Changes to Legislation: as of 3 November 2026, there are changes to this Act which have not been implemented by the Revised Acts editorial team, see highlighted entries **here**. Note that some amendments may not be in force until commenced by a commencement order or other provision.



Number 35 *of* 2023

PUBLIC HEALTH (TOBACCO PRODUCTS AND NICOTINE INHALING PRODUCTS) ACT 2023

REVISED

Updated to 2 February 2026

This Revised Act is an administrative consolidation of the *Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Credit Review Act 2026* (1/2026), enacted 3 February 2026, and all statutory instruments up to and including the *Gambling Regulation Act 2024 (Commencement) Order 2026* (S.I. No. 31 of 2026), made 3 February 2026, were considered in the preparation of this Revised Act.

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Number 35 *of* 2023

PUBLIC HEALTH (TOBACCO PRODUCTS AND NICOTINE INHALING PRODUCTS) ACT 2023

REVISED

Updated to 2 February 2026

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Number 35 *of* 2023

PUBLIC HEALTH (TOBACCO PRODUCTS AND NICOTINE INHALING PRODUCTS) ACT 2023

REVISED

Updated to 2 February 2026

An Act to provide for the licensing of the sale by retail of tobacco products and nicotine inhaling products; to provide for the establishment and maintenance of a register of licences issued under and in accordance with the Act; to provide for certain related offences; and for those and other purposes, to provide for the amendment of the Public Health (Tobacco) Act 2002; and to provide for the consequential amendment of certain other enactments and the revocation of certain statutory instruments; and to provide for related matters.

[13*th December*, 2023]

Be it enacted by the Oireachtas as follows:

PART 1

Preliminary and General

Short title, collective citation and commencement

1. (1) This Act may be cited as the Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023.

(2) The Public Health (Tobacco) Acts 2002 to 2015 and this Act may be cited as the Public Health (Tobacco) Acts 2002 to 2023.

(3) This Act shall come into operation on such day or days as the Minister 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 and different provisions.

Interpretation

2. In this Act—

"Act of 1997" means the Taxes Consolidation Act 1997;

"Act of 2002" means the Public Health (Tobacco) Act 2002;

"Act of 2015" means the Public Health (Standardised Packaging of Tobacco) Act 2015;

"applicant" has the meaning assigned to it by *section 11*;

"child" means a person who is under the age of 18 years;

"electronic cigarette" has the same meaning as it has in Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014[1] 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 and repealing Directive 2001/37/EC;

"Executive" means the Health Service Executive;

[1] OJ No. L 127, 29.4.2014, p. 1.

"licence" means a licence issued in accordance with *section 13*;

"licence number" means a number allocated to a licence by the Executive in accordance with *section 13*;

"licensee" means a person to whom a licence is issued;

"Minister" means the Minister for Health;

"nicotine inhaling product" means—

(a) an electronic cigarette, or

(b) any other product consisting of—

(i) a device (other than tobacco, cigarette paper or a device which is intended to enable the consumption of lit tobacco) which is intended to enable a relevant substance to be inhaled through a mouth piece (irrespective of whether the device would also enable any other substance to be so inhaled),

(ii) a cartridge which—

(I) may contain a relevant substance, and

(II) is intended to form part of a device that falls within *subparagraph (i)*,

or

(iii) a relevant substance which is intended to be used in a device that falls within *subparagraph (i)*;

"prescribe" means prescribe by regulations made by the Minister;

"register" has the meaning assigned to it by *section 23*;

"Regulations of 2016" means the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 (S.I. No. 271 of 2016);

"relevant officer" means in relation to a body corporate—

(a) a person who exercises control (within the meaning of section 11 or 432 of the Act of 1997) in relation to the body,

(b) a member (including the chairperson) of the body, or the board or board of directors of the body, or any other person acting in such capacity, or

(c) the managing director or chief executive officer of the body, or any other person acting in such capacity;

"relevant substance" means a substance which is not tobacco but which consists of, or contains, nicotine;

"sale by retail" includes sale by retail online;

"sell", in relation to a tobacco product or a nicotine inhaling product, means sell by retail and includes—

(a) offer or expose for sale,

(b) invite the making by a person of an offer to purchase,

(c) distribute free of charge, and

(d) supply for any of these purposes (whether or not for profit);

"tax clearance certificate" means a certificate under section 1095 of the Act of 1997;

"tobacco control legislation" means—

(a) this Act,

(b) the Act of 2002,

(c) the Act of 2015, and

(d) the Regulations of 2016;

"tobacco product" means a product (other than a medicinal product (within the meaning of the Irish Medicines Board Act 1995))—

(a) that can be consumed and consists, even partly, of tobacco, whether genetically modified or not and includes a cigarette paper, tube or filter manufactured for use in the smoking of tobacco, and

(b) that is intended for sale by retail in the State.

Application of Act

3. (1) This Act applies to the sale by retail of tobacco products and nicotine inhaling products.

(2) This Act does not apply to medical devices or medicinal products.

(3) In this section—

"medical device" means a medical device which falls within any definition of "medical device" in—

(a) Article 1 of Council Directive 90/385/EEC of 20 June 1990[2] on the approximation of the laws of the Member States relating to active implantable medical devices, as amended by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007[3] amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market,

(b) Article 1 of Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998[4] on in vitro diagnostic medical devices, or

(c) Article 2 of Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017[5] on medical devices, amending Directive 2001/83/EC, Regulation (EC) No. 178/2002 and Regulation (EC) No. 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC;

"medicinal product" has the same meaning as it has in Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001[6] on the Community code relating to medicinal products for human use.

Residence of body corporate or unincorporated body of persons

4. For the purpose of this Act, a company within the meaning of the Companies Act 2014 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 ordinarily resident at its principal office or place of business.

Regulations

5. (1) The Minister may make regulations for the purposes of this Act, including regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed.

(2) Without prejudice to any provision of this Act, regulations under this Act may contain such incidental, supplementary and consequential provisions as appears to the Minister to be necessary or expedient for the purposes of the regulations.

[2] OJ No. L 189, 20.7.1990, p. 17.
[3] OJ No. L 247, 21.9.2007, p. 21.
[4] OJ No. L 331, 7.12.1998, p. 1.
[5] OJ No. L 117, 5.5.2017, p. 1.
[6] OJ No. L 311, 28.11.2001, p. 67.

(3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses

6. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of monies provided by the Oireachtas.

Service of documents

7. A notice or other document that is required to be served on or given to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:

(a) by delivering it to the person;

(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;

(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;

(d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.

Remote sale of tobacco products or nicotine inhaling products

8. (1) Subject to *subsection (2)*, the sale of a tobacco product or a nicotine inhaling product is deemed, for the purposes of this Act, to take place at the premises where an agreement is made for the sale of the tobacco product or nicotine inhaling product concerned.

(2) Where—

(a) the premises where the agreement for the sale of the tobacco product or nicotine inhaling product concerned is made is not in the State, and

(b) the premises from which the tobacco product or nicotine inhaling product concerned is despatched are in the State,

the sale is deemed, for the purposes of this Act, to take place at the premises from which the tobacco product or nicotine inhaling product concerned is despatched.

Repeals and revocations

9. (1) The following provisions of the Act of 2002 are repealed:

(a) section 5A;

(b) section 37;

(c) section 45.

