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*Number 24 of 1988.*

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**TOBACCO (HEALTH PROMOTION AND PROTECTION) ACT, 1988.**

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ACTS REFERRED TO

Children Act, 1908	1908, c. 67
Finance (Excise Duty on Tobacco) Act, 1977	1977, No. 32
Health Act, 1970	1970, No. 1
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Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978	1978, No. 27

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## **TOBACCO (HEALTH PROMOTION AND PROTECTION) ACT, 1988**

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AN ACT TO PROVIDE FOR THE PROHIBITION AND RESTRICTION ON THE CONSUMPTION OF TOBACCO PRODUCTS IN DESIGNATED AREAS AND FACILITIES; TO PROVIDE FOR THE RESTRICTION ON THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 16 YEARS; TO MAKE PROVISION IN RELATION TO THE IMPORTATION, MANUFACTURE AND SALE OF 10 CERTAIN TOBACCO PRODUCTS; TO PROVIDE FOR THE AMENDMENT OF THE TOBACCO PRODUCTS (CONTROL OF ADVERTISING, SPONSORSHIP AND SALES PROMOTION) ACT, 1978; AND TO PROVIDE FOR OTHER CONNECTED MATTERS.

[12th July, 1988]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

### **Interpretation.**

**1.**—In this Act—

"designated area" means a place or building specified in regulations made under *section 2* of this Act as being an area in which the consumption of tobacco products is either prohibited or restricted;

"designated facility" means an aircraft, train, public service vehicle or other facility which is used by the public and which is specified in regulations under *section 2* as being a facility in or on which the consumption of tobacco products is either prohibited or restricted;

"health board" means a health board established under the Health 25 Act, 1970;

"health premises" means any premises provided and maintained by a health board under section 38 of the Health Act, 1970, or in which services are provided under the Health Acts, 1947 to 1970, for persons eligible for such services;

"the Minister" means the Minister for Health;

"public service vehicle" means a mechanically propelled vehicle used for the carriage of persons for reward and having seating passenger accommodation for more than eight persons exclusive of the driver;

"school" means, as the context may require, a first level school (including a special school), or a second level school, which is recognised and grant aided by the Minister for Education;

"tobacco product" has the same meaning as in the Finance (Excise Duty on Tobacco Products) Act, 1977.

### **Prohibition or restriction on consumption of tobacco products.**

**2.**—(1) The Minister may, by regulations, either prohibit or restrict the consumption of tobacco products in a designated area or a designated facility.

(2) Without prejudice to the generality of *subsection (1)* of this section, regulations under this section may do all or any of the following:

(a) prohibit or restrict the consumption of tobacco products in such aircraft, train, public service vehicle or other facility as may be specified;

(b) prohibit or restrict the consumption of tobacco products in such part of a health

- premises as may be specified,
- (c) prohibit or restrict the consumption of tobacco products in such part of a school, as may be specified;
  - (d) prohibit or restrict the consumption of tobacco products in such part as may be specified of a building to which the public has access and which belongs to, or is in the occupation of—
    - (i) the State, or
    - (ii) a body established by or under an Act of the Oireachtas;
  - (e) prohibit or restrict the consumption of tobacco products in a cinema, theatre, concert hall or in such other place of indoor public entertainment as may be specified.

(3) Any person who contravenes any provision of regulations made under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100.

(4) The owner, manager, or other person in charge, of a designated area or a designated facility who fails, neglects or refuses to ensure that the prohibitions and restrictions which apply to that area or, as the case may be, that facility, are complied with, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500, or to imprisonment for a term not exceeding six months or, at the discretion of the court, to both such fine or such imprisonment.

(5) In a prosecution of an offence under this section, it shall be a defence to establish that the owner, manager, or other person in charge, as the case may be, had taken all reasonable steps to ensure that the prohibitions and restrictions applying to the designated area or designated facility concerned had been fully complied with.

#### [Restriction on sale of tobacco products.](#)

**3.—**(1) Any person who sells, offers to sell, or makes available in relation to the sale of any other product, any tobacco product to a person under the age of 16 years, whether for his own use or otherwise, or who sells to any person, acting on behalf of a person under the age of 16 years, any tobacco products, shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding £500.

(2) The owner, or other person in charge, of any machine for the sale of tobacco products who permits the machine to be used for the sale of such products to a person under the age of 16 years shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

(3) Whenever a person is prosecuted for an offence under this section, it shall be a defence for him to establish that he had taken all reasonable steps to assure himself that the person to whom the tobacco products were sold, offered for sale or made available had attained the age of 16 years.

