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*Number 23 of 2009*

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**PUBLIC HEALTH (TOBACCO) (AMENDMENT) ACT 2009**

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ARRANGEMENT OF SECTIONS

Section

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[No. 23.]

*Public Health (Tobacco)  
(Amendment) Act 2009.*

[2009.]

ACTS REFERRED TO

European Communities Act 1972	1972, No. 27
Finance Act 2001	2001, No. 7
Finance Act 2005	2005, No. 5
Public Health (Tobacco) Act 2002	2002, No. 6
Public Health (Tobacco) (Amendment) Act 2004	2004, No. 6
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Number 23 of 2009

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**PUBLIC HEALTH (TOBACCO) (AMENDMENT) ACT 2009**

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AN ACT TO AMEND THE PUBLIC HEALTH (TOBACCO) ACT 2002; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

[16th July, 2009]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Definitions.

“Act of 2004” means the Public Health (Tobacco) (Amendment) Act 2004;

“Principal Act” means the Public Health (Tobacco) Act 2002.

2.—Section 2 of the Principal Act is amended, in subsection (1), by the insertion of the following definition:

Amendment of section 2 of Principal Act.

“ ‘cigarettes’ has the same meaning as it has in Chapter 3 of Part 2 of the Finance Act 2005;”.

3.—The Principal Act is amended by the insertion of the following section:

Order of court consequent upon conviction of an offence.

“5A.—(1) Subject to subsection (2), if a person who is registered under section 37 (amended by *section 5 of the Public Health (Tobacco) (Amendment) Act 2009*) 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, the court shall, in addition to any fine or term of imprisonment imposed by the court in respect of the offence, order that the registration of the person shall cease to have effect—

- (a) in the case of a summary conviction of the offence, for such period as is specified in the order not exceeding 3 months, or
- (b) in the case of a conviction on indictment of the offence, for such period as is specified in the order not exceeding 12 months.

(2) If a person, who is registered under section 37 in respect of more than one premises, is convicted of an offence under this Act and the offence relates to or was committed on one of those premises, the court shall, in addition to any fine or term of imprisonment imposed by the court in respect of the offence, order that the registration of the person in relation to that premises shall cease to have effect—

(a) in the case of a summary conviction of the offence, for such period as is specified in the order not exceeding 3 months, or

(b) in the case of a conviction on indictment of the offence, for such period as is specified in the order not exceeding 12 months.

(3) If a person who has made an application under subsection (3) of section 37 is convicted of an offence under this Act before the Office has registered the person under that section, the court shall, in addition to any fine or term of imprisonment imposed by the court in respect of the offence, order that the person shall not be eligible to be so registered until the expiration—

(a) in the case of a summary conviction of the offence, of such period as is specified in the order not exceeding 3 months, or

(b) in the case of a conviction on indictment of the offence, of such period as is specified in the order not exceeding 12 months.

(4) If a person who has made an application under subsection (4) of section 37 is convicted of an offence under this Act during the period of 15 months after such commencement but before the Office has registered the person under that section, the court shall, in addition to any fine or term of imprisonment imposed by the court in respect of the offence, order that the person—

(a) is prohibited from carrying on the selling of tobacco products by retail for such period as is specified in the order not exceeding the unexpired part of the first-mentioned period, and

(b) shall not be eligible to be so registered until the expiration of such further period as is specified in the order,

provided that the aggregate of the periods referred to in paragraphs (a) and (b) specified in the order shall—

(i) in the case of a summary conviction of the offence, not exceed 3 months, and

(ii) in the case of a conviction on indictment of the offence, not exceed 12 months.

(5) If a person (other than a person who has made an application under subsection (4) of section 37), who immediately before the commencement of the said section 37 carried on, in whole or in part, the business of selling tobacco products by retail, is convicted of an offence under this Act during the period of 3 months after such commencement, the court shall, in

addition to any fine or term of imprisonment imposed by the court in respect of the offence, order that the person—

- (a) is prohibited from carrying on the selling of tobacco products by retail for such period as is specified in the order not exceeding the unexpired part of the first-mentioned period, and
- (b) shall not be eligible to be registered under that section until the expiration of such further period as is specified in the order,

provided that the aggregate of the periods referred to in paragraphs (a) and (b) specified in the order shall—

- (i) in the case of a summary conviction of the offence, not exceed 3 months, and
- (ii) in the case of a conviction on indictment of the offence, not exceed 12 months.

(6) A period specified in an order under this section shall not commence until—

- (a) the expiration of any period during which the conviction may be appealed, or
- (b) where the conviction is appealed and affirmed, the date of the decision of the court before which the appeal is heard affirming the conviction.

(7) A person in respect of whom an order under subsection (1) is made shall, during the period specified in the order, be deemed not to be registered under section 37.

(8) A person in respect of whom an order under subsection (2) is made shall, during the period specified in the order, be deemed not to be registered under section 37 in respect of the premises to which the offence concerned related or on which the offence was committed.”.