(2) The following Regulations are revoked:

(a) Public Health (Tobacco) (Registration) Regulations 2009 (S.I. No. 41 of 2009);

(b) Public Health (Tobacco) (Self Service Vending Machines) Regulations 2009 (S.I. No. 42 of 2009);

(c) Public Health (Tobacco) (Retail Sign) Regulations 2009 (S.I. No. 57 of 2009).

Review of operation of Act

10. The Minister shall, 12 months after the passing of this Act, carry out a review of the operation of this Act.

PART 2

Licence for Sale of Tobacco Products or Nicotine Inhaling Products

Application for licence

11. (1) Subject to *subsections (2)*, *(3)*, *(4)* and *(5)*, a person (in this Act referred to as the "applicant") who, on or after the commencement of this section, wishes to sell by retail—

(a) tobacco products,

(b) nicotine inhaling products, or

(c) tobacco products and nicotine inhaling products,

on or from a premises or from a website (or otherwise online) shall apply to the Executive for a licence authorising such sale by retail by the person in respect of the premises or website (or otherwise online) as is specified in the application.

(2) A person who wishes to sell by retail the products referred to in *subsection (1)* on or from more than one premises or website shall make a separate application under *subsection (1)* for a license in respect of each such premises or website, as the case may be.

(3) A person may not apply for a licence unless he or she is aged 18 years or over.

(4) A person may not apply for a licence for the sale by retail of tobacco products or nicotine inhaling products on or from an excluded premises.

(5) Where a licence is suspended by order of the court under *section 39*, the licensee concerned may not make an application under *subsection (1)* during that period of suspension.

(6) An application under this section shall be made in such form and manner as may be prescribed and shall specify—

(a) the name of the applicant and address at which he or she ordinarily resides, or in the case of a company, the registered office of the company,

(b) where the applicant proposes to carry on the sale by retail of tobacco products or nicotine inhaling products concerned under a trading name, that trading name and legal identity,

(c) where the applicant is a body corporate, the name of each relevant officer and address at which he or she ordinarily resides and the address of his or her principal office or place of business,

(d) where the application is in respect of a premises, the address of the premises,

(e) where the application is in respect of online sales, the name and electronic address or web address of any website (or other location online) operated and maintained by the applicant through which the tobacco products or nicotine inhaling products are to be sold,

(f) whether the application relates to the sale by retail of tobacco products, nicotine inhaling products or both, and

(g) such other information as may be prescribed.

(7) An application for a licence shall be accompanied by—

(a) the fee prescribed under *section 18*,

(b) a tax clearance certificate in force relating to the applicant,

(c) a declaration signed by the applicant, or a relevant officer as the case may be, that, as at the date of the declaration, the applicant has complied with all requirements imposed on the applicant by tobacco control legislation, and

(d) such other information as may be prescribed.

(8) At any time after receiving an application and before determining the application, the Executive may by notice in writing, require the applicant to provide additional information to it and where the Executive does so, the applicant shall comply with that requirement.

(9) An applicant who knowingly or recklessly provides false or misleading information to the Executive under *subsection (6)*, *(7)(b)*, *(7)(c)*, *(7)(d)* or *(8)* commits an offence.

(10) A person who, immediately before the commencement of this section, was registered under section 37 of the Act of 2002 to carry on, in whole or in part, sale by retail of tobacco products shall, if he or she wishes to continue to so carry on such business on or after such commencement, apply not later than—

(a) 6 months, or

(b) the expiration of such longer period as may be prescribed,

after such commencement to the Executive for a licence under this section, and where the person does so, that person may continue to carry on, in whole or in part, sale by retail of tobacco products in accordance with such registration pending a decision by the Executive on that application.

(11) A person who, immediately before the commencement of this section, was carrying on the sale by retail of nicotine inhaling products, shall, if he or she wishes to continue the sale of such products after such commencement, apply not later than—

(a) 6 months, or

(b) the expiration of such longer period as may be prescribed,

after such commencement to the Executive for a licence under this section, and where the person does so, that person may continue to carry on the sale by retail of nicotine inhaling products pending a decision by the Executive on that application.

(12) In this section, "excluded premises" means a temporary or moveable premises other than a ship that carries passengers on commercial voyages between a place in the State and a place outside the State.

Determination of application for licence

12. (1) This section applies where the Executive receives an application under *section 11(1)*.

(2) Where an application is made in accordance with *section 11*, the Executive shall grant a licence to the applicant in accordance with the application where it is satisfied that the application complies with the requirements of that section.

(3) The Executive shall refuse to grant a licence where—

(a) the application is not made in accordance with *section 11* or otherwise does not comply with the requirements of that section,

(b) the applicant has, after the commencement of this section, been convicted of 2 or more category A offences (within the meaning of *section 39*), or

(c) it has reasonable grounds to believe that the application, the declaration under *section 11(7)(c)* or any document or information accompanying the application, contains information that is false or misleading.

(4) Where the Executive grants a licence, the Executive shall, as soon as practicable after doing so, issue the licence under *section 13* to the applicant and shall notify the applicant accordingly.

(5) Where the Executive refuses to grant a licence, the Executive shall, not later than 14 days after the date of such refusal, notify the applicant in writing of—

(a) the refusal of the application and the reasons for it, and

(b) the applicant's right to appeal the refusal in accordance with *section 16*.

Issue of licence

13. (1) Where the Executive grants a licence under *section 12* or renews a licence under *section 15*, or where *section 16(8)* applies, it shall, as soon as practicable, issue to the applicant a licence in the prescribed form specifying the date on which the licence takes effect.

(2) A licence issued under *subsection (1)* shall specify—

(a) the name of the licensee,

(b) the licence number,

(c) where the licence is in respect of premises, the name and address of the premises,

(d) where the licence is in respect of online sales, the name and electronic address or web address of any website (or other location online) operated and maintained by the licensee through which the tobacco products or nicotine inhaling products are sold,

(e) whether the licence relates to tobacco products or nicotine inhaling products or both,

(f) the date on which the licence takes effect in accordance with *subsection (1)*,

(g) the date on which the licence expires in accordance with *section 14*, and

(h) such other matters as may be prescribed.

Duration of licence

14. (1) Subject to *subsection (2)*, a licence has effect for a period of 12 months, beginning on the date specified by the Executive under *section 13(1)*.

(2) A licence shall not have effect for any period during which it is suspended by virtue of *section 39*.

Renewal of licence

15. (1) Subject to *subsection (2)*, a licensee may apply to the Executive for renewal of a licence.

(2) An application under *subsection (1)* shall be made in the prescribed form and in the prescribed manner and be accompanied by—

(a) the licence number,

(b) a further declaration signed by the applicant or, where the applicant is a body corporate, a relevant officer, that, as at the date of the declaration, the applicant has complied with all requirements imposed on the applicant by tobacco control legislation,

(c) where there has been a change in any information given in an application for a licence in accordance with *section 11*, details of any such change in information,

(d) a tax clearance certificate in force relating to the licensee,

(e) the prescribed fee, and

(f) such other information as may be prescribed.

(3) Where the application for a renewal is made in accordance with this section, the Executive shall renew the licence in accordance with the application where it is satisfied that the application complies with the requirements of this section.

