

**GENERAL SCHEME OF A
PUBLIC HEALTH (TOBACCO AND NICOTINE INHALING
PRODUCTS) BILL 2019**

October 2019

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PART 1
PRELIMINARY AND GENERAL

Head 1 Short title, collective citation, construction and commencement

Provide that:

- (1) This Act may be cited as the Public Health (Tobacco and Nicotine Inhaling Products) Bill 2019.
- (2) The Public Health (Tobacco) Acts 2002 to 2015 and this Act may be cited as the Public Health (Tobacco) Acts 2002 to 20XX.
- (3) The Public Health (Tobacco) Act 2002 and this Act shall be read together as one.
- (4) This Bill comes into operation on such day or such 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.

Explanatory Note

This is a standard provision containing the title, collective citation and commencement. The citation and the construction are modelled on the Greyhound Racing Act 2019. The advice of the Office of the Attorney General will be sought in relation to the citation and construction provisions to ensure continuity and alignment with tobacco control legislation.

Head 2 Definitions

Provide that:

In this Act -

“Act of 2002” means the Public Health (Tobacco) Act 2002;

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

“age card” has the same meaning as it has in Part IV of the Intoxicating Liquor Act 1988;

“Board” means the Board of the Executive;

“child” means any person under the age of 18 years;

“compliance notice” has the meaning assigned to it by *head 22*;

“compliance order” has the meaning assigned to it by *head 22*;

“Executive” means the Health Service Executive;

“General Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC¹;

“licence” means a licence granted under *head 11* for the retail sale of tobacco products or nicotine inhaling products;

“licensee” means the holder of a retail licence;

“medical device” means a medical device which falls within any of the definitions of “medical device” in-

(a) the Directive 93/42/EEC of 14 June 1993, or

(b) the Directive 98/79/EEC of 27 October 1998;

“medicinal product” has the meaning assigned to it by the Directive 2001/83/EEC of 6 November 2001, as amended from time to time;

¹ OJ No. L 119, 4.5.2016, p. 1.

“nicotine cartridge” means a cartridge which-

- (a) contains a substance which is not tobacco but consists of, or contains, nicotine, and
- (b) is intended to form part of a nicotine inhaling device;

“nicotine inhaling device” means a device which-

- (a) is intended to enable nicotine to be inhaled through a mouth piece (regardless of whether the device is also intended to enable any other substance to be inhaled through a mouth piece), but
- (b) is not tobacco, cigarette paper or a device intended to be used for the consumption of lit tobacco;

“nicotine inhaling product” means a nicotine inhaling device, nicotine cartridge or nicotine refill substance;

“nicotine refill substance” means a substance which-

- (a) is not tobacco but consists of, or contains, nicotine, and
- (b) is intended to be used to refill a nicotine inhaling device;

“non-combustible tobacco product” means a tobacco product which does not require the burning of the product for consumption;

“prescribed” means prescribed by the Minister;

“register of licences” has the meaning assigned to it in *head 13*;

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

“tobacco control legislation” means this Act, the Act of 2002, the Act of 2015 or the Regulations of 2016;

“sell” in relation to tobacco products and nicotine inhaling products, 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, or

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

“tobacco product” has the same meaning as it has in section 2 (as substituted by *head 32*) of the Act of 2002.

Explanatory Note

This head provides for the definition of certain terms used in the Bill. The definition section is subject to amendment following advice from Office of the Attorney General.

Head 3 Application of the Bill

Provide that:

- (1) This Bill applies to the retail sale of tobacco products and nicotine inhaling products, including online sales.

- (2) This Bill does not apply to medical devices or medicinal products as defined in *head 2*.

Explanatory Note

Subhead (1) sets out that the Bill applies to the retail sale of tobacco products and nicotine inhaling products including online sales.

Subhead (2) exempts medical devices and medicinal products as defined in head 2 from the requirements of the Bill.

Head 4 Application to registered clubs

Provide that:

This Bill applies to a club registered under the Registration of Clubs Acts 1904 to 2008, subject to the modifications that—

- (a) references in this Bill to a licensee shall be construed as references to the secretary of the club concerned, and
- (b) references in this Bill to a premises shall be construed as references to the premises of the club concerned,

and any other necessary modifications.

Explanatory Note

The purpose of this head is to ensure that the provisions in the Bill that apply to licensed premises and licensees, as defined in the interpretation head, are equally applied to registered clubs under the Registration of Clubs Act 1904 to 2008. By its nature, a club is owned by its members and technically, a member receiving tobacco products in a club is serving tobacco products to him or herself given that the tobacco products are bought by the members for their consumption. This provision ensures that licensing requirements, along with other relevant provisions applicable to licensees, are applied to registered clubs. This head is adapted from section 23(1) of the Intoxicating Liquor Act 2003 and the Public Health (Alcohol) Act 2018.

Head 5 Orders and regulations

Provide that:

- (1) The Minister may by regulations provide for any matter referred to in this Bill as prescribed or to be prescribed or for the purposes of enabling any provision of this Bill to have full effect.
- (2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the Bill.
- (3) Every order (other than an order under *head 1(4)*) or regulation made by the Minister under this Bill shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Explanatory Note

This is a standard provision in regard to Ministerial powers to make regulations.

Head 6 Expenses

Provide that:

The expenses incurred by the Minister in the administration of the Bill shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

Explanatory Note

This is a standard provision regarding the cost of the administration of the Bill.

Section 4 of the Public Health (Tobacco) Act 2002 already makes this provision. The Department will consult with the Office of the Parliamentary Counsel (OPC) on the necessity or otherwise for it to be repeated here.

Head 7 Transitional provisions

Provide that:

- (1) Subject to *subhead (2)*, notwithstanding the repeal by *head 34* of section 37 of the Act of 2002, a person who, immediately before the commencement of this section is registered for the sale of tobacco products under section 37 continues to be so registered:
 - (a) for a period of x months, or
 - (b) where he or she has applied for a licence in accordance with *head 10*, until his or her application has been processed by the Executive and he or she has been granted or refused a licence
whichever is earlier.
- (2) *Subhead (1)* ceases to apply where a person:
 - (a) has not applied for a licence in accordance with *head 10* within the time specified in *subhead (1)(a)*,
 - (b) has been refused a licence by the Executive,
 - (c) has been convicted of an offence under this Bill and the court has ordered the suspension of his or her licence under *head 28* for a specified period, during such period, or
 - (d) has been convicted of an offence under section 5A of the Act of 2002 and the court has ordered the cessation of his or her registration for a specified period, during such period.

Explanatory Note

Subhead (1) provides that where a person is registered to sell tobacco products under the Public Health (Tobacco) Act 2002 prior to the commencement of this section, he or she continues to be registered and will be allowed to sell tobacco products for a period of time (to be determined during the drafting process) or until he or she has applied for a licence and it has been granted or refused by the Executive, whichever is earlier.

Subhead (2) provides that subhead (1) ceases to apply if a person does not apply for a licence within the specified time or has been refused a licence by the Executive. Subhead (1) also ceases to apply during any period of suspension imposed under head 28 of this Bill or section 5A of the Act of 2002.

PART 2

LICENSING SYSTEM FOR THE RETAIL SALE OF TOBACCO AND NICOTINE INHALING PRODUCTS

Head 8 Requirement to hold a licence for the retail sale of tobacco or nicotine inhaling products

Provide that:

(1) Subject to *subhead (2)* a person shall not sell or cause to be sold by retail,

(a) tobacco products, or

(b) nicotine inhaling products

from a premises located in the State, without a valid licence specific to the licensee and attached to such premises, in accordance with this Bill.

(2) Where-

(a) the premises at which the agreement for the sale of the products set out in *subhead (1)* is made is not in the State, and

(b) the premises from which the products are dispatched is in the State,

the sale is deemed, for the purposes of this Bill, to take place at the premises from which the products are dispatched and as such a licence as set out in *subhead (1)* is required for the sale.

(3) Subject to *subhead (4)*, a person who contravenes *subhead (1)* is guilty of an offence.

(4) A person who, immediately before the commencement of this section was carrying on the business of selling products set out in *subhead (1)(a)* or *(1)(b)* is permitted to continue selling such products;

(a) for a period of x months, or

(b) until his or her application, submitted in accordance with *head 10*, has been processed by the Executive and he or she has been granted or refused a licence,

whichever is earlier.

- (5) Subhead (4) ceases to apply where a person:
- (a) has not applied for a licence in accordance with *head 10* within the time specified in subhead (4)(a),
 - (b) has been refused a licence by the Executive,
 - (c) has been convicted of an offence under this Bill and the court has ordered the suspension of his or her licence under *head 28* for a specified period, during such period, or
 - (d) registered under section 37 of the Act of 2002 has been convicted of an offence under section 5A of that Act and the court has ordered the cessation of his or her registration for a specified period, during such period.

