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Act no.6 of 2004

Number 6 of 2004

PUBLIC HEALTH (TOBACCO) (AMENDMENT) ACT 2004

ARRANGEMENT OF SECTIONS

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Public Health (Tobacco)
(Amendment) Act 2004.

[2004.]

SCHEDULE

Directive 2003/33/EC of the European Parliament and of the
Council of 26 May 2003

Acts Referred to

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

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PUBLIC HEALTH (TOBACCO) (AMENDMENT) ACT 2004

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

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1. In this Act "Principal Actí means the Public Health Definition. (Tobacco) Act 2002.

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

(a) the deletion of the definition of "advertisingí,

(b) the insertion of the following definitions:

advertisingí has the same meaning as it has in the Directive of 2003, and cognate words shall be construed accordingly;

¹ OJ No. L 194, 18.7.2001, p.26

² OJ No. L 152, 20.6.2003, p.16

³ OJ No. L 22, 25.1.2003, p.31

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

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

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

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

and

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

“‘tobacco product’ means—

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

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

Amendment of
section 5 of
Principal Act.

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

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

- (b) the insertion of the following subsection:

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

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

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

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

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

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

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

- (a) subsection (3), and
- (b) subsection (5) of section 47 (inserted by section 16 of the Public Health (Tobacco) (Amendment) Act 2004),

continue in force after such commencement.

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

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

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

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

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

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

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

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

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

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

Advertisements directed at persons engaged in the sale, etc., of tobacco products.

6.—The Principal Act is amended by the substitution of the following section for section 35:

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

- (a) is—
- (i) printed and published, and
 - (ii) primarily intended for sale or distribution, in a state other than a Member State of the European Communities, or
- (b) is directed solely at persons who carry on, in whole or in part, the business of selling or distributing tobacco products.”.

Prohibition of sponsorship.

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

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

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

- (a) use, display or advertising by the person, or at the event or activity concerned,
- (b) association with the person, event or activity, or
- (c) promotion,

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

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

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

Register of retailers of tobacco products.

8.—The Principal Act is amended by the substitution of the following section for section 37:

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

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

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

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

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

(5) An application under this section shall—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Prohibition of certain marketing practices.

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

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

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

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

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

(a) import,

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

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

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

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

(a) import,

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

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

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

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

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

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

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

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

for a tobacco product.

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

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

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

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

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

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

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

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

including information relating to—

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

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

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

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

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

Publication of certain information, etc.

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

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

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

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

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

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

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

Prohibition on certain assertions in relation to tobacco products.

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

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

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

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

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

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

14.—The Principal Act is amended by the substitution of the
following section for section 43:

Offences relating to
sale by retail of
tobacco products.

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

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

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

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

- (a) the registration number in respect of him or her is
affixed to the container, dispenser or vending
machine, as the case may be,
- (b) subject to paragraph (c) and the European Com-
munities (Requirements to Indicate Product Prices)
Regulations 2002 (S.I. No. 639 of 2002)—
 - (i) no notice, sign or display shall be displayed, and
 - (ii) no leaflet, circular, pamphlet or brochure shall be
issued to the public or given to a purchaser of a
product,

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

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

- (i) in such a manner and form as may be prescribed
by regulations made by the Minister,
- (ii) informing the public that tobacco products may
be sold at those premises to persons who have
attained the age of 18 years, and

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

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

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

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

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

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

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

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

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

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

Display of signs.

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

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

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

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

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

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

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

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

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

Amendment of
section 47 of
Principal Act.

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

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

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

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

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

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

(7) This section shall not apply to—

(a) a dwelling,

(b) a prison,

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

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

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

- (e) a bedroom in—
 - (i) a premises registered under Part III of the Tourist Traffic Act 1939 in a register established and maintained under that Part,
 - (ii) a premises for the time being specified in a list published, or caused to be published, under section 9 of the Tourist Traffic Act 1957, or
 - (iii) any other premises in which a person carries on business, being a business that consists of or includes the provision, in those premises, of sleeping accommodation to members of the public,
- (f) a room that, in furtherance of charitable objects, is used solely for the provision of living accommodation,
- (g) in premises owned or occupied by a person whose main objects are the provision of education, a room that, in furtherance of those objects (other than objects relating to the provision of primary or secondary education), is used solely for the provision of living accommodation,
- (h) a nursing home,
- (i) a hospice,
- (j) a psychiatric hospital, or
- (k) the Central Mental Hospital.

(8) In this section—

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

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

‘hospice’ means an institution—

- (a) for the maintenance of, and
- (b) in which palliative care is provided to,

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

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

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

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

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

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

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

‘psychiatric hospital’ means—

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

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

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

‘specified place’ means—

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

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

Amendment of section 48 of Principal Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) with the consent of the occupier, or

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

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

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

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

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

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

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

Taking of samples
by authorised
officers.

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

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

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

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

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

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

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

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

Repeal.

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

Short title,
commencement and
collective citation.

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

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

SCHEDULE

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

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

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

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

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

After consulting the Committee of the Regions,

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

Whereas:

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

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

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

⁽¹⁾ OJ C 270, E, 25.9.2001, p.97

⁽²⁾ OJ C 36, 8.2.2002, p.104

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

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

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

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

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

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

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

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

⁽¹⁾ OJ C 188, 22.7.1995, p.1

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

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

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

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

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

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

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

⁽²⁾ OJ L 311, 28.11.2001, p.67

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

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

⁽⁵⁾ OJ L 194, 18.7.2001, p.26

⁽⁶⁾ OJ L 213, 30.7.1998, p.9

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

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

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

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject-matter and scope

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

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

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

Article 2

Definitions

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

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

⁽⁷⁾ [2000] ECR I-8419

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

Article 3

Advertising in printed media and information society services

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

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

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

Article 4

Radio advertising and sponsorship

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

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

Article 5

Sponsorship of events

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

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

Article 6

Report

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

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

Penalties and enforcement

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

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

Article 8

Free movement of products and services

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

Article 9

References to Directive 98/43/EC

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

Article 10

Implementation

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

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

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

Article 11

Entry into force

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

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Article 12

Addresses

This Directive is addressed to the Member States.

Done at Brussels, 26 May 2003.

For the European Parliament
The President
P. COX

For the Council
The President
G. DRYS

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