(4) The Executive shall refuse the application for a renewal where—

(a) the application is not made in accordance with this section or otherwise does not comply with the requirements of this section,

(b) the applicant has, after the commencement of this section, been convicted of 2 or more category A offences (within the meaning of *section 39*), or

(c) it has reasonable grounds to believe that the application, the declaration under *section 11(7)(c)* or *subsection (2)(b)* or any document or information accompanying the application, contains information that is false or misleading.

(5) Where the Executive grants the application for the renewal of a licence, the Executive shall, as soon as practicable after doing so, issue a licence under *section 13* and shall notify the applicant accordingly.

(6) Where the Executive refuses the application for a licence, the Executive shall, not later than 14 days after the date of such refusal, notify the applicant in writing of—

(a) the refusal of the application and the reasons for it, and

(b) the applicant's right to appeal in accordance with *section 16*.

(7) Where an application under *subsection (1)* is made at least 30 days before the expiry of the licence and such application is awaiting determination on the day on which it would expire by virtue of *section 14*, the licence shall continue to have effect by virtue of this subsection until the application is determined.

Appeal against refusal of licence

16. (1) This section applies where a person is notified under *section 12(5)* or *15(6)* of a decision by the Executive to refuse to grant or renew a licence.

(2) The person may appeal such decision to the District Court not later than 21 days from the date of the service of the notice referred to in *subsection (1)*.

(3) An appeal under *subsection (2)* shall be on notice to the Executive.

(4) Where an appeal under *subsection (2)* relates to the refusal of a licence authorising the sale by retail on or from a premises, the appeal shall be made to the judge of the District Court within whose jurisdiction the premises is located.

(5) Subject to *subsection (6)*, where the appeal under *subsection (2)* relates to the refusal of a licence authorising the sale by retail from a website (or otherwise online), the appeal shall be made to the judge of the District Court within whose jurisdiction the person making the appeal is ordinarily resident.

(6) An appeal by a person not ordinarily resident in the State shall be brought before a judge of the District Court assigned to the Dublin Metropolitan District.

(7) On the hearing of an appeal under *subsection (2)*, the District Court may—

(a) confirm the decision, or

(b) allow the appeal.

(8) If the District Court allows the appeal, the Executive shall issue a licence or, as the case may be, renew the licence.

(9) Subject to *subsection (10)*, the decision of the District Court on an appeal under *subsection (2)* on a question of fact is final.

(10) The person who made the appeal or the Executive may, with leave of the District Court, appeal the decision of the Court under *subsection (7)* to the High Court on a point of law.

Copy of licence where lost, stolen, damaged or destroyed

17. (1) Where—

(a) a licence is lost, stolen, damaged or destroyed,

(b) the licensee applies to the Executive in the prescribed form and manner for a copy of the licence, and

(c) the application under this section is accompanied by the prescribed fee,

the Executive shall issue a copy of the licence to the licensee.

(2) This Act shall apply in relation to a copy of a licence issued under *subsection (1)* as it applies in relation to a licence.

Minister may prescribe fee

18. The Minister may prescribe a fee where an application is made for—

(a) a licence under *section 12*,

(b) the renewal of a licence under *section 15*, or

(c) a copy of a licence under *section 17*,

and such fee shall be recoverable by the Executive as a simple contract debt in any court of competent jurisdiction.

Revocation of licence

19. (1) Subject to this section, the Executive may revoke a licence where—

(a) a licensee has, after the commencement of this section, been convicted of 2 or more category A offences (within the meaning of *section 39*),

(b) the licensee no longer holds a tax clearance certificate which is in force, or

(c) it is satisfied that the licensee provided information to the Executive when making the application for that licence that was false or misleading in a material respect.

(2) Where the Executive proposes to revoke a licence under *subsection (1)*, it shall give notice to the licensee in writing of the proposed revocation.

(3) A notice under *subsection (2)* shall inform the licensee concerned of the following:

(a) the proposal to revoke a licence under *subsection (1)* and the reason for it;

(b) that the licensee may make representations in accordance with *section 20* regarding the proposal;

(c) that, if the licensee does not make such representations, the revocation under *subsection (1)* shall come into operation 28 days from the date of service of the notice;

(d) that the licensee may make an appeal in accordance with *section 21*.

(4) Revocation of a licence shall come into operation 28 days from the date of service of the notice referred to in *subsection (2)* where no appeal is brought under *section 21*.

Representations

20. (1) A licensee who is given notice under *section 19(2)* of a proposal to revoke a licence may, within 14 days of the date of the notice, make representations to the Executive in relation to the proposal.

(2) The Executive shall have regard to any representations made to it under *subsection (1)* in deciding whether or not to proceed with the proposed revocation and shall notify the licensee in writing of the decision.

Appeal against revocation of licence

21. (1) This section applies where a licensee is given notice under *section 19(2)* of a proposal to revoke a licence.

(2) The Executive shall not proceed with the revocation of a licence under *section 19* where an appeal has been made under this section.

(3) The licensee may appeal the proposed revocation to the District Court not later than 28 days from the date of the service of the notice referred to in *subsection (1)*.

(4) An appeal under *subsection (3)* shall be on notice to the Executive.

(5) Where the appeal under *subsection (3)* relates to the revocation of a licence authorising the sale by retail on or from a premises, the appeal under *subsection (3)* shall be made to the judge of the District Court within whose jurisdiction the premises to which the appeal relates is located.

(6) Subject to *subsection (7)*, where the appeal under *subsection (3)* relates to the revocation of a licence authorising the sale by retail from a website (or otherwise online), the appeal shall be made to the judge of the District Court within whose jurisdiction the person bringing the appeal is ordinarily resident.

(7) An appeal by a licensee not ordinarily resident in the State shall be brought before a judge of the District Court assigned to the Dublin Metropolitan District.

(8) On the hearing of an appeal under *subsection (3)*, the District Court may—

(a) affirm the revocation, or

(b) allow the appeal.

(9) Where the District Court allows the appeal, the Executive shall reinstate the licence.

(10) Subject to *subsection (11)*, the decision of the District Court under *subsection (8)* is final.

(11) A licensee or the Executive may, with leave of the District Court, appeal the decision of the Court under *subsection (8)* to the High Court on a point of law.

Duty to display licence

22. (1) A licensee, to whom a licence is issued in respect of the sale by retail of tobacco products or nicotine inhaling products on or from a premises, shall ensure that the licence is prominently displayed at a point of sale at the premises for the product concerned.

(2) Where a licence is issued in respect of sales online, details of the licence must be displayed on the website of the licensee (or otherwise online) in a manner that is prominent and clearly visible to members of the public or users of the website (or otherwise online).

(3) A licensee commits an offence if he or she fails, without reasonable excuse, to comply with *subsection (1)* or *(2)*.

Register of licences

23. (1) The Executive shall, as soon as practicable after the coming into operation of this section, cause to be established and maintained, in such form as it considers appropriate, a register of licences (referred to in this Act as the "register") issued by it under *section 13*.

