



**AN BILLE SLÁINTE POIBLÍ (PACÁISTIÚ
CAIGHDEÁNAITHE TOBAC), 2014
PUBLIC HEALTH (STANDARDISED PACKAGING OF
TOBACCO) BILL 2014**

EXPLANATORY AND FINANCIAL MEMORANDUM

Background

Tobacco smoking is the greatest single cause of preventable illness and premature death in Ireland, killing over 5,200 people a year. Smoking prevalence in Ireland remains high at 22% of our population. It has been estimated that approximately €500 million of health expenditure in Ireland is directly due to smoking related diseases.

Ireland's public health policy objective in relation to tobacco control is to promote and subsequently move toward a tobacco free society. *Tobacco Free Ireland*, the policy document approved by Government in July 2013, builds on existing tobacco control policies and legislation already in place in this country, and sets a target for Ireland to be tobacco free (i.e. with a prevalence rate of less than 5%) by 2025.

The Government is implementing a comprehensive suite of reforms to reduce smoking and its harmful effects. As part of these reforms the Government committed to introduce legislation requiring standardised packaging of tobacco products, to remove one of the last remaining frontiers for tobacco advertising.

Purpose of Bill

The Bill will control the design and appearance of tobacco products and packaging. This means that all forms of branding — trademarks, logos, colours and graphics — would be removed from packaging, except for the brand and variant names, which would be presented in a uniform typeface for all brands on the market. All packs would be in a plain neutral colour, except for the mandatory health warnings and other items provided for by law. It is intended that this Bill will operate alongside other regulatory mechanisms for tobacco products and packaging generally.

The regulation of the appearance of tobacco products and packaging is intended to contribute to improving public health by:

- reducing the appeal of tobacco products to consumers;
- increasing the effectiveness of health warnings on the retail packaging of tobacco products; and
- reducing the ability of the packaging of tobacco products to mislead consumers about the harmful effects of smoking.

The Bill also gives effect in part to Directive No. 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products. The Directive has been in force from 20th May 2014 and Member States have two years to transpose the new rules into national law. Areas covered by the Directive include labelling and packaging, ingredients and emissions, traceability and security features and cross border distance sales of tobacco. While the revised Directive does not go so far as to introduce standardised packaging on an EU-wide basis, it provides that it shall not affect the right of Member States to introduce further requirements in relation to standardised packaging.

In addition, the introduction of standardised packaging for tobacco products is one of the means by which the Government will give effect to Ireland's obligations under the World Health Organization *Framework Convention on Tobacco Control* (WHO FCTC). The following Articles of the WHO FCTC are of relevance:

- Article 5 of the WHO FCTC requires each Party to develop and implement comprehensive national tobacco control strategies, plans and programs, and to take effective legislative and other measures for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke.
- Article 11 of the WHO FCTC requires Parties to implement effective measures to ensure that tobacco packaging does not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions.
- Article 13 of the WHO FCTC requires Parties to implement comprehensive bans on tobacco advertising, promotion and sponsorship.

Guidelines adopted by the Conference of the Parties to the WHO FCTC on Article 11 and Article 13 recommend that Parties consider introducing standardised packaging.

The Bill is divided into four parts.

Part 1 deals with PRELIMINARY AND GENERAL PROVISIONS and covers Sections 1 to 6.

Section 1 — (Short title, collective citation and commencement)

Section 1 contains a standard provision for dealing with the short title, collective citation of the Public Health (Tobacco) Acts and the commencement date(s) of the Bill.

Section 2 — (Interpretation)

Section 2, subsection (1) deals with the interpretation of the Bill; it defines the meaning of certain terms used in the Bill, including *cigarette packet, inserted item, affixed item, retail packaging, tobacco product, and variant name*. *Subsection (2)* clarifies that (a) the outer surface of outside packaging means the entire outer surface of the packaging, including that of a flip-top lid in the case of a cigarette packet, (b) where the outside packaging has a flap with a surface visible only when the packaging is opened, that surface is classed as an inner surface. *Subsection (3)* states that, subject to *subsection (1)*, a word or expression used in the Bill and also used in the Tobacco

Products Directive has the same meaning, unless the context requires otherwise.

