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Explanatory Memorandum](#)



**AN BILLE SLÁINTE POIBLÍ (TOBAC), 2001
PUBLIC HEALTH (TOBACCO) BILL, 2001**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement.
2. Interpretation.
3. Orders and regulations.
4. Expenses.
5. Offences and penalties.
6. Proceedings.
7. Service of documents.
8. Repeals.

PART 2

TOBACCO CONTROL AGENCY

9. Establishment of Tobacco Control Agency.
10. Functions of Agency.
11. Conferral of additional functions on Agency.
12. Membership of Agency.
13. Conditions of office of members of Agency.
14. Casual vacancies among members of Agency.
15. Remuneration of members of Agency.

[No. 46 of 2001]

Section

16. Meetings and procedure.
17. Membership of either House of Oireachtas or European Parliament.
18. Disclosure by members of Agency of certain interests.
19. Disclosure by members of staff of certain interests.
20. Prohibition of unauthorised disclosure of confidential information.
21. Committees of Agency.
22. Tobacco Free Council.
23. Grants to Agency.
24. Accounts and audits.
25. Annual report and information.
26. Power to borrow.
27. Gifts.
28. Chief executive.
29. Staff.
30. Remuneration of staff.
31. Transfer of staff of Minister to Agency.
32. Superannuation.

PART 3

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

33. Prohibition of advertising of tobacco products.
34. Advertisements in foreign publications.
35. Advertisements directed at persons engaged in the sale etc. of tobacco products.
36. Prohibition of sponsorship.
37. Register of retailers of tobacco products.
38. Prohibition of certain marketing practices.
39. Specifications in relation to tobacco products.
40. Requirement to provide information on and test tobacco products.

Section

41. Publication of certain information etc.
 42. Prohibition on certain assertions in relation to tobacco products.
 43. Offences relating to sale by retail of tobacco products.
 44. Prohibition on sale of tobacco products to persons under 18 years of age.
 45. Display of signs.
 46. Prohibition or restriction on smoking of tobacco products.
 47. Authorised officer.
 48. Indemnification of authorised officers.
 49. Taking of samples by authorised officers.
 50. Laboratories.
 51. Evidence in proceedings for an offence.
 52. Forgery of documents.
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ACTS REFERRED TO

Companies Act, 1963	1963, No. 33
Companies Act, 1990	1990, No. 33
Companies Acts, 1963 to 1999	
Criminal Procedure Act, 1967	1967, No. 12
Education Act, 1998	1998, No. 51
European Parliament Elections Act, 1997	1997, No. 2
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 1996	
Intoxicating Liquor Act, 1988	1988, No. 16
Irish Medicines Board Act, 1995	1995, No. 29
Minimum Notice and Terms of Employment Acts, 1973 to 1991	
Organisation of Working Time Act, 1997	1997, No. 20
Petty Sessions (Ireland) Act, 1851	14 & 15 Vic., c. 93
Redundancy Payments Acts, 1967 to 1991	
Registration of Clubs Acts, 1904 to 2000	
Tobacco (Health Promotion and Protection) Act, 1988	1988, No. 24
Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978	1978, No. 27
Trade Marks Act, 1996	1996, No. 6
Unfair Dismissals Acts, 1977 to 1993	
Worker Protection (Regular Part-Time Employees) Act, 1991	1991, No. 5



AN BILLE SLÁINTE POIBLÍ (TOBAC), 2001
PUBLIC HEALTH (TOBACCO) BILL, 2001

BILL

entitled

5 AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A
BODY TO BE KNOWN AS THE TOBACCO CONTROL
AGENCY, TO PROVIDE FOR THE REGISTRATION OF
PERSONS ENGAGED IN THE BUSINESS OF SELLING
10 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 MAR-
15 KETING 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
20 SALES PROMOTION) ACT, 1978, AND THE TOBACCO
(HEALTH PROMOTION AND PROTECTION) ACT, 1988,
AND TO PROVIDE FOR MATTERS CONNECTED
THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

25 PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Public Health (Tobacco) Act, 2001. 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
30 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 regulations effected by *subsection (2)*
of that section.