(2) The register shall contain the following details in the case of each licence—

(a) the name, trading name and legal identity (if different) of the licensee,

(b) the address at which the licensee ordinarily resides or the address of his or her principal office or place of business or, where applicable, the name of each relevant officer and address at which he or she ordinarily resides and the address of his or her principal office or place of business,

(c) where the licence is in respect of a premises, the name and address of the premises,

(d) where the licence is in respect of online sales, the name and electronic or web address of any website (or other location online) operated and maintained by the licensee through which the tobacco products or nicotine inhaling products are sold,

(e) whether the licence relates to tobacco products or nicotine inhaling products or both,

(f) the date on which the licence takes effect in accordance with *section 14*,

(g) the date on which the licence was issued under *section 13* or renewed under *section 15*,

(h) the date on which the licence expires in accordance with *section 14*,

(i) the licence number,

(j) details of the tax clearance certificate in force relating to the licensee,

(k) details of any conviction by the licensee under tobacco control legislation,

(l) where a licence is suspended under *section 39*, details of the suspension and period of operation of such suspension, and

(m) such other matters as the Executive considers appropriate.

(3) Where a licence is revoked by the Executive under *section 19*, the Executive shall remove all entries in relation to the licence concerned from the register.

(4) Where a licence is reinstated in accordance with *section 21(9)*, the Executive shall reinstate all entries in relation to the licence concerned to the register.

(5) The Executive shall, from time to time, review each entry in the register and, if it becomes aware that any particular in the register is incorrect or has ceased to be correct, it shall make such alteration to the register as it considers necessary and shall notify the licensee concerned in writing of any such alteration.

Duty to notify change in information

24. (1) A licensee shall, as soon as practicable, notify the Executive—

(a) of any change in the name or address of the licensee or where applicable, a relevant officer that is contained in the register,

(b) of an error in an entry in the register relating to the licensee or where applicable, a relevant officer, or a change in circumstances that is likely to have a bearing on the accuracy of an entry in the register,

(c) where a tax clearance certificate provided under *section 11(7)(b)* or *15(2)(d)* is no longer in force, and

(d) of any change to the information provided under *section 11(7)(c)* or *15(2)(b)*.

(2) A person commits an offence if he or she fails, without reasonable excuse, to provide the information in accordance with *subsection (1)* within a period of 28 days from the date of any such change.

PART 3

Certain Offences

Offence of selling by retail tobacco products or nicotine inhaling products without licence

25. (1) Subject to *subsection (2)*, a person commits an offence if the person carries on the sale by retail of—

(a) tobacco products, or

(b) nicotine inhaling products,

otherwise than under and in accordance with a licence.

(2) *Subsection (1)* shall not apply where a person has made an application for a license under *subsection (10)* or *(11)* of *section 11* within the period specified or prescribed, as the case may be, in that *subsection (10)* or *(11)*, as the case may be, and is awaiting a decision by the Executive on that application.

Offence relating to sale by retail of nicotine inhaling products by means of self service

26. (1) A person shall not sell or cause to be sold a nicotine inhaling product by retail by means of self service.

(2) For the purposes of *subsection (1)*, a nicotine inhaling 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 nicotine inhaling product concerned whether by means of depositing of money or a token (intended to be used as a substitute for money) in a machine containing the nicotine inhaling product or otherwise.

(3) A person who contravenes *subsection (1)* commits an offence.

Prohibition on sale of tobacco products or nicotine inhaling products by child

27. (1) Subject to *subsection (2)*, a person shall not permit a child to sell by retail a tobacco product or a nicotine inhaling product on or from any premises or from a website (or otherwise online) in respect of which a licence is in force authorising the sale of the products concerned.

(2) A person may permit a child who is aged 16 years or over to sell by retail a tobacco product or a nicotine inhaling product on or from premises or from a website (or otherwise online) in respect of which a licence authorising the sale of the products concerned is in force if and only if the child is the licensee's sister, step-sister, daughter, step-daughter, sister-in-law, brother, step-brother, son, step-son or brother in-law.

(3) A person who contravenes *subsection (1)* commits an offence.

(4) In proceedings for an offence under this section, it shall be presumed, until the contrary is shown, that the person to whom the offence relates was, at the time of the alleged offence, a child.

Prohibition on sale of tobacco products or nicotine inhaling products to child

28. (1) A person shall not sell by retail, or cause to be sold by retail—

(a) a tobacco product, or

(b) a nicotine inhaling product,

to a child.

(2) A person who contravenes *paragraph (a)* or *(b)* of *subsection (1)* commits an offence.

(3) In proceedings against a person for an offence under *subsection (1)*, it shall be a defence for such person to prove that the child to whom the alleged offence relates produced to him or her—

(a) an age card,

(b) a passport, or

(c) a driving licence,

for the time being in force, relating to that child.

(4) In this section, "age card" has the same meaning as it has in Part IV of the Intoxicating Liquor Act 1988.

F3**[Prohibition on sale of tobacco products to person under age of 21 years**

28A. … **]**

Prohibition on sale of tobacco products or nicotine inhaling products at events aimed at children

29. (1) A person shall not sell, or cause to be sold, a tobacco product or a nicotine inhaling product—

(a) at an event aimed particularly at children, or

(b) at an event in relation to which the majority of the participants or audience are children.

(2) A person who contravenes *paragraph (a)* or *(b)* of *subsection (1)* commits an offence.

Prohibition on advertising of nicotine inhaling products in certain places

30. (1) A person shall not advertise, or cause the advertisement of, a nicotine inhaling product—

(a) in or at a school, including the grounds of the school, or within 200 metres of the perimeter of the grounds,

(b) in or on a public service vehicle (within the meaning of the Road Traffic Act 1961),

(c) in or on a train (within the meaning of the Railway Safety Act 2005),

(d) in or on a light rail vehicle (within the meaning of the Transport (Railway Infrastructure) Act 2001),

(e) in or at a train or bus station,

(f) at a designated stopping place at which passengers may board or alight from buses, or

(g) at a designated stopping place at which passengers may board or alight from light railway vehicles.

(2) A person who contravenes *subsection (1)* commits an offence.

(3) In this section—

"advertise" means to advertise by the display of posters, billboards, hoardings, placards or other signage whether intended to be permanent or temporary but does not include an advertisement on or attached to a premises where nicotine inhaling products are manufactured or sold by wholesale or retail;

"school" means a recognised school within the meaning of the Education Act 1998.

Prohibition on advertising of nicotine inhaling products in cinemas

31. (1) Subject to *subsection (2)*, it shall be an offence for a person to advertise a nicotine inhaling product in a cinema.

(2) It shall not be an offence for a person to advertise a nicotine inhaling product immediately before, or during an interval to, the screening of a film that has been certified by the Director of Film Classification as fit for viewing by persons aged 18 years or over.

Prohibition on display of suspended, expired or revoked licence

32. (1) A licensee who displays a licence during the period of a suspension of the licence by a court under *section 39*—

(a) at the premises to which the licence relates, or

(b) on the website (or otherwise online) to which the licence relates where such tobacco products or nicotine inhaling products are sold online,

commits an offence.

(2) A licensee who displays a licence where such licence has expired under *section 14* or been revoked under *section 19*—

(a) at the premises to which the licence relates, or

(b) on the website (or otherwise online) to which the licence relates where such tobacco products or nicotine inhaling products are sold online,

commits an offence.

