principally on the south elevation and not the main entrance doors.
- 3) The congregation of persons impedes both the entering and exiting of these building by non-smoking patrons and staff. This could be a difficulty in an emergency evacuation as most entrances are also fire escape exit routes.
- 4) Cigarette smoke can enter a building from outside through open windows. From time to time since the introduction of the legislation, the Institute has received complaints with regard to smoke entering open windows, including second and third floor windows. There is little research available with regard to trace elements of second hand smoke entering a building from outside and how this could affect a person's health & safety. The Institute can only enforce the legislation that is in existence. The present legislation does not make any reference to second hand smoke or smoke entering a building from outside. It should be noted that the Institute has a building perimeter length of 3400m (3.4km).
As long as patrons are smoking in an area that complies with the legislation then the Institute has no legal recourse with respect to smoke entering the building from outside through windows. The Institute relies on the goodwill of patrons to adhere to this no smoking policy.
- 5) It has been commented that the congregation of smokers around building entrances when visitors arrive is unsightly. In addition, the congregation of smokers in one area may disrupt other patrons of the Institute; a good example of this is an area outside offices. In this case, the occupier of the office may suffer from nuisance noise, nuisance activity and even second hand smoke. In this situation, the Institute has no recourse and relies on the good will of patrons to adhere to this no smoking policy.
- 6) The high-level use of these areas by smokers leads to large amounts of rubbish and debris accumulating from refreshments such as drinks, hot beverages and snacks, which are consumed while patrons smoke. In addition, there are large accumulations of cigarette butts discarded on the ground. Experience has shown that the presence of bins does not alleviate the problem of cigarette butts being discarded on the ground but in fact exasperates same as bins are used as focal points and as tables for persons who congregate to drink coffee and smoke. Bins at main Building Entrances are not permitted for this reason. All these actions occur at the points of highest pedestrian traffic and highest visibility (i.e. our front door). This activity is unsightly.

7) In a number of countries, a perimeter ban around public building has already been introduced (Notably Australia). Consideration is being given to banning smoking from public campuses in both Australia and some states in America. This would relocate the issues to the interface of the Institute and the main road, notably the front entrance gates. DkIT has 9 buildings and the total perimeter length for all building is 3400m (3.4km).

8) Vaping and e-cigarettes while not strictly falling under the tobacco control act are considered correctly or incorrectly by the Institute as tantamount to the same thing. In addition, vaping and e-cigarettes can cause a plume, which can activate Fire Alarm Systems causing nuisance emergency evacuations, which could put patrons at risk.

9) This is a voluntary self-regulating policy which due to fiscal, IR and legal reasons does not have, at this moment in time, an enforcement regime.

Estates Office 2011.

Revised Jan 2023.

Attachments:

- 1) Public Health (Tobacco Act) 2002
- 2) Public Health (Amendment Act) 2004
- 3) Drawing of "No Smoking within 15m Perimeter" Signage
- 4) Locations of "No Smoking within 15m Perimeter" Signage



Number 6 of 2002

PUBLIC HEALTH (TOBACCO) ACT, 2002

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 52. Evidence in proceedings for an offence.
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[No. 6.] *Public Health (Tobacco) Act, 2002.* [2002.]

ACTS REFERRED TO

Companies Act, 1963	1963, No. 33
Companies Act, 1990	1990, No. 33
Companies Acts, 1963 to 2001	
Criminal Procedure Act, 1967	1967, No. 12
Education Act, 1998	1998, No. 51
European Parliament Elections Act, 1997	1997, No. 2
Finance Act, 1997	1997, No. 22
Finance (Excise Duty on Tobacco Products) Act, 1977	1977, No. 32
Health (Eastern Regional Health Authority) Act, 1999	1999, No. 13
Health Act, 1970	1970, No. 1
Health Acts, 1947 to 2001	
Intoxicating Liquor Act, 1988	1988, No. 16
Irish Medicines Board Act, 1995	1995, No. 29
Minimum Notice and Terms of Employment Acts, 1973 to 2001	
Organisation of Working Time Act, 1997	1997, No. 20
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict., c. 93
Protection of Employees (Part-Time Work) Act, 2001	2001, No. 45
Redundancy Payments Acts, 1967 to 2001	
Registration of Clubs Acts, 1904 to 2000	
Safety, Health and Welfare at Work Act, 1989	1989, No. 7
Tobacco (Health Promotion and Protection) Act, 1988	1988, No. 24
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Number 6 of 2002

PUBLIC HEALTH (TOBACCO) ACT, 2002

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS THE OFFICE OF TOBACCO CONTROL, TO PROVIDE FOR THE REGISTRATION OF PERSONS ENGAGED IN THE BUSINESS OF SELLING TOBACCO PRODUCTS BY RETAIL, TO PROVIDE FOR A PROHIBITION ON THE ADVERTISING OF TOBACCO PRODUCTS, A PROHIBITION ON SPONSORSHIP BY MANUFACTURERS AND IMPORTERS OF TOBACCO PRODUCTS AND PROHIBITIONS ON CERTAIN MARKETING PRACTICES IN RELATION TO TOBACCO PRODUCTS, TO PROVIDE FOR THE PROHIBITION OR RESTRICTION OF TOBACCO SMOKING IN CERTAIN PLACES, TO REPEAL THE TOBACCO PRODUCTS (CONTROL OF ADVERTISING, SPONSORSHIP AND SALES PROMOTION) ACT, 1978, AND THE TOBACCO (HEALTH PROMOTION AND PROTECTION) ACT, 1988, AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH. [27th March, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Public Health (Tobacco) Act, 2002. Short title and commencement.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions and for the repeal of different enactments effected by *subsection (1) of section 8* and the revocation of different (or different provisions of) regulations effected by *subsection (3) of that section*.

2.—(1) In this Act, except where the context otherwise requires— Interpretation.

“Act of 1970” means the Health Act, 1970;

[No. 6.] *Public Health (Tobacco) Act, 2002.* [2002.]

“Act of 1978” means the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978;

“Act of 1988” means the Tobacco (Health Promotion and Protection) Act, 1988;

“advertisement” includes, in relation to a tobacco product, every form of recommendation of the product to the public and in particular—

(a) (i) a statement of the name of a manufacturer or importer of a tobacco product, the name of any brand of tobacco product, or

(ii) a statement of any trade description or designation, or a display or other publication of a trademark, emblem, marketing image or logo, by reference to which the product is marketed or sold,

in circumstances where such statement, display or publication may reasonably be regarded as a recommendation of the product to the public, and

(b) a statement of the properties of the product on a label, container, wrapper or package used for the product or in a leaflet, circular, pamphlet or brochure issued to the public or given to a purchaser of the product,

and cognate words shall be construed accordingly;

“authorised officer” means a person appointed under *section 48*;

“chief executive” has the meaning assigned to it by *section 28*;

“designated analyst” has the meaning assigned to it by *section 51*;

“designated laboratory” has the meaning assigned to it by *section 51*;

“functions” includes powers and duties and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the performance of the duties;

“health board” means—

(a) a board established under section 4 of the Act of 1970, or

(b) an Area Health Board established by section 14 of the Health (Eastern Regional Health Authority) Act, 1999;

“licensed premises” has the same meaning as it has in the Intoxicating Liquor Act, 1988;

“Minister” means the Minister for Health and Children;

“Office” means the Office of Tobacco Control established under *section 9*;

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“public service vehicle” means a mechanically propelled vehicle used for the carriage of persons for reward and having seating accommodation for more than 8 persons exclusive of the driver; Pr.1 S.2

“register” has the meaning assigned to it by *section 37*;

“registered club” has the same meaning as it has in the Registration of Clubs Acts, 1904 to 2000;

“registration number” has the meaning assigned to it by *section 37*;

“smoke” in relation to a tobacco product, includes sniffing, chewing or sucking of such a product;

“specified place” has the meaning assigned to it by *section 47*;

“superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death;

“tobacco product” means—

- (a) any product consisting, in whole or in part, of tobacco, that is intended to be smoked,
- (b) a tobacco product within the meaning of the Finance (Excise Duty on Tobacco Products) Act, 1977 (inserted by section 86(1) of the Finance Act, 1997),
- (c) any cigarette paper, tube or filter manufactured for use in the smoking of tobacco,

other than a medicinal product within the meaning of the Irish Medicines Board Act, 1995.

(2) In this Act—

- (a) a reference to a Part or section is a reference to a Part or section of this Act, unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and
- (c) a reference to any enactment or regulations shall be construed as a reference to that enactment or those regulations, as the case may be, as amended, adapted or extended whether before or after the commencement of this subsection, by or under any subsequent enactment.

(3) For the purposes of this Act, a company within the meaning of the Companies Acts, 1963 to 2001, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business in the State.

3.—Every order (other than an order under *section 1(2)*) and regulation under this Act shall be laid by the Minister before each House Orders and regulations.

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of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Expenses.

4.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Offences and penalties.

5.—(1) A person guilty of an offence under *section 20* shall be liable on summary conviction to a fine not exceeding €1,900, or to imprisonment for a term not exceeding 6 months, or to both.

(2) A person guilty of an offence under *section 37(13), 43, 45, 46, 47 or 48* shall be liable on summary conviction to a fine not exceeding €1,900, or to imprisonment for a term not exceeding 3 months, or to both.

(3) A person guilty of an offence under *section 33, 36, 37(14), 38, 39, 40, 42 or 53* shall be liable—

(a) on summary conviction to a fine not exceeding €1,900, or to imprisonment for a term not exceeding 3 months, or to both, or

(b) on conviction on indictment to a fine not exceeding €125,000, or to imprisonment for a term not exceeding 2 years, or to both.

(4) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence under this Act as if, in lieu of the penalties specified in subsection (3)(a) of that section, there were specified therein the penalties provided for in *subsection (3)(a)*, and the reference in subsection (2)(a) of the said section 13 to the penalties provided for by subsection (3) shall be construed and have effect accordingly.

(5) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of such body corporate or a person who was purporting to act in any such capacity, that officer or person shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) On conviction for an offence under this Act the court may, in addition to any other penalty, order any tobacco product or any apparatus, equipment or thing to which the offence relates to be forfeited.

Proceedings.

6.—(1) Summary proceedings for an offence under this Act may be brought and prosecuted by the Office.

(2) Summary proceedings for an offence under this Act may be brought and prosecuted by the health board within whose functional area the offence is alleged to have been committed.

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(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted not later than 12 months from the date on which the Office or the health board concerned, as may be appropriate, forms the opinion that there exists sufficient evidence to justify instituting proceedings for the offence concerned, but in no case shall such proceedings be brought after 5 years from the date of the alleged commission of the offence. Pr.1 S.6

(4) References in section 382 of the Companies Act, 1963, to a company shall, for the purposes of this Act, be construed as including references to a body corporate (whether or not a company within the meaning of that section) charged on indictment with an offence under this Act.

7.—A notice or other document under this Act shall be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways: Service of documents.

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address,
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.

8.—(1) The following enactments are hereby repealed, namely— Repeals, saver and revocations.

- (a) the Act of 1978; and
- (b) the Act of 1988.

(2) Notwithstanding *subsection (1)*, regulations made under the Act of 1978 or the Act of 1988 that are in force immediately before the commencement of that subsection shall, subject to *subsection (3)*, continue in force after such commencement.

(3) The following regulations are hereby revoked, namely—

- (a) the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations, 1991 (S.I. No. 326 of 1991); and
- (b) the Tobacco (Health Promotion and Protection) Regulations, 1995 (S.I. No. 359 of 1995).

PART 2

OFFICE OF TOBACCO CONTROL

9.—(1) There is hereby established a body to be known as the Office of Tobacco Control (in this Act referred to as the “Office”) to perform the functions assigned to it by this Act. Establishment of Office of Tobacco Control.

(2) The Office shall be a body corporate with perpetual succession and an official seal and shall have power to sue, and may be sued, in

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its corporate name and, with the consent of the Minister and the Minister for Finance, shall have power to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(3) The seal of the Office shall be authenticated by the signature of the chairperson of the Office, or by the signatures of both an ordinary member and a member of the staff of the Office authorised by the Office to act in that behalf.

(4) Judicial notice shall be taken of the seal of the Office and every document purporting to be an instrument made by, and to be sealed with the seal of, the Office (purporting to be authenticated in accordance with this section) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

Functions of Office.

10.—(1) The general functions of the Office shall be to—

- (a) advise the Minister in relation to the formulation, and assist him or her in the implementation, of policies and objectives of the Government concerning the control and regulation of the manufacturing, sale, marketing and smoking of tobacco products,
- (b) consult with such national or international bodies or agencies having a knowledge or expertise in the field of smoking prevention for the purpose of identifying measures designed to eliminate, reduce the incidence of, or discourage smoking,
- (c) make such recommendations to the Minister as it deems appropriate in relation to measures that the Office considers should be taken in order to reduce or eliminate smoking or its effects in the State,
- (d) undertake, sponsor or commission, or provide financial or other assistance for, research aimed at identifying measures that when adopted are likely to reduce the incidence of smoking or its effects,
- (e) prepare and publish, in such manner as it thinks fit, reports on any research undertaken, sponsored or commissioned, or for which financial or other assistance was given, under *paragraph (d)*,
- (f) furnish advice to the Minister, whenever he or she so requests, on matters relating to the control and regulation of the manufacture, importation, sale or supply of tobacco products and on measures to reduce, eliminate or discourage smoking,
- (g) provide, and where appropriate exchange with the Garda Síochána and the Revenue Commissioners, information relating to the control and regulation of the manufacture, sale, supply, importation and distribution of tobacco products,
- (h) prepare and implement a plan for the coordination nationally of the activities of the Office and of health boards in relation to this Act and the cooperation of the

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Office and the health boards in the performance of their functions under this Act, Pr.2 S.10

(i) furnish advice to the Minister, whenever he or she so requests, on matters relating to—

(i) strategies employed by manufacturers, importers, distributors or retailers of tobacco products in the marketing, sale or promotion of such products,

(ii) technology used in the manufacture, production or marketing of tobacco products,

(iii) any innovations on the part of manufacturers, importers, distributors or retailers of tobacco products relating to the manufacture, production or marketing of those products,

(j) coordinate and implement a programme for the inspection of all premises in which tobacco products are manufactured, stored, subjected to any process or sold by retail, and all premises to which the public have access, either as of right or with the permission of the occupier or person in charge of the premises concerned, for the purposes of ensuring that there is compliance with the provisions of this Act,

(k) collect or disseminate such information as may reasonably be necessary for the effective performance of its functions,

(l) furnish, whenever the Office considers it appropriate or is so requested by the Minister, advice or information to a Minister of the Government (including the Minister) in relation to any matter connected with its functions.