Explanatory Note

Subhead (1) provides that a person cannot sell tobacco or nicotine inhaling products by retail from a premises located in the State without holding a valid licence for the sale of those products for a specific premises.

Subhead (2) makes it a requirement for a person to hold a licence where the products are ordered from outside the State, for example online, but are dispatched from a premises within the State (remote sales).

Subhead (3) provides that anyone who contravenes subhead (1) is guilty of an offence.

Subhead (4) provides that a person, if registered under section 37 of the Public Health (Tobacco) Act 2002 prior to the commencement of this section can continue to sell tobacco or nicotine inhaling products for a specified number of months or until his or her application, submitted in accordance with head 10, is processed by the Executive, whichever is earlier.

Subhead (5) provides that subhead (4) ceases to apply if a person does not apply for a licence within the specified time or has been refused a licence by the Executive. Subhead (5) also ceases to apply during any period of suspension imposed under head 28 of this Bill or under section 5A of the Act of 2002.

Head 9 Licence, licensee and fees

Provide that:

- (1) Where a person proposes to sell or who, immediately before the commencement of this section, was carrying on the business of selling:
 - (a) tobacco products, or
 - (b) nicotine inhaling products

in a premises, he or she shall apply to the Executive for a licence specific to the licensee and in respect of the said specified premises for the sale of such products.
- (2) Two categories of licence shall apply:
 - (a) category 1: combustible tobacco products, non-combustible tobacco products and nicotine inhaling products, or
 - (b) category 2: non-combustible tobacco products and nicotine inhaling products.
- (3) Where a person is granted a licence for the sale of combustible tobacco products referred to in *subhead 2(a)*, he or she may also sell non-combustible tobacco products and nicotine inhaling products, subject to the restrictions on tobacco products as set out in tobacco control legislation.
- (4) Where a person is granted a licence for the sale of non-combustible tobacco products and nicotine inhaling products referred to in *subhead 2(b)*, he or she shall not sell combustible tobacco products, subject to the restrictions on tobacco products as set out in tobacco control legislation.
- (5) A licence referred to in this Bill refers to a licence for the retail sale of the products in *subhead (2)*.
- (6) A licence shall specify the premises in respect of which it is granted and the name and address of the licensee.
- (7) A premises named in or in connection with a licence is, for the purposes of this Bill, the location at which or from which the business of the retail sale of the products set out in *subhead (2)* is carried on.
- (8) A separate licence shall be required for each premises at which tobacco products or nicotine inhaling products are sold.

- (9) A licence is valid for 12 months from the day of issue and may be renewed for consecutive periods of 12 months.
- (10) Where the Executive grants or renews a licence to an applicant, that person shall be deemed to be the licensee for the purposes of this Bill.
- (11) Where the applicant is a company, partnership or an unincorporated association, the application shall be made on the applicant's behalf by certain of its officers and they shall hold the licence on behalf of the applicant and shall, for purposes of meeting the licensee's obligations under this Bill, be the licensee.
- (12) A licence may not be transferred or assigned or be mortgaged or otherwise encumbered.
- (13) If a person who has made an application for a licence for a specified premises is convicted of an offence under tobacco control legislation and is subject to an order under *head 28* suspending the licence attached to said premises before the Executive grants the person a licence then that person shall not be eligible to receive a licence for that premises until the expiration—
 - (a) in the case of a summary conviction of the offence for such period of suspension as is specified in the court order,
 - (b) in the case of a conviction on indictment of the offence for such period of suspension as is specified in the court order.
- (14) The Executive shall charge an applicant an annual licence fee of such amounts to be prescribed from time to time for the grant or renewal of each licence for each individual premises.
- (15) The Executive shall charge an applicant a non-refundable administration fee of such amounts to be prescribed from time to time for the purpose of the processing of an application.
- (16) The fees referred to in *subhead (15)* and *head 12(4)* shall accrue to the Executive and be applied for the purpose of meeting the expenses incurred by the Executive in the discharge of its functions under tobacco control legislation.
- (17) Income generated by fees referred to in *subhead (14)* shall accrue to the Executive and shall be disposed of in a manner determined by the Executive with the agreement of the Minister and the Minister for Public Expenditure and Reform.

Explanatory Note

Subhead (1) intends to provide that where a person is selling or intends to sell tobacco products and/or nicotine inhaling products, he or she must apply to the Executive for a licence for that specified premises.

Subhead (2) provides that two categories of licence apply. The first category applies to combustible tobacco products, non-combustible tobacco products and nicotine inhaling products. The second category applies to non-combustible tobacco products and nicotine inhaling products.

Subhead (3) states a person granted a licence for the sale of combustible tobacco products under subhead (2)(a) may sell non-combustible tobacco products and nicotine inhaling products.

Subhead (4) provides that a person granted a licence for the sale of non-combustible tobacco products and nicotine inhaling products under subhead (2)(b) cannot sell combustible tobacco products.

Subhead (5) makes it clear that a licence relates to retail sale only of tobacco products and nicotine inhaling products.

Subhead (6) states that a licence must set out the premises and the name and address of the licensee.

Subhead (7) states that the premises named in association with a licence is the premises where the sale of the products takes place.

Subhead (8) provides that each premises selling the products require a licence i.e. where a person owns two or more premises they must have a licence for each premises. The current registration regime under the Public Health (Tobacco) Acts does not require this.

Subhead (9) states that the licence is valid for 12 months and may be renewed for consecutive periods of 12 months.

Subhead (10) provides that the applicant for the licence is deemed to be the licensee.

Subhead (11) states that an individual applying for a licence on behalf of a company shall be deemed to be the licensee.

Subhead (12) states that the licence is non-transferrable and may not be assigned, mortgaged or otherwise encumbered.

Subhead (13) provides that if an applicant is convicted of an offence under the relevant legislation and is subject to a suspension under head 28, that person shall not be eligible to receive a licence in relation to the premises concerned until the expiration of the period of suspension as specified in the court order.

Subhead (14) states that the Executive shall charge an annual fee to be determined in regulations by the Minister for Health.

Subhead (15) states that the Executive shall charge a non-refundable administration fee for the processing of applications.

Subhead (16) provides that the Executive will receive the income generated from administration fees and the fees for obtaining a duplicate licence under head 12(5) to be used to discharge its functions under tobacco control legislation.

Subhead (17) provides that the Executive will receive the income generated from the licence fee to be used in a manner to be determined by it, subject to the agreement of the Minister and the Minister for Public Expenditure and Reform.

Subheads (16) and (17) are modelled on section 65 of the Taxi Regulation Act, 2013.

Head 10 Licence application and renewal

Provide that:

- (1) A person who proposes to sell the products set out in *head 9(1)(a)* or *9(1)(b)* shall apply to the Executive for a licence no later than x days before commencing to carry on the business of selling such products.
- (2) A person who immediately before the commencement of this section was carrying on the business of selling of products set out in *head 9(1)(a)* or *9(1)(b)* in a premises shall, no later than X months after such commencement, or such further period as may be prescribed from time to time, apply to the Executive for a licence for the sale of such products, for the specified premises.
- (3) A person applying for a licence for the sale of tobacco products or nicotine inhaling products shall be 18 years or over.
- (4) An application for the granting or renewal of a licence under *subhead (1)* or *(2)* shall be in writing and include:
 - (a) the full name and address of the applicant;
 - (b) the trade name and address of the premises from which tobacco products or nicotine inhaling products will be sold;
 - (c) the category of licence required as set out in *head 9(2)*;
 - (d) a declaration signed by the applicant that he or she complies with tobacco control legislation; and
 - (e) such other information as may be prescribed from time to time.
- (5) An application for the granting or renewal of a licence shall be accompanied by –
 - (a) the prescribed administration fee and the prescribed licence fee in respect of each premises from which tobacco products or nicotine inhaling products are to be sold; and
 - (b) any such information as may be prescribed from time to time.
- (6) A person applying for a licence or renewal of a licence shall pay to the Executive such fee or fees prescribed under *head 9(14)* or *9(15)* at such intervals as may be prescribed from time to time.

- (7) An application for the renewal of a licence is to be made no later than x days before the day on which the licence is due to expire.
- (8) Where a licensee ceases to carry on the business of selling tobacco products or nicotine inhaling products in the premises specified on the licence, a new application must be submitted in circumstances where
 - (a) the person deemed to be the licensee has changed, or
 - (b) the business of selling tobacco products or nicotine inhaling products is to be carried on in a new premises.
- (9) Where a licensee ceases to carry on the business of selling tobacco products or nicotine inhaling products in the premises specified on the licence, the licence expires on the date the business ceases or its expiry date, whichever is earlier.
- (10) A person who carries out the business of selling tobacco products or nicotine inhaling products and who knowingly or recklessly provides false or misleading information to the Executive in respect of information required by *subhead (4)*, is guilty of an offence.

