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**HEALTH (CONTROL OF SMOKING) ORDINANCE 2013**

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**HEALTH (CONTROL OF SMOKING) ORDINANCE 2013**

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An Ordinance to amend and consolidate provisions relating to the labelling, sale, advertisement and promotion of tobacco products, prohibiting smoking in public premises and related matters

**J. S. WRIGHT**  
**DEPUTY ADMINISTRATOR**

*22nd February 2013.*

**BE** it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

**Part 1**

**Preliminary**

**1. Short title and commencement**

This Ordinance may be cited as the Health (Control of Smoking) Ordinance 2013 and comes into force on 1 April 2013.

**2. Interpretation**

(1) In this Ordinance—

“authorised officer” means an Area Officer, a customs officer or a police officer;

“corresponding Republican law” means Law No. 75(I)/2002 (Protection of Health (Control of Smoking) Law 2002) and includes, whether made before or after the coming into force of this Ordinance,—

- (a) amendments to that law; and
- (b) regulations made under that law;

“the Crown” means Her Majesty in right of Her Government in the United Kingdom and in right of Her Administration in the Areas;

“distance-selling” means a transaction where the buyer and seller are not simultaneously physically present when the transaction is concluded;

“motor vehicle” has the meaning given in section 2 of the Motor Vehicles and Road Traffic (Consolidation) Ordinance 2006(a);

“public” includes a section of the public;

“public premises” means premises, which are open to the public, including premises where only part of the premises are open to the public, and the following premises irrespective of whether any part of the premises are open to the public—

- (a) factories; and
- (b) premises used for the production, packaging or sale of food;

“public service motor vehicle” has the meaning given in section 2 of the Motor Vehicles and Road Traffic (Consolidation) Ordinance 2006;

“tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.

- (2) For the purpose of this Ordinance—
  - (a) to “advertise a tobacco product” means any form of commercial communication, including by electronic means,—
    - (i) whose purpose is to promote a tobacco product; or
    - (ii) whose effect is to do so;
  - (b) a person who has “control of public premises” includes, but is not limited to, the proprietor and the manager.

### **3. Application to the Crown**

- (1) This Ordinance applies to the Crown.
- (2) Proceedings for a criminal offence may not be brought against—
  - (a) the Crown;
  - (b) an employee of the Crown acting in the course of employment of the Crown;
  - (c) a member of Her Majesty’s Forces acting in the course of service of the Crown.

## **PART 2**

### **SALE AND PROMOTION OF TOBACCO PRODUCTS**

#### **4. Prohibition of supply of tobacco products to persons aged under 18 years**

- (1) It is an offence to supply a tobacco product to a person aged under 18 years.
- (2) A person who is convicted under subsection (1) is liable to a term of imprisonment not exceeding 6 months or a fine not exceeding €1,708, or both.
- (3) On a second conviction for an offence under subsection (1), the court may order that the person’s licence to sell tobacco be revoked for a period not exceeding 5 years.
- (4) In this section, “licence to sell tobacco” means a licence issued pursuant to section 3 of the Excise Ordinance 2006(b).

#### **5. Prohibition of promotion of tobacco products**

- (1) It is an offence to—
  - (a) distribute a free tobacco product or a product designed to imitate a tobacco product;
  - (b) supply, market or promote—
    - (i) tobacco for oral use;
    - (ii) tobacco products which do not meet the requirements of this Ordinance or corresponding Republican law; or
    - (iii) a product designed to imitate a tobacco product.
- (2) Subsection (1) does not apply to a product supplied for use outside the island of Cyprus.

- (3) A person who is convicted under subsection (1) is liable to a term of imprisonment not exceeding 6 months or a fine not exceeding €1,708, or both.
- (4) In this section—
  - (a) “tobacco for oral use” does not include a tobacco product intended to be smoked or chewed; and
  - (b) “a product designed to imitate a tobacco product” does not include a product designed for the purpose of assisting a person to stop smoking.

Example: a sweet which is designed to look like a cigarette is a product designed to imitate a tobacco product.