(2) The Office shall have all such powers as are necessary or expedient for the performance of its functions.

(3) The Office may perform any of its functions through or by a member of the staff of the Office duly authorised by the Office to act in that behalf.

11.—(1) The Minister may, with the consent of the Minister for Finance and after consultation with such other Minister of the Government (if any) as he or she considers appropriate, by order confer on the Office such additional functions connected with the functions for the time being of the Office as he or she thinks fit, subject to such conditions (if any) as may be specified in the order. Conferral of additional functions on Office.

(2) An order under this section may contain such incidental, supplementary and consequential provisions as may, in the opinion of the Minister, be necessary to give full effect to the order.

(3) (a) The Minister may, by order, amend or revoke an order under this section (including an order under this subsection).

(b) An order under this subsection shall be made in the like manner, and its making shall be subject to the like consent and consultations (if any) as the order that it is amending or revoking.

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Membership of
Office.

12.—(1) The Office shall consist of the following members, that is to say, a chairperson and 11 ordinary members.

(2) The members of the Office shall be appointed by the Minister.

(3) The chairperson of the Office shall hold office for a period of 5 years from the date of his or her appointment.

(4) An ordinary member of the Office shall hold office for such period not exceeding 5 years as the Minister may determine when appointing him or her.

(5) A member of the Office whose term of office expires by the effluxion of time shall be eligible for reappointment to the Office.

Conditions of office
of members of
Office.

13.—(1) The Minister may at any time remove from office a member of the Office.

(2) A member of the Office may resign from office by notice in writing given to the Minister and the resignation shall take effect on the date on which the Minister receives the notice.

(3) A member of the Office shall cease to be qualified for office and shall cease to hold office if—

(a) he or she is adjudicated bankrupt,

(b) he or she makes a composition or arrangement with creditors,

(c) he or she is convicted of any indictable offence in relation to a company,

(d) he or she is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not,

(e) he or she is the subject of an order under section 160 of the Companies Act, 1990, or

(f) he or she is sentenced to a term of imprisonment by a court of competent jurisdiction.

(4) A member of the Office shall, subject to the provisions of this Act, hold office upon such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the Minister, with the consent of the Minister for Finance.

Casual vacancies
among members of
Office.

14.—(1) If a member of the Office dies, resigns, ceases to be qualified for office and ceases to hold office or is removed from office, the Minister may appoint a person to be a member of the Office to fill the casual vacancy so occasioned in the same manner as the member of the Office who occasioned the casual vacancy was appointed.

(2) A person appointed to be a member of the Office pursuant to this section shall hold office for that period of the term of office of the member who occasioned the casual vacancy concerned that remains unexpired at the date of his or her appointment and shall be eligible for reappointment as a member of the Office on the expiry of the said period.

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15.—The chairperson and ordinary members of the Office shall be paid by the Office such remuneration (if any) and such allowances for expenses as the Minister, with the approval of the Minister for Finance, may determine.

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Remuneration of
members of Office.

16.—(1) The Office shall hold such and so many meetings as may be necessary for the due fulfilment of its functions.

Meetings and
procedure.

(2) At a meeting of the Office—

(a) the chairperson of the Office shall, if present, be the chairperson of the meeting, or

(b) if and so long as the chairperson of the Office is not present, or if that office is vacant, the members of the Office who are present shall choose one of their number to be chairperson of the meeting.

(3) Every question at a meeting shall be determined by a majority of the votes of the members of the Office present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

(4) The Office may act notwithstanding one or more vacancies among its members.

(5) Subject to the provisions of this Act, the Office shall regulate its procedure by rules or otherwise.

(6) The quorum for a meeting of the Office shall, unless the Minister otherwise directs, be 7.

17.—(1) Where a member of the Office is—

(a) nominated as a member of Seanad Éireann,

(b) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, or

(c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to that Parliament,

Membership of
either House of
Oireachtas or
European
Parliament.

he or she shall thereupon cease to be a member of the Office.

(2) Where a member of the staff of the Office is—

(a) nominated as a member of Seanad Éireann,

(b) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, or

(c) regarded pursuant to the said Part XIII, as having been elected to that Parliament,

he or she shall thereupon stand seconded from employment by the Office and shall not be paid by, or be entitled to receive from, the Office any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected (as the case may be), and ending

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when such person ceases to be a member of either such House or a representative in such Parliament.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a representative in the European Parliament shall, while he or she is so entitled or is such a representative, be disqualified for membership of the Office or for employment in any capacity by the Office.

(4) A period mentioned in *subsection (2)* shall not, for the purposes of any superannuation benefit, be reckoned as service with the Office.

Disclosure by
members of Office
of certain interests.

18.—(1) Where at a meeting of the Office any of the following matters arises, namely—

- (a) an arrangement to which the Office is a party or a proposed such arrangement, or
- (b) a contract or other agreement with the Office or a proposed such contract or other agreement,

then, any member of the Office present at the meeting who otherwise than in his or her capacity as such a member has an interest in the matter shall—

- (i) at the meeting disclose to the Office the fact of such interest and the nature thereof,
- (ii) neither influence nor seek to influence a decision to be made in relation to the matter,
- (iii) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,
- (iv) take no part in any deliberation of the Office relating to the matter, and
- (v) not vote on a decision relating to the matter.

(2) Where an interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

(3) Where at a meeting of the Office a question arises as to whether or not a course of conduct, if pursued by a member of the Office, would constitute a failure by him or her to comply with the requirements of *subsection (1)*, the question may be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where the Minister is satisfied that a member of the Office has contravened *subsection (1)*, the Minister may, if he or she thinks fit, remove that member from office and, in case a person is removed from office pursuant to this subsection, he or she shall thenceforth be disqualified for membership of the Office.

[2002.] *Public Health (Tobacco) Act, 2002.* [No. 6.]

19.—(1) Where a member of the staff of the Office has an interest, otherwise than in his or her capacity as such a member, in any contract, agreement or arrangement, or proposed contract, agreement or arrangement, to which the Office is a party, that person shall—

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Disclosure by
members of staff of
certain interests.

- (a) disclose to the Office his or her interest and the nature thereof,
- (b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the Office or members of the staff of the Office in relation thereto, or
- (c) neither influence nor seek to influence a decision to be made in the matter nor make any recommendation in relation to the contract, agreement or arrangement.

(2) *Subsection (1)* shall not apply to contracts or proposed contracts of employment of members of the staff of the Office with the Office.

(3) Where a person contravenes this section the Office may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's contract of employment.

20.—(1) A person shall not disclose confidential information obtained by him or her while performing functions as—

Prohibition of
unauthorised
disclosure of
confidential
information.

- (a) a member or member of the staff of, or an adviser or consultant to, the Office, or
- (b) a member of a committee established under *section 21*,

unless he or she is duly authorised by the Office to so do.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

(3) In this section “confidential information” includes—

- (a) information that is expressed by the Office to be confidential either as regards particular information or as regards information of a particular class or description, and
- (b) proposals of a commercial nature or tenders submitted to the Office by contractors, consultants or any other person.

21.—(1) The Office may establish committees to advise it in relation to the performance of any or all of its functions and may determine the terms of reference and regulate the procedure of any such committee.

Committees of
Office.

(2) A committee established under this section may include persons who are not members of the Office.

(3) A member of a committee established under this section may be removed from office at any time by the Office.

(4) The Office may at any time dissolve a committee established under this section.

(5) The Office may appoint a person to be chairperson of a committee established under this section.

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(6) There may be paid by the Office to members of a committee established under this section such allowances for expenses (if any) incurred by them as the Office may, with the consent of the Minister and the Minister for Finance, determine.

Tobacco Free Council.

22.—(1) The Office shall establish a body to be known as the Tobacco Free Council (hereafter in this section referred to as the “Council”).

(2) The Council shall make themselves available to be consulted by the Office in relation to the performance by the Office of functions (of such a class as may be determined by the Office, with the consent of the Minister) and may give advice or an opinion to the Office regarding any matter (of such a class as may, with the consent of the Minister, be determined by the Office) falling to be decided by the Office or the performance by it of such functions.

(3) The Council shall consist of not more than 24 members of whom—

(a) 12 shall be appointed by the Minister, of whom not less than one shall be a person or persons nominated by such body or bodies as the Minister may determine being—

(i) (where the Minister makes a determination in relation to one body only) a body that has as its principal object, or

(ii) (where the Minister makes a determination in relation to more than one body) bodies that have as their principal objects,

the promotion of abstinence from smoking, and

(b) the remainder shall be appointed by the Office.

(4) The Office shall, after consultation with the Minister, determine the terms of reference and regulate the procedure of the Council.

(5) A member of the Council may be removed from office at any time—

(a) in the case of a member who is appointed by the Minister, by the Minister after consultation with the Office, and

(b) in the case of a member who was appointed by the Office, by the Office after consultation with the Minister.

(6) There may be paid by the Office to members of the Council such allowances for expenses (if any) incurred by them as the Office may, with the consent of the Minister and the Minister for Finance, determine.

(7) The Office shall have regard to any advice or opinion given by the Council in relation to any matter (of such a class as may be determined by the Office, with the consent of the Minister) falling to be decided by the Office or in relation to the performance of any function (of such a class as may be determined by the Office, with the consent of the Minister).

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(8) The Office may publish any advice or opinion given to it by the Council. Pr.2 S.22

(9) The failure of the Office to consult the Council or to have regard to any advice or opinion of the Council in relation to any matter falling to be decided by the Office or the performance of any function by the Office shall not invalidate any decision taken or anything done by the Office.

(10) The Office and the Minister shall endeavour to ensure that, in so far as is practicable, there are equal numbers of men and women on the Council.

(11) The Office and the Minister shall, in so far as is practicable, endeavour to ensure that persons who have experience or expertise in matters relating to public health, entertainment, communications, sport, or who are representative of persons carrying on such trades, professions or commercial or industrial activities as the Office and the Minister may determine, are represented on the Council.

23.—The Minister may, with the consent of the Minister for Finance, advance to the Office out of moneys provided by the Oireachtas such sums as the Minister may determine. Grants to Office.

24.—(1) The Office shall keep in such form and in respect of such accounting periods as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by it, including an income and expenditure account, a cash flow statement and a balance sheet, and, in particular, shall keep in such form as aforesaid all such special accounts as the Minister may, with the consent of the Minister for Finance, or at his or her request shall, from time to time direct. Accounts and audits.

(2) Accounts kept in pursuance of this section shall be submitted not later than 3 months after the end of the accounting period to which they relate by the Office to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the accounts, statement and balance sheet and of such other (if any) accounts kept pursuant to this section as the Minister, after consultation with the Minister for Finance, may direct, and a copy of the report of the Comptroller and Auditor General on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

(3) In this section “cash flow statement” means, in relation to an accounting period, an account showing the derivation of all moneys received by the Office during that period and the purposes to which they were applied.

25.—The Office shall not later than 3 months after the end of each financial year prepare and submit to the Minister a report on its activities in the immediately preceding financial year and the Minister shall, as soon as may be, cause copies of the report to be laid before each House of the Oireachtas. Annual report.

26.—(1) The Office may, for the purpose of providing for current expenditure, from time to time borrow money (whether on the security of the assets of the Office or otherwise), but shall not do so without the consent of the Minister and the Minister for Finance. Power to borrow.

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(2) The aggregate at any time of borrowings under *subsection (1)* shall not exceed €250,000.

Gifts.

27.—(1) The Office may accept gifts of money, land or other property upon such trusts or conditions (if any) as may be specified by the donor.

(2) The Office shall not accept a gift if the trusts or conditions attached to it would be inconsistent with its functions.

Chief executive.

28.—(1) There shall be a chief executive officer of the Office (who shall be known as and is referred to in this Act as the “chief executive”).

(2) The chief executive shall carry on and manage, and control generally, the administration of the Office and perform such other functions (if any) as may be determined by the Office.

(3) The chief executive shall be appointed, and may be removed from office, by the Office, with the consent of the Minister.

(4) The chief executive shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the Office with the consent of the Minister and the Minister for Finance.

(5) The chief executive shall not hold any other office or employment or carry on any business without the consent of the Office.

(6) The chief executive may attend meetings of the Office and may make submissions, orally or in writing, to and otherwise advise the Office at such meetings in accordance with the procedures of the Office under *section 16(5)*.

Staff.

29.—(1) The Office shall appoint, with the consent of the Minister and the Minister for Finance, such and so many persons to be members of the staff of the Office as it may from time to time determine.

(2) The terms and conditions of service of a member of the staff of the Office shall, with the consent of the Minister and the Minister for Finance, be such as may be determined from time to time by the Office.

(3) There shall be paid by the Office to the members of its staff such remuneration and allowances as, from time to time, the Office, with the consent of the Minister and the Minister for Finance, determines.

Remuneration of staff.

30.—The Office, in determining the remuneration or allowances for expenses to be paid to members of its staff or the other terms or conditions subject to which such members hold or are to hold their employment, shall have regard to Government or nationally agreed guidelines which are for the time being extant and to Government policy concerning remuneration and conditions of employment which is so extant and, in addition to the foregoing, the Office shall comply with any directives with regard to such remuneration, allowances, terms or conditions which the Minister may give to the Office with the consent of the Minister for Finance.

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31.—(1) Every person (whether an officer of the Minister or not) who immediately before the commencement of this section is assigned to perform duties in relation to that part of the Department of State for which the Minister has charge known as the Office of Tobacco Control, and who is designated by the Minister for employment by the Office shall be transferred to and become a member of the staff of the Office on such day as may be specified by the Minister after consultation with the Office.

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Transfer of staff to
Office.

(2) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (1)* shall not, while in the service of the Office be subject to less beneficial conditions of service (including conditions in relation to tenure of office) or of remuneration than the conditions of service (including conditions in relation to tenure of office) or remuneration to which he or she was subject immediately before the commencement of this section.