Explanatory Note

Subhead (1) provides that a person who wishes to sell tobacco products or nicotine inhaling products must apply to the Executive for a licence no later than x days before selling such products. The timeframes in relation to applications will be determined during the drafting process.

Subhead (2) provides that those already selling tobacco products or nicotine inhaling products must apply to the Executive for a licence for the premises in question within a specified timeframe to be determined during the drafting process.

Subhead (3) provides that a person applying for a licence must be over 18 years of age.

Subhead (4) sets out the information to be included in an application for a licence. It also provides that the Minister may make regulations in relation to other information which may be required.

Subhead (5) sets out that an application for a licence must be accompanied by the required fee or fees which will be prescribed by the Minister for Health. It also provides that the Minister may make regulations in relation to other information which may be required.

Subhead (6) obliges a person applying for a licence or a renewal of a licence to pay the prescribed fee or fees as prescribed by the Minister.

Subhead (7) provides that an application for a renewal of a licence must be made no later than x days before the licence is due to expire. Timeframe will be determined during the drafting process.

Subhead (8) provides that when a licensee ceases to trade, a new application for a new licence must be made if another person is taking over the business or the business is moving to a new premises.

Subhead (9) indicates that where a licensee stops selling the products, the licence expires on the day the business ceases or the day it expires whichever is earlier.

Subhead (10) provides that a person who provides false information to the Executive is guilty of an offence.

Head 11 Granting, refusal or renewal of a licence

Provide that:

- (1) The Executive shall, upon application to it and in accordance with this Bill and any regulations thereunder, grant, renew or refuse a licence to the applicant.
- (2) In determining whether to grant or renew a licence the Executive may also have regard to:
 - (a) subject to the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, whether there exist convictions recorded against the applicant or the company, as the case may be, in relation to contraventions of tobacco control legislation,
 - (b) the repeated occurrence of any such offences, and
 - (c) the applicant's compliance history with tobacco control legislation.
- (3) The Executive may refuse an application for the grant or renewal of a licence after consideration of information set out in *subhead (2)*.
- (4) The Executive shall refuse an application for the grant or renewal of a licence where:
 - (a) the applicant has not attained the age of 18 years;
 - (b) the applicant does not meet the requirements as set out in this *Part*;
 - (c) the applicant has not paid the required fees as set out in this *Part*;
 - (d) the Executive has reasonable grounds to believe that the information or documentation provided by the applicant is false or misleading;
 - (e) the applicant fails to furnish, within 21 days or such further period as the Executive considers reasonable in the circumstances, information the Executive requires for the performance of its function under this *Part*.
- (5) Where at the time of an application for a licence or renewal by an applicant for a specified premises:
 - (a) an order from the court under section 5A of the Act of 2002 has ordered the cessation of the applicant's registration from the retail register for a specified period for said premises, or
 - (b) an order from the court under *head 28* has effect whereby the licence specific to the licensee attached to that premises has been suspended for a specified period even if that period is greater than the period of validity of the licence,

a licence, if the Executive so grants, shall not be valid until the day following the expiration of the period specified in the court order.

- (6) Where an application for the renewal of a licence is made within the period specified in *head 10(7)* and the application is not determined by the Executive before the expiry of the licence, the existing licence continues in force until the application has been so determined.
- (7) *Subhead (6)* does not apply to an application referred to in that subhead where the application is not accompanied by the fee and all of the information or documentation required by this Bill or regulations made thereunder.
- (8) Where the Executive grants an application for a licence for or renewal of a licence, the Executive should notify the applicant in writing and issue the licence.
- (9) Where the Executive refuses an application for the granting or renewal of a licence, the Executive shall notify in writing to the applicant of the decision to refuse and the reasons for refusal within 28 days of that decision.
- (10) Where the Executive notifies the applicant under *subhead (9)*, details of the appeals procedure shall also be notified.
- (11) In this head ‘applicant’ includes any person from a company, partnership, or an unincorporated association specific to a licence and attached to such specified premises.

Explanatory Note

Subhead (1) provides that the Executive has the power to grant or refuse an application for a new licence or a renewal of a licence.

Subheads (2) and (3) provide that the Executive may consider convictions under tobacco control legislation, subject to the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 and the applicant’s compliance with tobacco control legislation when determining an application. The Executive may refuse an application on foot of this information.

Subhead (4) sets out the circumstances in which the Executive shall refuse an application.

Subhead (5) provides that where an applicant applies for a licence or the renewal of a licence during a suspension period either under section 5A of the Act of 2002 or head 28 of this Bill, a licence, if granted by the Executive, is not valid until after the suspension period expires.

Subhead (6) provides that where an application for renewal made within the timeframe specified in head 10(7) is not determined by the Executive before the expiration of the licence, the existing licence continues in force until the application is determined.

Subhead (7) states that subhead (6) does not apply if the applicant does not pay the fee or has not provided all the required information and documentation.

Subhead (8) requires the Executive to inform the applicant in writing if the licence is granted and to issue the licence.

Subheads (9) and (10) provide that when the Executive refuses an application, it must notify the applicant of the reasons for the refusal within 28 days of the decision and notify the applicant of details of the appeals procedure.

Subhead (11) provides that in this head ‘applicant’ includes any person from a company, partnership or an unincorporated association.

Head 12 Particulars and display of licence

Provide that:

- (1) A licence shall set out the following:
 - (a) the full name of the licensee,
 - (b) the trade name and address of the premises where the products are to be sold,
 - (c) whether the licence is for-
 - (i) combustible tobacco products, non-combustible tobacco products and nicotine inhaling products (category 1), or
 - (ii) non-combustible tobacco products and nicotine inhaling products (category 2),
 - (d) the licence number assigned by the Executive, and
 - (e) the date of issue and expiry of the licence.
- (2) A licensee shall display at all times the licence or a duplicate of the licence referred to subhead (4) –
 - (a) at the point of sale for tobacco products or nicotine inhaling products at the premises specified in the licence, and
 - (b) in a manner that the licence or duplicate of the licence is prominent and clearly visible to members of the public.
- (3) Where a licensee sells tobacco products or nicotine inhaling products online, details of the licence must be displayed on the website in a manner that is prominent and clearly visible to members of the public.
- (4) A licensee may apply to the Executive for a duplicate licence accompanied by a fee of such amount to be prescribed from time to time.
- (5) A person who contravenes *subheads* (2) or (3) is guilty of an offence.

Explanatory Note

This head sets out the details of a licence and places an obligation on a licensee to display the licence.

Subhead (1) provides what must be set out on a licence.

Subhead (2) provides that the licence or a duplicate of the licence must be displayed where the products are sold within the premises and be clearly visible to the public.

Subhead (3) provides that where a licensee sells tobacco or nicotine inhaling products online, details of the licence must be prominent on the website.

Subhead (4) provides that a licensee may apply to the Executive for a duplicate licence for a fee to be prescribed by the Minister.

Subhead (5) provides that a person who contravenes subheads (2) or (3) is guilty of an offence.

Head 13 Register of licences

Provide that:

- (1) The Executive shall, as soon as is practicable after the commencement of this section, establish and maintain a register of licences containing the particulars of every licence issued to include: -
 - (a) the trade name and address of the premises from which tobacco products or nicotine inhaling products are to be sold under the licence;
 - (b) the name of the licensee and the address at which he or she ordinarily resides;
 - (c) the trade name and address of the company, partnership or unincorporated association, where appropriate;
 - (d) the category of licence held;
 - (e) the identifying number of the licence;
 - (f) the date on which the licence was issued and date of expiry;
 - (g) the current tax clearance certificate number relevant to the business and licensee;
 - (h) details of the wholesaler, distributor or supplier who supplies the licensee with tobacco products or nicotine inhaling products in connection with his or her business;
 - (i) details of any convictions under tobacco control legislation, subject to the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016;
 - (j) details of any court order suspension of a licence or registration; and
 - (k) such other particulars as the Executive considers appropriate.
- (2) The Executive may remove a licence from the register or amend the register of licences if it becomes aware that any particular entered in the register is incorrect.
- (3) Where a Court has made an order to suspend a licence for a period as determined by the Court under *head 28* or Section 5A of the Act of 2002, the Executive shall record such suspension in the register of licences.
- (4) Where a licensee has notified the Executive under *head 14* that he or she ceases to carry on the business of selling tobacco products or nicotine inhaling products in the premises

specified on the licence, the Executive shall remove the said licence from the register of licences.

- (5) The Executive may publish a list of valid licensees, the trade name and address of the premises to which the licences pertain, having due regard to the General Data Protection Regulation and the Data Protection Acts 1998 to 2018.

Explanatory Note

Subhead (1) places an obligation on the Executive to establish and maintain a register of licences and sets out the details to be included in the register.

Subhead (2) allows the Executive to remove a licence from the register or amend any error on it.

