

Public Health
(Tobacco Products and Nicotine
Inhaling Products) Act 2023
(Number 35 of 2023)
Guidance
for
Industry

Sections 29, 30 & 31

September 2024

Contents

Introduction

Guidance Document

Data Protection/Freedom of Information

Overview of the Public Health (Tobacco Products and Nicotine

Inhaling Products) Act 2023

Commencement

Definitions

Enforcement

Sections 29, 30 & 31

Contact details

Introduction

Tobacco control policy in Ireland is framed by the Tobacco Free Ireland policy and international considerations, EU tobacco control policy and the World Health Organisation Framework Convention on Tobacco Control.

Tobacco Free Ireland has set a target to reduce smoking levels to less than 5% of the population by 2025. Tobacco Free Ireland contains over 60 recommendations, underpinned by two strategies, the protection of children and the denormalisation of smoking.

The Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023 forms part of a comprehensive suite of reforms to reduce smoking and its harmful effects, informed by national and international considerations in line with the recommendations in Tobacco Free Ireland. The Public Health (Tobacco Products and Nicotine Inhaling Products) Act was signed into law by the President on the 13th of December 2023.

Provisions within the Act:

- introduce a licensing system for the retail sale of tobacco and nicotine inhaling products.
- prohibit the sale of tobacco products from self-service vending machines, temporary or mobile units and at events for children.
- prohibit the sale of tobacco products and nicotine inhaling products by persons under 18 years and prohibit the sale of tobacco products and nicotine inhaling products to persons under 18 years.
- introduce additional enforcement powers and sanctions including fixed penalty notices for retailers convicted of offences.
- prohibit the sale of nicotine inhaling products from self-service vending machines, temporary or mobile premises, and at events for children.
- prohibit the advertisement of e-cigarettes on public transport, in cinemas, and near schools.

Guidance Document

The aim of this publication is to provide guidance in relation to sections 29, 30 and 31 of the Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023 which will come into effect from 23rd September 2024 to persons who have responsibilities under this legislation.

As interpretation of the law is a matter for the Courts, this guidance is intended to provide general information on the Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023 and should not be construed as legal advice. It is without prejudice to any other legal obligations under criminal or civil law.

Data Protection and Freedom of Information

The Health Service Executive (HSE) fully respects your right to privacy. Any personal information attained for the purposes of the Public Health (Tobacco Products and Nicotine Inhaling Products) Act will be treated in accordance with the Data Protection Acts, 1988 and 2003 (and any amending or substituting legislation). Your personal information will be used only for the purposes for which it is provided, for example, for conducting regulatory checks or requirements or to comply with a legal process. You are entitled to access information that the HSE holds relating to you and can do so by applying to the HSE in writing and on payment of the prescribed statutory fee. The HSE reserves the right to charge a reasonable administration fee for each access request. The HSE is entitled to take reasonable steps to establish your identity in relation to any query, amendment, access or deletion request in respect of the Tobacco Products and Nicotine Inhaling Products Non-Compliance List.

Commencement

[The Public Health \(Tobacco Products and Nicotine Inhaling Products\) Act 2023 \(Commencement Order\) 2023 \(S.I. 669 of 2023\)](#) commenced Section 28 of the Act, which is a prohibition on the sale of tobacco products and nicotine inhaling products to those aged under 18. The Order also commenced the general provisions of the Act including those

relating to penalties and proceedings and amendments to other legislation¹. All sections in the Order came into effect from 22 December 2023.

Sections 29, 30 and 31 of the Act relate to the prohibition on the sale of tobacco products and nicotine inhaling products at events aimed at children and the prohibition on advertising of nicotine inhaling products in certain places and in cinemas. These provisions will come into operation on 23rd September 2024.

Definitions

The following definitions will apply for the purpose of this guidance document.

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

“nicotine inhaling product” means—

(a) an electronic cigarette, or

(b) any other product consisting of —

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

(ii) a cartridge which— (I) may contain a relevant substance, and (II) is intended to form part of a device that falls within subparagraph (i), or

(iii) a relevant substance;

¹ Sections 1 to 8 inclusive, Section 9 subsection 1(c), Section 10, Section 28, Sections 35 – 41 inclusive, Sections 42 – 44 inclusive, Sections 46 – 49 inclusive, and Sections 50 – 51 inclusive.

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

- (a) that can be consumed and consists, even partly, of tobacco, whether genetically modified or not and includes a cigarette paper, tube or filter manufactured for use in the smoking of tobacco, and
- (b) that is intended for sale by retail in the State;

Enforcement

The National Environmental Health Service in the HSE will be the enforcement body.

Guidance for Industry – Section 29, Prohibition on sale of tobacco products or nicotine inhaling products at events aimed at children.

Section 29 of the Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023 introduces a prohibition on the sale of tobacco products and nicotine inhaling products at events aimed at children.

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

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

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

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

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

What does this mean?

No tobacco products or nicotine inhaling products can be sold at events for children or events where all or more than 50% of participants or audience are children. The objective of this measure is to protect the health of children.