35 2.—(1) In this Act, except where the context otherwise requires— Interpretation.

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

“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—

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(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,

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

15

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,

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and cognate words shall be construed accordingly;

“Agency” means the Tobacco Control Agency established under section 9;

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

“designated analyst” has the meaning assigned to it by section 50;

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“designated laboratory” has the meaning assigned to it by section 50;

“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;

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“health board” means a board established under section 4 of the Act of 1970 or the Eastern Regional Health Authority established under the Health (Eastern Regional Health Authority) Act, 1999;

“Minister” means the Minister for Health and Children;

“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;

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

“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;

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“specified place” has the meaning assigned to it by section 46;

“sponsorship” means the giving of financial or other assistance, or the causing of 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, or

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

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, and “sponsorship agreement” shall be construed
10 accordingly;

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

“tobacco product” means—

15 (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,

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

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

(2) In this Act—

25 (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
30 intended, and

(c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended whether before or after the commencement of this subsection, by or under any subsequent enactment.

35 (3) For the purposes of this Act, a company within the meaning of the Companies Acts, 1963 to 1999, 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
40 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 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
45 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

Orders and regulations.

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. 5

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 £1,500 (€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 or 47* shall be liable on summary conviction to a fine not exceeding £1,500 (€1,900), or to imprisonment for a term not exceeding 3 months, or to both. 10

(3) A person guilty of an offence under *section 33, 36, 37(14), 38, 39, 40, 42, 44 or 52* shall be liable—

(a) on summary conviction to a fine not exceeding £1,500 (€1,900), or to imprisonment for a term not exceeding 3 months, or to both, or 15

(b) on conviction on indictment to a fine not exceeding £100,000 (€125,000), or to imprisonment for a term not exceeding 2 years, or to both. 20

(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 (2)(a), (4)(a), (5)(a) or (7)(a), as may be appropriate, 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. 25

(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. 30
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(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 Agency. 40

(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.

(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 Agency or the health board concerned, as may be appropriate, forms 45

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.

5 (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.

10 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,

15 (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,

20 (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.—The Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978, and the Act of 1988 are hereby repealed. Repeals.

PART 2

25 TOBACCO CONTROL AGENCY

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

30 (2) The Agency shall be a body corporate with perpetual succession and an official seal and shall have power to sue, and may be sued, in its corporate name and, with the consent of the Minister, 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.

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

(4) The Agency shall have all such powers as are necessary for or incidental to the performance of its functions under this Act.

40 10.—(1) The general functions of the Agency shall be to— Functions of Agency.

45 (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, 5
- (c) make such recommendations to the Minister as it deems appropriate in relation to measures that the Agency 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, 10
- (e) to 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)*, 15
- (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, 20
- (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, 25
- (h) prepare and implement a plan for the coordination nationally of the activities of the Agency and of health boards in relation to this Act and the cooperation of the Agency and the health boards in the performance of their functions under this Act, 30
- (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, 35
 - (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, 40
- (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, 45 50

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

5 (l) furnish, whenever the Agency 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 Agency shall have all such powers as are necessary or expedient for the performance of its functions.

10 **11.**—(1) The Minister may, after consultation with such other Minister of the Government (if any) as he or she considers appropriate, by order confer on the Agency such additional functions connected with the functions for the time being of the Agency as he or she thinks fit, subject to such conditions (if any) as may be specified in
15 the order.

Conferral of additional functions on Agency.

(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.

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

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

Membership of Agency.

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

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

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

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

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

Conditions of office of members of Agency.

35 (2) A member of the Agency 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 Agency shall cease to be qualified for office and shall cease to hold office if—

(a) he or she is adjudicated bankrupt,

40 (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. 5

(4) A member of the Agency 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. 10

Casual vacancies among members of Agency.