(3) In relation to persons transferred to the Office under *subsection (1)*, previous service in the civil service shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the Redundancy Payments Acts, 1967 to 2001, the Protection of Employees (Part-Time Work) Act, 2001, the Organisation of Working Time Act, 1997, the Minimum Notice and Terms of Employment Acts, 1973 to 2001, and the Unfair Dismissals Acts, 1977 to 2001.

32.—(1) As soon as may be after its establishment, the Office shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such of its staff (including the chief executive) as the Office shall think fit.

Superannuation.

(2) Every such scheme shall fix the time and conditions of retirement for all persons to, or in respect of whom, superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) The Office may at any time prepare and submit to the Minister a scheme amending a scheme previously submitted and approved under this section.

(4) A scheme or amending scheme submitted to the Minister under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Office in accordance with its terms.

(5) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit in pursuance of a scheme under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance whose decision shall be final.

(6) No superannuation benefit shall be granted by the Office to or in respect of any of its staff (including the chief executive) who are members of a scheme under this section, nor shall any other arrangement be entered into for the provision of any superannuation benefit to such persons on their ceasing to hold office, other than in accordance with such scheme or schemes submitted and approved under this section.

(7) Where, in the period beginning on the commencement of *section 9* and ending immediately before the commencement of a

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scheme under this section, a superannuation benefit falls due for payment to or in respect of a person who was transferred to the staff of the Office under *section 31*, the benefit shall be calculated by the Office in accordance with such scheme, or such enactments in relation to superannuation, as applied to the person immediately before the commencement of the said *section 9* or such day as may be specified by the Minister under *section 31(1)* and, for that purpose, his or her pensionable service with the Office shall be aggregated with his or her previous pensionable service and shall be paid by the Office.

(8) The Minister shall cause every scheme submitted and approved under this section to be laid before each House of the Oireachtas as soon as may be after it is approved, and if either such House within the next 21 days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to anything previously done thereunder.

PART 3

REGULATION AND CONTROL OF SALE, MARKETING AND SMOKING OF TOBACCO PRODUCTS

Prohibition of advertising of tobacco products.

33.—(1) Subject to *sections 34* and *35*, a person who advertises, or causes the advertisement of, a tobacco product shall be guilty of an offence.

(2) It shall be an offence for a person to sell or cause to be sold, by retail, or otherwise supply or cause to be supplied, to a member of the public a product (other than a tobacco product) that bears—

- (a) the name of the manufacturer of a tobacco product, or the name of any brand of tobacco product, or
- (b) any trade description, designation, trademark, emblem, marketing image or logo by reference to which a tobacco product is marketed or sold.

Advertisements in foreign publications.

34.—(1) The Office may, upon the application in writing of a press distributor, exempt from the application of *section 33* advertising of tobacco products contained in such publications as are specified in the exemption concerned for such period (not exceeding one year) as is so specified, where it is satisfied that—

- (a) the publication concerned has a circulation in the State—
 - (i) in the case of a daily or weekly publication, not exceeding 3,000, or
 - (ii) in the case of any other publication, not exceeding 1,000,
- (b) it would not be practicable for economic reasons to require—
 - (i) the excision or omission from the publication of an advertisement the inclusion of which in a publication distributed in the State would, but for the granting of an exemption under this section, constitute an offence under *section 33*, or

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(ii) the publisher concerned to produce an edition of the publication for distribution solely or mainly in the State, Pr.3 S.34

(c) no part of the publication is printed specially or mainly for distribution in the State,

(d) any advertisement of tobacco products contained in the publication is lawful in the place where the publication is printed or first published,

(e) the publisher of the publication does not publish an edition thereof that does not contain advertisements of tobacco products,

(f) the publication is not produced solely or mainly for the purpose of promoting the smoking or sale of tobacco products, and

(g) the publication is not produced solely or mainly for sale or distribution to persons who have not attained the age of 18 years.

(2) *Section 33* shall not apply to an advertisement in a publication in respect of which an exemption under this section is in force.

(3) An exemption under this section shall be in writing.

(4) The Office may revoke an exemption under this section where, in respect of the publication concerned, it ceases to be satisfied in relation to any one or more of the matters specified in *subsection (1)*.

(5) In this section—

“press distributor” means a person who carries on the business of supplying newspapers, magazines or other periodicals to persons for the purpose of their selling those newspapers, magazines or periodicals by retail;

“publication” includes a newspaper, magazine or any other periodical.

35.—*Section 33* shall not apply to the advertising of tobacco products, in such form and subject to such conditions as may be prescribed by regulations made by the Minister, that is directed solely at persons who carry on, in whole or in part, the business of selling or distributing tobacco products. Advertisements directed at persons engaged in the sale etc. of tobacco products.

36.—(1) It shall be an offence for a person to give financial or other assistance, or cause financial or other assistance to be given, to or for the benefit of a person, or for or in relation to an event or activity, in consideration of the— Prohibition of sponsorship.

(a) use, display or advertising by the person, or at the event or activity concerned,

(b) association with the person, event or activity, or

(c) promotion,

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of a tobacco product, the name of a tobacco manufacturer or importer, the name of a brand of tobacco product or a trademark, emblem, marketing image or logo used in the marketing of a tobacco product.

(2) It shall be an offence for a person to receive financial or other assistance to which *subsection (1)* applies.

Register of retailers of tobacco products.

37.—(1) The Office shall, on the commencement of this section, cause to be established and maintained a register of all persons who carry on, in whole or in part, the business of selling tobacco products by retail (hereafter in this Act referred to as “the register”).

(2) The Office may, for the purpose of defraying any expense incurred in establishing or maintaining the register, charge each person registered under this section a fee of such amount as may be determined by the Minister (in this section referred to as the “appropriate fee”).

(3) Where a person proposes to carry on, in whole or in part, the business of selling tobacco products by retail he or she shall, in accordance with this section, apply to the Office to be registered in the register.

(4) A person who immediately before the commencement of this section was carrying on, in whole or in part, the business of selling tobacco products by retail shall, if he or she wishes to continue carrying on that business, apply, not later than 3 months after such commencement, to the Office to be registered in the register.

(5) An application under this section shall—

- (a) be in writing,
- (b) specify the name of the applicant and the address at which he or she ordinarily resides,
- (c) specify the address of each premises at which the applicant carries on, in whole or in part, the business of selling tobacco products by retail,
- (d) contain such other information as may be prescribed by regulations made by the Minister,

and shall be accompanied by the appropriate fee.

(6) As soon as practicable after an application under this section, in respect of which there is compliance with *subsection (5)*, is received by the Office, the Office shall, subject to *subsection (9)*, enter in the register—

- (a) the applicant’s name and the address at which he or she ordinarily resides,
- (b) the address of each premises at which he or she carries on, in whole or in part, the business referred to in *subsection (1)*,
- (c) a number from which it will be possible to identify the applicant (in this Act referred to as the “registration number”),

(d) the names of the persons who supply the applicant with tobacco products in connection with his or her business, and

(e) such other particulars as the Office considers appropriate,

and a person shall, upon the Office so entering the matters specified in this subsection in relation to him or her, be registered for the purposes of this section.

(7) If a person, who is registered under this section, is convicted of an offence under this Act, and the offence relates to or was committed on premises in respect of which the person carries on, in whole or in part, the business of selling tobacco products by retail (being premises in respect of which the person is for the time being so registered) the Office shall, in circumstances where the person is so registered in respect of premises other than the first-mentioned premises, remove the address of the first-mentioned premises from the register, and such person shall not, before the expiration of—

(a) the period of 3 months (in the case of a person convicted summarily of an offence), or

(b) the period of one year (in the case of a person convicted of an offence on indictment),

from the address being so removed, be eligible to be registered under this section in respect of the premises concerned, and the Office shall not, until such expiration, perform, in relation to any application by the person under this section, any function under *subsection (6)*.

(8) If a person, who is registered under this section, is convicted of an offence under this Act, and the offence relates to or was committed on premises in which the person carries on, in whole or in part, the business of selling tobacco products by retail (being the only premises in respect of which the person is for the time being so registered) the Office shall remove from the register that person's name, the address of those premises, the registration number in respect of him or her and any other particulars entered in the register relating to him or her, and such person shall not, before the expiration of—

(a) the period of 3 months (in the case of a person convicted summarily of an offence), or

(b) the period of one year (in the case of a person convicted of an offence on indictment),

from his or her being so removed, be eligible to be registered under this section in respect of those premises, and the Office shall not, until such expiration, perform, in relation to any application by the person under this section, any function under *subsection (6)*.

(9) Where a person, who has made an application under *subsection (3)* in respect of which the Office has not yet performed a function under *subsection (6)*, is convicted of an offence under this Act, that person shall not be eligible to be registered under this section before the expiration of—

(a) the period of 3 months (in the case of a person convicted summarily of an offence), or

(b) the period of one year (in the case of a person convicted of an offence on indictment),

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from him or her being so convicted, and the Office shall not during that period perform any function under *subsection (6)* in relation to his or her application.

(10) Where a person to whom *subsection (4)* applies is convicted of an offence under this Act during the 3 month period referred to therein he or she shall not be eligible to be registered under this section before the expiration of—

- (a) the period of 6 months (in the case of a person convicted summarily of an offence), or
- (b) the period of 15 months (in the case of a person convicted of an offence on indictment),

from the commencement of this section and the Office shall not during the said period of 6 months or the said period of 15 months, as the case may be, perform any function under *subsection (6)* in relation to an application under this section by him or her after his or her being so convicted.

(11) A person registered in the register shall, if a particular entered in the register in accordance with *subsection (6)* ceases to be correct, so inform the Office as soon as may be.

(12) The Office shall upon becoming aware that any particular entered in the register is incorrect or has ceased to be correct make such alterations to the register as it considers necessary.

(13) A person who, in purported compliance with *subsection (5)*, knowingly or recklessly provides information or a particular to the Office that is false or misleading in a material respect, or who believes any such information or particular provided by him or her, in purported compliance with that subsection, not to be true, shall be guilty of an offence.

(14) Subject to *subsection (15)*, it shall be an offence for a person to sell a tobacco product, or cause a tobacco product to be sold, by retail.

- (15) (a) It shall be lawful for a person to sell a tobacco product, or cause a tobacco product to be sold by retail, in accordance with this Act, from premises in respect of which he or she is registered under this section.
- (b) It shall be lawful for a person who immediately before the commencement of this section carried on, in whole or in part, the business of selling tobacco products by retail to sell a tobacco product, or cause a tobacco product to be sold, by retail, in accordance with this Act, during the period of 3 months after such commencement from premises (being premises in respect of which he or she is not registered under this section) in which, immediately before such commencement, he or she carried on such business.
- (c) It shall be lawful for a person to whom *paragraph (b)* applies and who has made an application under *subsection (4)* in respect of premises to which that subsection applies to sell a tobacco product, or cause a tobacco product to be sold, by retail, in accordance with this Act, during the period of 12 months after the expiration of the period of 3 months referred to in that subsection, from

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such premises (being premises in respect of which he or she is not registered under this section). Pr.3 S.37

38.—(1) It shall be an offence for a person to sell cigarettes by retail other than in a packet containing not less than 20 cigarettes. Prohibition of certain marketing practices.

(2) It shall be an offence for a person to manufacture, import, supply, sell or invite an offer to purchase an oral smokeless tobacco product.

(3) It shall be an offence for a person to sell confectioneries normally intended for sale to children, that have been manufactured in such a way as to resemble in appearance a type of tobacco product.

(4) It shall be an offence for a person to—

(a) import,

(b) sell (by retail or otherwise), or

(c) otherwise supply to, or invite an offer to purchase by, any person,

a tobacco product, the packaging of which does not bear a warning in such form and of such a type as may be prescribed by regulations made by the Minister, that is intended to inform the public that the consumption of the product is injurious to health, and a statement containing such other information as may be so prescribed in such form as may be so prescribed.

(5) It shall be an offence for a person to—

(a) import,

(b) sell (by retail or otherwise), or

(c) otherwise supply to, or invite an offer to purchase by, any person,

a tobacco product, the packaging of which does not bear a number in such form as may be prescribed by regulations made by the Minister, that enables the lot or batch from which the product originated and the date and place of its manufacture to be ascertained.

(6) It shall be an offence for a person to supply free of charge to a member of the public any tobacco product for the purpose of promoting the consumption of that product.

(7) It shall be an offence for a person to supply or sell to a member of the public any voucher, coupon or other document or thing (intended to be used as a substitute for money) for the purpose of its being—

(a) used as payment or payment in part, or

(b) otherwise exchanged,

for a tobacco product.

(8) It shall be an offence for a person to sell a tobacco product by retail, or supply a tobacco product to, or invite an offer to purchase by, a member of the public of a tobacco product where part of the

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consideration to be given to the purchaser is a gift, token, trading stamp, coupon or other document or thing that may be exchanged for or used as payment or payment in part for certain goods.

(9) The Minister may, for the purpose of ensuring that the price at which a tobacco product is sold does not constitute a sales promotion device, by regulations make such provision in relation to the price at which tobacco products or tobacco products of such class as may be specified in the regulations may be sold as he or she considers appropriate.

(10) A person who sells or invites an offer to purchase a tobacco product in contravention of regulations under *subsection (9)* shall be guilty of an offence.

Specifications in relation to tobacco products.

39.—(1) Such tobacco products and such classes of tobacco products as may be prescribed by regulations made by the Minister shall comply with such standards and requirements relating to their manufacture, importation, distribution and sale as may be so prescribed.

(2) A person who manufactures or imports, or who sells (whether by retail or otherwise) or invites an offer to purchase, a tobacco product in relation to which there is a contravention of regulations under this section shall be guilty of an offence.

Requirement to provide information on and test tobacco products.

40.—(1) A manufacturer or importer of tobacco products shall provide the Office with such information (within such period as it may, from time to time by notice in writing, require) relating to—

- (a) the tobacco products concerned,
- (b) tobacco products of such a class as the Office may specify,
or
- (c) tobacco products that are sold under such brand name as may be so specified,

including information relating to their composition or properties, and to their sale or marketing.

(2) The Office may by notice in writing require the manufacturer or importer of a tobacco product to carry out such tests as are specified in the notice on such tobacco products manufactured by him or her as are so specified.

(3) The manufacturer or importer of a tobacco product shall, when carrying out a test pursuant to a requirement under *subsection (2)*, permit such person as may be specified in a notice under that subsection to attend at the place or places where such test is carried out and observe its being carried out.