Section 3 — (Orders and regulations)

Section 3 makes provision for the laying of regulations before the Houses of the Oireachtas. *Subsection (1)* states that the Minister may make regulations to provide for any matter referred to in the Bill, or to give full effect to any provision of the Bill. *Subsection (2)* specifies that the regulations may contain any provisions which appear to the Minister to be necessary or expedient for the purposes of the regulations. *Subsection (3)* states that every order (other than an order under *section 1(3)*) or regulation made by the Minister under the Act will be laid before the Houses of the Oireachtas.

Section 4 — (Expenses)

Section 4 is a standard provision dealing with expenses.

Section 5 — (Restriction of Act)

Subsection (1) refers to the Trade Marks Act 1996 and clarifies that nothing in the Act operates to prohibit the registration of a trade mark or that nothing in the Act shall be grounds for the revocation of the registration of a trade mark. *Subsection (2)* specifies that nothing in the Act affects the law in relation to tax stamps.

Section 6 — (Transitional Provisions)

Section 6 makes transitional provisions which provide a timeframe for retailers and tobacco manufacturers to comply with the new measures.

Part 2 deals with the RETAIL PACKAGING AND PRESENTATION OF TOBACCO PRODUCTS and covers Sections 7 to 14.

Section 7 — (Retail packaging of cigarettes)

Section 7, subsection (1) provides for the specifications for cigarette packets, which must (a) have an outer surface of a prescribed colour with a matt finish, (b) have an inner surface of a prescribed colour, (c) have no marks or trademarks, (d) not have any decorative ridges, embossing or embellishments, (e) not have a coloured or non-transparent adhesive, (f) not contain any inserted or affixed items. *Subsection (2)* clarifies that subsections 1(a) and 1(c) do not apply to (a) health warnings, (b) a bar-code or other identification mark that is in accordance with *subsection (5)*, (c) other items provided for by law. *Subsection (3)* provides that, subject to *subsection (4)*, the following may be printed on a cigarette packet: (a) a brand or business or company name, and (b) a variant name. *Subsection (4)* states that the names referred to in *subsection (3)* must be printed in accordance with regulations under *subsection (10)* and may be printed on the cigarette packet (i) once on the front outer surface, (ii) once on the top outer surface, and (iii) once on the bottom outer surface, provided that the text does not obscure or interfere with health warnings. *Subsection (5)* provides that a bar-code or other similar identification mark may be printed once on a cigarette packet in a form and manner prescribed by the Minister, provided that it does not convey any information to the consumer (including any electronic communication). *Subsection (6)* specifies that a cigarette packet must (a) be cuboid in shape with edges that may be rounded or bevelled, (b) be made of carton or soft material, (c) not have an opening that may be re-closed or re-opened other than (i) a flip-top lid, provided it is hinged at the back of the packet, or (ii) a shoulder box hinged lid. *Subsection (7)* states that the requirements of *subsections (1) to (5)* will apply to any other form

of outside packaging of cigarettes. *Subsection (8)* specifies that a wrapper covering a cigarette packet or any other form of outside packaging of cigarettes shall (a) be transparent, (b) not be coloured, (c) not have any decorative ridges, embossing or embellishments, (d) not have a trademark or mark other than a tear-strip in accordance with *subsection (9)*, (e) not have any affixed item, other than as provided by law. *Subsection (9)* states that the Minister may prescribe the manner in which a tear strip may be printed on a wrapper under *subsection (8)(d)*, including colour, dimensions, specifications, and positioning. *Subsection (10)* states that the Minister may prescribe the manner in which names referred to in *subsection (3)* may be printed on a cigarette packet or outside packaging of cigarettes, including colour, font, font size, positioning and appearance. *Subsection (11)* specifies that in prescribing a colour for *subsections (1)(a)* or *(b)* or matters referred to in *subsection (10)*, the Minister shall have regard to (a) the need to decrease the appeal of cigarettes, (b) the need to increase the effectiveness of health warnings on retail packaging of cigarettes and (c) the need to reduce the ability of retail packaging of cigarettes to mislead consumers about the harmful effects of smoking. *Subsection (12)* specifies that this section applies to the retail packaging of cigarettes that are to be sold by retail in the State. *Subsection (13)*, which has been included in order to transpose articles of the EU Tobacco Products Directive, specifies that *subsection (6)* applies to the retail packaging of cigarettes that are intended to be placed on the market within the EU.