14.—(1) If a member of the Agency 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 Agency to fill the casual vacancy so occasioned in the same manner as the member of the Agency who occasioned the casual vacancy was appointed. 15

(2) A person appointed to be a member of the Agency 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 Agency on the expiry of the said period. 20

Remuneration of members of Agency.

15.—The chairperson and ordinary members of the Agency shall be paid by the Agency such remuneration (if any) and such allowances for expenses as the Minister, with the approval of the Minister for Finance, may determine. 25

Meetings and procedure.

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

(2) At a meeting of the Agency— 30

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

(b) if and so long as the chairperson of the Agency is not present, or if that office is vacant, the members of the Agency who are present shall choose one of their number to be chairperson of the meeting. 35

(3) Every question at a meeting shall be determined by a majority of the votes of the members of the Agency 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. 40

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

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

(6) The quorum for a meeting of the Agency shall, unless the Minister otherwise directs, be 7. 45

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

Membership of either House of Oireachtas or European Parliament.

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

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

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

- 10 (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,

15 he or she shall thereupon stand seconded from employment by the Agency and shall not be paid by, or be entitled to receive from, the Agency 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
20 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
25 of the Agency or for employment in any capacity by the Agency.

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

30 18.—(1) Where at a meeting of the Agency any of the following matters arises, namely—

Disclosure by members of Agency of certain interests.

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

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

- 40 (i) at the meeting disclose to the Agency 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 Agency 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. 5

(3) Where at a meeting of the Agency a question arises as to whether or not a course of conduct, if pursued by a member of the Agency, 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. 10 15

(4) Where the Minister is satisfied that a member of the Agency 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 Agency. 20

Disclosure by members of staff of certain interests.

19.—(1) Where a member of the staff of the Agency 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 Agency is a party, that person shall— 25

(a) disclose to the Agency 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 Agency or members of the staff of the Agency in relation thereto, or 30

(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 Agency with the Agency. 35

(3) Where a person contravenes this section the Agency 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. 40

Prohibition of unauthorised disclosure of confidential information.

20.—(1) A person shall not disclose confidential information obtained by him or her while performing duties as a member or member of the staff of, a member of a committee established under *section 21*, or an adviser or consultant to, the Agency unless he or she is duly authorised by the Agency to do so. 45

(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 Agency to be confidential either as regards particular information or as regards information of a particular class or description, and

5 (b) proposals of a commercial nature or tenders submitted to the Agency by contractors, consultants or any other person.

21.—(1) The Agency 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 Agency.

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

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

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

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

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

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

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

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

(a) 12 shall be appointed by the Minister, and

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

40 (4) The Agency 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 Agency, and

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

(6) There may be paid by the Agency to members of the Council such allowances (if any) incurred by them as the Agency may, with the consent of the Minister and the Minister for Finance, determine. 5

(7) The Agency 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 Agency, with the consent of the Minister) falling to be decided by the Agency or in relation to the performance of any function (of such a class as may be determined by the Agency, with the consent of the Minister). 10

(8) The Agency may publish any advice or opinion given to it by the Council.

(9) The failure of the Agency 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 Agency or the performance of any function by the Agency shall not invalidate any decision taken or anything done by the Agency. 15

(10) The Agency 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. 20

(11) The Agency 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 Agency and the Minister may determine, are represented on the Council. 25

Grants to Agency.

23.—The Minister may, with the consent of the Minister for Finance, advance to the Agency out of moneys provided by the Oireachtas such sums as the Minister may determine. 30

Accounts and audits.

24.—(1) The Agency 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. 35

(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 Agency 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. 40 45

(3) In this section “cash flow statement” means an account showing the derivation of the income of the Agency and the purposes to which it is applied. 50

5 **25.—**(1) The Agency 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 and information.

(2) The Agency shall furnish the Minister with such information regarding the performance of its functions as the Minister may from time to time require.

10 **26.—**(1) The Agency may, for the purpose of providing for current expenditure, from time to time borrow money (whether on the security of the assets of the Agency or otherwise), but shall not do so without the consent of the Minister and the Minister for Finance. The aggregate at any time of borrowings under *subsection (1)* shall not exceed £200,000 (€250,000). Power to borrow.