PART 4

Enforcement and Compliance

Test purchasing

33. (1) An authorised officer may, in the course of his or her duty as such officer and in accordance with guidelines issued under *subsection (2)*, send a person who is at least 15 years of age but under 18 years of age into a premises at which tobacco products or nicotine inhaling products are for sale by retail for the purpose of the person purchasing tobacco products or nicotine inhaling products on those premises if but only if—

(a) the parent or guardian of the person has consented, in writing, to him or her being sent into those premises for that purpose, and

(b) the authorised officer is satisfied that all reasonable steps have been or will be taken to avoid harm to the welfare of the person.

(2) The Minister shall, after consulting with the Minister for Children, Equality, Disability, Integration and Youth, from time to time issue guidelines in respect of the procedures to be followed with respect to the practical operation of this section, including guidelines as to—

(a) prohibiting any active instigation of a contravention of *section 28* such as a false representation, whether made orally or by means of the production of any document, that a person is over the age of 18 years, and

(b) the basis on which premises will be selected for the purposes of the application of this section, including but not limited to—

(i) reference to the location of the premises,

(ii) complaints received by the Executive concerning the premises,

(iii) the number of reports of alleged contraventions (if any) of *section 28* relating to the premises or the clientele attracted to the premises, or

(iv) any combination thereof.

(3) In this section, "authorised officer" means an authorised officer appointed under section 48 of the Act of 2002.

Executive may publish information respecting certain persons

34. (1) The Executive shall keep and maintain a list (in this section referred to as the "tobacco products and nicotine inhaling products non-compliance list") of persons on whom a fine or other penalty is imposed by a court under tobacco control legislation.

(2) Subject to *subsection (4)*, the tobacco products and nicotine inhaling products non compliance list shall specify, in respect of each person listed therein—

(a) the name, trading name, legal identity and address of the premises or the name and electronic or web address of any website (or other location online) operated and maintained by the licensee through which the tobacco products or nicotine inhaling products are sold where the offence was committed,

(b) his or her licence number, where applicable,

(c) the relevant provision of tobacco control legislation which was contravened or under which the fine or penalty was imposed, and

(d) such particulars as the Executive considers appropriate in respect of the matters occasioning the fine or penalty and the amount or nature of that fine or penalty.

(3) The Executive may, in any form or manner as it considers appropriate, publish or cause to be published, including on a website maintained by or on behalf of the Executive, all or any part of the tobacco products and nicotine inhaling products non compliance list.

(4) An entry in the tobacco products and nicotine inhaling products non-compliance list in relation to the imposition of a fine or other penalty shall be deleted not more than 12 months after the date of the imposition of the fine or penalty.

PART 5

Penalties and Proceedings

Penalties

35. (1) A person guilty of an offence under *section 11(9)*, *25*, *27(3)* or *28(2)*, shall be liable—

(a) on summary conviction—

(i) in the case of a first offence, to a class B fine or to imprisonment for a term not exceeding 6 months or to both, or

(ii) in the case of any subsequent offence, to a class A fine or to imprisonment for a term not exceeding 12 months or to both,

and

(b) on conviction on indictment to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or to both.

(2) A person guilty of an offence under section 43(1) of the Act of 2002 or *section 22(3)*, *24(2)*, *26(3)*, *29(2)*, *30(2)*, *31* or *32* shall be liable on summary conviction—

(a) in the case of a first offence, to a class B fine or to imprisonment for a term not exceeding 6 months or to both, and

(b) in the case of any subsequent offence, to a class A fine or to imprisonment for a term not exceeding 12 months or to both.

(3) Where a person is convicted of an offence under this Act, the court shall, unless it is satisfied that there are special and substantial reasons for not doing so, order the person to pay to the Executive the costs and expenses, measured by the court, incurred by the Executive in relation to the investigation, detection and prosecution of the offence.

Defences generally

36. In proceedings for an offence under this Act, 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 such provisions of this Act as are alleged to have been contravened.

Liability for offences by body corporate

37. (1) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to be attributable to any wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Evidence in proceedings for an offence

38. (1) In proceedings for an offence under 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—

(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

(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 matters stated in the certificate.

(2) In proceedings for an offence under this Act, a certificate purporting to be signed by a designated analyst stating any one or more of the following, namely—

(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

(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.

(4) A certificate under this section shall be in such form as may be prescribed.

(5) In proceedings for an offence under this Act, a tobacco product or a nicotine inhaling 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 or nicotine inhaling product was manufactured or imported, as the case may be, by the person concerned.

(6) In proceedings for an offence under this Act, a tobacco product or a nicotine inhaling 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—

"designated laboratory" has the same meaning as it has in section 51 of the Act of 2002;

"trademark" has the same meaning as it has in the Trade Marks Act 1996.

Order of court consequent upon conviction of offence

39. (1) If a licensee is convicted of a category A or category B offence, the court shall, in addition to any fine or term of imprisonment imposed by the court in respect of the offence, order that the licence be suspended in accordance with *subsection (2)*.

(2) Where the court is suspending a licence in accordance with *subsection (1)*, such licence shall be suspended—

(a) in relation to a category B offence—

(i) in the case of a summary conviction of a first offence, for such period as is specified in the order of not less than 2 days and no more than 7 days, or

(ii) in the case of a summary conviction of a second or subsequent offence, for such period as is specified in the order of not less than 7 days and not more than 30 days,

or

(b) in relation to a category A offence—

(i) in the case of a summary conviction of a first offence, for such period as is specified in the order of not less than 7 days and not more than 30 days,

(ii) in the case of a summary conviction of a second or subsequent offence, for such period as is specified in the order of not less than 30 days and not more than 3 months, or

(iii) in the case of a conviction on indictment of the offence, for such period as is specified in the order of not less than 30 days and not more than 12 months.

(3) 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.

(4) 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 hold a licence for the premises or website (or other online location) concerned where the offence was committed.

(5) In this section—

"category A offence" means an offence under—

(a) *section 11(9)*, *25*, *26(3)* or *28(2)*,

(b) section 33A(2), 36, 38(1), 38(2), 38(7), 38(8), 38(9), 43(1), 43(3), 43(4), 48(8), 48(12) or 53 of the Act of 2002, or

(c) Regulation 8, 22, 27, 29 or 44 of the Regulations of 2016;

"category B offence" means an offence under *section 27(3)*.

Prosecution of summary offences

40. Summary proceedings for an offence under this Act may be brought and prosecuted by the Executive.

Time limit where offence may be prosecuted in summary proceedings only

41. Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under *section 26(3)*, *29(2)* or section 43(1) of the Act of 2002 may be instituted within 12 months after the date on which the offence was committed.

PART 6

Amendment of Public Health (Tobacco) Act 2002

Amendment of section 2 of Act of 2002

42. Section 2 of the Act of 2002 is amended, in subsection (1)—

(a) by the substitution of the following definition for the definition of "tobacco product":

" 'tobacco product' means a product (other than a medicinal product (within the meaning of the Irish Medicines Board Act 1995))—

(a) that can be consumed and consists, even partly, of tobacco, whether genetically modified or not and includes a cigarette paper, tube or filter manufactured for use in the smoking of tobacco, and

(b) that is intended for sale by retail in the State;",

and

(b) by the insertion of the following definitions:

" '*Act of 2023*' means the *Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023*;

'electronic cigarette' has the same meaning as it has in Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014[7] 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 and repealing Directive 2001/37/EC;

'Executive' means the Health Service Executive;

'licensee' means a licensee within the meaning of *section 2* of the *Act of 2023*;

'nicotine inhaling product' means—

(a) an electronic cigarette, or

(b) any other product consisting of—

(i) a device (other than tobacco, cigarette paper or a device which is intended to enable the consumption of lit tobacco) which is intended to enable a relevant substance to be inhaled through a mouth piece (irrespective of whether the device would also enable any other substance to be so inhaled),

(ii) a cartridge which—

(I) may contain a relevant substance, and

(II) is intended to form part of a device that falls within subparagraph (i),

or

(iii) a relevant substance which is intended to be used in a device that falls within subparagraph (i);

'relevant substance' means a substance which is not tobacco but which consists of, or contains, nicotine;

'sale by retail' includes sale by retail online;".