Section 8 — (Appearance of cigarettes)

Subsection (1) sets out the provisions for the appearance of the cigarette sticks: (a) the paper covering the cigarette must be white, (b) where there is a filter tip this must be (i) white and (ii) the paper covering the filter tip may be white or have an imitation cork tip. *Subsection (2)* allows (a) a brand name or business name or company name and (b) a variant name to be printed on a cigarette in accordance with regulation under *subsection (3)*. *Subsection (3)* provides that the Minister may prescribe the manner and form for the matters in *subsection (2)*, including the colour, font, font size, positioning and appearance of such a name, and in doing so the Minister shall have regard to (a) the need to ensure that an erroneous impression is not created about the characteristics, health effects, hazards or emissions of cigarettes, and (b) the need to reduce the ability of cigarettes to mislead consumers about the harmful effects of smoking. *Subsection (4)* specifies that “an imitation cork tip” means the paper covering the filter tip that is printed to look like cork. *Subsection (5)* sets out that it is an offence for a person to manufacture, import or sell cigarettes that do not comply with this section and *subsection (6)* provides that this section applies to cigarettes intended for retail sale in the State.

Section 9 — (Retail packaging of roll-your-own tobacco)

Section 9 provides the specifications for the appearance of and content of the roll-your-own tobacco packets. *Subsection (1)* provides that a unit packet of roll-your-own tobacco shall (a) be a prescribed colour with a matt finish on the outside, (b) be a prescribed colour on the inside, (c) have no marks or trademarks, (d) not have any decorative ridges, embossing or embellishments, (e) not have a coloured or non-transparent adhesive, (f) not contain any inserted or affixed items other than as provided for by law. *Subsection (2)* clarifies that paragraphs (a) and (c) of *subsection (1)* do not apply to (a) health warnings, (b) a bar-code or other similar identification mark which is in accordance with regulations under *subsection (5)*, (c) other items provided for by law. *Subsection (3)*

provides that, subject to *subsection (4)*, the following may be printed on a unit packet of roll your own tobacco: (a) a brand or business or company name, and (b) a variant name. *Subsection (4)* states that the names referred to in *subsection (3)* must be printed in accordance with regulations under *subsection (10)* and may be printed (a) where the packet is cuboid (i) once on the front outer surface, (ii) once on the top outer surface, and (iii) once on the bottom outer surface, or (b) where the packet is other than cuboid in shape, twice on the outer surface but not more than once on any one surface, provided that the name does not obscure or interfere with health warnings. *Subsection (5)* provides that a bar-code or other similar identification mark may be printed once on a unit packet of roll your own tobacco in a form and manner to be prescribed by the Minister, provided that it does not convey any information to the consumer (including any electronic communication). *Subsection (6)* states that a unit packet of roll your own tobacco must (a) be cuboid and may have rounded or bevelled edges, (b) be cylindrical or (c) have the form of a pouch. *Subsection (7)* states that the requirements of *subsections (1) to (5)* will apply with all necessary modifications to any other form of outside packaging of roll your own tobacco. *Subsection (8)* specifies that a wrapper covering a unit packet or any other form of outside packaging of roll your own tobacco shall (a) be transparent, (b) not be coloured, (c) not have any decorative ridges, embossing or embellishments, (d) not have a trademark or mark other than a tear-strip in accordance with *subsection (9)*, (e) not have any affixed item, other than as provided by law. *Subsection (9)* states that the Minister may prescribe the manner in which a tear strip may be printed on a wrapper under *subsection (8)(d)*, including colour, dimensions, specifications, and positioning. *Subsection (10)* states that the Minister may prescribe the manner in which names referred to in *subsection (3)* may be printed on a unit packet or outside packaging of roll your own tobacco, including colour, font, font size, positioning and appearance. *Subsection (11)* specifies that in prescribing a colour for *subsections (1)(a) or (b)* or matters referred to in *subsection (10)*, the Minister shall have regard to (a) the need to decrease the appeal of roll your own tobacco, (b) the need to increase the effectiveness of health warnings on retail packaging of roll your own tobacco and (c) the need to reduce the ability of retail packaging of tobacco products to mislead consumers about the harmful effects of smoking. *Subsection (12)* specifies that this section applies to the retail packaging of your own tobacco that are to be sold by retail in the State. *Subsection (13)*, which has been included in order to transpose articles of the EU Tobacco Products Directive, specifies that *subsection (6)* applies to the retail packaging of roll your own tobacco intended to be placed on the market within the EU.