15 **27.—**(1) The Agency may accept gifts of money, land or other property upon such trusts or conditions (if any) as may be specified by the donor. Gifts.

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

20 **28.—**(1) There shall be a chief executive officer of the Agency (who shall be known as and is referred to in this Act as the “chief executive”). Chief executive.

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

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

30 (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 Agency 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 Agency.

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

40 **29.—**(1) The Agency 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 Agency as it may from time to time determine. Staff.

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

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

Remuneration of staff.

30.—The Agency, 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 Agency shall comply with any directives with regard to such remuneration, allowances, terms or conditions which the Minister may give to the Agency with the consent of the Minister for Finance. 5
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Transfer of staff of Minister to Agency.

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 Agency shall be transferred to and become a member of the staff of the Agency on such day as may be specified by the Minister after consultation with the Agency. 15
20

(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 Agency be brought 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. 25
30

(3) In relation to persons transferred to the Agency 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 1991, the Worker Protection (Regular Part-Time Employees) Act, 1991, the Organisation of Working Time Act, 1997, the Minimum Notice and Terms of Employment Acts, 1973 to 1991, and the Unfair Dismissals Acts, 1977 to 1993. 35

Superannuation.

32.—(1) As soon as may be after its establishment, the Agency 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 Agency shall think fit. 40

(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. 45

(3) The Agency 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 50

of the Minister for Finance, be carried out by the Agency in accordance with its terms.

5 (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.

10 (6) No superannuation benefit shall be granted by the Agency 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.

15 (7) Where, in the period beginning on the commencement of *section 9* and ending immediately before the commencement of a 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 Agency under *section 31*, the benefit shall be calculated by the
20 Agency 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 Agency shall be aggregated with his or her previous pensionable service and shall be paid
25 by the Agency.

(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
30 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

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

33.—(1) Subject to *sections 34* and *35*, a person who advertises a tobacco product shall be guilty of an offence. Prohibition of advertising of tobacco products.

40 (2) It shall be an offence for a person to sell by retail or otherwise supply 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

45 (b) any trade description, designation, trademark, emblem, marketing image or logo by reference to which a tobacco product is marketed or sold.

34.—(1) The Agency 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
50 year) as is so specified, where it is satisfied that— Advertisements in foreign publications.

- (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, 5
 - (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 10
 - (ii) the publisher concerned to produce an edition of the publication for distribution solely or mainly in the State, 15
 - (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, 20
 - (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 25
 - (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. 30
- (3) An exemption under this section shall be in writing.
- (4) The Agency 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)*. 35
- (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; 40
- “publication” includes a newspaper, magazine or any other periodical.

5 **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) A person who is a party to a sponsorship agreement or who gives, or causes to be given, or who receives, financial or other assistance pursuant to such an agreement shall be guilty of an offence.

Prohibition of sponsorship.

10 (2) A person who engages in sponsorship shall be guilty of an offence.

37.—(1) The Agency 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”).

Register of retailers of tobacco products.

15 (2) The Agency 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 Agency to be registered in the register.

25 (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 Agency to be registered in the register.

30 (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,

35 (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.

40 (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 Agency, the Agency shall, subject to *subsection (9)*, enter in the register—

45 (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 Agency considers appropriate,

and a person shall, upon the Agency 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 Agency 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 Agency 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 product by (being the only premises in respect of which the person is for the time being so registered) the Agency 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 Agency 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 Agency 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

5 (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 Agency shall not during that period perform any function under *subsection (6)* in relation to his or her application.

10 (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—

15 (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),

20 from the commencement of this section and the Agency 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.

25 (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 Agency as soon as may be.

(12) The Agency 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.

30 (13) A person who, in purported compliance with *subsection (5)*, knowingly or recklessly provides information or a particular to the Agency 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.

35 (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.

40 (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.

45 (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 such premises (being premises in respect of which he or she is not registered under this section). 5
10

Prohibition of certain marketing practices.