(4) A manufacturer or importer who carries out a test pursuant to a notice under *subsection (2)* shall, not later than 14 days from its obtaining the results of the test, furnish the Office with a statement of those results which shall contain such information and be in such form as the Office may specify.

(5) A person who contravenes this section or a requirement under this section shall be guilty of an offence.

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41.—(1) The Office may publish such information and such results of tests received under *section 40* in such manner as it considers appropriate.

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Publication of
certain information
etc.

(2) Where the Office proposes to publish information or results of tests under *subsection (1)* it shall, not later than 21 days before so doing, notify the manufacturer or importer concerned, in writing, that it so proposes.

(3) The High Court may, if of the opinion that the publication of information or the results of tests in accordance with *subsection (1)* would result in the disclosure of a secret manufacturing process, direct the Office not to publish such information or results, upon application being made to the High Court in that behalf by the manufacturer or importer concerned.

(4) An application referred to in *subsection (3)* may be brought not later than 7 days from the receipt of the notification under *subsection (2)*.

(5) The Office shall comply with a direction under *subsection (3)*.

(6) Proceedings under *subsection (3)* shall be held *in camera*.

42.—(1) Where the packaging of a tobacco product or any printed material attached to or accompanying a tobacco product or such packaging—

Prohibition on
certain assertions in
relation to tobacco
products.

(a) bears an assertion that—

(i) smoking does not cause life threatening diseases,

(ii) the smoking or consumption of one brand or class of tobacco product is less harmful than the smoking or consumption of others,

(iii) the smoking of tobacco products is not addictive,

(iv) filters attached to, additives to or other ingredients of a tobacco product render it less harmful than tobacco products that do not have a filter, or contain such additives or ingredients,

(b) bear the words “low tar”, “light”, “ultra light”, “mild”, or such similar words or terms as may be prescribed by regulations made by the Minister in a manner that implies that the tobacco product or brand concerned is less harmful than other tobacco products or brands of tobacco product, as the case may be,

the manufacturer, importer and distributor of the tobacco product concerned shall each be guilty of an offence.

(2) It shall be an offence for a person to sell by retail a tobacco product where the package containing the product bears an assertion referred to in *subsection (1)(a)* or words referred to in *subsection (1)(b)*.

43.—(1) Subject to *subsection (2)*, it shall be an offence for a person to sell a tobacco product by retail, or cause a tobacco product to be sold by retail, by means of self service.

Offences relating to
sale by retail of
tobacco products.

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(2) It shall be lawful for tobacco products to be sold by retail, in accordance with regulations made by the Minister, by means of a vending machine on licensed premises or the premises of a registered club by such persons, or by persons belonging to such classes of persons, as are specified in the regulations (being persons who are registered under *section 37* in respect of the licensed premises concerned or the premises of the registered club concerned).

(3) A person registered under *section 37* (other than a person to whom regulations under *subsection (2)* apply) shall ensure that tobacco products sold by him or her are kept in a closed container or dispenser that is not visible or accessible to any person other than the first-mentioned person, or a person employed by him or her in connection with the business of selling goods by retail while so employed.

(4) A person registered under *section 37* shall ensure that—

(a) the registration number in respect of him or her is affixed to the container, dispenser or vending machine, as the case may be,

(b) subject to *paragraph (c)* and the European Communities (Requirements to Indicate Product Prices) Regulations, 2001 (S.I. No. 422 of 2001)—

(i) no notice, sign or display shall be displayed, and

(ii) no leaflet, circular, pamphlet or brochure shall be issued to the public or given to a purchaser of a product,

at any place, indicating that tobacco products may be purchased at the premises concerned,

(c) a sign is displayed at the premises concerned—

(i) in such a manner and form as may be prescribed by regulations made by the Minister,

(ii) informing the public that tobacco products may be sold at those premises to persons who have attained the age of 18 years, and

(iii) providing such other information as may be so prescribed.

(5) A person who contravenes *subsection (3)* or *(4)* shall be guilty of an offence.

(6) For the purposes of *subsection (1)*, a tobacco product shall be deemed to be sold by means of self service where the purchaser is permitted to supply himself or herself, either upon or before payment, with the tobacco product concerned whether by means of the depositing of money or a token (intended to be used as a substitute for money) in a machine containing the tobacco product or otherwise.

Exemption from *section 43.*

44.—(1) This section shall apply to a person who carries on in whole the business of selling—

(a) tobacco products, or

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(b) products used for the purposes of or in connection with smoking, Pr.3 S.44

by retail, other than a person who carries on in whole such business being a subsidiary of a company that does not carry on in whole such business.

(2) The Minister may issue a certificate to a person to whom this section applies, upon application being made in that behalf by that person, stating that *section 43* shall not apply to him or her in respect of such premises as are specified in the certificate, and accordingly, where the Minister issues such a certificate, *section 43* shall not apply to the person in relation to those premises while such certificate remains in force.

(3) The Minister shall not issue a certificate where—

(a) the person making the application concerned is in contravention of regulations under this section, or

(b) there is a contravention of such regulations in respect of the premises to which the application concerned relates.

(4) The Minister may make regulations for the purposes of this section, and, without prejudice to the generality of the foregoing, such regulations may provide—

(a) for the minimum size of premises to which a certificate under this section shall apply,

(b) that such premises shall not form part of another premises in which products other than those referred to in *subsection (1)* are sold,

(c) for the proportion of tobacco products that may be sold in the form of cigarettes on those premises,

(d) for the form of an application under this section and the information and documentation that shall accompany such application,

(e) for the payment of fees by a person who makes an application under this section, for the purposes of defraying expenses incurred in considering such application or issuing a certificate under this section, or

(f) the period in respect of which a certificate under this section shall continue in force.

(5) The Minister may revoke a certificate under this section if—

(a) the person to whom the certificate is issued—

(i) contravenes regulations under this section, or

(ii) ceases to be a person to whom this section applies,

or

(b) there is a contravention of such regulations in relation to the premises concerned.

(6) In this section “subsidiary” has the same meaning as it has in section 155 of the Companies Act, 1963.

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Prohibition on sale of tobacco products to persons under 18 years of age.

45.—(1) It shall be an offence for a person to sell a tobacco product by retail, or supply a tobacco product, to, or invite an offer to purchase a tobacco product by, a person who has not attained the age of 18 years.

(2) In proceedings for an offence under *subsection (1)* it shall be a defence for the person against whom such proceedings are brought to prove that—

(a) he or she made all reasonable efforts to satisfy himself or herself that the person to whom the alleged offence relates had at the time of the alleged commission of the offence attained the age of 18 years, or

(b) the person specified in *paragraph (a)* produced to the first-mentioned person an age card, for the time being in force, relating to the person so specified.

(3) In proceedings for an offence under *subsection (1)* the court may have regard to a person's physical appearance or attributes for the purpose of determining whether that person is under the age of 18 years or was, at the time of the alleged commission of the offence to which the proceedings relate, under the age of 18 years.

(4) In this section “age card” has the same meaning as it has in Part IV of the Intoxicating Liquor Act, 1988.

Display of signs.

46.—(1) There shall be displayed at all times at all premises (in which or in part of which the smoking of tobacco products is permitted) to which members of the public have access, either as of right or with the permission of the occupier of those premises, a sign indicating clearly those parts of the premises in which smoking is permitted and those parts of the premises in which smoking is not permitted, and each such sign shall display the name of the occupier or other person in charge of the premises concerned and the name of the person to whom a complaint may be made by a member of the public for the time being present on the premises who observes another person smoking a tobacco product in a part of the premises in which smoking is not permitted.

(2) There shall be displayed at all times in a public service vehicle a sign stating that smoking is not permitted in that vehicle.

(3) Where there is a contravention of *subsection (1)*, the occupier and person in charge of the premises concerned shall each be guilty of an offence.

(4) Where there is a contravention of *subsection (2)*, the owner and person in charge of the public service vehicle concerned shall each be guilty of an offence.

(5) In this section “owner”, when used in relation to a mechanically propelled vehicle that is the subject of a hire-purchase agreement, means the person entitled to be in possession of the vehicle under the agreement.

[2002.] *Public Health (Tobacco) Act, 2002.* [No. 6.]

47.—(1) The Minister may, by regulations, prohibit or restrict the smoking of tobacco products in—

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Prohibition or
restriction on
smoking of tobacco
products.

- (a) an aircraft, train, ship or other vessel, public service vehicle, or a vehicle used for the carriage of members of the public for reward other than a public service vehicle,
- (b) all or part of—
 - (i) a health premises, or
 - (ii) a hospital that is not a health premises,
- (c) all or part of a school or college,
- (d) all or part of a building to which the public has access, either as of right or with the permission of the owner or occupier of the building, and which belongs to, or is in the occupation of—
 - (i) the State,
 - (ii) a Minister of the Government,
 - (iii) the Commissioners of Public Works in Ireland, or
 - (iv) a body established by or under an Act of the Oireachtas,
- (e) a cinema, theatre, concert hall or other place normally used for indoor public entertainment,
- (f) all or part of a licenced premises, registered club, or place of work, or
- (g) all or part of any other premises or place,

generally or of such a class as may be specified in the regulations (hereafter in this Act referred to as a “specified place”).

(2) Regulations under this section may revoke regulations made under section 2 of the Act of 1988 and regulations under the said section 2 shall notwithstanding *section 8* continue in operation as if made under this section.

(3) Any person who contravenes a provision of regulations made under this section shall be guilty of an offence.

(4) Where in relation to a specified place there is a contravention of regulations under this section the occupier, manager and any other person for the time being in charge of the place shall each be guilty of an offence.

(5) In proceedings for an offence under this section, it shall be a defence for a person against whom such proceedings are brought to show that he or she made all reasonable efforts to ensure compliance with such provisions of regulations under this section as are alleged to have been contravened.

(6) In this section—

“college” means a university, institute of technology or other establishment at which third level education is provided;

“health premises” means any hospital, sanatorium, home, laboratory, clinic, health care centre or similar premises required for the provision of services under the Health Acts, 1947 to 2001, provided and maintained by a health board under section 38 of the Act of 1970;

“place of work” has the same meaning as it has in the Safety, Health and Welfare at Work Act, 1989;

“school” has the same meaning as it has in the Education Act, 1998.

Authorised officer.

48.—(1) The chief executive of the Office shall appoint such one or more persons, as he or she considers appropriate, to be an authorised officer or authorised officers for the purposes of this Act.

(2) The chief executive officer of a health board shall, in relation to the functional area of that health board, appoint such one or more persons, as he or she considers appropriate, to be an authorised officer or authorised officers for the purposes of this Act.

(3) A person appointed to be an authorised officer under this section shall, on his or her appointment, be furnished—

(a) in the case of a person appointed under *subsection (1)*, by the Office, and

(b) in the case of a person appointed under *subsection (2)*, by the health board concerned,

with a warrant of his or her appointment, and when exercising a power conferred by this Act shall, if requested by any person thereby affected, produce such warrant to that person for inspection.

(4) An authorised officer may, for the purposes of this Act—

(a) at all reasonable times enter (if necessary by the use of reasonable force), subject to *subsection (6)*, any premises at which he or she has reasonable grounds for believing that—

(i) any trade, business or activity connected with the manufacture, processing, disposal, exportation, importation, distribution, sale, storage, packaging or labelling of a tobacco product is or has been carried on, or

(ii) records relating to such trade, business or activity are kept,

(b) at all reasonable times enter (if necessary by the use of reasonable force) any specified place,

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- (c) at such premises inspect and take copies of, any books, records, other documents (including documents stored in non-legible form) or extracts therefrom, which he or she finds in the course of his or her inspection, Pr.3 S.48
- (d) remove any such books, records or documents from such premises and detain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,
- (e) carry out, or have carried out, such examinations, tests, inspections and checks of—
- (i) the premises,
 - (ii) any tobacco product or any article or substance used in the manufacture, processing or storage of tobacco products, at the premises, or
 - (iii) any equipment, machinery or plant at the premises,
- as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,
- (f) require any person at the premises or the owner or person in charge of the premises and any person employed there to give to him or her such assistance and information and to produce to him or her such books, documents or other records (and in the case of documents or records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's power or procurement, as he or she may reasonably require for the purposes of his or her functions under this Act,
- (g) take samples of any tobacco product or any article or substance used in the manufacture, processing or storage of tobacco products found at the premises for the purposes of analysis and examination,
- (h) direct that such tobacco products found at the premises as he or she, upon reasonable grounds, believes contravene a provision of this Act not be sold or distributed or moved from the premises, without his or her consent,
- (i) secure for later inspection any premises or part of any premises in which a tobacco product, substance or article is found or ordinarily kept, or records, books or documents are found or ordinarily kept, for such period as may reasonably be necessary for the purposes of his or her functions under this Act, or
- (j) take possession of and remove from the premises for examination and analysis any tobacco product or any substance or article used in the manufacture, processing or storage of tobacco products found there, and detain them for such period as he or she considers reasonably necessary for the purposes of his or her functions under this Act.

(5) When performing a function under this Act, an authorised officer may, subject to any warrant under *subsection (7)*, be accompanied by such number of authorised officers or members of the Garda Síochána as he or she considers appropriate.

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(6) An authorised officer shall not enter a dwelling, other than—

- (a) with the consent of the occupier, or
- (b) in accordance with a warrant issued under *subsection (7)*.

(7) On the application of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that—

- (a) a tobacco product or any substance or article used in the manufacture, processing or storage of a tobacco product is to be found in any dwelling, or is being or has been subjected to any process or stored in any dwelling,
- (b) books, records or other documents (including documents stored in non-legible form) referred to in *subsection (4)(a)(ii)* are being stored or kept in any dwelling, or
- (c) a dwelling is occupied in whole or in part by an undertaking engaged in any trade, business or activity referred to in *subsection (4)(a)(i)*,

issue a warrant authorising a named authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times, within one month of the date of issue of the warrant, to enter the dwelling and perform the functions of an authorised officer under *paragraphs (c), (d), (e), (f), (g), (h), (i) and (j) of subsection (4)*.

(8) Any person who obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by this Act or a warrant under *subsection (7)* or impedes the exercise by the officer or member, as the case may be, of such power or fails or refuses to comply with a request or requirement of, or to answer a question asked by, the officer or member pursuant to this section, or in purported compliance with such request or requirement or in answer to such question gives information to the officer or member that he or she knows to be false or misleading in any material respect, shall be guilty of an offence.