Amendment of section 5 of Act of 2002

43. Section 5 of the Act of 2002 is amended, in subsection (2), by the substitution of "section 37(13), 43(3), 43(4), 45, 46, 48 or 54(9)" for "section 37(13), 43, 45, 46 or 48".

Amendment of section 7 of Act of 2002

44. Section 7 of the Act of 2002 is amended—

(a) in paragraph (c), by the substitution of "address," for "address.", and

(b) by the insertion of the following paragraph after paragraph (c):

"(d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.".

Amendment of section 43 of Act of 2002

45. Section 43 of the Act of 2002 is amended—

(a) in subsection (1), by the substitution of "It shall" for "Subject to subsection (2), it shall",

(b) by the deletion of subsection (2),

(c) by the substitution of the following subsection for subsection (3):

"(3) A licensee 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 licensee, or a person

[7] OJ No. L 127, 29.4.2014, p. 1.

employed by him or her in connection with the business of selling goods by retail while so employed.",

F9**[**(d) by the substitution of the following subsections for subsection (4):

"(4) Subject to subsections (4A) and (4B) and the European Communities (Requirements to Indicate Product Prices) Regulations 2002 (S.I. No. 639 of 2002), a licensee shall ensure that—

(a) no notice, sign or display shall be displayed, and

(b) 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.

(4A) Notwithstanding subsection (4) and subject to subsection (4B), a sign may be displayed indicating that tobacco products may be purchased at the premises concerned in such manner and form as may be prescribed by regulations made by the Minister.

(4B) A sign under subsection (4A)—

(a) shall, on or before 31 January 2028, inform the public that tobacco products may be sold at the premises to persons who have attained the age of 18 years,

(b) shall, on or after 1 February 2028, inform the public that tobacco products may be sold at the premises to persons who have attained the age of 21 years, and

(c) may provide such other information as may be prescribed.",**]**

and

(e) in subsection (5)—

(i) in paragraph (a), by the substitution of "A licensee" for "A person registered under section 37", and

(ii) in paragraph (b), by the substitution of "the licensee" for "the person registered under section 37".

Amendment of section 48 of Act of 2002

46. Section 48 of the Act of 2002 is amended—

(a) in subsection (1), by the substitution of "this Act, the Act of 2015 and the *Act of 2023*" for "this Act and the Act of 2015",

(b) by the substitution of the following subsection for subsection (4):

"(4) For the purposes of this Act, the Act of 2015 and the *Act of 2023*, 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, labelling or retail packaging of a tobacco product or a nicotine inhaling 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 labels, retail packaging of tobacco products or nicotine inhaling products, 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 labels, retail packaging, 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, the Act of 2015 or the *Act of 2023*,

(e) carry out, or have carried out, such examinations, tests, inspections and checks of—

(i) the premises,

(ii) any tobacco product or nicotine inhaling product, retail packaging of tobacco products or nicotine inhaling products or any article or substance used in the manufacture, processing, labelling, retail packaging or storage of tobacco products or nicotine inhaling 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, the Act of 2015 or the *Act of 2023*,

(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 labels, retail packaging of tobacco products, retail packaging of nicotine inhaling products, tobacco products, nicotine inhaling products, 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, the Act of 2015 or the *Act of 2023*,

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

(h) direct that such tobacco products, nicotine inhaling products or retail packaging of tobacco products or nicotine inhaling products found at the premises as he or she, upon reasonable grounds, believes contravene a provision of this Act, the Act of 2015 or the *Act of 2023* 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, nicotine inhaling product, retail packaging of tobacco products or nicotine inhaling products, substance or article used in the manufacture, processing, labelling, retail packaging or storage of tobacco products or nicotine inhaling products is found or ordinarily kept, or records, labels, retail packaging of tobacco products or nicotine inhaling products, tobacco products, nicotine inhaling products, 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, the Act of 2015 or the *Act of 2023*, or

(j) take possession of and remove from the premises for examination and analysis any tobacco product, nicotine inhaling products, retail packaging of tobacco products or nicotine inhaling products or any substance or article used in the manufacture, processing, labelling, retail packaging or storage of tobacco products or nicotine inhaling 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, the Act of 2015 or the *Act of 2023*.",

(c) by the insertion of the following subsection after subsection (4):

"(4A) An authorised officer may, for the purposes of obtaining any information which may be required in relation to a matter under investigation under this Act, the Act or 2015 or the *Act of 2023*, at all reasonable times—

(a) pay or make tender of payment for a tobacco product or nicotine inhaling product, as the case may be, or

(b) confirm any other information in relation to a tobacco product or nicotine inhaling product, as the case may be, for the purposes of the investigation.",

(d) in subsection (5), by the substitution of "this Act, the Act of 2015 or the *Act of 2023*" for "this Act",

(e) in subsection (7), by the substitution of the following paragraph for paragraph (a):

"(a) a tobacco product, nicotine inhaling product, retail packaging of tobacco products or nicotine inhaling products or any substance or article used in the manufacture, processing, labelling, retail packaging or storage of a tobacco product or nicotine inhaling product is to be found in any dwelling or premises, or is being or has been subjected to any process or stored in any dwelling or premises,",

(f) in subsection (9), by the substitution of "this Act, the Act of 2015 or the *Act of 2023*" for "this Act or under the Act of 2015",

(g) by the substitution of the following subsection for subsection (10):

"(10) Where an authorised officer has—

(a) directed pursuant to subsection (4)(h) that tobacco products or nicotine inhaling products or retail packaging of tobacco products not be sold, distributed or moved, or

(b) taken possession of and removed pursuant to subsection (4)(j) any tobacco product or nicotine inhaling products or retail packaging of tobacco products,

he or she may apply to the District Court for an order that any such tobacco product or nicotine inhaling product or retail packaging be destroyed, and the judge of the District Court may grant such an order if he or she is satisfied that such product or retail packaging contravenes a provision of this Act, the Act of 2015 or the *Act of 2023*.",

(h) in subsection (13), by the substitution of "this Act, the Act of 2015 or the *Act of 2023*" for "this Act or the Act of 2015", and

(i) in subsection (14), by the substitution of the following definition for the definition of "premises":

" 'premises' means any place, ship or other vessel, aircraft, railway wagon or other vehicle, and includes a container used to transport tobacco products or nicotine inhaling products or retail packaging of tobacco products or any article or substance used in the manufacture, processing or storage of tobacco products or nicotine inhaling products or retail packaging of tobacco products;".