## **6. Prohibition on tobacco advertising, sponsorship and distance-selling**

- (1) It is an offence to—
  - (i) advertise or sponsor a tobacco product;
  - (ii) facilitate in any way the advertising or sponsorship of a tobacco product; or
  - (iii) sell a tobacco product by means of distance-selling.
- (2) Subsection (1) does not apply to advertising a tobacco product in printed publications—
  - (a) intended exclusively for professionals in the tobacco trade; or
  - (b) printed and published outside the island of Cyprus, if the publications are intended wholly or mainly for distribution in countries outside the European Union.
- (3) A person who is convicted under subsection (1) is liable to a term of imprisonment not exceeding 6 months or a fine not exceeding €1,708, or both.
- (4) The producer of a tobacco product which is the subject of an advertisement is also guilty of an offence and is liable on conviction to the penalty specified in subsection (3).

## **7. Right of action by interested persons**

A person with a legitimate interest in preventing the advertising or sponsorship of a tobacco product may apply to the Resident Judge’s Court for an order preventing the advertising or sponsorship, irrespective of whether a prosecution has been brought against the person advertising or sponsoring the tobacco product.

## **8. Health warnings**

- (1) It is an offence to supply or offer for sale a tobacco product where the packet does not carry a health warning about the effects of smoking, in accordance with the requirements for a health warning prescribed in corresponding Republican law.
- (2) The health warning must be placed on a tobacco product at the time of production and packaging, and it is an offence to place the warning at any other time or to alter it in any way.
- (3) A packet which does not carry a health warning in accordance with subsection (1), including where the health warning has been altered, may be confiscated by an authorised officer.
- (4) Subsection (1) does not apply to tobacco products which are exempt from customs duty and supplied for sale to members of Her Majesty’s Forces, the civilian component and their dependents.
- (5) A person who is convicted under subsection (1) or (2) is liable to a term of imprisonment not exceeding 6 months or a fine not exceeding €1,708, or both, and the court may order confiscation of the packets of the tobacco product.
- (6) In this section, “civilian component” and “dependent” are to be construed in accordance with sections 1(b) and (d) of Annex C of the Treaty of Establishment.

## **9. Prohibition on sale of tobacco products from vending machines**

- (1) It is an offence to—
  - (a) offer to sell or expose for sale a tobacco product in a vending machine;

- (b) possess or control a vending machine;
  - (c) install or permit the installation of a vending machine;
  - (d) facilitate the operation of a vending machine; or
  - (e) import or manufacture a vending machine.
- (2) A person who is convicted under subsection (1) is liable to a term of imprisonment not exceeding 6 months or a fine not exceeding €1,708, or both, and the court may order the confiscation of the machine.
- (3) In this section, the reference to a “vending machine” in—
- (a) subsections (1)(b), (c) and (d) means a vending machine used, designed or adapted for the sale of tobacco products;
  - (b) subsection (1)(e) means a vending machine designed or adapted for the sale of tobacco products.

### **PART 3**

#### **PROHIBITION ON SMOKING IN CERTAIN PLACES**

##### **10. Prohibition on smoking in public premises**

- (1) It is an offence to smoke in public premises, except in an area of those premises which is neither enclosed nor substantially enclosed.

Example: restaurants, bars, clubs, private members clubs, shops, educational establishments, clinics and surgeries are public premises.

- (2) A person who has control of public premises in which an offence is committed under subsection (1) also commits an offence, unless that person has taken all reasonable measures to prevent the person committing an offence under subsection (1) from smoking.
- (3) A person who is convicted of an offence under subsection (1) or (2) is liable to a fine of €2,000.

##### **11. Prohibition on smoking in public service motor vehicles**

- (1) It is an offence to smoke in a public service motor vehicle.
- (2) A person who is convicted under subsection (1) is liable to a term of imprisonment not exceeding 6 months or a fine not exceeding €1,708, or both.

##### **12. Prohibition on smoking in private motor vehicles carrying passenger under 16 years**

- (1) It is an offence to smoke in a private motor vehicle where the vehicle is carrying a passenger aged under 16 years.
- (2) A person who is convicted under subsection (1) is liable to a term of imprisonment not exceeding 6 months or a fine not exceeding €1,708, or both.

##### **13. Signs prohibiting smoking**

- (1) A person who has control of public premises or operates a public service motor vehicle must place a sign in a conspicuous place stating legibly and clearly that smoking is prohibited.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding €1,000.

##### **14. Smoking in workplaces**

- (1) An employer must have a written policy about smoking in the workplace, including workplaces which are public premises, which must be accessible to every employee.
- (2) The policy must be drawn up following consultation with employees or representatives of employees and must be based on the principle that employees who do not smoke or do not wish to smoke at work are protected from exposure to tobacco smoke in the workplace.
- (3) An employer must place signs in conspicuous places stating legibly and clearly where smoking is permitted or prohibited.