(9) Where an authorised officer, upon reasonable grounds, believes that a person has committed an offence under this Act he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(10) A person who falsely represents himself or herself to be an authorised officer shall be guilty of an offence.

(11) In this section—

“premises” means any place, ship or other vessel, aircraft, railway wagon or other vehicle, and includes a container used to transport tobacco products or any article or substance used in the manufacture, processing or storage of tobacco products;

“record” includes, in addition to a record in writing—

- (a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,

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(b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and

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(c) a photograph,

and any reference to a copy of a record includes—

(i) in the case of a record to which *paragraph (a)* applies, a transcript of the sounds or signals embodied therein,

(ii) in the case of a record to which *paragraph (b)* applies, a still reproduction of the images embodied therein, and

(iii) in the case of a record to which *paragraphs (a) and (b)* apply, such a transcript together with such a still reproduction.

49.—(1) Where the Office is satisfied that an authorised officer appointed by it, or any other member of the staff of the Office has discharged his or her duties in relation to the enforcement of the provisions of this Act in a *bona fide* manner, the Office shall indemnify the authorised officer, or such member of the staff of the Office against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties.

Indemnification of authorised officers.

(2) Where a health board is satisfied that an authorised officer appointed by it has discharged his or her duties in relation to the enforcement of the provisions of this Act in a *bona fide* manner, the health board shall indemnify the authorised officer against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties.

50.—(1) Where an authorised officer takes a sample of a tobacco product or a sample of any substance or article used in the manufacturing, processing or storage of tobacco products, he or she shall divide the sample into 3 approximately equal parts, and place each part into separate containers which he or she shall forthwith seal and mark in such a manner as to identify it as part of the sample taken by that authorised officer.

Taking of samples by authorised officers.

(2) Where an authorised officer has complied with *subsection (1)* he or she shall—

(a) offer one of the sealed containers to the owner or person for the time being in charge or possession of the tobacco product, substance or article from which the sample concerned was taken,

(b) retain one of the said sealed containers, and

(c) forward, or cause to be forwarded, one of the sealed containers to a designated laboratory for the purposes of analysis.

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(3) Where a tobacco product, or any substance or article used in the manufacturing, processing or storage of a tobacco product is contained in a container and its division into parts is (for whatever reason) not practicable, an authorised officer, who wishes to take samples of such tobacco product, substance or article for the purposes of analysis, shall take possession of 3 such containers belonging to the same batch, and each such container shall be deemed to be part of a sample for the purposes of *subsection (1)*, and the provisions of *subsections (1) and (2)* shall apply thereto accordingly.

Laboratories.

51.—(1) The Minister may, for the purposes of this Act designate, by notice in writing published in *Iris Oifigiúil*—

- (a) a laboratory as a laboratory at which samples taken under this Act may be analysed (in this Act referred to as a “designated laboratory”), and
- (b) a person as being a person who, or a class of persons the members of which, may, at a designated laboratory, analyse samples taken under this Act, and each such person or member is in this Act referred to as a “designated analyst”.

(2) As soon as practicable after a sample taken by an authorised officer under this Act has been received at a designated laboratory it shall be analysed and the composition, the amount and concentration of its ingredients and any other properties of the sample shall be determined by a designated analyst at that laboratory.

(3) As soon as practicable after compliance with *subsection (2)* a designated analyst engaged in the analysis of samples at the designated laboratory concerned shall forward the results of the analysis carried out on the sample concerned—

- (a) in the case of a sample forwarded or caused to be forwarded under *section 50* by an authorised officer appointed by the Office, to the Office, or
- (b) in the case of a sample forwarded or caused to be forwarded under that section by an authorised officer appointed by the health board, to the health board concerned.

Evidence in proceedings for an offence.

52.—(1) In proceedings for an offence consisting of a contravention of this Act, a certificate purporting to be signed by a person employed or engaged at a designated laboratory stating the capacity in which that person is so employed or engaged and stating any one or more of the following, namely—

- (a) that the person received a sample submitted to the designated laboratory,
- (b) that, for such period as is specified in the certificate, the person had in his or her custody a sample so submitted, or
- (c) that the person gave to such other person as is specified in the certificate a sample so submitted,

shall unless the contrary is proved be evidence of the matters stated in the certificate.

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(2) In proceedings for an offence consisting of a contravention of this Act, a certificate purporting to be signed by a designated analyst stating any one or more of the following, namely—

- (a) that he or she carried out any procedure for the purpose of detecting the presence of any substance in the sample so submitted, or
- (b) that the sample concerned contained such substance or such amount thereof as is specified in the certificate,

shall unless the contrary is proved be evidence of the matters stated in the certificate.

(3) In proceedings for an offence under this Act the court may, if it considers that the interests of justice so require, direct that oral evidence of the matters stated in a certificate under this section be given and the court may, for the purpose of receiving oral evidence, adjourn the proceedings to a later date.

(4) A certificate under this section shall be in such form as may be prescribed by regulations made by the Minister.

(5) In proceedings for an offence under this Act, a tobacco product, or a package containing a tobacco product, that purports to bear the name of the manufacturer or importer of that product, shall unless the contrary is proved be evidence that the tobacco product was manufactured or imported, as the case may be, by the person concerned.

(6) In proceedings for an offence under this Act a tobacco product, or a package containing a tobacco product, that bears a trademark shall unless the contrary is proved be evidence that the product was manufactured by the person who at the time of the alleged commission of the offence owned that trademark.

(7) In this section “trademark” has the same meaning as it has in the Trade Marks Act, 1996.

53.—(1) It shall be an offence for a person to forge or utter knowing it to be forged—

Forgery of documents.

- (a) the register, an entry in the register or a document purporting to be an extract from the register (in this section referred to as “a forged register”), or
- (b) a notice, certificate or other document purporting to be issued, granted or given under this Act (in this section referred to as “a forged document”).

(2) It shall be an offence for a person to alter with intent to defraud or deceive, or to utter knowing it to be so altered—

- (a) the register, an entry in the register or an extract from the register (in this section referred to as “an altered register”), or
- (b) a notice, certificate or other document issued, granted or given under this Act (in this section referred to as “an altered document”).

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(3) It shall be an offence for a person to have, without lawful authority, in his or her possession a forged register, forged document, altered register or altered document.

(4) It shall be an offence for a person to aid or abet the commission of an offence under this section.



Number 6 of 2004

PUBLIC HEALTH (TOBACCO) (AMENDMENT) ACT 2004

ARRANGEMENT OF SECTIONS

Section

1. Definition.
2. Amendment of section 2 of Principal Act.
3. Amendment of section 5 of Principal Act.
4. Repeals, saver and revocation.
5. Prohibition of advertising of tobacco products.
6. Advertisements directed at persons engaged in the sale, etc., of tobacco products.
7. Prohibition of sponsorship.
8. Register of retailers of tobacco products.
9. Prohibition of certain marketing practices.
10. Amendment of section 39 of Principal Act.
11. Requirement to provide information on and test tobacco products.
12. Publication of certain information, etc.
13. Prohibition on certain assertions in relation to tobacco products.
14. Offences relating to sale by retail of tobacco products.
15. Display of signs.
16. Amendment of section 47 of Principal Act.
17. Amendment of section 48 of Principal Act.
18. Taking of samples by authorised officers.
19. Repeal.
20. Short title, commencement and collective citation.

[No. 6.]

*Public Health (Tobacco)
(Amendment) Act 2004.*

[2004.]

SCHEDULE

DIRECTIVE 2003/33/EC OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL OF 26 MAY 2003

ACTS REFERRED TO

Criminal Justice Act 1960	1960, No. 27
Education Act 1998	1998, No. 51
Finance Act 1997	1997, No. 22
Finance (Excise Duty on Tobacco Products) Act 1977	1977, No. 32
Health Acts 1947 to 2001	
Health (Nursing Homes) Act 1990	1990, No. 23
Irish Medicines Board Act 1995	1995, No. 29
Mental Health Act 2001	2001, No. 25
Mental Treatment Acts 1945 to 1966	
Prisons Act 1970	1970, No. 11
Prisons Act 1972	1972, No. 7
Public Health (Tobacco) Act 2002	2002, No. 6
Registration of Maternity Homes Act 1934	1934, No. 14
Safety, Health and Welfare at Work Act 1989	1989, No. 7
Tourist Traffic Act 1939	1939, No. 24
Tourist Traffic Act 1957	1957, No. 27



Number 6 of 2004

PUBLIC HEALTH (TOBACCO) (AMENDMENT) ACT 2004

AN ACT TO GIVE EFFECT IN PART TO DIRECTIVE NO. 2001/37/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 5 JUNE 2001¹ ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES CONCERNING THE MANUFACTURE, PRESENTATION AND SALE OF TOBACCO PRODUCTS; TO GIVE EFFECT TO DIRECTIVE NO. 2003/33/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 MAY 2003² ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES RELATING TO THE ADVERTISING AND SPONSORSHIP OF TOBACCO PRODUCTS; AND FOR THOSE AND OTHER PURPOSES, AND HAVING REGARD TO COUNCIL RECOMMENDATION OF 2 DECEMBER 2002³ ON THE PREVENTION OF SMOKING AND ON INITIATIVES TO IMPROVE TOBACCO CONTROL, AND THE WORLD HEALTH ORGANISATION FRAMEWORK CONVENTION ON TOBACCO CONTROL DONE AT GENEVA ON THE 21st DAY OF MAY 2003, TO AMEND THE PUBLIC HEALTH (TOBACCO) ACT 2002.
[11th March 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “Principal Act” means the Public Health Definition. (Tobacco) Act 2002.

2.—Section 2 of the Principal Act is amended, in subsection (1), by— Amendment of section 2 of Principal Act.

(a) the deletion of the definition of “advertisement”,

(b) the insertion of the following definitions:

“ ‘advertising’ has the same meaning as it has in the Directive of 2003, and cognate words shall be construed accordingly;

¹ OJ No. L 194, 18.7.2001, p.26

² OJ No. L 152, 20.6.2003, p.16

³ OJ No. L 22, 25.1.2003, p.31

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‘Directive of 2001’ means Directive No. 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products;

‘Directive of 2003’ means Directive No. 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, the text of which is set out in the *Schedule* to the *Public Health (Tobacco) (Amendment) Act 2004*;”,

- (c) the substitution of the following definition for the definition of “public service vehicle”:

“‘public service vehicle’ means a mechanically propelled vehicle used for the carriage of persons for reward and having seating accommodation for more than 8 persons exclusive of the driver;”,

and

- (d) the substitution of the following definition for the definition of “tobacco product”:

“‘tobacco product’ means—

(a) any product consisting, in whole or in part, of tobacco, that is intended to be smoked,

(b) a tobacco product within the meaning of the Finance (Excise Duty on Tobacco Products) Act 1977 (inserted by section 86(1) of the Finance Act 1997), or

(c) any cigarette paper, tube or filter manufactured for use in the smoking of tobacco,

other than a medicinal product within the meaning of the Irish Medicines Board Act 1995.”.

Amendment of section 5 of Principal Act.

3.—Section 5 of the Principal Act is amended by—

- (a) the deletion in subsection (2) of “, 47”,

- (b) the insertion of the following subsection:

“(2A) A person guilty of an offence under section 47 shall be liable on summary conviction to a fine not exceeding €3,000.”,

- (c) the insertion, in subsection (3), of “33A,” after “section 33,” and

- (d) the substitution of “€3,000” for “€1,900” in each place that it occurs.

4.—The Principal Act is amended by the substitution of the following section for section 8: Repeals, saver and revocation.

“8.—(1) The following enactments are repealed, namely—

(a) the Act of 1978, and

(b) the Act of 1988.

(2) Notwithstanding subsection (1), regulations made under the Act of 1978 or the Act of 1988 that are in force immediately before the commencement of that subsection shall, subject to—

(a) subsection (3), and

(b) subsection (5) of section 47 (inserted by *section 16* of the *Public Health (Tobacco) (Amendment) Act 2004*),

continue in force after such commencement.

(3) The Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations 1991 (S.I. No. 326 of 1991) are revoked.”.

5.—The Principal Act is amended by the substitution of the following sections for section 33: Prohibition of advertising of tobacco products.

“33.—Subject to section 35, a person who advertises, or causes the advertisement of, a tobacco product in contravention of the Directive of 2003 shall be guilty of an offence.

33A.—(1) The advertisement of tobacco products in premises in which the business of selling tobacco products by retail is carried on in whole or in part is prohibited.

(2) A person who contravenes subsection (1) shall be guilty of an offence.

(3) Where in relation to a premises to which subsection (1) applies there is a contravention of that subsection, the occupier, manager and any other person for the time being in charge of the premises shall each be guilty of an offence.

(4) In this section, ‘advertisement’ includes, in relation to a tobacco product, every form of recommendation of the product to the public and, in particular—

(a) (i) a statement of the name of a manufacturer or importer of a tobacco product, or the name of any brand of tobacco product, or

(ii) a statement of any trade description or designation, or a display or other publication of a trademark, emblem, marketing image or logo, by reference to which the product is marketed or sold,

in circumstances where such statement, display or publication may reasonably be regarded as a recommendation of the product to the public, and

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S.5 (b) a statement of the properties of the product on a label, container, wrapper or package used for the product or in a leaflet, circular, pamphlet or brochure issued to the public or given to a purchaser of the product, and cognate words shall be construed accordingly.”.

Advertisements directed at persons engaged in the sale, etc., of tobacco products. **6.**—The Principal Act is amended by the substitution of the following section for section 35:

“35.—Section 33 shall not apply to the advertising of a tobacco product in a publication that—

(a) is—

(i) printed and published, and

(ii) primarily intended for sale or distribution,

in a state other than a Member State of the European Communities, or

(b) is directed solely at persons who carry on, in whole or in part, the business of selling or distributing tobacco products.”.

Prohibition of sponsorship. **7.**—The Principal Act is amended by the substitution of the following section for section 36:

“36.—(1) A person who engages in sponsorship in contravention of the Directive of 2003 shall be guilty of an offence.

(2) It shall be an offence for a person to give financial or other assistance, or cause financial or other assistance to be given, to or for the benefit of a person, or for or in relation to an event or activity, in consideration of the—

(a) use, display or advertising by the person, or at the event or activity concerned,

(b) association with the person, event or activity, or

(c) promotion,

of a tobacco product, the name of a tobacco manufacturer or importer, the name of a brand of tobacco product or a trademark, emblem, marketing image or logo used in the marketing of a tobacco product.