4.—The Principal Act is amended by the substitution of the following section for section 35 (inserted by section 6 of the Act of 2004):

Exemptions from prohibition on advertising of tobacco products.

“35.—(1) The advertising of a tobacco product in a publication that is—

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

is not prohibited.

(2) Section 33A (inserted by section 6 of the Public Health (Tobacco) (Amendment) Act 2004) shall not apply to the advertising of a tobacco product in premises specified in a certificate under subsection (2) of section 44.

- (3) (a) Section 33A shall not apply to the display in duty free premises situated in an airport of a pictorial list consisting of visual images of packets of the tobacco products on sale at those premises, 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 is specified in column 2 of Part 1 of Schedule 1 to the European Communities (Manufacture, Presentation and Sale of Tobacco Products) Regulations 2003 (S.I. No. 425 of 2003).
- (b) In this subsection ‘duty free premises’ means a tax warehouse within the meaning of Chapter 1 of Part 2 of the Finance Act 2001 in which tobacco products are sold by retail.

(4) Regulation 8 of the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations 1991 (S.I. No. 326 of 1991) is amended by the deletion of subparagraph (c) of paragraph (2).”.

Amendment of  
section 37 of  
Principal Act.

5.—Section 37 (inserted by section 8 of the Act of 2004) of the Principal Act is amended by—

- (a) the deletion of subsections (7) and (8),
- (b) the substitution of the following subsections for subsections (9) and (10):

“(9) Where a person, who has made an application under subsection (3) is convicted of an offence under this Act before the Office has registered the person under this section, that person shall not be eligible to be registered under this section before the expiration of the period specified in the order under subsection (3) of section 5A (inserted by section 3 of the *Public Health (Tobacco) (Amendment) Act 2009*) made by the court upon conviction of the offence, and the Office shall, during that period, not perform any function under subsection (6) in relation to his or her application.

(10) Where a person who has made an application under subsection (4) is convicted of an offence under this Act during the period of 15 months after the commencement of this section but before the Office has registered the person under this section, he or she shall not be eligible to be registered under this section before the expiration of the periods specified in an order under subsection (4) of section 5A made by the court upon conviction of the offence, and the Office shall, during the periods so specified, not perform any function under subsection (6) in relation to his or her application.”,

- (c) the insertion of the following subsection:

“(10A) Where a person who—

- (a) immediately before the commencement of this section carried on, in whole or in part, the business of selling tobacco products by retail, and
- (b) has not made an application under subsection (4),

is convicted of an offence under this Act during the period of 3 months after the commencement of this section, he or she shall not be eligible to be registered under this section before the expiration of the periods specified in an order under subsection (5) of section 5A made by the court upon conviction of the offence, and the Office shall, during the periods so specified, not perform any function under subsection (6) in relation to any application made by him or her to be registered under this section.”,

and

- (d) the substitution of the following subsection for subsection (15):

- “(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) Subject to any order under subsection (4) or (5) of section 5A, 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) Subject to any order under subsection (4) or (5) of section 5A, it shall be lawful for a person to whom paragraph (b) applies and who has made an application under subsection (4) 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 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.”.

6.—Section 38 (inserted by section 9 of the Act of 2004) of the Principal Act is amended by—

Amendment of  
section 38 of  
Principal Act.

- (a) the substitution of the following subsection for subsection (6):

“(6) Regulations under subsection (4) or (5) may be made for the purpose of—

- (a) giving effect to Article 5 of the Directive of 2001,
- (b) giving further effect to Commission Decision No. 2003/641/EC of 5 September 2003<sup>1</sup> on the use of colour photographs or other illustrations as health warnings on tobacco products, or
- (c) giving effect or further effect to any act adopted by an institution of the European Communities amending the said Article 5 or the Commission Decision referred to in paragraph (b).”

and

- (b) the insertion of the following subsection:

“(12) In this section ‘European Communities’ has the same meaning as it has in the European Communities Act 1972.”.

Amendment of section 44 of Principal Act.

**7.**—Section 44 of the Principal Act is amended by the substitution of the following subsection for subsection (1):

“(1) This section shall apply to a person who—

- (a) carries on, in whole, the business of selling by retail—
  - (i) tobacco products, or
  - (ii) products used for the purposes of or in connection with smoking tobacco products,

unless he or she is a subsidiary of a company that does not carry on in whole such business, or

- (b) carries on, in part, the business of selling tobacco products by retail and does not carry on any business that consists, in whole or in part, of selling cigarettes.”.

Short title and collective citation.

**8.**—(1) This Act may be cited as the Public Health (Tobacco) (Amendment) Act 2009.

(2) The Public Health (Tobacco) Acts 2002 and 2004 and this Act may be cited together as the Public Health (Tobacco) Acts 2002 to 2009.

<sup>1</sup> OJ No. L226 of 10.09.2003, p.24