



**An Bille Sláinte Poiblí (Toitíní Leictreonacha agus
Luibhthoitíní), 2019**
**Public Health (Electronic Cigarettes and Herbal
Cigarettes) Bill 2019**

Meabhrán Mínitheach
Explanatory Memorandum



**AN BILLE SLÁINTE POIBLÍ (TOITÍNÍ LEICTREONACHA
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PUBLIC HEALTH (ELECTRONIC CIGARETTES AND HERBAL
CIGARETTES) BILL 2019**

EXPLANATORY MEMORANDUM

The European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 (S.I. No. 271 of 2016) (“Regulations of 2016”) give effect to Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products— (“Directive of 2014”). However, while recitals to the Directive of 2014 recommend that an age limit be imposed on the sale or supply of tobacco or related products to young persons, that matter is left up to Member States to deal with by their own domestic law. The sale of tobacco products to persons under the age of 18 years is prohibited by section 45 of the Public Health (Tobacco) Act 2002. However, no provision is provided to prohibit the sale or supply of “related products” (electronic cigarettes, refill containers and herbal cigarettes) to young persons. This Bill proposes to deal with that lacuna.

Section 1 of the Bill provides definitions of words and phrases used in the Bill in different sections and is a standard form section used in Bills. In the Bill “electronic cigarette”, “refill container” and “herbal cigarette” follow definitions used in Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 (**Directive of 2014**) on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products.

The Directive defines key provisions as follows:

“electronic cigarette” means a product that can be used for consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank. Electronic cigarettes can be disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges;

“refill container” means a receptacle that contains a nicotine-containing liquid, which can be used to refill an electronic cigarette;

“herbal product for smoking” means a product based on plants, herbs or fruits which contains no tobacco and that can be consumed via a combustion process;

and the definition of “herbal cigarettes” in the Bill is defined as having the same meaning as has

“herbal product for smoking” in the Directive.

Section 2 of the Bill makes it an offence for a person to sell an electronic cigarette, refill container or herbal cigarette by retail, or supply such a cigarette or container, to, or invite an offer to purchase such a cigarette by, a person who has not attained the age of 18 years. This provision is similar to that provided for tobacco by section 45 of the Public Health (Tobacco) Act 2002 (Act of 2002).

Sections 3 and 4 of the Bill propose to provide penalties for an offence and for proceedings relating to an offence under this proposed Act. This is along the lines provided for tobacco by sections 5 and 6 of the Act of 2002. The penalties provided by section 3(1) take account of the Fines Act 2010.

Section 5 of the Bill extends the application of section 45 (functions of authorised officers) of the Act of 2002 to enable authorised officers under that Act to act in respect of matters dealt with by this proposed Act (i.e. sale of electronic cigarettes and herbal cigarettes to persons under the age of 18). This is proposed to be done by further extending the application of section 45 of the Act of 2002, as provided for by the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 (S.I. No. 271 of 2016) (Regulations of 2016), which otherwise enables authorised officers under the Act of 2002 to act in respect of electronic cigarettes, refill containers and herbal cigarettes to the extent that provided for by those Regulations in the context of the Directive of 2014.

At subsection (3), this section also provides for the indemnification by the Health Service Executive of authorised officers exercising functions under this proposed Act in the same manner as otherwise provided for by Regulation 39 of the Regulations of 2016 and by section 49 (as amended) of the Act of 2002 in relation that Act.

Section 6:

Subsection (1) is a standard form provision providing a short title.

Subsection (2) provides that the proposed Act comes into operation on the day following its passing.

Deputy Alan Farrell

Samhain, 2019.