(3) It shall be an offence for a person to receive financial or other assistance to which subsection (2) applies.

(4) In this section ‘sponsorship’ has the same meaning as it has in the Directive of 2003.”.

Register of retailers of tobacco products. **8.**—The Principal Act is amended by the substitution of the following section for section 37:

“37.—(1) The Office shall, on the commencement of this section, cause to be established and maintained a register of all

persons who carry on, in whole or in part, the business of selling S.8
tobacco products by retail (hereafter in this Act referred to as
'the register').

(2) The Office may, for the purpose of defraying any expense incurred in establishing or maintaining the register, charge each person registered under this section a fee of such amount as may be determined by the Minister (in this section referred to as the 'appropriate fee').

(3) Where a person proposes to carry on, in whole or in part, the business of selling tobacco products by retail he or she shall, in accordance with this section, apply to the Office to be registered in the register.

(4) A person who immediately before the commencement of this section was carrying on, in whole or in part, the business of selling tobacco products by retail shall, if he or she wishes to continue carrying on that business, apply, not later than 3 months after such commencement, to the Office to be registered in the register.

(5) An application under this section shall—

- (a) be in writing,
- (b) specify the name of the applicant and the address at which he or she ordinarily resides,
- (c) specify the address of each premises at which the applicant carries on, in whole or in part, the business of selling tobacco products by retail,
- (d) contain such other information as may be prescribed by regulations made by the Minister, and
- (e) be accompanied by the appropriate fee.

(6) As soon as practicable after an application under this section, in respect of which there is compliance with subsection (5), is received by the Office, the Office shall, subject to subsection (9), enter in the register—

- (a) the applicant's name and the address at which he or she ordinarily resides,
- (b) the address of each premises at which he or she carries on, in whole or in part, the business referred to in subsection (1),
- (c) a number from which it will be possible to identify the applicant (in this Act referred to as the 'registration number'),
- (d) the names of the persons who supply the applicant with tobacco products in connection with his or her business, and
- (e) such other particulars as the Office considers appropriate,

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and a person shall, upon the Office so entering the matters specified in this subsection in relation to him or her, be registered for the purposes of this section.

(7) If a person, who is registered under this section, is convicted of an offence under this Act, and the offence relates to, or was committed on, premises in which the person carries on, in whole or in part, the business of selling tobacco products by retail (being premises in respect of which the person is for the time being so registered) the Office shall, in circumstances where the person is so registered in respect of premises other than the first-mentioned premises, remove the address of the first-mentioned premises from the register, and such person shall not, before the expiration of—

- (a) the period of 3 months (in the case of a person convicted summarily of an offence), or
- (b) the period of one year (in the case of a person convicted of an offence on indictment),

from the address being so removed, be eligible to be registered under this section in respect of the premises concerned, and the Office shall not, until such expiration, perform, in relation to any application by the person under this section, any function under subsection (6).

(8) If a person, who is registered under this section, is convicted of an offence under this Act, and the offence relates to, or was committed on, premises in which the person carries on, in whole or in part, the business of selling tobacco products by retail (being the only premises in respect of which the person is for the time being so registered) the Office shall remove from the register that person's name, the address of those premises, the registration number in respect of him or her and any other particulars entered in the register relating to him or her, and such person shall not, before the expiration of—

- (a) the period of 3 months (in the case of a person convicted summarily of an offence), or
- (b) the period of one year (in the case of a person convicted of an offence on indictment),

from his or her being so removed, be eligible to be registered under this section in respect of those premises, and the Office shall not, until such expiration, perform, in relation to any application by the person under this section, any function under subsection (6).

(9) Where a person, who has made an application under subsection (3) in respect of which the Office has not yet performed a function under subsection (6), is convicted of an offence under this Act, that person shall not be eligible to be registered under this section before the expiration of—

- (a) the period of 3 months (in the case of a person convicted summarily of an offence), or
- (b) the period of one year (in the case of a person convicted of an offence on indictment),

from him or her being so convicted, and the Office shall not S.8
during that period perform any function under subsection (6) in
relation to his or her application.

(10) Where a person to whom subsection (4) applies is convicted of an offence under this Act during the 3 month period referred to therein, he or she shall not be eligible to be registered under this section before the expiration of—

- (a) the period of 6 months (in the case of a person convicted summarily of an offence), or
- (b) the period of 15 months (in the case of a person convicted of an offence on indictment),

from the commencement of this section and the Office shall not during the said period of 6 months or the said period of 15 months, as the case may be, perform any function under subsection (6) in relation to an application under this section by him or her after his or her being so convicted.

(11) A person registered under this section shall, if a particular entered in the register in accordance with subsection (6) in relation to him or her ceases to be correct, so inform the Office as soon as may be.

(12) The Office shall upon becoming aware that any particular entered in the register is incorrect or has ceased to be correct make such alterations to the register as it considers necessary.

(13) A person who, in purported compliance with subsection (5), knowingly or recklessly provides information or a particular to the Office that is false or misleading in a material respect, or who believes any such information or particular provided by him or her, in purported compliance with that subsection, not to be true, shall be guilty of an offence.

(14) Subject to subsection (15), it shall be an offence for a person to sell a tobacco product, or cause a tobacco product to be sold, by retail.

- (15) (a) It shall be lawful for a person to sell a tobacco product, or cause a tobacco product to be sold by retail, in accordance with this Act, from premises in respect of which he or she is registered under this section.
- (b) It shall be lawful for a person who immediately before the commencement of this section carried on, in whole or in part, the business of selling tobacco products by retail to sell a tobacco product, or cause a tobacco product to be sold, by retail, in accordance with this Act, during the period of 3 months after such commencement, from premises (being premises in respect of which he or she is not registered under this section) in which, immediately before such commencement, he or she carried on such business.
- (c) It shall be lawful for a person to whom paragraph (b) applies and who has made an application under subsection (4) in respect of premises to which that subsection applies to sell a tobacco product, or cause a tobacco product to be sold, by retail, in accordance

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with this Act, during the period of 12 months after the expiration of the period of 3 months referred to in that subsection, from such premises (being premises in respect of which he or she is not registered under this section).”.

Prohibition of certain marketing practices.

9.—The Principal Act is amended by the substitution of the following section for section 38:

“38.—(1) It shall be an offence for a person to sell cigarettes by retail other than in a packet containing not less than 20 cigarettes.

(2) It shall be an offence for a person to manufacture, import, supply, sell or invite an offer to purchase an oral smokeless tobacco product.

(3) It shall be an offence for a person to sell confectioneries normally intended for sale to children, that have been manufactured in such a way as to resemble in appearance a type of tobacco product.

(4) It shall be an offence for a person to—

(a) import,

(b) sell (by retail or otherwise), or

(c) otherwise supply to, or invite an offer to purchase by, any person,

a tobacco product, the packaging of which does not bear a warning in such form and of such a type as may be prescribed by regulations made by the Minister, that is intended to inform the public that the consumption of the product is injurious to health, and a statement containing such other information as may be so prescribed in such form as may be so prescribed.

(5) It shall be an offence for a person to—

(a) import,

(b) sell (by retail or otherwise), or

(c) otherwise supply to, or invite an offer to purchase by, any person,

a tobacco product, the packaging of which does not bear a number in such form as may be prescribed by regulations made by the Minister, that enables the lot or batch from which the product originated and the date and place of its manufacture to be ascertained.

(6) Regulations under subsection (4) or (5) may be made for the purpose of giving effect to Article 5 of the Directive of 2001.

(7) It shall be an offence for a person to supply free of charge to a member of the public any tobacco product for the purpose of promoting the consumption of that product.

(8) It shall be an offence for a person to supply or sell to a member of the public any voucher, coupon or other document

or thing (intended to be used as a substitute for money) for the S.9 purpose of its being—

- (a) used as payment or payment in part, or
- (b) otherwise exchanged,

for a tobacco product.

(9) It shall be an offence for a person to sell a tobacco product by retail, or supply a tobacco product to, or invite an offer to purchase by, a member of the public of a tobacco product where part of the consideration to be given to the purchaser is a gift, token, trading stamp, coupon or other document or thing that may be exchanged for or used as payment or payment in part for certain goods.

(10) The Minister may, for the purpose of ensuring that the price at which a tobacco product is sold does not constitute a sales promotion device, by regulations, make such provision in relation to the price at which tobacco products or tobacco products of such a class as may be specified in the regulations may be sold as he or she considers appropriate.

(11) A person who sells or invites an offer to purchase a tobacco product in contravention of regulations under subsection (10) shall be guilty of an offence.”.

10.—Section 39 of the Principal Act is amended by the insertion of the following subsection: Amendment of section 39 of Principal Act.

“(1A) Regulations under this section may be made for the purpose of giving effect to Article 3 of the Directive of 2001.”.

11.—The Principal Act is amended by the substitution of the following section for section 40: Requirement to provide information on and test tobacco products.

“40.—(1) A manufacturer or importer of tobacco products shall provide the Office with such information (within such period as it may, from time to time by notice in writing, require) relating to—

- (a) the tobacco products concerned,
- (b) tobacco products of such a class as the Office may specify, or
- (c) tobacco products that are sold under such brand name as may be so specified,

including information relating to—

- (i) the composition or properties of tobacco products, and
- (ii) their sale or marketing.

(2) The Office may, by notice in writing, require the manufacturer or importer of a tobacco product to carry out such tests as are specified in the notice on such tobacco products manufactured by him or her as are so specified.

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(3) The manufacturer or importer of a tobacco product shall, when carrying out a test pursuant to a requirement under subsection (2), permit such person as may be specified in a notice under that subsection to attend at the place or places where such test is carried out and observe its being carried out.

(4) A manufacturer or importer who carries out a test pursuant to a notice under subsection (2) shall, not later than 14 days from his or her obtaining the results of the test, furnish the Office with a statement of those results which shall contain such information and be in such form as the Office may specify.

(5) A person who contravenes this section or a requirement under this section shall be guilty of an offence.”.

Publication of certain information, etc.

12.—The Principal Act is amended by the substitution of the following section for section 41:

“41.—(1) The Office may publish such information and such results of tests received under section 40 in such manner as it considers appropriate.

(2) Where the Office proposes to publish information or results of tests under subsection (1) it shall, not later than 21 days before so doing, notify the manufacturer or importer concerned, in writing, that it so proposes.

(3) The High Court may, if of the opinion that the publication of information or the results of tests in accordance with subsection (1) would result in the disclosure of a secret manufacturing process, direct the Office not to publish such information or results, upon application being made to the High Court in that behalf by the manufacturer or importer concerned.

(4) An application referred to in subsection (3) may be brought not later than 21 days from the receipt of the notification under subsection (2).

(5) The Office shall comply with a direction under subsection (3).

(6) Proceedings under subsection (3) shall be held *in camera*.”.

Prohibition on certain assertions in relation to tobacco products.

13.—The Principal Act is amended by the substitution of the following section for section 42:

“42.—(1) Where the packaging of a tobacco product or any printed material attached to or accompanying a tobacco product or such packaging bears an assertion that—

- (a) smoking does not cause life threatening diseases,
- (b) the smoking or consumption of one brand or class of tobacco product is less harmful than the smoking or consumption of others,
- (c) the smoking of tobacco products is not addictive,
- (d) filters attached to, or additives to or other ingredients of, a tobacco product render it less harmful than

tobacco products that do not have filters attached, S.13
or do not contain such additives or ingredients,

the manufacturer, importer and distributor of the tobacco
product concerned shall each be guilty of an offence.

(2) It shall be an offence for a person to sell by retail a
tobacco product where the package containing the product bears
an assertion referred to in subsection (1).”.

14.—The Principal Act is amended by the substitution of the following section for section 43: Offences relating to
sale by retail of
tobacco products.

“43.—(1) Subject to subsection (2), it shall be an offence for
a person to sell a tobacco product by retail, or cause a tobacco
product to be sold by retail, by means of self service.

(2) It shall be lawful for tobacco products to be sold by retail,
in accordance with regulations made by the Minister, by means
of a vending machine on licensed premises or the premises of a
registered club by such persons, or by persons belonging to such
classes of persons, as are specified in the regulations (being
persons who are registered under section 37 in respect of the
licensed premises concerned or the premises of the registered
club concerned).

(3) A person registered under section 37 (other than a person
to whom regulations under subsection (2) apply) shall ensure
that tobacco products sold by him or her are kept in a closed
container or dispenser that is not visible or accessible to any
person other than the first-mentioned person, or a person
employed by him or her in connection with the business of
selling goods by retail while so employed.

(4) A person registered under section 37 shall ensure that—

(a) the registration number in respect of him or her is
affixed to the container, dispenser or vending
machine, as the case may be,

(b) subject to paragraph (c) and the European Com-
munities (Requirements to Indicate Product Prices)
Regulations 2002 (S.I. No. 639 of 2002)—

(i) no notice, sign or display shall be displayed, and

(ii) no leaflet, circular, pamphlet or brochure shall be
issued to the public or given to a purchaser of a
product,

at any place, indicating that tobacco products may
be purchased at the premises concerned,

(c) a sign is displayed at the premises concerned—

(i) in such a manner and form as may be prescribed
by regulations made by the Minister,

(ii) informing the public that tobacco products may
be sold at those premises to persons who have
attained the age of 18 years, and

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(iii) providing such other information as may be so prescribed.

(5) (a) A person registered under section 37 may provide such information relating to a tobacco product sold by him or her to a member of the public intending to purchase a tobacco product as may be prescribed by regulations made by the Minister.

(b) Regulations under paragraph (a) may provide that the person registered under section 37 may—

(i) notwithstanding subsection (3), show the member of the public concerned one packet only of each tobacco product sold by him or her, or a reproduction thereof, or

(ii) show the member of the public concerned a pictorial list consisting of visual images of packets of the tobacco products sold by him or her, provided that—

(I) each such image is not greater in size than the size of the packet concerned,

(II) the list does not contain more than one image of the same product, and

(III) the list or each such image contains a warning in such form and of such a type as may be prescribed by those regulations.

(6) A person who contravenes subsection (3) or (4), or regulations under subsection (5), shall be guilty of an offence.