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. 15

(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. 20

(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, 25

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. 30

(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, 35

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. 40

(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 45

(intended to be used as a substitute for money) for the purpose of its being—

(a) used as payment or part payment, or

(b) otherwise exchanged,

5 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 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 part payment 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.

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.

Specifications in relation to tobacco products.

(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.

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

Requirement to provide information on and test tobacco products.

(a) the tobacco products concerned,

(b) tobacco products of such a class as the Agency may specify,
or

(c) tobacco products that are sold under such brand name as may be so specified.

(2) The Agency 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 Agency with a statement of those results which shall contain such information and be in such form as the Agency may specify. 5

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

Publication of certain information etc.

41.—(1) The Agency may publish such information and such results of tests received under *section 40* in such manner as it considers appropriate. 10

(2) Where the Agency 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 Agency not to publish such information or results, upon application being made to the High Court in that behalf by the manufacturer or importer concerned. 15
20

(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 Agency shall comply with a direction under *subsection (3)*. 25

Prohibition on certain assertions in relation to tobacco products.

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

(a) bears an assertion that—

(i) smoking does not cause life threatening diseases, 30

(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, 35

(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, 40

the manufacturer, importer and distributor of the tobacco product concerned shall each be guilty of an offence. 45

(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)*.

5 **43.—(1)** Subject to *subsection (2)*, it shall be an offence for a person to sell 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.

10 (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).

15 (3) A person registered under *section 37* (other than a person to whom regulations under *subsection (2)* apply) shall ensure that—

20 (a) 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,

(b) the registration number in respect of him or her is affixed to the container or dispenser,

(c) subject to *paragraph (d)*—

25 (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,

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

35 (d) a sign is displayed at the premises concerned, in such manner and form as may be prescribed by regulations made by the Minister, informing the public that tobacco products may be sold at those premises to persons who have attained the age of 18 years.

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

40 (5) 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, 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.

(6) In this section—

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

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

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

44.—(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. 5

(2) In proceedings for an offence under *subsection (1)* it shall be a defence for the person against whom such proceedings are brought to show that he or she took all reasonable steps 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. 10

(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. 15

Display of signs.

45.—(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. 20 25

(2) There shall be displayed at all times in a public service vehicle a sign stating that smoking is not permitted in that vehicle. 30

(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. 35

(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. 40

Prohibition or restriction on smoking of tobacco products.

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

(a) an aircraft, train, public service vehicle, or a vehicle used for the carriage of members of the public for reward other than a public service vehicle, 45

(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—
- 5 (i) the State,
- (ii) a Minister of the Government,
- (iii) the Commissioners of Public Works in Ireland, or
- 10 (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 any other premises or place,
- 15 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 continue in operation as if made under this section.

- 20 (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.

25

(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 took all reasonable steps to ensure that there had been compliance with such provisions of regulations under this section as are alleged to have been contravened.

30

(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 1996, provided and maintained by a health board under section 38 of the Act of 1970;

35

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

40 **47.—**(1) The chief executive of the Agency may appoint one or more persons to be an authorised officer or authorised officers for the purposes of this Act. Authorised officer.

(2) The chief executive officer of a health board may, in relation to the functional area of that health board, appoint one or more persons 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— 5

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

(b) in the case of a person appointed under *subsection (2)*, by the health board concerned, 10

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— 15

(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 20

(ii) records relating to such trade, business or activity are kept, 25

(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, 30

(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, 35

(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 40

(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 45

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) 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 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,

(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

(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.

Indemnification of authorised officers.

48.—(1) Where the Agency is satisfied that an authorised officer appointed by it, or any other member of the staff of the Agency has discharged his or her duties in relation to the enforcement of the provisions of this Act in a *bona fide* manner, the Agency shall indemnify the authorised officer, or such member of the staff of the

Agency against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties.

5 (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.

10 49.—(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
15 by that authorised officer. Taking of samples by authorised officers.

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

20 (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

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

30 (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.

35 50.—(1) The Minister may, for the purposes of this Act designate, Laboratories.
by instrument in writing—

(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

40 (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”.