Subhead (3) provides that the Executive must record suspensions of licences or from the register by the courts in the register.

Subhead (4) provides for the removal of a licence from the register when notified by a licensee that he or she has ceased selling tobacco products or nicotine inhaling products.

Subhead (5) provides that the Executive may publish a list of valid licensees, subject to data protection legislation.

Head 14 Change in particulars

Provide that:

- (1) The licensee shall notify the Executive of any change in the particulars set out in *head 10*.
- (2) Where a licensee ceases to carry on the business of selling tobacco products or nicotine inhaling products in the premises specified on a licence, the licensee shall notify the Executive.
- (3) Where the licensee fails to notify the Executive as set out in this head, he or she is guilty of an offence.

Explanatory Note

Subhead (1) obliges a licensee to notify the Executive of any changes to the information provided under head 10.

Subhead (2) requires a licensee to notify the Executive if he or she stops selling tobacco or nicotine inhaling products in the premises specified on the licence.

Subhead (3) makes it an offence to contravene subheads (1) or (2).

Head 15 Appeals

Provide that:

Where the applicant is aggrieved by a decision of the Executive in relation to a valid licence application, he or she may make an appeal within a period to be determined.

Explanatory Note

This head provides that an applicant may appeal a decision by the Executive in relation to a licence application within a specified time. The advice of the Attorney General will be sought in relation to the appropriate mechanism for an appeals process.

PART 3

RESTRICTIONS ON THE SALE OF TOBACCO AND NICOTINE INHALING PRODUCTS

Head 16 Prohibition on the sale of tobacco products from temporary or movable premises

Provide that:

- (1) A person shall not sell, or cause to be sold, tobacco products from temporary or movable premises excluding ships.
- (2) For the purposes of this Bill “temporary” means a place where a trader does not carry out his or her business on a usual and permanent basis.
- (3) For the purposes of this head “ships” means sea-going vessels engaged in commercial international voyages carrying passengers to or from the State or having passengers on board for the purposes of such carriage.
- (4) A person who contravenes *subhead (1)* is guilty of an offence.

Explanatory Note

Subhead (1) prohibits the sale of tobacco products from temporary or movable premises excluding ships as defined in subhead (3).

Subhead (2) defines “temporary” for the purposes of this bill. This definition is adapted from section 2(1) of the EU (Consumer Information, Cancellation and Other Rights) Regulations 2013(S.I. No. 484 of 2013).

Subhead (3) provides a definition of “ship” for the purpose of this head. The purpose of excluding ships from the requirements of subhead (1) is to allow commercial ships, such as cruise ships and ferries to continue to sell tobacco products while they are in the territorial seas of the State.

Subhead (4) makes it an offence to contravene subhead (1). This is in line with the recommendations set out in Tobacco Free Ireland. The intention is to prohibit the sale of tobacco products from temporary or movable outlets, for example stalls, vans etc. Sea-going international passenger ships are being excluded from the prohibition on the basis that they travel

long distances and serve the passengers on board. They are currently registered to sell tobacco and under this Bill will require a licence if tobacco products are sold in the State's jurisdiction.

Head 17 Selling of tobacco products from a counter or point of sale only

Provide that:

- (1) The only place within a premises at which members of the public may request and pay for a tobacco product is at a counter or point of sale of the premises.
- (2) A person who contravenes *subhead (1)* is guilty of an offence.
- (3) Where a person under the age of 18 years contravenes *subhead (1)*, the licensee is guilty of the offence.
- (4) A person under the age of 18 years does not commit an offence if he or she contravenes this section.

Explanatory Note

Subhead (1) provides that tobacco products can only be sold at a counter or point of sale within a premises. The intention of this head is to prohibit the sale of tobacco products in (mobile or transportable) trays, bags or other containers that are carried, wheeled or otherwise transported by persons. This provision is modelled on section 9 of the Intoxicating Liquor Act 2008.

Subhead (2) makes it an offence to contravene subhead (1).

Subheads (3) and (4) intend to provide that where a person under 18 years contravenes this section, it is the licensee and not the child who is guilty of the offence.

Head 18 Prohibition on the sale of tobacco products or nicotine inhaling products by persons under the age of 18 years

Provide that:

- (1) Subject to *subhead (2)*, a person under the age of 18 years shall not sell tobacco products or nicotine inhaling products.
- (2) A person under the age of 18 years and aged 16 or over may sell tobacco products or nicotine inhaling products in a premises being licensed to sell such products, if and only if he or she is the licensee's sister, step-sister, daughter, step-daughter, sister-in-law, brother, step-brother, son, step-son or brother-in-law.
- (3) Where a person under the age of 18 years is engaged in the sale of tobacco products or nicotine inhaling products and is not a person set out in *subhead (2)*, the licensee is guilty of an offence.
- (4) A person under the age of 18 years does not commit an offence if he or she contravenes this section.
- (5) In proceedings for an offence under this head, it shall be presumed, until the contrary is shown, that the person selling tobacco products or nicotine inhaling products who appeared to the authorised officer to be a child, was, at that time, a child.

Explanatory Note

Subhead (1) prohibits a person under the age of 18 selling tobacco products or nicotine inhaling products.

Subhead (2) allows for someone aged between 16 and 18 to sell these products if and only if they are related to the licensee as set out. The intention is to facilitate small shops where family relations may work on their own. This provision is modelled on section 38 of the Intoxicating Liquor Act 1988.

Subheads (3) and (4) intend to provide that the licensee is guilty of an offence under this head and not the child.

Subheads (5) provides that in proceedings, it will be presumed until otherwise shown that the person selling the products who appeared to be a child, was, at the time, a child.

Head 19 Prohibition on the sale of tobacco products and nicotine inhaling products to persons under the age of 18 years

Provide that:

- (1) A person shall not sell, or cause to be sold, a tobacco product or a nicotine inhaling product to a person under the age of 18 years.
- (2) A person who contravenes *subhead (1)* is guilty of an offence.
- (3) In any proceedings against a person for an offence under *subhead (1)*, it shall be a defence for such person to prove that the person under the age of 18 years produced to him or her –
 - (a) an age card,
 - (b) a passport, or
 - (c) a driving licence,

relating to that person which indicates that he or she has attained the age of 18 years.

Explanatory Note

Subhead (1) prohibits a person selling or supplying tobacco or nicotine inhaling products to a person under the age of 18 years.

Subhead (2) makes it an offence to contravene subhead (1).

Subhead (3) provides defences relating to the fact that the seller was shown an age card, a passport or a driving licence.

Section 45 of the Act of 2002 already prohibits the sale of tobacco products to persons under the age of 18 years. However, it is intended to repeal section 45 and replace it as to align the defences with more recent legislation, for example the Public Health (Sunbeds) Act, 2014. The proposed defence in this head relates to the fact that the seller was shown an age card, a passport or a driver's licence as opposed to section 45 which allows the seller to use the defence that he or she made all reasonable efforts to satisfy him or herself that the person was 18 years or over. The offence is committed by the seller but not the person under the age of 18 years.

This provision is adapted from section 5 of the Public Health (Sunbeds) Act, 2014.

Head 20 Signage in relation to the sale of tobacco products and nicotine inhaling products

Provide that:

- (1) A person who sells tobacco products or nicotine inhaling products shall ensure that signs are displayed at the premises concerned –
 - (a) in such a manner and form as may be prescribed from time to time,
 - (b) informing the public that tobacco products or nicotine inhaling products may be sold at those premises to persons over the age of 18 years, and
 - (c) providing such other information as may be so prescribed.
- (2) A person who contravenes *subhead (1)* is guilty of an offence.

Explanatory Note

Subhead (1) provides that a person selling tobacco products or nicotine inhaling products must display a sign in the manner provided. It also provides for the making of regulations in relation to the matter.

Requirements in relation to signage for tobacco products are currently provided for in section 43(4)(c) of the Act of 2002 and Public Health (Tobacco) (Retail Sign) Regulations 2009 (S.I. No. 57 of 2009). It is proposed to repeal section 43(4)(c) and to revoke the regulations as they relate to the retail register which is being replaced by the licensing system proposed in this Bill.

Subhead (2) makes it an offence to contravene subhead (1).

Head 21 Prohibition on the sale of tobacco products at events or places intended for children

Provide that:

- (1) A person shall not sell, or cause to be sold tobacco products -
 - (a) at an event aimed particularly at children or an event in relation to which the majority of the participants, audience or competitors are children,
 - (b) at a place where an event referred to in (a) is happening, or
 - (c) at a place which is primarily for children
- (2) A person who contravenes *subhead (1)* is guilty of an offence.

Explanatory Note

Subhead (1) prohibits the sale of tobacco products at events or places which are either intended for children or where the majority of attendees are children. The purpose of this head is to protect children by ensuring that tobacco products are not sold at events or places intended for them and further denormalising smoking.

Subhead (2) makes it an offence to contravene subhead (1).