Amendment of section 50 of Act of 2002

47. Section 50 of the Act of 2002 is amended—

(a) in subsection (1), by the substitution of "a sample of a tobacco product or a nicotine inhaling product or a sample of any substance or article used in the manufacturing, processing or storage of tobacco products or nicotine inhaling products," for "a sample of a tobacco product or a sample of any substance or article used in the manufacturing, processing or storage of tobacco products,",

(b) in subsection (2)(a), by the substitution of "tobacco product or nicotine inhaling product" for "tobacco product", and

(c) by the substitution of the following subsection for subsection (3):

"(3) Where a tobacco product or a nicotine inhaling product, or any substance or article used in the manufacturing, processing or storage of a tobacco product or a nicotine inhaling 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 or nicotine inhaling 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.".

Amendment of section 53 of Act of 2002

48. Section 53 of the Act of 2002 is amended—

(a) in subsection (1)(b), by the substitution of "this Act, the Act of 2015 or the *Act of 2023*" for "this Act", and

(b) in subsection (2)(b), by the substitution of "this Act, the Act of 2015 or the *Act of 2023*" for "this Act".

Amendment of Act of 2002

49. The Act of 2002 is amended by the insertion of the following sections after section 53:

"Compliance notice

54. (1) Where an authorised officer is satisfied that a person has contravened a provision to which this section applies, the authorised officer may serve a notice (in this Act referred to as a 'compliance notice') on the person.

(2) A compliance notice shall—

(a) state the grounds for the authorised officer being satisfied that there has been a contravention referred to in subsection (1),

(b) for the purpose of ensuring compliance by the person concerned with a provision to which this section applies, require the person to do or refrain from doing such act or acts as is or are specified in the notice by such date as is so specified, and

(c) contain information regarding the bringing of an appeal under subsection (5) against the notice, including the manner in which an appeal shall be brought.

(3) A compliance notice shall not specify a date in accordance with subsection (2)(b) that falls on or before the date by which an appeal under subsection (5) may be brought.

(4) An authorised officer may—

(a) withdraw a compliance notice at any time, as he or she consider appropriate, or

(b) where no appeal is brought under subsection (5), specify a date extending the period specified in the notice for the purposes of subsection (2)(b), and notify the person in writing accordingly.

(5) A person may appeal a compliance notice served on him or her to the District Court not later than 14 days after the service of the compliance notice concerned.

(6) Where a person makes an appeal under subsection (5), that person shall at the same time notify the Executive of the appeal and the grounds for the appeal and the authorised officer and the appellant concerned shall be entitled to be heard and to adduce evidence at the hearing of an appeal.

(7) The District Court shall, upon an appeal under subsection (5), do one of the following:

(a) affirm the compliance notice concerned;

(b) direct the authorised officer to withdraw the compliance notice concerned.

(8) An authorised officer shall comply with a direction under subsection (7)(b).

(9) A person who fails to comply with a compliance notice by the specified date shall be guilty of an offence.

(10) This section shall not operate to prevent or restrict—

(a) the entitlement of any person to bring proceedings for the purpose of securing compliance with this Act by a person, or

(b) the bringing or prosecuting of any proceedings for an offence under this Act.

(11) In this section, 'specified date' means, in relation to a compliance notice—

(a) the date specified in the notice in accordance with paragraph (b) of subsection (2), where no appeal against the notice is brought under subsection (5), or

(b) the day falling immediately after the expiration of the period of 7 days from the date on which the District Court so affirms the notice, where an appeal against the notice

is brought under subsection (5) and the District Court affirms the notice in accordance with paragraph (a) of subsection (7).

(12) This section applies to the following provisions:

(a) sections 33, 33A, 36 and 46;

(b) sections 7, 8, 9, 10, 11, 12, 13 and 14 of the Act of 2015;

(c) *sections 22*, *27*, *28*, *30*, *31* and *32* of the *Act of 2023*.

Prohibition notice

55. (1) Where an authorised officer is of the opinion that a person has contravened a provision to which this section applies, the authorised officer may, with the approval of the chief executive officer of the Executive, or another officer of the Executive designated for that purpose, serve, or arrange to have served, on the person concerned, an order (in this section referred to as a 'prohibition notice') in accordance with subsection (2).

(2) A prohibition notice shall—

(a) be signed by the authorised officer issuing it,

(b) state that the authorised officer is of the opinion that there has been a contravention referred to in subsection (1),

(c) specify the provision or provisions of this Act or the *Act of 2023* to which the suspected contravention referred to in subsection (1) relates, and

(d) direct the person on whom the prohibition notice is served to ensure that—

(i) the contravention of a provision referred to in paragraph (c), should cease immediately on the service of the prohibition notice,

(ii) the tobacco product or nicotine inhaling product, is not placed or made available on the market until such time as all appropriate measures, including corrective measures, have been taken to bring the product into compliance with the provision of this Act or the *Act of 2023* to which the contravention relates,

(iii) the tobacco product or nicotine inhaling product to which the contravention relates, is not placed or made available on the market until such time as all appropriate measures have been taken to ensure compliance with the provision of this Act or the *Act of 2023* to which the contravention relates,

(iv) the tobacco product or nicotine inhaling product to which the contravention relates, is withdrawn or recalled from the market within a specified period of time, or

(v) the tobacco product or nicotine inhaling product is destroyed within a specified period of time and in a manner specified in the notice by the authorised officer or is detained for the purposes of destruction by the authorised officer.

(3) The approval referred to in subsection (1) may be given orally or in writing and if given orally, shall be recorded in writing as soon as practicable.

(4) A prohibition notice shall take effect—

(a) where, the prohibition notice so declares, immediately the notice is received by the person on whom it is served, or

(b) in any other case—

(i) where no appeal is taken against the prohibition notice, on the expiration of the period during which such an appeal may be taken or the day specified in the prohibition notice as the day on which it is to come into effect, whichever is the later, or

(ii) where an appeal is taken, on the day next following the day on which the prohibition notice is confirmed on appeal or the appeal is withdrawn or the day specified in the prohibition notice as the day on which it is to come into effect, whichever is the later.

(5) The bringing of an appeal against a prohibition notice which is to take effect in accordance with subsection (4)(a) shall not have the effect of suspending the operation of the prohibition notice, but the appellant may apply to the District Court to have the operation of the prohibition notice suspended until the appeal is disposed of and, on such application, the District Court may, if it thinks it proper to do so, direct that the operation of the prohibition notice be suspended until the appeal is disposed of.

(6) In the event of non-compliance or delay by the person on whom the prohibition notice has been served, an authorised officer shall, with the approval of the chief executive officer or other officer designated in that behalf by the Executive, take whatever steps are considered necessary to ensure compliance with the direction given under subsection (2)(d) and this may include the withdrawal, recall, seizure and destruction of the products in question or the making of any arrangements for such withdrawal, recall, seizure or destruction, or both.

(7) A person who is aggrieved by a prohibition notice may, within the period of 7 days beginning on the day on which the prohibition notice is served on him or her, appeal in the prescribed manner against the notice to a judge of the District Court in the District Court district in which the prohibition notice was served and in determining the appeal the judge may—

(a) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the prohibition notice, with or without modification, or

(b) cancel the prohibition notice.