45 (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 49* by an authorised officer appointed by the Agency, the Agency, or 5

(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, the health board concerned. 10

Evidence in proceedings for an offence.

51.—(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— 15

(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 20

(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 matter stated in the certificate.

(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— 25

(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 30

(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. 35

(4) A certificate under this section shall be in such form as may be prescribed by regulations made by the Minister. 40

(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. 45

5 (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.

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

10 (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

15 (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—

20 (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”).

25 (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.



**AN BILLE SLÁINTE POIBLÍ (TOBAC), 2001
PUBLIC HEALTH (TOBACCO) BILL, 2001**

EXPLANATORY MEMORANDUM

Object of the Bill

The object of the Bill is to provide a new, more comprehensive and strengthened legislative basis for regulating and controlling the sale, marketing and smoking of tobacco products and for enforcing such controls.

The Bill contains three parts. The main provisions are summarised below.

Part 1 (Sections 1 — 8)

This Part contains standard provisions regarding short title, commencement and expenses of the Minister and definitions of key terms used in the Bill. Provision is also made for the laying of regulations made by the Minister before each House of the Oireachtas. This Part also includes offences and penalties provisions and provides for repeals.

Part 2 (Sections 9 — 32)

This Part provides for the establishment of the Tobacco Control Agency by the Minister and identifies its main functions. The Agency will generally advise and assist the Minister on tobacco control measures and will monitor and co-ordinate the implementation of such measures. The Agency will have a wide range of other functions relating to advising and assisting the Minister in relation to the control and regulation of the manufacture, sale, marketing and smoking of tobacco products. The Agency will have a chairman and eleven members and the Bill contains clear provisions in relation to the disclosure by members of the Agency and by its staff of certain interests and a prohibition of unauthorised disclosure of confidential information.

The Bill also provides for the establishment by the Agency of committees to advise it in relation to the performance of any or all of its functions and for the establishment of a Tobacco Free Council, drawn from a wide spectrum of interests, to be consulted by the Agency in relation to the performance by the Agency of its functions.

The existing Office of Tobacco Control, currently operating on an administrative basis, will continue to function pending the establishment of the Agency on a statutory basis.

Part 3 (Sections 33 — 52)

This Part provides for a comprehensive ban on tobacco advertising (with limited exceptions) and on all forms of sponsorship by the tobacco industry.

The Bill also provides for the establishment, by the Tobacco Control Agency, of a register of all persons who carry on, in whole or in part, the business of selling tobacco products by retail and for the charging of a fee by the Agency for such registration.

This Part of the Bill also includes a prohibition of certain marketing practices:

- the sale, by retail, of cigarettes in packets of less than 20 cigarettes,
- the manufacture, supply or sale of oral smokeless tobacco products,
- the sale of confectioneries, normally intended for children, which resemble a tobacco product,
- the sale or supply of tobacco products which do not bear a warning as may be prescribed by the Minister,
- the sale or supply of a tobacco product which does not bear a number in such form as may be prescribed 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, and
- certain sales promotion devices.

The Bill also provides that the Minister may prescribe standards and requirements to be complied with in the manufacture and sale of tobacco products. In addition, the Agency may require a manufacturer to provide information relating to the composition or properties of tobacco products and may also require the carrying out of tests on tobacco products. The Agency may, subject to certain requirements, publish such information and the results of such tests.

This Part also prohibits certain claims in relation to tobacco products and the sale of tobacco product by means of self service. A derogation from the general ban on the sale of tobacco products by self service will be made for tobacco vending machines in licensed premises which will be subject to regulations to be made under the Bill. There is a prohibition on the sale of tobacco products to persons under 18 years of age and a provision whereby the Minister can prohibit or restrict smoking in specified places.

The Bill contains comprehensive enforcement provisions and gives authorised officers powers of entry, inspection, the taking of records and samples and the carrying out of examinations and tests.

*An Roinn Sláinte agus Leanaí.
Iúil, 2001.*