PART 4
COMPLIANCE

Head 22 Compliance notices and orders

Provide that:

- (1) Where an authorised officer is satisfied that a person has contravened a provision to which this head applies, the authorised officer may serve or arrange to have served a notice (in this head 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 *subhead (1)*,
 - (b) for the purpose of ensuring compliance by the person concerned, 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 *subhead (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 *subhead (2)(b)* that falls on or before the date by which an appeal under *subhead (5)* shall be brought.
- (4) An authorised officer may -
 - (a) withdraw a compliance notice at any time, as he or she considers appropriate, or
 - (b) where no appeal is brought under this head, specify a date extending the period specified in the notice for the purposes of *subhead (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 *subhead (5)* that person shall at the same time notify the Executive of the appeal and the grounds for the appeal and the Executive shall be entitled to appear, be heard and adduce evidence at the hearing of the appeal.

- (7) The District Court shall, upon an appeal under this head, 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 *subhead (7)*.
- (9) A person who fails to comply with a compliance notice by the specified date is guilty of an offence and shall be liable -
- (a) on summary conviction -
 - (i) in the case of a first offence, to a class X fine or to imprisonment for a term not exceeding X months, or to both, and
 - (ii) in the case of a second or subsequent offence, to a class X fine or to imprisonment for a term not exceeding X months, or to both, or
 - (b) on conviction on indictment to a fine not exceeding €X or imprisonment for a term not exceeding X years or both.
- (10) Where a compliance notice is not complied with or is not complied with to the satisfaction of an authorised officer, the Executive may seek an order (“compliance order”) of the District Court addressed to the licensee, directing him or her to comply with the compliance order and the order shall –
- (a) specify the provision or provisions of tobacco control legislation which are contravened or are in non-compliance and the matters giving rise to the non-compliance,
 - (b) the arrangements to be put in place to ensure compliance,
 - (c) the time limit for completion or implementation of the specified arrangements.
- (11) This head shall not operate to prevent or restrict -
- (a) the entitlement of any person to bring proceedings for the purpose of securing compliance with tobacco control legislation by a person, or
 - (b) the bringing or prosecuting of any proceedings for an offence under tobacco control legislation.

(12) In this head ‘specified date’ means, in relation to a compliance notice -

- (a) the date specified in the notice in accordance with *subhead (2)(b)*, where no appeal against the notice is brought under this head, 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 *subhead (5)* and the District Court affirms the notice in accordance with *subhead (7)(a)*.

(13) This head applies to:

- (a) *heads 12, 14, 17, 20 and 28(8)* of this Bill,
- (b) sections 33, 33A, 36, 43, 46 and 47(3) of the Act of 2002, and
- (c) sections 7, 8, 9, 10, 11, 12, 13 and 14 of the Act of 2015,

Explanatory Note

Subhead (1) provides that an authorised officer may serve a compliance notice on a person where the authorised officer is satisfied that the person has contravened a relevant provision.

Subheads (2) to (4) set out the requirements in relation to such compliance notices.

Subheads (5) and (8) provide for the appeal against a compliance notice and the requirements in relation to such an appeal.

Subhead (9) provides that a failure to comply with a compliance notice is an offence and sets out the penalties for same. The advice of the Attorney General will be sought to ensure the penalties are effective and proportionate.

Subhead (10) provides that where a compliance notice is not complied with, an authorised officer may seek a compliance order from the District Court directing the licensee to comply with the compliance order.

Subhead (11) provides that this head does not prevent or restrict the bringing of proceedings or prosecutions for non-compliance or offences under tobacco control legislation.

Subhead (12) sets out the parameters in relation to “specified time” in the context of compliance notices.

Subhead (13) sets out the legislation to which this head applies. The advice of the Attorney General will be sought in relation to this provision.

Head 23 Prohibition orders

Provide that:

- (1) Where an authorised officer is of the opinion that a person has contravened a provision to which this head 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 head referred to as a “prohibition order”) in accordance with *subhead (2)*.
- (2) A prohibition order shall -
 - (a) be signed by the authorised officer issuing it,
 - (b) state that the authorised officer is of the opinion that a particular product, matter or activity does not comply with tobacco control legislation,
 - (c) specify the provision or provisions of tobacco control legislation which are contravened or are in non-compliance and the matters giving rise to the non-compliance, and
 - (d) direct the person on whom the prohibition order is served to ensure that -
 - (i) the matter or activity, which is in contravention of the sections referred to in *subhead (1)*, should cease immediately on the service of the prohibition order,
 - (ii) the relevant tobacco product or nicotine inhaling product are not to be placed or made available on the market until such time as all appropriate measures have been taken to ensure compliance with the relevant tobacco control legislation,
 - (iii) the relevant tobacco product or nicotine inhaling product should be withdrawn from sale (whether or not the product is on the market for sale in the State or elsewhere) or prohibited from being placed on the market for sale or imported into, or exported out of, the State,
 - (iv) the relevant tobacco product or nicotine inhaling product is recalled from sale or distribution (whether or not the product is on sale or being or has been distributed for sale in the State or elsewhere).
- (3) The approval referred to in *subhead (1)* may be given orally or in writing and if given orally, shall be recorded in writing as soon as practicable.
- (4) A prohibition order shall take effect -
 - (a) where the prohibition order so declares, immediately the order 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 order, on the expiration of the period during which such an appeal may be taken or the day specified in the prohibition order 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 order is confirmed on appeal or the appeal is withdrawn or the day specified in the prohibition order as the day on which it is to come into effect, whichever is the later.
- (5) The bringing of an appeal against a prohibition order which is to take effect in accordance with *subhead (4)(a)* shall not have the effect of suspending the operation of the prohibition order, but the appellant may apply to the District Court to have the operation of the prohibition order 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 order be suspended until the appeal is disposed of.
- (6) In the event of non-compliance or delay by the person on whom the prohibition order has been served, an authorised officer shall, with the approval of the chief executive officer or other officer designated on behalf by the Executive, take whatever steps are considered necessary to ensure compliance with the direction given under this head and this may include the seizure and destruction of relevant tobacco products or nicotine inhaling products or the making of any arrangements for such seizure or destruction or both.
- (7) A person who is aggrieved by a prohibition order may, within the period of 7 days beginning on the day on which the prohibition order is served on him or her, appeal against the order to a judge of the District Court in the district court district in which the prohibition order was served in the prescribed manner 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 order, with or without modification, or
 - (b) cancel the prohibition order.
- (8) Where on the hearing of an appeal under *subhead (7)* a prohibition order is confirmed, notwithstanding *subhead (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 order for such period as in the circumstances of the case the judge considers appropriate.
- (9) A person who appeals against a prohibition order or who applies for a direction suspending the application of the prohibition order under *subhead (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 order made in accordance with this Bill and the Board shall be notified at the next available meeting of the Board of any such revocation or variation and the reasons therefore.
- (11) Where a prohibition order has been served and activities are carried on in contravention of the prohibition order, 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 *subhead (11)* shall be by motion 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 *subhead (11)* is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.
- (13) The Executive may, if considered to be in the public interest to do so, at any time, and in any form or manner the Executive considers appropriate, publish or cause to be published information relating to the service of prohibition orders.
- (14) This head applies to:
 - (a) *heads 8, 16, 18, 19, 21 and 28(7)* of this Bill, and
 - (b) sections 38(1), 38(2), 38(7), 38(8), 38(9) and 43(1) of the Act of 2002.

Explanatory Note

Subhead (1) provides that an authorised officer may serve a prohibition order, with the approval of the chief executive officer or a designated officer, on a person where the authorised officer is satisfied that the person has contravened a relevant provision.

Subheads (2) to (4) set out the requirements in relation to prohibition orders.

Subheads (5) to (9) provide for the appeal against a prohibition order and the requirements in relation to such an appeal.

Subhead (10) states that the chief executive officer of the Executive or a designated officer may revoke or vary a prohibition order. The Board of Executive must be notified of any revocations or variations to prohibition orders at the next meeting of the Board.

Subheads (11) and (12) provide that in the case of a contravention of a prohibition order, the High Court may by order prohibit the continuance of relevant activities and the requirements under such an order.

Subhead (13) allows the Executive to publish information relating to the service of prohibition orders.

Subhead (14) sets out the legislation to which this head applies. The advice of the Attorney General will be sought in relation to this provision.

This head is modelled on Regulation 42 of the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 (S.I. No. 271 of 2016).

Head 24 Test purchasing

Provide that:

- (1) An authorised officer may, in the course of his or her duty as such officer and in accordance with guidelines issued under *subhead (2)*, send a person who is at least 15 years of age but under 18 years of age into premises 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 and Youth Affairs, from time to time issue guidelines in respect of the procedures to be followed with respect to the practical operation of this head, including guidelines as to—
 - (a) prohibiting any active instigation of a contravention of *head 19* 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 head, including but not limited to, reference to the location of the premises, complaints received by the Executive concerning the premises, the number of reports of possible contraventions of *head 19* relating to the premises or the clientele attracted to the premises.