(7) For the purposes of subsection (1), a tobacco product shall be deemed to have been sold by means of self service where the purchaser was permitted to supply himself or herself, either upon or before payment, with the tobacco product concerned whether by means of the depositing of money or a token (intended to be used as a substitute for money) in a machine containing the tobacco product or otherwise.”.

Display of signs.

15.—The Principal Act is amended by the substitution of the following section for section 46:

“46.—(1) There shall be displayed at all times at all premises (in part of which the smoking of tobacco products is prohibited) to which members of the public have access, either as of right or with the permission of the occupier of those premises, a sign indicating clearly those parts of the premises in which smoking is permitted and those parts of the premises in which smoking is prohibited, and each such sign shall display the name of the occupier or other person in charge of the premises concerned and the name of the person to whom a complaint may be made by a member of the public for the time being present on the premises who observes another person smoking a tobacco product in a part of the premises in which smoking is prohibited.

(2) There shall be displayed at all times at all premises (in which the smoking of tobacco products is prohibited) to which members of the public have access, either as of right or with the

permission of the occupier of those premises, a sign indicating clearly that smoking is prohibited on those premises, and each such sign shall display the name of the occupier or other person in charge of the premises concerned and the name of the person to whom a complaint may be made by a member of the public for the time being present on the premises who observes another person smoking a tobacco product on those premises. S.15

(3) There shall be displayed at all times in a public service vehicle a sign stating that smoking is not permitted in that vehicle.

(4) Where there is a contravention of subsection (1) or (2), the occupier and person in charge of the premises concerned shall each be guilty of an offence.

(5) Where there is a contravention of subsection (3), the owner and person in charge of the public service vehicle concerned shall each be guilty of an offence.

(6) In this section ‘owner’, when used in relation to a mechanically propelled vehicle that is the subject of a hire-purchase agreement, means the person entitled to be in possession of the vehicle under the agreement.”.

16.—The Principal Act is amended by the substitution of the following section for section 47:

Amendment of
section 47 of
Principal Act.

“47.—(1) Subject to subsection (7), the smoking of a tobacco product in a specified place is prohibited.

(2) A person who contravenes subsection (1) shall be guilty of an offence.

(3) Where in relation to a specified place there is a contravention of subsection (1), the occupier, manager and any other person for the time being in charge of the specified place concerned shall each be guilty of an offence.

(4) In proceedings for an offence under this section, it shall be a defence for a person against whom such proceedings are brought to show that he or she made all reasonable efforts to ensure compliance with this section.

(5) The Tobacco (Health Promotion and Protection) Regulations 1995 (S.I. No. 359 of 1995) are revoked.

(6) This section has been enacted for the purposes of reducing the risk to and protecting the health of persons.

(7) This section shall not apply to—

(a) a dwelling,

(b) a prison,

(c) subject to paragraph (d), a place or premises, or a part of a place or premises, that is wholly uncovered by any roof, whether fixed or movable,

(d) an outdoor part of a place or premises covered by a fixed or movable roof, provided that not more than

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50 per cent of the perimeter of that part is surrounded by one or more walls or similar structures (inclusive of windows, doors, gates or other means of access to or egress from that part),

(e) a bedroom in—

(i) a premises registered under Part III of the Tourist Traffic Act 1939 in a register established and maintained under that Part,

(ii) a premises for the time being specified in a list published, or caused to be published, under section 9 of the Tourist Traffic Act 1957, or

(iii) any other premises in which a person carries on business, being a business that consists of or includes the provision, in those premises, of sleeping accommodation to members of the public,

(f) a room that, in furtherance of charitable objects, is used solely for the provision of living accommodation,

(g) in premises owned or occupied by a person whose main objects are the provision of education, a room that, in furtherance of those objects (other than objects relating to the provision of primary or secondary education), is used solely for the provision of living accommodation,

(h) a nursing home,

(i) a hospice,

(j) a psychiatric hospital, or

(k) the Central Mental Hospital.

(8) In this section—

‘college’ means a university, institute of technology or other establishment at which third level education is provided;

‘health premises’ means any hospital, sanatorium, home, laboratory, clinic, health care centre or similar premises required for the provision of services under the Health Acts 1947 to 2001 provided and maintained by a health board under section 38 of the Act of 1970;

‘hospice’ means an institution—

(a) for the maintenance of, and

(b) in which palliative care is provided to,

persons (a majority of whom are over 18 years of age) who suffer from illnesses or diseases which are active, progressive and advanced in nature and which are no longer curable by means of the administration of existing or available medical treatments, but does not include—

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- (i) an institution in which a majority of the persons being S.16
maintained are being treated for acute illnesses, or
- (ii) a maternity home within the meaning of the Regis-
tration of Maternity Homes Act 1934;

‘nursing home’ has the same meaning as it has in the Health
(Nursing Homes) Act 1990, except that it includes—

- (a) an institution to which paragraph (a), (e) or (g) of
section 2(1) of that Act applies, and
- (b) a premises in which a majority of the persons being
maintained are members of a religious order, or
priests or clergy of any religion;

‘place of work’ has the same meaning as it has in the Safety,
Health and Welfare at Work Act 1989;

‘prison’ means a place of custody administered by the Minister
for Justice, Equality and Law Reform, and includes—

- (a) Saint Patrick’s Institution,
- (b) a place provided under section 2 of the Prisons Act
1970,
- (c) a place specified under section 3 of the Prisons Act
1972, and
- (d) any part of a Garda Síochána station used for the
detention of persons;

‘psychiatric hospital’ means—

- (a) a mental institution within the meaning of the Mental
Treatment Acts 1945 to 1966, or
- (b) an approved centre under the Mental Health Act 2001;

‘Saint Patrick’s Institution’ has the same meaning as it has in the
Criminal Justice Act 1960;

‘school’ has the same meaning as it has in the Education Act
1998;

‘specified place’ means—

- (a) a place of work,
- (b) an aircraft, train, ship or other vessel, public service
vehicle, or a vehicle used for the carriage of
members of the public for reward other than a public
service vehicle, insofar as it is a place of work,
- (c) a health premises, insofar as it is a place of work,
- (d) a hospital that is not a health premises, insofar as it is
a place of work,
- (e) a school or college, insofar as it is a place of work,

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- (f) a building to which the public has access, either as of right or with the permission of the owner or occupier of the building, and which belongs to, or is in the occupation of—
- (i) the State,
 - (ii) a Minister of the Government,
 - (iii) the Commissioners of Public Works in Ireland, or
 - (iv) a body established by or under an Act of the Oireachtas,
- insofar as it is a place of work,
- (g) a cinema, theatre, concert hall or other place normally used for indoor public entertainment, insofar as it is a place of work,
- (h) a licensed premises, insofar as it is a place of work, or
- (i) a registered club, insofar as it is a place of work.”.

Amendment of
section 48 of
Principal Act.

17.—Section 48 of the Principal Act is amended by the substitution of the following subsections for subsections (4), (5), (6), (7), (8) and (9):

“(4) For the purposes of this Act, an authorised officer may—

- (a) subject to subsection (6), enter (if necessary by the use of reasonable force), at all reasonable times, any premises at which he or she has reasonable grounds for believing that—
 - (i) any trade, business or activity connected with the manufacture, processing, disposal, export, import, distribution, sale, storage, packaging or labelling of a tobacco product is or has been carried on, or
 - (ii) books, records or other documents (including documents stored in non-legible form) relating to such trade, business or activity are kept,
- (b) at all reasonable times enter (if necessary by the use of reasonable force) any specified place,
- (c) at such premises inspect and take copies of, any books, records, other documents (including documents stored in non-legible form) or extracts therefrom, which he or she finds in the course of his or her inspection,
- (d) remove any such books, records or documents from such premises and detain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,
- (e) carry out, or have carried out, such examinations, tests, inspections and checks of—
 - (i) the premises,

(ii) any tobacco product or any article or substance used in the manufacture, processing or storage of tobacco products, at the premises, or

(iii) any equipment, machinery or plant at the premises,

as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,

(f) require any person at the premises or the owner or person in charge of the premises and any person employed there to give to him or her such assistance and information and to produce to him or her such books, documents or other records (and in the case of documents or records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's power or procurement, as he or she may reasonably require for the purposes of his or her functions under this Act,

(g) take samples of any tobacco product or any article or substance used in the manufacture, processing or storage of tobacco products found at the premises for the purposes of analysis and examination,

(h) direct that such tobacco products found at the premises as he or she, upon reasonable grounds, believes contravene a provision of this Act not be sold or distributed or moved from the premises, without his or her consent,

(i) secure for later inspection any premises or part of any premises in which a tobacco product, substance or article is found or ordinarily kept, or records, books or documents are found or ordinarily kept, for such period as may reasonably be necessary for the purposes of his or her functions under this Act, or

(j) take possession of and remove from the premises for examination and analysis any tobacco product or any substance or article used in the manufacture, processing or storage of tobacco products found there, and detain them for such period as he or she considers reasonably necessary for the purposes of his or her functions under this Act.

(5) When performing a function under this Act, an authorised officer may, subject to any warrant under subsection (7), be accompanied by such number of authorised officers or members of the Garda Síochána as he or she considers appropriate.

(6) An authorised officer shall not enter a dwelling, other than—

(a) with the consent of the occupier, or

(b) in accordance with a warrant issued under subsection (7).

(7) Upon the application of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that—

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- (a) a tobacco product or any substance or article used in the manufacture, processing or storage of a tobacco product is to be found in any dwelling, or is being or has been subjected to any process or stored in any dwelling,
- (b) books, records or other documents (including documents stored in non-legible form) referred to in subsection (4)(a)(ii) are being stored or kept in any dwelling, or
- (c) a dwelling is occupied in whole or in part by an undertaking engaged in any trade, business or activity referred to in subsection (4)(a)(i),

issue a warrant authorising a named authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times, within one month of the date of issue of the warrant, to enter the dwelling and perform the functions of an authorised officer under paragraphs (c), (d), (e), (f), (g), (h), (i) and (j) of subsection (4).

(8) Any person who obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by this Act or a warrant under subsection (7) or impedes the exercise by the officer or member, as the case may be, of such power or fails or refuses to comply with a request or requirement of, or to answer a question asked by, the officer or member pursuant to this section, or in purported compliance with such request or requirement or in answer to such question gives information to the officer or member that he or she knows to be false or misleading in any material respect, shall be guilty of an offence.

(9) Where an authorised officer, upon reasonable grounds, believes that a person has committed an offence under this Act, he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(10) A statement or admission made by a person pursuant to a requirement under subsection (4)(f) shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under subsection (8)).”.

Taking of samples
by authorised
officers.

18.—The Principal Act is amended by the substitution of the following section for section 50:

“50.—(1) Where an authorised officer takes a sample of a tobacco product or a sample of any substance or article used in the manufacturing, processing or storage of tobacco products, he or she shall divide the sample into 3 approximately equal parts, and place each part into separate containers which he or she shall forthwith seal and mark in such a manner as to identify it as part of the sample taken by that authorised officer.

(2) Where an authorised officer has complied with subsection (1) he or she shall—

- (a) offer one of the sealed containers to the owner or person for the time being in charge or possession of the

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tobacco product, substance or article from which the S.18
sample concerned was taken,

- (b) retain one of the sealed containers, and
- (c) forward, or cause to be forwarded, one of the sealed containers to a designated laboratory for the purposes of analysis.

(3) Where a tobacco product, or any substance or article used in the manufacturing, processing or storage of a tobacco product is contained in a container and its division into parts is (for whatever reason) not practicable, an authorised officer, who wishes to take samples of such tobacco product, substance or article for the purposes of analysis, shall take possession of 3 such containers belonging to the same batch, and each such container shall be deemed to be part of a sample for the purposes of subsection (1), and the provisions of subsections (1) and (2) shall apply thereto accordingly.”.

19.—Section 34 of the Principal Act is repealed.

Repeal.

20.—(1) This Act may be cited as the Public Health (Tobacco) (Amendment) Act 2004.

Short title,
commencement and
collective citation.

(2) This Act shall come into operation on such day or days as the Minister for Health and Children may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

(3) The Public Health (Tobacco) Act 2002 and this Act may be cited together as the Public Health (Tobacco) Acts 2002 and 2004.

SCHEDULE

DIRECTIVE 2003/33/EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL OF 26 MAY 2003

*on the approximation of the laws, regulations and administrative
provisions of the Member States relating to the advertising and
sponsorship of tobacco products*

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Com-
munity, and in particular Articles 47(2), 55 and 95 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Economic and
Social Committee⁽²⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251
of the Treaty ⁽³⁾,

Whereas:

(1) There are differences between the Member States' laws, regu-
lations and administrative provisions on the advertising of tobacco
products and related sponsorship. Such advertising and sponsorship
in certain cases crosses the borders of the Member States or involves
events organised on an international level, and are activities to which
Article 49 of the Treaty applies. The differences in national legis-
lation are likely to give rise to increasing barriers to the free move-
ment between Member States of the products or services that serve
as the support for such advertising and sponsorship. In the case of
press advertising, certain obstacles have already been encountered.
In the case of sponsorship, distortions of the conditions of compe-
tition are likely to increase and have already been noted as regards
the organisation of certain major sporting and cultural events.

(2) Those barriers should be eliminated and, to this end, the rules
relating to the advertising of tobacco products and related sponsor-
ship should in specific cases be approximated. In particular, there is
a need to specify the extent to which tobacco advertising in certain
categories of publications is allowed.

(3) Article 95(3) of the Treaty requires the Commission, in its
proposals for the establishment and functioning of the Internal Mar-
ket concerning health, to take as a base a high level of protection.
Within their respective powers, the European Parliament and the
Council also seek to achieve this objective. The legislation of the
Member States to be approximated is intended to protect public
health by regulating the promotion of tobacco, an addictive product
responsible for over half a million deaths in the Community annually,
thereby avoiding a situation where young people begin smoking at
an early age as a result of promotion and become addicted.

⁽¹⁾ OJ C 270, E, 25.9.2001, p.97

⁽²⁾ OJ C 36, 8.2.2002, p.104

⁽³⁾ Opinion of the European Parliament of 20 November 2002 (not yet published in
the Official Journal) and Decision of the Council of 27 March 2003.