Section 10 — (Retail packaging of other tobacco products)

Section 10 provides for the specifications for the retail packaging of tobacco products other than roll your own tobacco and cigarettes. *Subsection (1)* specifies that subject to *subsection (2)* a unit packet of other tobacco products shall (a) be a prescribed colour with a matt finish on the outside, (b) be a prescribed colour on the inside, (c) have no marks or trademarks, (d) not have any decorative ridges, embossing or embellishments, (e) not have a coloured or non-transparent adhesive, (f) not contain any inserted or affixed items other than as provided for by law. *Subsection (2)* clarifies that paragraphs (a), and (c) of *subsection (1)* do not apply to (a) health warnings, (b) a bar-code or other similar identification mark which is in accordance with regulations under *subsection (5)*, (c) other items provided for by law. *Subsection (3)* provides that, subject to *subsection (4)*, the following may be printed on a unit packet of other tobacco products: (a) a brand or business or company name, and (b) a variant name. *Subsection (4)* states that the names referred to in

subsection (3) must be printed in accordance with regulations under *subsection (9)* and may be printed (a) where the packet is cuboid (i) once on the front outer surface, (ii) once on the top outer surface, and (iii) once on the bottom outer surface, or (b) where the packet is other than cuboid in shape, twice on the outer surface but not more than once on any one surface, provided that the name does not obscure or interfere with health warnings. *Subsection (5)* provides that a bar-code or other similar identification mark may be printed once on a unit packet in a form and manner prescribed by the Minister, provided that it does not convey any information to the consumer (including any electronic communication). *Subsection (6)* states that the requirements of *subsections (1) to (5)* will apply with all necessary modifications to any other form of outside packaging of other tobacco products. *Subsection (7)* specifies that a wrapper covering a unit packet or any other form of outside packaging of other tobacco products shall (a) be transparent, (b) not be coloured, (c) not have any decorative ridges, embossing or embellishments, (d) not have a trademark or mark other than a tear-strip in accordance with *subsection (8)*, (e) not have any affixed item, other than as provided by law. *Subsection (8)* states that the Minister may prescribe the manner in which a tear strip may be printed on a wrapper under *subsection (7)(d)*, including colour, dimensions, specifications, and positioning. *Subsection (9)* states that the Minister may prescribe the manner in which names referred to in *subsection (3)* may be printed on a unit packet or outside packaging of other tobacco products, including colour, font, font size, positioning and appearance. *Subsection (10)* specifies that in prescribing a colour for *subsections (1)(a) or (b)* or matters referred to in *subsection (9)*, the Minister shall have regard to (a) the need to decrease the appeal of tobacco products other than cigarettes or roll your own tobacco, (b) the need to increase the effectiveness of health warnings on retail packaging of tobacco products other than cigarettes or roll your own tobacco and (c) the need to reduce the ability of retail packaging of tobacco products other than cigarettes or roll your own tobacco to mislead consumers about the harmful effects of smoking.

Section 11 — (Linings of tobacco products)

Section 11 deals with the linings of unit packets of tobacco products, and provides that where a lining is present it shall be of a colour and material as may be prescribed.

Section 12 — (Tar, nicotine and carbon monoxide yields)

Section 12, subsection (1) provides that the tar, nicotine and carbon monoxide content shall not be printed on a unit packet or any other form of retail packaging of a tobacco product. *Subsection (2)* specifies that in this section “tobacco product” includes a tobacco product intended to be placed on the market in the EU.

Section 13 — (Presentation of tobacco products)

Section 13, subsection (1) provides that a tobacco product and any retail packaging, including any brand name, business name or company name printed on a tobacco product or the outside packaging, or any bar-code or other identification mark, shall not (a) promote a tobacco product or encourage its consumption by containing information that creates incorrect impressions about its characteristics, health effects, hazards or emissions, (b) contain information suggesting a tobacco product is less harmful or reduces the effect of the harmful components of smoke, (c) contain information suggesting that a tobacco product has vitalising, energetic, healing, rejuvenating, natural or organic properties, or lifestyle benefits, (d) make reference to taste, smell, flavouring or absence thereof, (e) contain any element that resembles a food or

cosmetic product, (f) suggest a tobacco product has improved biodegradability or other environmental advantages. *Subsection (2)* states that it will be an offence for a person to manufacture, import or sell tobacco products which contravene this section. *Subsection (3)* specifies that in this section “tobacco product” includes a tobacco product intended to be placed on the market in the EU.