Date of operation

The provision will come into operation on the 23rd of September 2024.

Penalties

A fixed payment notice can be issued by the HSE under section 56 (inserted by section 49 of the Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023 (No. 35 of 2023)) of the Public Health (Tobacco) Act 2002 (No. 6 of 2002).

On summary conviction, a person shall be liable to a class B fine, up to a maximum of €4000 or up to 6 months imprisonment or both.

On conviction for a second or subsequent offence, a person shall be liable to a class A fine, up to a maximum of €5000 or up to 12 months imprisonment or both.

Q & A

Q. What are examples of events aimed at children or sports events aimed at children?

A. Events aimed at children include:

- Teddy Bear Picnics
- Music events aimed at children

Sports events include:

- Football matches
- Community Games
- Swimming Galas

Guidance for Industry – Section 30, Prohibition on advertising of nicotine inhaling products in certain places.

Section 30 of the Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023 introduces a prohibition on the advertising of nicotine inhaling products in certain places.

Prohibition on advertising of nicotine inhaling products in certain places

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

- (a) in or at a school, including the grounds of the school, or within 200 metres of the perimeter of the grounds,
- (b) in or on a public service vehicle (within the meaning of the Road Traffic Act 1961),
- (c) in or on a train (within the meaning of the Railway Safety Act 2005),
- (d) in or on a light rail vehicle (within the meaning of the Transport (Railway Infrastructure) Act 2001),
- (e) in or at a train or bus station,
- (f) at a designated stopping place at which passengers may board or alight from buses, or
- (g) at a designated stopping place at which passengers may board or alight from light railway vehicles.

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

(3) In this section —

“advertise” means to advertise by the display of posters, billboards, hoardings, placards or other signage whether intended to be permanent or

temporary but does not include an advertisement on or attached to a premises where nicotine inhaling products are manufactured or sold by wholesale or retail;

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

What does this mean?

There can be no advertisement for a nicotine inhaling product:

- in or at a school (including its grounds) or within 200 metres of a school
- in or on a public service vehicle² (e.g. taxi, hackney, limousine, bus)
- in or on a train³, in or on a light railway vehicle⁴ (e.g. luas)
- at a bus or train station
- at a bus stop
- at a luas stop

The purpose of the measure is to reduce the exposure of children and young people to advertisements for nicotine inhaling products in order to protect their health. A list of schools can be accessed [here](#).

Date of operation

The provision will come into operation on the 23rd of September 2024.

² public service vehicle” means a mechanically propelled vehicle used for the carriage of persons for reward

³ “train” means a vehicle with flanged wheels designed to operate on a railway for whatever purpose and includes carriages and rolling stock.

⁴ “light rail vehicle” means a vehicle with flanged wheels designed to run on a light railway

Penalties

On summary conviction, a person shall be liable to a class B fine, up to a maximum of €4000 or up to 6 months imprisonment or both.

On conviction for a second or subsequent offence, a person shall be liable to a class A fine, up to a maximum of €5000 or up to 12 months imprisonment or both.

Q & A

Q. What sort of advertisements are prohibited?

A. Advertisements for nicotine inhaling products on posters, billboards, hoardings, placards or other signage, whether intended to be permanent or temporary and:

- in or at a school (including its grounds) or within 200 metres of a school
- on a public service vehicle such as a bus or a taxi or other cab or limousine,
- a train or a tram,
- at a train station or bus station, or
- at a bus stop or tram stop.

Q. What is not included in this prohibition?

A. It does not include an advertisement on or attached to a premises where nicotine inhaling products are manufactured or sold by wholesale or retail.

Guidance for Industry – Section 31, Prohibition on advertising of nicotine inhaling products in cinemas.

Section 31 of the Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023 introduces a prohibition on the advertising of nicotine inhaling products in cinemas. It provides for an exemption for advertising nicotine inhaling products immediately before or during the screening of films classified as suitable for those aged 18 years or more.

Prohibition on advertising of nicotine inhaling products in cinemas.

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

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

What does this mean?

From 23 September 2024, there can be no advertisements for nicotine inhaling products in cinemas unless the film is for persons aged 18 years or over.

The objective of this measure is to reduce the exposure of children and young people to advertisements for nicotine inhaling products in order to protect their health.

Date of operation

The provision will come into operation on the 23rd of September 2024.

Penalties

On summary conviction, a person shall be liable to a class B fine, up to a maximum of €4000 or up to 6 months imprisonment or both.

On conviction for a second or subsequent offence, a person shall be liable to a class A fine, up to a maximum of €5000 or up to 12 months imprisonment or both.

Q & A

Q. What is classified as a cinema?

A. Cinemas include open-air and pop-up cinema events as well as permanent cinemas.

Contact Details

For further information or enquiries regarding enforcement or to make a complaint please contact your local Environmental Health Office at info@tpd.ie

For further information regarding the Public Health (Tobacco Products and Nicotine Inhaling Products) Act please contact the Tobacco and Alcohol Control Unit of the Department of Health at tobacco@health.gov.ie