Explanatory Note

Subheads (1) and (2) provide for test purchasing of tobacco products or nicotine inhaling products on retail premises, in accordance with guidelines issued by the Minister for Health. Parental or guardian consent in writing will be required in all cases and all reasonable steps must be taken to protect the young person concerned.

This head is modelled on section 18 of the Public Health (Sunbeds) Act 2014.

Head 25 Tobacco and nicotine inhaling products non-compliance list

Provide that:

- (1) The Executive shall keep and maintain a list (the “tobacco and nicotine inhaling products non-compliance list”) of the names and addresses of the following persons and the particulars specified in *subhead (2)* and in accordance with the General Data Protection Regulation and the Data Protection Act 2018:
 - (a) a person on whom a fine or other penalty was imposed by a court under tobacco control legislation, the trade name and address of the premises where the offence occurred;
 - (b) a person who has had his or her licence suspended by the Executive by direction of the Court, the trade name and address of the premises which held that licence.
- (2) The tobacco and nicotine inhaling products non-compliance list shall specify, in relation to each person named in the list, such particulars as the Executive considers appropriate in respect of the following:
 - (a) the matter occasioning any fine or penalty imposed on the person by the court and the amount or nature of that fine or penalty; and,
 - (b) the matter occasioning the suspension of a licence by the Executive on direction of the Court
- (3) The Executive may, at any time and in any form or manner the Executive considers appropriate, publish or cause to be published all or any part of the tobacco and nicotine inhaling products non-compliance list.

Explanatory Note

This head provides that information relating to persons on whom a fine or other penalty has been imposed by a court under the relevant legislation or relating to persons who have their licences suspended may be published by the Executive.

Subhead (1) provides that the Executive must keep and maintain a list of information in respect of persons who have been fined or penalised by a court for a conviction, or persons who have had their licence suspended by a court.

Subhead (2) provides that the list will contain information relating to offences, fines, penalties and suspensions.

Subhead (3) allows the Executive to publish the list.

This head is modelled on section 21 of the Public Health (Sunbeds) Act 2014.

PART 5

FIXED PAYMENT NOTICES, OFFENCES, PENALTIES AND PROCEEDINGS

Head 26 Fixed payment notices for offences

Provide that:

- (1) Where an authorised officer has reasonable grounds for believing that a person is committing, or has committed, a relevant offence the authorised person may serve a notice in writing (in this Bill referred to as a “fixed payment notice”) in the prescribed form stating—
 - (a) that the person is alleged to have committed the offence concerned,
 - (b) where and when the person is alleged to have committed the 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 €xxx 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 to whom the notice is given in respect of the alleged 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 offence will be instituted and
 - (f) that in default of such payment, the person shall be prosecuted for the alleged offence.
- (2) Where a fixed payment notice is served under *subhead (1)* –
 - (a) the person to whom it applies may make a payment in accordance with *subhead 1(c)*,
 - (b) the Executive shall, subject to *subhead (6)*, 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 offence to which the notice relates shall not be instituted during the period specified in *subhead 1(c)* and, if payment is made during that period, no prosecution in respect of the alleged offence will be instituted.

- (3) In proceedings for an offence it shall be a defence for the defendant to prove that he or she has made a payment in accordance with this head, pursuant to a fixed payment notice issued in respect of the offence.
- (4) In proceedings for an offence it shall not be a defence for the defendant to show that he or she was not served with a fixed payment notice in respect of the alleged offence.
- (5) The Minister may prescribe the amount of a fixed payment and may prescribe different amounts for different offences.
- (6) Payments received by the Executive under this head shall be paid into or disposed of for the benefit of the Executive in such manner determined by the Executive with the agreement of the Minister and the Minister for Public Expenditure and Reform.
- (7) In this head “relevant offence” means an offence under:
 - (a) *heads 12(5), 14(3), 17(2), 18(3), 20(2), 21(2) and 28(8)* of this Bill, and
 - (b) sections 33A(2), 33A(3), 38(3), 38(7), 38(8), 38(9), 38(11), 43, 46, 47(2) and 47(3) of the Act of 2002.

Explanatory Note

The fixed payment notices (FPN) provision will give an authorised officer an alternative to initiating legal proceedings against a person who has or is committing specific offences under the Bill. FPNs may be issued where they are determined to be an appropriate sanction, proportionate to the nature of the non-compliance. The FPN is served on a person alleged to have contravened certain heads of this Bill. That person is required to pay the specified fine within the prescribed timeframe. A prosecution will not be taken for relevant offences where a person pays the fine within the specified period. Conversely, legal proceedings will be initiated in cases where the offender fails to pay within the prescribed timeframe. The maximum amount for a fixed payment notice will be determined during the drafting process.

Subhead (1) provides that where an authorised officer believes that a person has or is committing an offence under this Bill, he or she may serve an FPN in the manner set out.

Subhead (2) provides that where a person chooses to pay the FPN, the Executive shall receive and retain the payment and issue a receipt to the person. It also provides where a payment is made within the specified time, a prosecution will not be taken.

Subhead (3) provides a defence for the defendant to show that he or she made the required payment in accordance with the requirements of the FPN.

Subhead (4) provides that it is not a defence for the defendant to show that he or she was not served with an FPN.

Subhead (5) allows the Minister to prescribe the amount of the FPN and may prescribe different amounts for different offences.

Subhead (6) provides that the Executive may, with the agreement of the Minister of Health and the Minister for Public Expenditure and Reform, determine how to dispose of payments received.

Subhead (7) sets out the legislation to which this head applies. The advice of the Attorney General will be sought in relation to this provision.

This head is modelled on section 20 of the Public Health (Sunbeds) Act 2014 and section 29 of the Public Health (Alcohol) Act 2018.

Head 27 Offences and penalties

Provide that:

- (1) It is an offence for a person not to comply with the requirements set out in this Bill.
- (2) In proceedings for an offence under this Bill, it shall be a defence for the 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 Bill as are alleged to have been contravened.
- (3) A person guilty of an offence of this Bill shall be liable on summary conviction –
 - (a) in the case of a first offence, to a class X fine or imprisonment for a term not exceeding X months or both,
 - (b) in the case of a second or subsequent offence, to a class X fine or imprisonment for a term not exceeding X months or both, or
 - (c) on conviction on indictment to a fine or imprisonment for a term not exceeding X years.
- (4) Where a person is convicted of an offence under this Bill, 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 or prosecution of the offence.

Explanatory Note

This head sets out the offences and penalties for a person convicted of an offence under this Bill.

Subhead (1) provides that it is an offence not to comply with the provisions of this Bill.

Subhead (2) provides a defence of reasonable efforts to comply with the provisions of the Bill. This head is modelled on section 15(4) of the Public Health (Standardised Packaging of Tobacco) Act 2015.

Subhead (3) establishes the relevant penalties. The advice of the Attorney General will be sought to ensure the penalties are effective and proportionate.

Subhead (4) obliges the court to order a person convicted of an offence under this Bill to pay costs and expenses to the Executives in relation to the investigation, detection or prosecution

of the offence unless there are particular reasons for not doing so. This provision is modelled on section 8(6) of the Public Health (Alcohol) Act 2018.

Head 28 Suspension of a licence by the court upon conviction

Provide that:

- (1) Subject to *head 29*, where a licensee, his or her employee or his or her agent is convicted of an offence under tobacco control legislation, the court shall make an order suspending the licence specific to the licensee and attached to the premises where the offence occurred.
- (2) Where the licensee holds the licence on behalf of a company, partnership or an unincorporated association, the order shall apply to all persons associated with the company, partnership or an unincorporated association.
- (3) A period specified in an order under this head 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 *subhead (1)* is made shall, during the period specified in the order, be deemed not to hold a licence for the specified premises where the offence was committed.
- (5) The courts service shall notify the Executive of any suspension under *subhead (1)*.
- (6) The Executive shall record any suspensions under *subhead (1)* in the register of licences for the period of time specified by the Court.
- (7) Where a licence is suspended under *subhead (1)* and the person who held the licence carries on or attempts to carry on selling the products pertaining to the licence, he or she is guilty of an offence.
- (8) A licensee of a licence who continues to display a licence which has been suspended under *subhead (1)* or to display a licence which has expired is guilty of an offence.

Explanatory Note

This head provides that where a licensee, his or her employee or his or agent is convicted of an offence under the legislation set out, the court shall order the suspension of his or her licence attached to the premises where the offence occurred.

Subhead (2) provides that where the licence is held on behalf of a company, partnership or an unincorporated association, the suspension applies to all persons associated with the company, partnership or unincorporated association.

Subhead (3) provides that a suspension order does not commence until the expiration of appeal process deadlines.