Section 14 — (Features of retail packaging of tobacco products)

Section 14 clarifies that any retail packaging of a tobacco product or any bar-code or similar identification mark printed on the outside packaging shall not (a) contain any sound effects or scents that promote the tobacco product, (b) contain any features designed to alter the retail packaging after sale including (i) heat-activated inks, (ii) inks that appear gradually, (iii) inks that appear fluorescent in certain light, (iv) panels designed to be scratched or rubbed to reveal an image, (v) removable tabs, (vi) fold-out panels.

Part 3 sets out the OFFENCES, PROCEEDINGS AND PENALTIES provisions and covers Sections 15 to 19.

Section 15 — (Offences in relation to retail packaging)

Section 15 sets out the offences under the legislation. *Subsection (1)* states that it shall be an offence to package tobacco products with retail packaging which contravenes *sections 7, 9, 10, 11, 12, 13 or 14*. *Subsection (2)* states that it will be an offence to manufacture retail packaging which contravenes *sections 7, 9, 10, 11, 12, 13 or 14*. *Subsection (3)* states that it will be an offence to import or sell tobacco products where their retail packaging contravenes *sections 7, 9, 10, 11, 12, 13 or 14*. *Subsection (4)* clarifies that where proceedings are being brought, it shall be a defence for a person to show that he/she made all reasonable efforts to comply with the provisions of the legislation.

Section 16 — (Penalties)

Section 16 sets out the penalties for the offences under the Act. *Subsection (1)* specifies that a person who is guilty of an offence (a) shall be liable on summary conviction (i) to a class B fine or imprisonment for a term not exceeding 6 months, or both, in the case of a first offence, (ii) to a class A fine or to imprisonment for a term not exceeding 12 months, or both, in the case of a subsequent offence, or (b) shall be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 8 years, or to both. *Subsection (2)* states that where a person is convicted of an offence, the court shall order him/her to pay the prosecution costs and expenses, unless there are special and substantial reasons for not doing so.

Section 17 — (Offences by bodies corporate)

Section 17 sets out provisions relating to offences committed by bodies corporate and its directors, managers or officers. *Subsection (1)* specifies that where an offence is committed by a body corporate, and it is proved that it was committed with consent or connivance or was attributable to any wilful neglect of a director, manager, secretary or other officer of the body, that person as well as the body shall be guilty of an offence and may be proceeded against and punished. *Subsection (2)* states that where the affairs of a body corporate are managed by its members, *subsection (1)* applies to the acts and defaults of a member as if he/she were a director or manager of the body.

Section 18 — (Proceedings)

Section 18 states that proceedings under the Act may be brought and prosecuted by the Health Service Executive.

Section 19 — (Evidence in proceedings for an offence)

Section 19 sets out provisions relating to evidence brought before proceedings. *Subsection (1)* states that unless the contrary is proved a tobacco product, or packaging of a tobacco product, that bears the name of the importer of the product shall be evidence that the tobacco product was imported by the person concerned. *Subsection (2)* states that unless the contrary is proved, a tobacco product or retail packaging of a tobacco product that bears the name of the manufacturer shall be evidence that (a) the tobacco product was manufactured by the person concerned, (b) the retail packaging was manufactured by the person concerned, or (c) that the person concerned packaged the tobacco product with retail packaging, as the case may be. *Subsection (3)* states that unless the contrary is proved a tobacco product, or retail packaging of a tobacco product, that bears a trade mark shall be evidence that the product or the retail packaging was manufactured by the person who owned that trademark at the time the offence was allegedly committed.

Part 4 sets out MISCELLANEOUS requirements and covers Sections 20 to 22.

Section 20 — (Amendment of section 5A of the Act of 2002)

Section 20 amends Section 5A of the Public Health (Tobacco) Acts, as amended. The Act will now provide that if a person registered to sell tobacco under the Section 37 of the Public Health (Tobacco) Acts (as amended) is found guilty of an offence under the current legislation, then they can be removed from the register for a specified period.

Section 21 — (Amendment of section 37 of the Act of 2002)

Section 21 amends Section 37 of the Public Health (Tobacco) Acts, as amended. Section 37 will now take the current legislation and any offences committed under it into consideration when a person is applying for registration for the sale of tobacco products.

Section 22 — (Amendment of section 48 of the Act of 2002)

Section 22 amends Section 48 of the Public Health (Tobacco) Acts, as amended. Section 48 will now provide the Health Service Executive with the necessary powers to enforce the current legislation.

Financial Implications

It is not expected that significant additional Exchequer costs will be required arising from the legislation.

*Department of Health,
June, 2014.*