- (4) Without limit to the generality of section 10, an employer may permit smoking in an enclosed space where there is adequate ventilation and in which only employees who smoke are required to enter, if the employees who wish to smoke in the workplace request such a space.
- (5) An employer who contravenes subsection (1) or (3) commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or a fine not exceeding €1,708, or both.

## **PART 4**

### **MISCELLANEOUS**

#### **15. Limit on tar, nicotine content etc**

- (1) The tar and nicotine content, and any other content of tobacco products, which are supplied or offered for sale must not exceed the limits which are prescribed in corresponding Republican law,
- (2) A person who contravenes subsection (1) commits an offence and on conviction is liable to a term of imprisonment not exceeding 6 months or a fine not exceeding €1,708, or both, and the court may order the confiscation of the tobacco products.

#### **16. Prohibition on comparative labelling**

- (1) It is an offence to supply or offer for sale a packet of a tobacco product to carry a text, image or any other indication which suggests that a certain tobacco product is less harmful than another.
- (2) A person who is convicted under subsection (1) is liable to a term of imprisonment not exceeding 6 months or a fine not exceeding €1,708, or both.

#### **17. Enforcement by authorised officers**

- (1) An authorised officer may enter at any time public premises, or a place where a tobacco product is being manufactured, packaged or supplied for sale for the purpose of ensuring compliance with this Ordinance.
- (2) Without limit to the power conferred by subsection (1), an authorised officer may take a sample of a tobacco product for the purpose of analysing it to ensure it complies with section 15.
- (3) A person who appears to an authorised officer to be in control of the manufacturing packaging or supply for sale must supply the sample required under subsection (2) within a reasonable time.
- (4) This section does not limit an authorised officer's powers of entry apart from this section.

#### **18. Obstruction of authorised officers**

- (1) It is an offence to obstruct an authorised officer in the exercise of powers under section 17 or to fail to supply a sample requested under that section.
- (2) A person who is convicted under subsection (1) is liable to a term of imprisonment not exceeding 6 months or a fine not exceeding €1,708, or both.

#### **19. Liability of body corporate**

Where an offence is committed with the consent of, or is attributable to the negligence of, a director, manager, secretary or other similar officer of a body corporate, the officer also commits an offence and is liable, on conviction, to the penalty for that offence.

#### **20. Fixed penalty notice**

A person may be issued with a fixed penalty notice under section 3(1) of the Fixed Penalty Ordinance 2010(c) ("FPO") where-

- (a) the person is suspect of committing an offence specified in this Ordinance; and
- (b) the offence is specified in Schedule 1 or 2 to the FPO.

## **21. Regulations**

- (1) The Administrator may make regulations by public instrument for the more effective application of this Ordinance.
- (2) Regulations under this section may contain such provision as may be made by Ordinance.

## **22. Judicial notice of corresponding Republican law**

- (1) For the purpose of interpreting a provision in this Ordinance which requires compliance with corresponding Republican law, a court may take judicial notice of corresponding Republican law and of any other document of any description granted or otherwise made under corresponding Republican law.
- (2) The production of a copy of any legislation of the Republic may be held by a court to be conclusive evidence for all purposes of the due and lawful making of that legislation if it is—
  - (a) contained in a printed collection of legislation purporting to be printed and published by an authority of the Republic;
  - (b) contained in an issue of the official Gazette of the Republic; or
  - (c) purporting to be printed by the Government Printer of the Republic, by whatever name called.
- (3) For the purposes of this section, a version of any legislation of the Republic in English may be held by the court to be conclusive evidence for all purposes that such version is the accurate English version of the legislation in question if it is—
  - (a) purporting to be produced by an authority of the Republic;
  - (b) certified as being accurate by an officer of the Administration considered by the court to have been, at the time of such certification, a competent translator into English from the language in which the legislation of the Republic was published in the Republic;
  - (c) given or produced in the course of oral evidence of a person whom the court considers to be a competent translator for the purpose; or
  - (d) stated orally in court or produced in writing by a registrar or official court interpreter.
- (4) For the purposes of this section, the production of may be held by the court to be conclusive evidence for all purposes of the content of the document if it is—
  - (a) a document, the accuracy of which is certified in writing by a senior officer of the Government Department of the Republic responsible for the legislation under which the document in question was granted or otherwise made; or
  - (b) an English translation of a document, the accuracy of which is certified in writing by a translator of recognised competence.

