



Number 6 of 2004

PUBLIC HEALTH (TOBACCO) (AMENDMENT) ACT 2004

ARRANGEMENT OF SECTIONS

Section

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17. Amendment of section 48 of Principal Act.
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20. Short title, commencement and collective citation.

[No. 6.]

*Public Health (Tobacco)
(Amendment) Act 2004.*

[2004.]

SCHEDULE

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

ACTS REFERRED TO

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



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PUBLIC HEALTH (TOBACCO) (AMENDMENT) ACT 2004

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

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “Principal Act” means the Public Health Definition. (Tobacco) Act 2002.

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

(a) the deletion of the definition of “advertisement”,

(b) the insertion of the following definitions:

“‘advertising’ has the same meaning as it has in the Directive of 2003, and cognate words shall be construed accordingly;

¹ OJ No. L 194, 18.7.2001, p.26

² OJ No. L 152, 20.6.2003, p.16

³ OJ No. L 22, 25.1.2003, p.31

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

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

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

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

and

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

“‘tobacco product’ means—

(a) any product consisting, in whole or in part, of tobacco, that is intended to be smoked,

(b) a tobacco product within the meaning of the Finance (Excise Duty on Tobacco Products) Act 1977 (inserted by section 86(1) of the Finance Act 1997), or

(c) any cigarette paper, tube or filter manufactured for use in the smoking of tobacco,

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

Amendment of section 5 of Principal Act.

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

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

- (b) the insertion of the following subsection:

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

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

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

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

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

(a) the Act of 1978, and

(b) the Act of 1988.

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

(a) subsection (3), and

(b) subsection (5) of section 47 (inserted by *section 16* of the *Public Health (Tobacco) (Amendment) Act 2004*),

continue in force after such commencement.

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

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

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

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

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

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

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

(a) (i) a statement of the name of a manufacturer or importer of a tobacco product, or the name of any brand of tobacco product, or

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

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