Subhead (4) provides that during the period of suspension the person on whom the suspension is made does not hold a licence for the specified premises.

Subhead (5) provides that the Court service shall notify the Executive of any suspensions.

Subhead (6) provides that the Executive shall record any suspensions in the register.

Subhead (7) provides that a person who sells or attempts to sell products pertaining to a suspended licence commits an offence.

Subhead (8) provides that a licensee who continues to display a suspended or expired licence commits an offence.

Head 29 Minimum suspension periods

Provide that:

(1) Where the Court suspends a licence under *head 28* for offences under:

- (a) *heads 12(5), 20(2), 21(2) or 28(8)* of this Bill,
- (b) sections 43(5) or 46 of the Act of 2002, or
- (c) regulations 4, 11 or 23 of the Regulations of 2016,

the following suspension period shall apply:

- (i) in the case of a summary conviction of a first offence, the Court shall suspend a licence for such period as is specified in the order of not less than 2 days [A] and no more than 7 days.
- (ii) in the case of a summary conviction of a second or subsequent offence, the Court shall suspend a licence for such period as is specified in the order of not less than 7 days [B] and no more than 30 days.

(2) Where the Court suspends a licence under *head 28* for offences under:

- (a) *heads 8(3), 10(10), 16(4), 17(2), 18(3), 19, 22(9) or 28(7)* of this Bill,
- (b) sections 33, 33A(2), 33A(3), 36, 38(1), 38(2), 38(7), 38(8), 38(9), 38(11), 42(2), 43(1), 43(3), 43(4), 47(3), 48(8), 48(12) and 53 of the Act of 2002,
- (c) sections 7, 8, 9, 10, 11, 12, 13 or 14 of the Act of 2015, or
- (d) regulations 8, 10, 22, 25(1), 27, 28, 29, 43(6) or 44 of the Regulations of 2016,

the following suspension period shall apply:

- (i) in the case of a summary conviction of a first offence, the Court shall suspend a licence for such period as is specified in the order of not less than 7 days [X] and no more than 30 days.
- (ii) in the case of a summary conviction of a second or subsequent offence, the Court shall suspend a licence for such period as is specified in the order of not less than 30 days [Y] and no more than 3 months.

- (iii) in the case of a conviction on indictment of the offence, the Court shall suspend a licence for such period as is specified in the order of not less than 3 months [Z] and no more than 12 months.
- (3) In determining the duration of the suspension period, the Court may seek from the authorised officer of the Executive involved in bringing the proceedings, a report on the circumstances in which the offence was committed and any other information which the Court may consider to be of assistance to it in dealing with the case.
- (4) A period specified in an order referred to in *subheads (1) or (2)* 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.
- (5) A person in respect of whom an order under *subheads (1) or (2)* is made shall be deemed not to hold a licence in respect of the premises to which the offence concerned for the sale of tobacco products or for the sale of nicotine inhaling products as the case may be for the period specified in that order or notification as the case may be.

Explanatory Note

This head intends to provide for the minimum suspension periods.

Subhead (1) sets out the suspension periods for offences under the specified heads. In the case of a summary conviction for a first offence, the suspension period will be no less than 2 days but no more than 7 days. For a second or subsequent offence, the suspension period will be no less than 7 days but no more than 30 days.

Subhead (2) sets out the suspension periods for offences under the specified heads. In the case of a summary conviction for a first offence, the suspension period will be no less than 7 days but no more than 30 days. For a second or subsequent offence, the suspension period will be no less than 30 days but no more than 3 months. In the case of a conviction on indictment, the suspension period will be no less than 3 months but no more than 12 months.

Subhead (3) provides that a court may seek a report and other information from an authorised officer to assist it in determining the duration of a suspension period.

Subhead (4) provides that a suspension period cannot commence until (a) the expiration of any appeal period or (b) where a conviction is appealed and affirmed, the date of the decision of the court affirming the conviction.

Subhead (5) provides that a person does not hold a licence for the premises in question during a suspension period specified by a court.

The advice of the Attorney General will be sought in relation to the provisions of this head.

Proposed Minimum Suspensions

Offence	Minimum	Maximum
A - 1st "low grade offence"	2 days*	7 days*
B - 2 nd and subsequent "low grade offence"	7 days*	30 days*
X - 1st "high grade offence" -	7 days*	30 days*
Y - 2 nd and subsequent "high grade offence"	30 days	3 months**
Z - Indictment	3 months	12 months**

*In line with Alcohol (Intoxicating Liquor) temporary closures

** current maximum in the Public Health Tobacco Acts

Head 30 Proceedings

Provide that:

- (1) Summary proceedings for an offence under this Bill may be brought and prosecuted by the Executive.
- (2) Notwithstanding section 10(4) of the *Petty Sessions (Ireland) Act 1851*, summary proceedings for an offence under this Bill may be instituted at any time within 12 months from the date on which the offence was committed or alleged to have been committed.

Explanatory Note

This is a standard head that provides for the prosecution of summary offences.

Subhead (1) is modelled on section 18 of the Public Health (Standardised Packaging of Tobacco) Act 2015.

Subhead (2) is modelled on section 22 of the Public Health (Sunbeds) Act 2014.

Head 31 Offences by bodies corporate

Provide that:

- (2) Where an offence under this Bill is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person purporting to act in such capacity, that person is, as well as the body corporate, guilty of an offence and is liable to be proceeded against and punished as if he or she was guilty of the first-mentioned offence.
- (3) Where the affairs of a body corporate are managed by its members, *subhead (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.

Explanatory Note

This head provides for an offence by a body corporate and is modelled on section 17 of the Public Health (Standardised Packaging of Tobacco) Act 2015.

PART 6

AMENDMENT OF THE PUBLIC HEALTH (TOBACCO) ACT 2002

Head 32 Amendment of section 2 of the Act of 2002

Provide that:

Section 2(1) of the Act of 2002 is amended as follows:

(a) by inserting the following definition:

“ ‘Act of 20XX’ means the *Public Health (Tobacco and Nicotine Inhaling Products) Act 20XX*.”;

(b) by substituting the following for the definition of “tobacco product”:

“ ‘tobacco product’ means a product 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;”

Explanatory Note

A definition of this Bill will be inserted into the Act of 2002 to allow alignment between the provisions.

The definition of “tobacco product” is being amended to bring the definition into line with the definition within the Public Health (Standardised Packaging of Tobacco) Act 2015.

Head 33 Repeal of section 5A of the Act of 2002

Provide that:

Section 5A of the Act of 2002 is repealed subject to a transitional period to allow the licensing system to become fully operational.

Explanatory Note

Section 5A of the Public Health (Tobacco) Act 2002 provides for sanctions and offences in relation to section 37 of that Act. Section 37 relates to the retail register and is being repealed by this Bill. The repeal of section 5A will be subject to an appropriate transitional period to allow the licensing system proposed within this Bill to become fully operational.

Head 34 Repeal of section 37 of the Act of 2002

Provide that:

Repeal of section 37 of the Act of 2002 subject to a transitional period to provide for the processing of applications for licences under this Bill.

Explanatory Note

Section 37 of the Act of 2002 provides that people who sell tobacco products by retail must register with the Executive. The section sets out the requirements for doing so. The provisions of this Bill in relation to the licensing of tobacco products replace the requirements of section 37. The repeal of section 37 will be subject to an appropriate transitional period to allow the licensing system proposed within this Bill to become fully operational.

Head 35 Amendment of section 43 of the Act of 2002

Amend section 43 as follows:

- (a) in subsection (1), delete “subject to subsection (2)”;
- (b) repeal subsection (2);
- (c) in subsection (3), amend the reference to “a person registered under section 37” to reflect the provisions of this Bill and by deleting “(other than a person to whom regulation under subsection 2 apply)”;
- (d) repeal subsection (4)(a) following any necessary transitional period;
- (e) repeal subsection (4)(c) following any necessary transitional period;
- (f) in subsection (5), amend references to “person registered under section 37”.

Explanatory Note

Section 43(1) of the Act of 2002 prohibits the sale of tobacco products by means of self service.

Section 43(2) provides an exemption to licensed premises and registered clubs, allowing them to sell tobacco products by means of self-service vending machines.

The effect of repealing section 43(2) is to prohibit the sale of tobacco products by means of a self-service vending machine in licensed premises or registered clubs.

The amendments in relation to “person registered under section 37” are required to reflect the repeal of section 37 by head 34 of the Bill.

Once the licensing system becomes fully operational, the requirement to ensure that a registration number is affixed to a container or dispenser under section 43(4)(a) will cease, therefore it is intended to repeal this provision.

Section 43(4)(c) provides for a sign (prescribed in S.I. No. 57 of 2009) to be displayed at a premises, informing the public that tobacco products may be sold at those premises to persons who have attained the age of 18 years. The information prescribed in S.I. No. 57 of 2009 relates to the retail register and will therefore be repealed following any necessary transitional period. The requirements within section 43(4)(c) are being replaced by the provisions in head 20.