## **23. Repeals and revocations**

- (1) The Ordinances specified in Part 1 of the Schedule are repealed.
- (2) The public instruments specified in Part 2 of the Schedule are revoked.

## REPEALS AND REVOCATIONS

## PART 1

## REPEALS

1. Protection of Health (Control of Smoking) Ordinance 1981**(d)**;
2. Protection of Health (Control of Smoking) (Amendment) Ordinance 1988**(e)**;
3. Protection of Health (Control of Smoking) (Amendment) Ordinance 1996**(f)**;
4. Protection of Health (Control of Smoking) (Amendment) Ordinance 2000**(g)**;
5. Protection of Health (Control of Smoking) (Amendment) Ordinance 2009**(h)**.

## PART 2

## REVOCATIONS

6. Protection of Health (Control of Smoking) Regulations 1988**(i)**;
7. Protection of Health (Control of Smoking) (Amendment) Regulations 1989**(j)**;
8. Protection of Health (Control of Smoking) (Amendment) Regulations 2009**(k)**

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**Notes**

- (a)** Ordinance 5/06 to which there are amendments which are not relevant to this Ordinance.
- (b)** Ordinance 3/06 which adopts Republic's Excise Duties Law 2004 (Law 91(1) 2004). That Republican law makes provision for the issue of a licence to sell tobacco.
- (c)** Ordinance 25/10.
- (d)** Ordinance 8/81.
- (e)** Ordinance 11/88.
- (f)** Ordinance 11/96.
- (g)** Ordinance 20/00.
- (h)** Ordinance 33/09.
- (i)** P.I. 89/88.
- (j)** P.I. 77/89.
- (k)** P.I. 41/09.

## EXPLANATORY NOTE

**(This note is not part of the Ordinance)**

### Introduction

1. This explanatory note relates to the Health (Control of Smoking) Ordinance 2013. It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So, when a section or part of a section does not seem to require any explanation or comment, none is given.

### Particular points

3. The purpose of this Ordinance is to consolidate and amend legislation controlling the sale and promotion of tobacco products, prohibit smoking in public premises and regulate smoking in the workplace. The Ordinance reflects relevant provisions in Republican law 75(I)/2002, subsequent amendments to that law and regulations made under that law. Republican law relating to the manufacture and sale of tobacco products is derived from European Union Directive 2001/37/EC.

4. Part 1 contains preliminary provisions. Section 2 defines terms used in the Ordinance, and section 3 applies the Ordinance to the Crown, but provides the Crown cannot be prosecuted for a criminal offence.

5. Part 2 contains provisions regulating and controlling the sale of tobacco products. Sale to persons under 18 is prohibited by section 4. Section 5 prohibits the distribution of free tobacco products or imitation products (for example sweets designed to look like cigarettes). Advertising, sponsorship and distance-selling is prohibited by section 6, except in publications intended exclusively for the tobacco trade or published outside the island of Cyprus for distribution outside the European Union. Advertising is defined in section 2(2) as being any communication, including electronic communication, whose purpose or effect is to promote a tobacco product. Section 8 requires packets of tobacco offered for sale to have health warnings, and section 9 prohibits sale from vending machines.

6. Part 3 contains provisions prohibiting smoking in specified places. Under section 10 smoking is prohibited in public premises, except those neither enclosed nor substantially enclosed. Examples of public premises are restaurants, bars, clubs and shops. Smoking is prohibited in public service vehicles (e.g. buses and taxis) (section 11) and in private vehicles carrying passengers under 16 (section 12). Section 13 requires persons controlling public premises and licensed to operate public service vehicles, to put up no smoking signs. Under section 14 employers are required to have workplace smoking policies based on the principle that those who do not smoke or do not wish to be exposed to smoke at the workplace must be protected from exposure to smoke.

7. Part 4 contains various miscellaneous provisions, including powers of enforcement. Packets of tobacco products offered for sale are required to specify tar and nicotine content (section 15) and comparative labelling (e.g. use of the term low tar) is prohibited under section 16. Section 17 provides that an authorised officer (defined in section 2(1) as an Area Officer, a customs officer or a police officer) may enter public premises or a place where tobacco is manufactured for the purpose of enforcing the Ordinance, and section 18 makes obstruction of an authorised officer in the exercise of these powers an offence. The criminal offences specified in this Ordinance may be disposed of by way of the issue of a fixed penalty notice issued under section 3(1) of the Fixed Penalty Ordinance 2010 (section 20).

(SBA/AG/2/EN/147)