(4) Where, in a prosecution of an offence under this section, it is alleged that the person in respect of whom the offence was committed is under the age of 16 years, and such person appears to the court to have been, at the date of the commission of the alleged offence, under the age of 16 years, such person shall for the purposes of this section be presumed, until the contrary is proved, to have been at that date under that age.

#### [Restriction on sale of cigarettes.](#)

**4.—**Any person who sells, offers to sell or makes available in relation to the sale of any other product, cigarettes to a person otherwise than in packets of ten or more cigarettes shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

#### Prohibition on use of specified constituents of tobacco products .

**5.—**(1) A person engaged in the manufacture of tobacco products shall, whenever the Minister so requests, notify the Minister of any constituent of the tobacco product, other than tobacco, water or reconstituted sheet made wholly from tobacco, and of the amount of such constituent, used in the manufacture of such products.

(2) Any person who imports a tobacco product shall, whenever the Minister so requests, notify the Minister of any constituent of the tobacco product, other than tobacco, water or reconstituted sheet made wholly from tobacco, and of the amount of such constituent which is contained in the tobacco product so imported.

(3) The Minister, after consulting with the tobacco manufacturer or tobacco importer concerned, may by regulations—

(a) control or prohibit the use in the manufacture of tobacco products of such constituent of the tobacco product (other than tobacco, water or reconstituted sheet made wholly from tobacco) as may be specified in the regulations.

(b) prohibit or restrict the importation of any tobacco product which contains such constituent (other than tobacco, water or reconstituted sheet made wholly from tobacco) as may be specified in the regulations.

(4) Any person who—

(a) fails, neglects or refuses to comply with a request of the Minister under *subsection (1)* of this section, or

(b) uses any constituent in the manufacture of a tobacco product in contravention of regulations under *subsection (3)* of this section, or

(c) imports any tobacco product in contravention of such regulations,

shall be guilty of an offence and shall be liable—

(i) on summary conviction, to a fine not exceeding £1,000, or

(ii) on conviction on indictment, to a fine not exceeding £10,000.

#### Prohibition on import etc. of oral smokeless tobacco products.

**6.—**(1) Any person who imports, manufactures, sells or otherwise disposes of, or offers for sale or other disposal, or advertises, an oral smokeless tobacco product shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000, or

(b) on conviction on indictment to a fine not exceeding £10,000.

(2) In this section "oral smokeless tobacco product" means any product or substance, made wholly or partly from tobacco, which is intended for use, unlit, by being placed in the mouth and kept there for a period, or by being placed in the mouth and sucked or chewed.

#### Offences in relation to bodies corporate and unincorporated bodies.

**7.—**Where an offence under this Act is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons and is proved to have been committed with the consent or approval of, or to have been facilitated by any neglect on the part of, any person who, when the offence is committed, is a director, member of the committee of management or other controlling authority of the body concerned, or the manager, secretary or other officer of the body, that person shall also be deemed to have committed the offence and may be proceeded against and punished accordingly.

Prosecution of offences.

**8.**—Summary proceedings in relation to an offence under this Act may be brought and prosecuted by the Minister or by an officer, appointed by the Minister for that purpose, of the Minister or of a health board.

Amendment of Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion Act 1978.).

**9.**—The Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978, is hereby amended by the substitution for section 3 of the following section:

"3. (1) A person who contravenes a regulation under section 2 of this Act shall be guilty of an offence and shall be liable—

( a ) on summary conviction, to a fine not exceeding £1,000, or

( b ) on conviction on indictment, to a fine not exceeding £10,000.

(2) Where an offence under this Act is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons and is proved to have been committed with the consent or approval of, or to have been facilitated by any neglect on the part of any person who, when the offence is committed, is a director, member of the committee of management or other controlling authority of the body concerned, or the manager, secretary or other officer of the body, that person shall also be deemed to have committed the offence and may be proceeded against and punished accordingly.

(3) Summary proceedings in relation to an offence under this section may be brought by the Minister or by an officer, appointed by the Minister for that purpose, of the Minister or of a health board".

Regulations.

**10.**—Every regulation 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 twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Repeal.

**11.**—Sections 39 to 43 of the Children Act, 1908, are hereby repealed.

Expenses.

**12.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title.

**13.**—This Act may be cited as the Tobacco (Health Promotion and Protection) Act, 1988.

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