Head 36 Repeal of section 45 of the Act of 2002

Provide that:

Section 45 of the Act of 2002 is repealed.

Explanatory Note

Section 45 of the Public Health (Tobacco) Act 2002 prohibits the sale of tobacco products to persons under 18 years of age. Section 45 is being repealed and replaced by head 19 which prohibits the sale or supply of tobacco products and also nicotine inhaling products to persons under the age of 18 years.

The proposed head 19 provides defences in line with more recent legislation, for example the Public Health (Sunbeds) Act, 2014. The proposed defence in head 19 relates to the fact that the seller was shown an age card, a passport or a driver's licence as opposed to section 45 which allows the seller to use the defence that he or she made all reasonable efforts to satisfy him or herself that the person was 18 years or over.

Head 37 Amendment of section 48 of the Act of 2002

Provide that:

Section 48 of the Public Health (Tobacco) Act 2002 is amended

- (a) to provide that authorised officer under that Act are also authorised officers for the purposes of this Act and
- (b) to provide further enforcement powers to authorised officers for the enforcement of tobacco control legislation

Explanatory Note

The purpose of this head is to amend Section 48 of the Public Health (Tobacco) Acts in relation to authorised officers and enforcement in respect of this Bill and to also update and enhance the enforcement provisions to comply with contemporary practices.

Head 38 Amendment of section 49 of the Act of 2002

Provide that:

Section 49 of the Act of 2002 is amended in subsections (1) and (2) by inserting “, the Act of 2015 or the Act of 20XX” after “this Act”.

Explanatory Note

Section 49 of the Act of 2002 provides for the indemnification of authorised officers appointed by the Executive and the staff of the Office of Tobacco Control which was established by section 9 of the Act of 2002. This amendment provides for the indemnification of authorised officers and staff in relation to this Bill too.

Head 39 Amendment of section 53 of the Act of 2002

Provide that:

Section 53 of the Act of 2002 is amended to bring it in line with the proposed new register of licences.

Explanatory Note

Section 53 provides that it is an offence for a person to forge or alter with intent to defraud or deceive, the retail register, an entry in the register or a document purporting to be an extract from the register. It also provides that it is an offence for a person to have any of aforementioned items in his or her possession.

The advice of the Attorney General will be sought as to whether an amendment is required to associate this section with the new register of licences or whether it should be repealed when the retail register ceases to operate.

PART 7

AMENDMENT OF THE EUROPEAN UNION (MANUFACTURE, PRESENTATION AND SALE OF TOBACCO AND RELATED PRODUCTS) REGULATIONS 2016

Head 40 Amendment of Regulation 41 of the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016

Provide that:

Regulation 41 of the Regulations of 2016 is amended as follows:

(a) by substituting paragraph (1) for the following:

“(1) Where an authorised officer is satisfied that a person has contravened regulation 5, 6, 7, 10, 11, 23, 24, 26, 27, 28, 29, 30, 31, 33(1), 34, 35 or 36, the authorised officer may serve a notice (in this Regulation referred to as a “compliance notice”) on the person.”;

(b) by inserting the following after paragraph (9):

“(9A) Where a compliance notice is not complied with or is not complied with to the satisfaction of an authorised officer, the Executive may seek an order (“compliance order”) of the District Court addressed to the licensee, directing him or her to comply with the compliance order and the order shall –

- (a) specify the provision or provisions of tobacco control legislation which are contravened or are in non-compliance and the matters giving rise to the non-compliance,
- (b) the arrangements to be put in place to ensure compliance,
- (c) the time limit for completion or implementation of the specified arrangements.”.

Explanatory Note

Regulation 41 of the EU (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 (S.I. No. 271 of 2016) provides for compliance notices for contraventions of certain regulations. The purpose of this amendment is to extend the regulations to which a compliance notice applies.

It will also provide for compliance orders for those contraventions. This amendment will bring regulation 41 in line with head 22 which provides for compliance notices and orders for contraventions of provisions in this Bill, the Act of 2002 and the Act of 2015.

Head 41 Amendment of Regulation 42 of the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016

Provide that:

Regulation 42 of the Regulations of 2016 is amended by substituting paragraph (1) for the following:

“(1) Where an authorised officer is of the opinion that a manufacturer, importer, distributor or retailer of a relevant product has contravened Regulation 4(1), 5, 8, 22, 24, 26, 27, 28, 29, 33(2) or 33(3) and 35, 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 manufacturer, importer, distributor or retailer concerned, an order (in this Regulation referred to as a ‘prohibition order’) in accordance with paragraph (2).”.

Explanatory Note

Regulation 42 of the EU (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 (S.I. No. 271 of 2016) provides for prohibition orders in relation to contraventions of certain regulations. This amendment increases the regulations to which a prohibition order applies. The advice of the Attorney General will be sought in relation to this provision.

Head 42 Insertion of new regulation to provide that fixed payment notices apply to offences in the Regulations of 2016

Provide that:

Insert a new regulation in Part 6 of the Regulations of 2016 to provide for fixed payment notices for certain offences within the Regulations. The fixed payment notices will apply to Regulations 11, 23(6), 23(11A), 29(1), 30 and 31.

Explanatory Note

This head will provide that where an authorised officer believes that a person has or is committing an offence under the regulations, he or she may serve an FPN on that person. It will also set out the parameters and obligations in relation to FPNs.

This provision will reflect head 26 which provides for fixed penalty notices in relation to provisions of this Bill and the Act of 2002. The advice of the Attorney General will be sought in relation to this provision.

Head 43 Insertion of new regulations to provide for minimum suspension periods for offences in the Regulations of 2016

Provide that:

Insert new regulations in Part 6 of the Regulations of 2016 to provide for the minimum suspension periods for certain offences in the regulations. Minimum suspension periods will apply to regulations 4, 8, 10, 11, 22, 23, 25(1), 27, 28, 29, 43(6) and 44.

Explanatory Note

This head will provide that a licence can be suspended for offences under the specified regulations and minimum suspension periods will apply. The provision will reflect heads 28 and 29. The advice of the Attorney General will be sought in relation to this provision.

PART 8

AMENDMENT OF THE CRIMINAL JUSTICE (PSYCHOACTIVE SUBSTANCES) ACT 2010

Head 44 Amendment of section 2 of Criminal Justice (Psychoactive Substances) Act 2010

Provide that:

Section 2(1) of the Criminal Justice (Psychoactive Substances) Act 2010 is amended 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 and Nicotine Inhaling Products) Act 20XX,”.

Explanatory Note

The Criminal Justice (Psychoactive Substances) Act 2010 was introduced as a general criminal justice measure to deal with new psychoactive substances as they emerge.

Section 3 (Prohibition of sale, etc. of psychoactive substances) of the 2010 Act provides for the offences of selling, importing and exporting psychoactive substances knowing or being reckless as to whether they are being acquired or supplied for human consumption.

The term “psychoactive substance” is defined in section 1 (Interpretation) of the Act as meaning a substance, product, preparation, plant, fungus or natural organism which has, when consumed by a person, the capacity to—

- (a) produce stimulation or depression of the central nervous system of the person, resulting in hallucinations or a significant disturbance in, or significant change to, motor function, thinking, behaviour, perception, awareness or mood, or
- (b) cause a state of dependence, including physical or psychological addiction.

Section 2 (Exclusions from application of Act) excludes from the scope of the Act specific products which are subject to licence, authorisation or other control. These include medicinal products, animal remedies, intoxicating liquor, food and controlled drugs which are subject to the Misuse of Drugs Acts. Tobacco products within the meaning of section 2 of the Public Health (Tobacco) Act 2002 are also specifically excluded by section 2.

This head proposes to amend section 2 of the 2010 Act to add nicotine inhaling products to the list of products excluded from the scope of that Act. The exclusion of nicotine inhaling products from the application of the 2010 Act is consistent with the position regarding tobacco products. and will ensure that there is no doubt regarding the status of nicotine inhaling products under the 2010 Act.

PART 9

REVOCATIONS AND CONSEQUENTIAL AMENDMENTS

Head 45 Revocations

Provide that:

The following Regulations will be revoked, subject to any necessary transitional arrangements:

- (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).

Explanatory Note

This head will provide for the revocation of certain regulations. Further revocations may be required as a result of provisions within this Bill. The advice of the Attorney General will be sought in relation to this provision.

Head 46 Consequential amendments

Provide that:

This head provides for any necessary consequential amendments to tobacco control legislation arising from this Bill.

Explanatory Note

Consequential amendments to current tobacco control legislation may be required as a result of the Bill. This head provides for such amendments. The advice of the Attorney General will be sought in relation to necessary consequential amendments arising from the provisions within the Bill.