



SEANAD ÉIREANN

**AN BILLE UM CHOSAINN SLÁINTE LEANAÍ AR
DHEATACH TOBAC, 2012
PROTECTION OF CHILDREN'S HEALTH FROM TOBACCO
SMOKE BILL 2012**

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM CHOSAINN SLÁINTE LEANAÍ AR DHEATACH TOBAC, 2012 —AN COISTE

PROTECTION OF CHILDREN'S HEALTH FROM TOBACCO SMOKE BILL 2012 —COMMITTEE STAGE

*Leasuithe
Amendments*

SECTION 2

1. In page 3, before section 2, to insert the following new section:

“Insertion of
sections 6A and 6B
into Principal Act.

2.—The Principal Act is amended by inserting, after section 6, the following:

“6A.—(1) Summary proceedings in respect of the contravention of the requirements of section 47(8)(j) may be brought and prosecuted by a member of the Garda Síochána.

(2) In respect of prosecutions relating to the alleged contravention of the requirements of section 47(8)(j)—

(a) it shall be presumed until the contrary is shown that a child who is a passenger in a mechanically propelled vehicle at the time of the commissioning of the alleged offence has not attained 18 years of age, and

(b) evidence of the age of a child at the time of the commissioning of the alleged offence shall be discharged by the production of an original birth certificate or passport in respect of the child.

(3) A member of the Garda Síochána who suspects that a person has contravened the requirements of section 47(8)(j) may—

(a) direct the driver of the mechanically propelled vehicle concerned to stop the vehicle,

(b) require the driver of the mechanically propelled vehicle to—

(i) state his or her name and home address,

(ii) state the names of all passengers in the vehicle, and

(iii) produce his or her driver licence, or learner permit,

(c) require a passenger in the mechanically propelled vehicle, who the member of the Garda Síochána reasonably suspects has contravened the requirements of section 47(8)(j), to state his or her name and home address.

[SECTION 2]

(4) A person who fails to comply with the direction of a member of the Garda Síochána, who is exercising powers under subsection (3), is guilty of an offence.

(5) Notwithstanding any other part of this Act, a person who is the sole occupant of a mechanically propelled vehicle shall not be in breach of the requirements of section 47(8)(j).

(6) In this section—

‘learner permit’ has the meaning assigned to it by section 35 of the Road Traffic Act 1961;

‘driving licence’ has the meaning assigned to it by section 22 of the Road Traffic Act 1961;

‘mechanically propelled vehicle’ has the meaning assigned to it by section 3 of the Road Traffic Act 1961;

‘child’ means any person under the age of eighteen.

6B.—(1) Where a person is alleged to have acted in contravention of the requirements of section 47(8)(j), or section 6A, he or she may be served with a fixed charge notice, which may be declared by the Minister of Transport by regulations, stating that—

- (a) the person is alleged to have committed the offence,
- (b) the person may, during the period of 21 days beginning on the date of the notice, make to the Garda Síochána at the address specified in the notice a payment of the prescribed amount (‘fixed charge’) specified in the notice, and
- (c) a prosecution in respect of an alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) Where a fixed charge notice is given under subsection (1)—

- (a) the person to whom the notice applies may, during the period specified in the notice, make to the Garda Síochána at the address specified in the notice the payment specified in the notice accompanied by the notice,
- (b) the Garda Síochána may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

[SECTION 2]

(3) In a prosecution for an offence referred to in subsection (1) the onus of proving that a payment pursuant to a notice under this section has been made shall lie on the defendant.

(4) The Minister for Transport may by regulations, and in consultation with the Minister for Health prescribe the amount of a fixed charge and may prescribe different amounts in relation to—

- (a) the number of persons in the mechanically propelled vehicle who have acted in contravention of the requirements of section 47(8)(j),
- (b) the number of passengers in the mechanically propelled vehicle, and,
- (c) the ages of the passengers in the mechanically propelled vehicle.

(5) In this section, ‘mechanically propelled vehicle’ has the meaning assigned to it by section 3 of the Road Traffic Act 1961.”.”

—*Senators John Crown, Mark Daly, Jillian van Turnhout.*

[*Acceptance of this amendment involves the deletion of section 2 of the Bill.*]

SECTION 4

2. In page 4, before section 4, to insert the following new section:

“Amendment of section 48 of the Principal Act to designate the driver of a vehicle, as a person responsible for whether other occupants of the vehicle smoke.

4.—The Principal Act is amended in subsection (3) of section 47, by substituting for “the occupier, manager and any other person for the time being in charge of the specified place” the following “the occupier, manager, the driver of a mechanically propelled vehicle, and any other person for the time being in charge of the specified place”.”.

—*Senators John Crown, Mark Daly, Jillian van Turnhout.*

[*Acceptance of this amendment involves the deletion of section 4 of the Bill.*]

SECTION 5

3. In page 4, before section 5, to insert the following new section:

“Offences.

5.—The Principal Act is amended in subsection (2) of section 5 by substituting for “section 37(13)” the following “section 6A, 37(13)”.”.

—*Senators John Crown, Mark Daly, Jillian van Turnhout.*

4. In page 4, before section 5, to insert the following new section:

“Inclusion of offences created by this Act among the fixed charge offences defined by the Road Traffic Acts.

6.—Section 103(1) of the Road Traffic Act 1961, as amended by section 14 of the Road Traffic Act 2006, is amended by replacing the text:

“and an offence standing so declared under paragraph (a) or (b) and each of the offences referred to in paragraphs (c), (d) and (e) are referred to in this section as a fixed charge offence.”,

with the following:

[SECTION 5]

“(f) an offence under section 47(8)(j), or section 6A, of the Public Health (Tobacco) Act of 2002, as amended, may be declared by the Minister by regulations, made after consultation with the Minister for Health to be fixed charge offences of a form described by section 6B of the Public Health (Tobacco) Act 2002, as inserted by the *Protection of Children’s Health from Tobacco Smoke Act 2013*,

and an offence standing so declared under paragraph (a) or (b) and each of the offences referred to in paragraphs (c), (d), (e) and (f) are referred to in this section as a fixed charge offence.””.

—*Senators John Crown, Mark Daly, Jillian van Turnhout.*

5. In page 4, after line 10, to insert the following subsection:

“(2) This Act comes into operation on such day or days, as the Minister may by order appoint.”.

—*Senators John Crown, Mark Daly, Jillian van Turnhout.*