(4) The circulation in the Internal Market of publications such as periodicals, newspapers and magazines is subject to an appreciable risk of obstacles to free movement as a result of Member States' laws, regulations and administrative provisions which prohibit or regulate tobacco advertising in those media. In order to ensure free circulation throughout the Internal Market for all such media, it is necessary to limit tobacco advertising therein to those magazines and periodicals which are not intended for the general public such as publications intended exclusively for professionals in the tobacco trade and to publications printed and published in third countries, that are not principally intended for the Community market. SCH

(5) The laws, regulations and administrative provisions of the Member States relating to certain types of sponsorship for the benefit of tobacco products with cross-border effects give rise to an appreciable risk of distortion of the conditions of competition for this activity within the Internal Market. In order to eliminate these distortions, it is necessary to prohibit such sponsorship only for those activities or events with cross-border effects which otherwise may be a means of circumventing the restrictions placed on direct forms of advertising, without regulating sponsorship on a purely national level.

(6) Use of information society services is a means of advertising tobacco products which is increasing as public consumption and access to such services increases. Such services, as well as radio broadcasting, which may also be transmitted via information society services, are particularly attractive and accessible to young consumers. Tobacco advertising by both these media has, by its very nature, a cross-border character, and should be regulated at Community level.

(7) Free distribution of tobacco products is subject to restriction in several Member States, given its high potential to create addiction. Cases of free distribution have occurred in the context of the sponsorship of events having cross-border effects and should therefore be prohibited.

(8) Internationally applicable standards for the advertising of tobacco products and related sponsorship are the subject of negotiations for the drafting of a World Health Organisation Framework Convention on Tobacco Control. These negotiations are intended to create binding international rules complementary to those contained in this Directive.

(9) The Commission should draw up a report on the implementation of this Directive. Provision should be made in the relevant Community programmes to monitor the effects of this Directive on public health.

(10) Member States should take adequate and effective steps to ensure control of the implementation of measures adopted pursuant to this Directive in compliance with their national legislation, as provided for in Commission Communication to the European Parliament and the Council on the role of penalties in implementing Community Internal Market legislation and in the Council Resolution of 29 June 1995 on the effective uniform application of Community law and on the penalties applicable for breaches of Community law in the International Market ⁽¹⁾. Such means should include provision for intervention of persons or organisations with legitimate interest

⁽¹⁾ OJ C 188, 22.7.1995, p.1

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in the suppression of activities that are not in conformity with this Directive.

(11) The penalties provided for under this Directive should be without prejudice to any other penalty or remedy provided under national law.

(12) This Directive regulates the advertising of tobacco products in the media other than television, i.e. in the press and other printed publications, in radio broadcasting and in information society services. It also regulates the sponsorship, by tobacco companies, of radio programmes and of events or activities involving, or taking place in, several Member States or otherwise having cross-border effects, including the free or discounted distribution of tobacco products. Other forms of advertising, such as indirect advertising, as well as the sponsorship of events or activities without cross-border effects, fall outside the scope of this Directive. Subject to the Treaty, Member States retain the competence to regulate these matters as they deem necessary to guarantee the protection of human health.

(13) Advertising relating to medicinal products for human use is covered by Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use ⁽²⁾. Advertising relating to products intended for use in overcoming addiction to tobacco does not fall within the scope of this Directive.

(14) This Directive should be without prejudice to Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ⁽³⁾, which prohibits all forms of television advertising for cigarettes and other tobacco products. Directive 89/552/EEC provides that television programmes may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or the provision of services, the advertising of which is prohibited by that Directive. Teleshopping for tobacco products is also prohibited by Directive 89/552/EEC.

(15) The transnational character of advertising is recognised by Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising ⁽⁴⁾. Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products ⁽⁵⁾, contains provisions on the use of misleading descriptions on the labelling of tobacco products, the cross-border effect of which has also been recognised.

(16) Directive 98/43/EC of the European Parliament and of the Council of 6 July 1998 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products ⁽⁶⁾ was annulled by

⁽²⁾ OJ L 311, 28.11.2001, p.67

⁽³⁾ OJ L298, 17.10.1989, p.23 Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p.60)

⁽⁴⁾ OJ L 250, 19.9.1984 p.17. Directive as amended by Directive 97/55/EC of the European Parliament and of the Council (OJ L 290, 23.10.1997, p.18)

⁽⁵⁾ OJ L 194, 18.7.2001, p.26

⁽⁶⁾ OJ L 213, 30.7.1998, p.9

the Court of Justice in Case C-376/98 *Federal Republic of Germany v European Parliament and Council of the European Union* ⁽⁷⁾. References to Directive 98/43/EC should therefore be construed as references to this Directive.

(17) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of the proper functioning of the Internal Market to lay down rules on the advertising of tobacco products and related sponsorship. This Directive does not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.

(18) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure respect for the fundamental right of freedom of expression,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject-matter and scope

1. The objective of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to the advertising of tobacco products and their promotion:

- (a) in the press and other printed publications;
- (b) in radio broadcasting;
- (c) in information society services; and
- (d) through tobacco related sponsorship, including the free distribution of tobacco products.

2. This Directive is intended to ensure the free movement of the media concerned and of related services and to eliminate obstacles to the operation of the Internal Market.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) 'tobacco products' means all products intended to be smoked, sniffed, sucked or chewed inasmuch as they are made, even partly, of tobacco;
- (b) 'advertising' means any form of commercial communications with the aim or direct or indirect effect of promoting a tobacco product;
- (c) 'sponsorship' means any form of public or private contribution to any event, activity or individual with the aim or direct or indirect effect of promoting a tobacco product;

⁽⁷⁾ [2000] ECR I-8419

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(d) 'information society services' means services within the meaning of Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services ⁽¹⁾.

Article 3

Advertising in printed media and information society services

1. Advertising in the press and other printed publications shall be limited to publications intended exclusively for professionals in the tobacco trade and to publications which are printed and published in third countries, where those publications are not principally intended for the Community market.

Other advertising in the press and other printed publications shall be prohibited.

2. Advertising that is not permitted in the press and other printed publications shall not be permitted in information society services.

Article 4

Radio advertising and sponsorship

1. All forms of radio advertising for tobacco products shall be prohibited.

2. Radio programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of tobacco products.

Article 5

Sponsorship of events

1. Sponsorship of events or activities involving or taking place in several Member States or otherwise having cross-border effects shall be prohibited.

2. Any free distribution of tobacco products in the context of the sponsorship of the events referred to in paragraph 1 having the purpose or the direct or indirect effect of promoting such products shall be prohibited.

Article 6

Report

No later than 20 June 2008, the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive. That report shall be accompanied by any proposals for amendments to this Directive which the Commission deems necessary.

⁽¹⁾ OJ L 204, 21.7.1998, p.37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p.18)

Penalties and enforcement

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those rules to the Commission by the date specified in Article 10 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Those rules shall include provisions ensuring that persons or organisations which, under national legislation, can justify a legitimate interest in the suppression of advertising, sponsorship or other matters incompatible with this Directive, may take legal action against such advertising or sponsorship or bring such advertising or sponsorship to the attention of an administrative body competent either to pronounce on complaints or to institute the appropriate legal proceedings.

*Article 8***Free movement of products and services**

Member States shall not prohibit or restrict the free movement of products or services which comply with this Directive.

*Article 9***References to Directive 98/43/EC**

References to the annulled Directive 98/43/EC shall be construed as references to this Directive.

*Article 10***Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 July 2005 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 11***Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

[No. 6.]

*Public Health (Tobacco)
(Amendment) Act 2004.*

[2004.]

SCH

Article 12

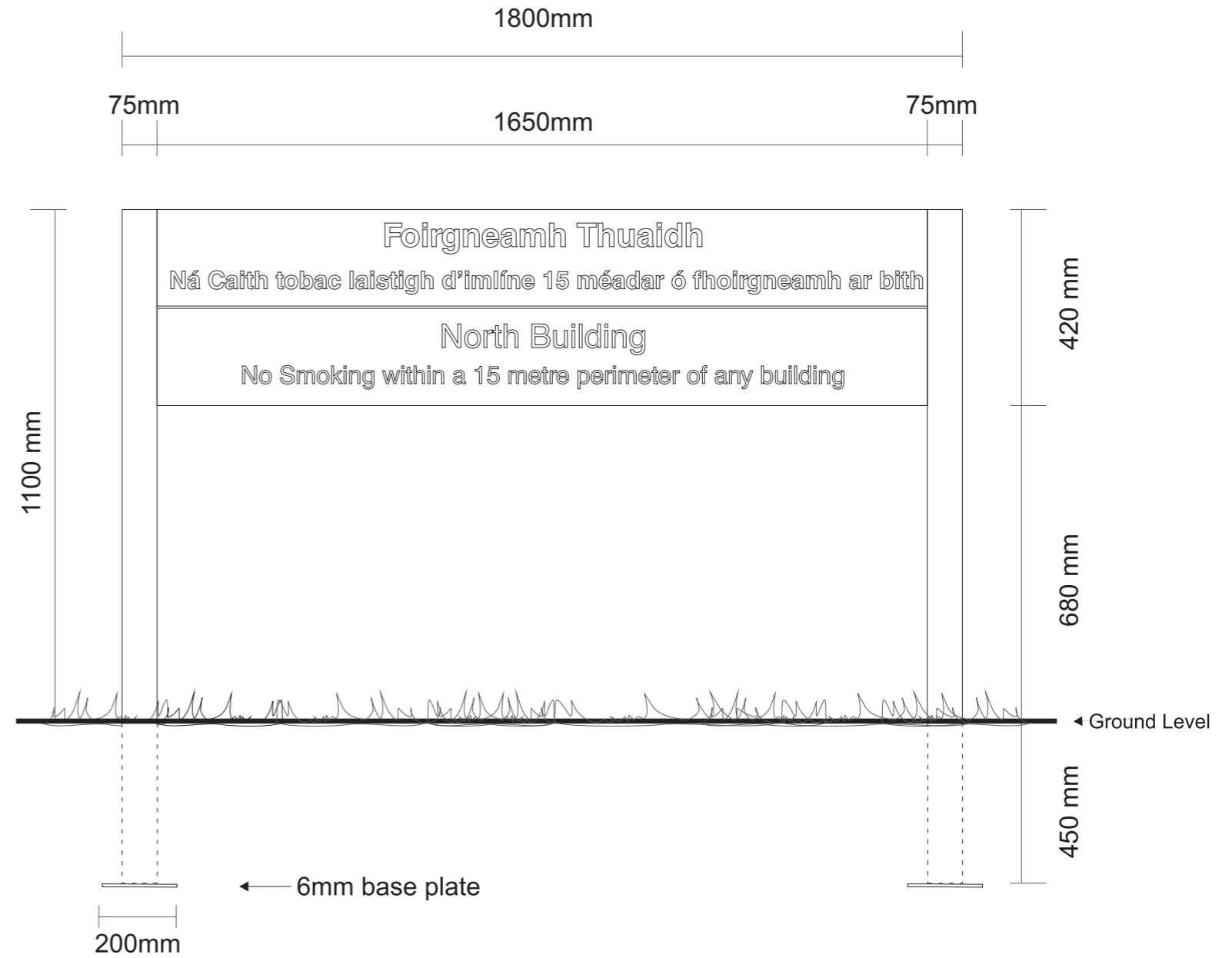
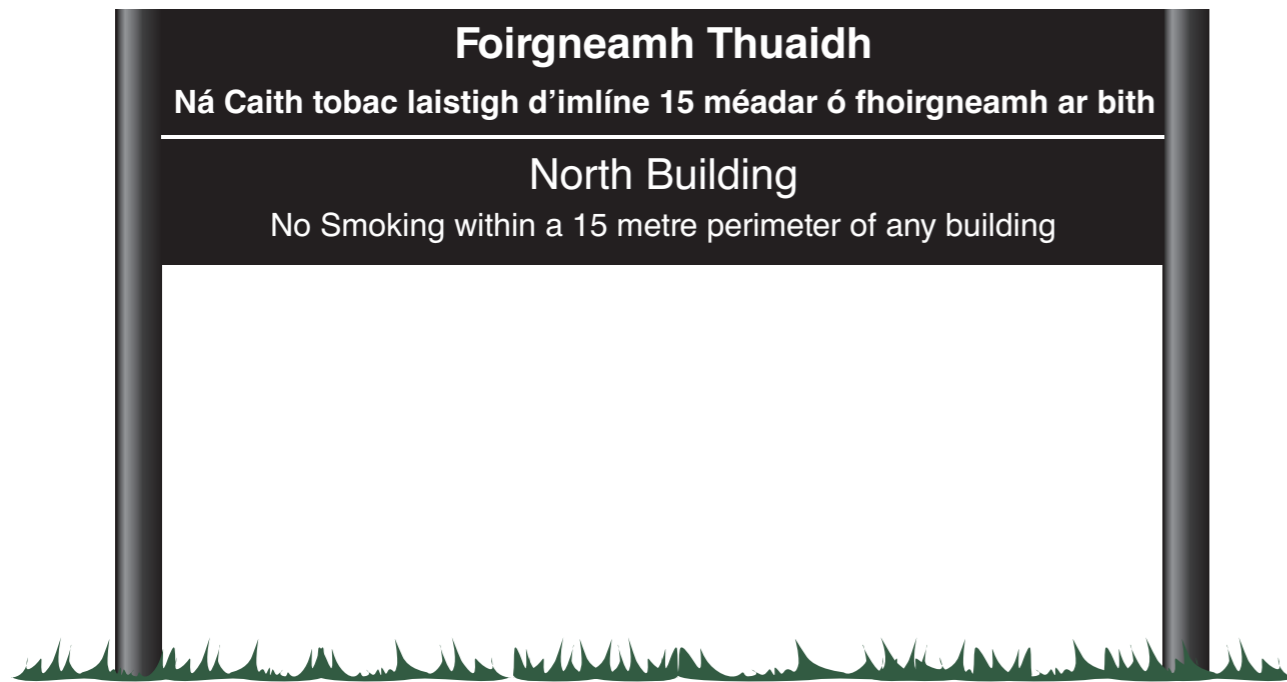
Addresses

This Directive is addressed to the Member States.

Done at Brussels, 26 May 2003.

*For the European Parliament
The President
P. COX*

*For the Council
The President
G. DRYS*



Note: Colours shown are an approximate indication only. Drawings may not be in any direct scale to each other

Project:	Dundalk D.I.T.	Drawing By	RK
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		Approved By	Owen Lennon



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No Smoking
within a 15 metre
perimeter
OF ANY BUILDING

800
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