(8) Where on the hearing of an appeal under subsection (7), a prohibition notice is confirmed, notwithstanding subsection (6), the judge of the District Court by whom the appeal is heard may, on the application of the appellant, suspend the operation of the prohibition notice for such period as in the circumstances of the case the judge considers appropriate.

(9) A person who appeals against a prohibition notice or who applies for a direction suspending the application of the prohibition notice under subsection (5) shall at the same time notify the Executive of the appeal or the application and the grounds for the appeal or the application and the Executive shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(10) The chief executive officer of the Executive, or another officer of the Executive designated for that purpose may, for stated reasons, revoke or vary a prohibition notice made in accordance with this section and the Executive shall be notified at the next available meeting of the Executive of any such revocation or variation and the reasons therefore.

(11) Where a prohibition notice has been served and activities are carried on in contravention of the prohibition notice, the High Court may, on the application of the Executive, by order prohibit the continuance of the activities.

(12) An application to the High Court for an order under subsection (11) shall be by motion on notice to the person and the Court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate and the order by which an application under subsection (11) is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

(13) This section applies to—

(a) sections 38(1), 38(2), 38(7), 38(8), 38(9) and 43(1), and

(b) *sections 25*, *26*, *28* and *29* of the *Act of 2023*.

Fixed payment notice

56. (1) Where an authorised officer has reasonable grounds for believing that a person is committing, or has committed, a relevant offence, the authorised officer may serve a notice in writing (in this Act referred to as a 'fixed payment notice') in the prescribed form stating—

(a) that the person is alleged to have committed the relevant offence concerned,

(b) where and when the person is alleged to have committed the relevant offence concerned,

(c) that the person may, during the period of 28 days beginning on the date of the fixed payment notice, make to the Executive at the address specified in the notice a payment of such amount or amounts as may be prescribed, being an amount of not more than €2,000 accompanied by the notice or copy thereof,

(d) that the person is not obliged to make the payment specified in the notice,

(e) that a prosecution of the person in respect of the alleged relevant offence will not be instituted during the period of 28 days beginning on the date of the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged relevant offence will be instituted, and

(f) that in default of such payment, the person shall be prosecuted for the alleged relevant offence.

(2) Where a fixed payment notice is served under subsection (1)—

(a) the person to whom it applies may make a payment in accordance with subsection (1)(c),

(b) the Executive shall, subject to subsection (5), receive and retain the payment and issue a receipt for the payment,

(c) any payment received by the Executive shall not be recoverable by the person who made it, and

(d) a prosecution in respect of the alleged relevant offence to which the notice relates shall not be instituted during the period specified in subsection (1)(c) and, if payment so specified is made during that period, no prosecution in respect of the alleged relevant offence will be instituted.

(3) In proceedings for a relevant offence, it shall be a defence for the defendant to prove that he or she has made a payment in accordance with this section, pursuant to a fixed payment notice served in respect of the offence.

(4) The Minister may prescribe the amount of a fixed payment and may prescribe different amounts for different offences.

(5) Payments received by the Executive under this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure, National Development Plan Delivery and Reform may direct.

(6) In this section, 'relevant offence' means—

(a) an offence under section 43, or

(b) an offence under *section 22*, *26*, or *29* of the *Act of 2023*.

Legal privilege

57. (1) Subject to subsection (2), nothing in this Act, the Act of 2015, the *Act of 2023* or the Regulations of 2016 shall compel the disclosure by any person of privileged legal material or authorise the taking of privileged legal material.

(2) The disclosure of information may be compelled, or possession of it taken, pursuant to this Act, the Act of 2015, the *Act of 2023* or the Regulations of 2016, notwithstanding that it is apprehended that the information is privileged legal material provided that the compelling of its disclosure or the taking of its possession is done by means whereby the confidentiality of the information can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the High Court of the issue as to whether the information is privileged legal material.

(3) Without prejudice to subsection (4), where, in the circumstances referred to in subsection (2), information has been disclosed or taken possession of pursuant to this Act, the Act of 2015, the *Act of 2023* or the Regulations of 2016, the person—

(a) to whom such information has been so disclosed, or

(b) who has taken possession of it,

shall (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under subsection (4) in relation to the matter concerned) apply to the High Court for a determination as to whether the information is privileged legal material and an application under this section shall be made within 30 days after the disclosure or the taking of possession.

(4) A person who, in the circumstances referred to in subsection (2), is compelled to disclose information, or from whose possession information is taken, may apply to the High Court for a determination as to whether the information is privileged legal material.

(5) Pending the making of a final determination of an application under subsection (3) or (4), the High Court may give such interim or interlocutory directions as the court considers appropriate including, without prejudice to the generality of the foregoing, directions as to—

(a) the preservation of the information, in whole or in part, in a safe and secure place in any manner specified by the court, or

(b) the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the court considers to be appropriate for the purpose of—

(i) examining the information, and

(ii) preparing a report for the court with a view to assisting or facilitating the court in the making by the court of its determination as to whether the information is privileged legal material.

(6) An application under subsection (3), (4) or (5) shall be by motion and may, if the High Court directs, be heard otherwise than in public.

(7) In this section—

'computer' includes a personal organiser or any other electronic means of information storage or retrieval;

'information' means information contained in a book, document or record, a computer or otherwise;

'privileged legal material' means information which, in the opinion of the High Court, a person is entitled to refuse to produce on the grounds of legal professional privilege.".

PART 7

MISCELLANEOUS

Amendment of Criminal Justice (Psychoactive Substances) Act 2010

50. Section 2 of the Criminal Justice (Psychoactive Substances) Act 2010 is amended, in subsection (1), by the insertion of the following paragraph after paragraph (d):

"(da) a nicotine inhaling product, within the meaning of *section 2* of the *Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023*,".

Amendment of Regulations of 2016

51. Regulation 38 of the Regulations of 2016 are amended—

(a) in paragraph (b), by the substitution of "this Act, the Act of 2015 and the *Act of 2023*" for "this Act and the Act of 2015",

(b) in paragraph (c), by the substitution of "this Act, the Act of 2015 or the *Act of 2023*" for "this Act or the Act of 2015", and

(c) by the substitution of the following paragraph for paragraph (d):

"(d) the reference to 'this Act, under the Act of 2015 or under the *Act of 2023*' shall be construed as a reference to 'these Regulations';".

Number 35 *of* 2023

PUBLIC HEALTH (TOBACCO PRODUCTS AND NICOTINE INHALING PRODUCTS) ACT 2023

REVISED

Updated to 2 February 2026

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Public Health (Tobacco) Acts 2002 to 2024: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Public Health (Tobacco) (Amendment) Act 2024* (47/2024), s. 11(2)). The Acts in this group are:

- *Public Health (Tobacco) Act 2002* (6/2002)
- *Public Health (Tobacco) (Amendment) Act 2004* (6/2004)
- *Public Health (Tobacco) (Amendment) Act 2009* (23/2009)
- *Public Health (Tobacco) (Amendment) Act 2010* (39/2010)
- *Public Health (Tobacco) (Amendment) Act 2011* (15/2011)
- *Public Health (Tobacco) (Amendment) Act 2013* (17/2013)
- *Public Health (Standardised Packaging of Tobacco) Act 2015* (4/2015)
- *Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023* (35/2023)
- *Public Health (Tobacco) (Amendment) Act 2024* (47/2024)

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.