

CONTROL OF TOBACCO AND RELATED PRODUCTS ORDINANCE, 2019

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ST HELENA

A BILL

FOR

AN ORDINANCE

to make provision for the control of tobacco, tobacco products, nicotine, nicotine products and herbal products for smoking; to make provision for the registration of dealers in tobacco and related products and regulate the sale of tobacco and related products; to prohibit smoking in certain premises and vehicles; to regulate the display, packaging and sale of tobacco and related products; to control the advertising and promotion of tobacco and related products; and for connected and incidental purposes.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

PART I PRELIMINARY

Short title and commencement

1. (1) This Ordinance may be cited as the Control of Tobacco and Related Products Ordinance, 2019, and comes into force on a date the Governor in Council appoints by notice in the *Gazette*.

(2) A notice under subsection (1) may appoint different dates for different provisions or for different purposes of the same provision, and may contain incidental or transitional provisions that appear to the Governor in Council necessary or expedient.

Interpretation

2. (1) In this Ordinance—
“**advertisement**” in relation to a tobacco or related product, means a commercial communication through any media or means that is intended to have, or is likely to have, the direct, indirect or incidental effect of—
(a) creating an awareness of a tobacco or related product, brand, manufacturer or seller;

or

(b) promoting the purchase or use of a tobacco or related product or brand, and “**advertise**” and other related expressions must be construed accordingly;

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

“**electronic cigarette**” means a product that can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether the product is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges);

“**herbal product for smoking**” means a product based on plants, herbs or fruits which contains no tobacco and that can be consumed via a combustion or other heating process;

“**heated tobacco product**” means a tobacco product that produces aerosols inhaled by the user, upon heating of the tobacco or activation of a device containing the tobacco, and includes any such device and parts and accessories intended to be used with such device;

“**importer**” means a person who receives or arranges for the receipt of tobacco or related products from another country for sale or supply in St Helena;

“**manufacturer**” means a person who manufactures, fabricates, produces, processes, packages or labels tobacco or related products;

“**package**” means a covering, wrapper, container, carton or other enclosure that contains a tobacco or related product including labels and other written or graphic information on or in it;

“**promotion**” in relation to a tobacco or related product, includes advertisement and a commercial act or practice that is intended to or is likely to encourage or recommend a tobacco or related product or the use of a tobacco or related product, directly or indirectly;

“**registered dealer**” means a person registered as a dealer in accordance with regulations made under section 29(c);

“**related product**” in relation to a tobacco product, means any—

(a) nicotine and nicotine products (other than nicotine replacement therapy supplied by a medical practitioner or authorised seller under the Pharmacy and Poisons Ordinance);

(b) herbal products for smoking; and

(c) electronic cigarettes;

“**smoke-free**” in relation to any premises or vehicle, means that no person is allowed to smoke while at such premises or in such vehicle;

“**smoke-free place**” means any premises, place or vehicle which is smoke-free by virtue of any provision of this Ordinance;

“**smoking**” refers to smoking tobacco or related product or anything which contains tobacco or a related product, or smoking any other substance, and includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit or heated substance in a form in which it could be smoked, and “**smoke**” and other related expressions must be construed accordingly;

“**supply**” means to sell, give, exchange, convey, consign, deliver, furnish, or transfer possession of a tobacco or related product, or arrange or offer to do so, whether for a fee or other consideration or without charge;

“**tobacco**” means a product entirely or partly made from the leaf tobacco as raw material, which is manufactured to be used for smoking, sucking, chewing or snuffing;

“**tobacco product**” means tobacco or any product containing tobacco and intended for oral or nasal use and smoking mixtures intended as a substitute for tobacco.

PART II SMOKE-FREE PREMISES AND VEHICLES

Premises open to public

3. (1) If premises are open to the public, the premises must be smoke-free.

(2) Subject to subsection (3), the smoke-free requirement under subsection (1) applies only in those areas which are enclosed or substantially enclosed as defined in section 5.

(3) In the case of government buildings, the smoke-free requirement applies to any areas that adjoin the building and are used or occupied by the building, even if such areas are not enclosed or substantially enclosed.

(4) For purposes of this section, premises are “**open to the public**” if the public, or a section of the public, has access to these premises, whether by invitation or not, and whether on payment or not.

(5) If only part of the premises is open to the public, the smoke-free requirement applies only to that extent and the limits of these areas must be clearly marked as required by section 8.

Places of work

4. (1) Subject to subsection (4) all premises which are used as a place of work must at all times be smoke-free if—

- (a)* the premises are used by more than one person (even if the persons who work there do so at different times, or only intermittently); or
- (b)* members of the public might attend for the purpose of seeking or receiving goods or services from any person working there.

(2) If only part of the premises is used as a place of work, the smoke-free requirement applies only to that extent.

(3) The smoke-free requirement applies only in those areas which are enclosed or substantially enclosed as defined in section 5.

(4) Subject to subsection (4A) a private dwelling which is also used as a place of work is exempt from the smoke-free requirement if the work done there is limited to work in one or more of the following forms—

- (a)* providing personal care for a person living in the dwelling;
- (b)* assisting with the domestic work of the household in the dwelling;
- (c)* maintaining the structure or fabric of the dwelling; or
- (d)* installing, maintaining or removing any service provided to the dwelling for the benefit of persons living in it.

(4A) A private dwelling is exempt from the smoke-free requirement only with the consent of the owner of the private dwelling.

(5) For purposes of this section—

- (a) **“place of work”** means a place used by persons during their employment or work, and includes common areas, and any other area which is generally used during the course of employment or work;
- (b) **“private dwelling”** includes any self-contained residential accommodation for permanent, temporary or holiday use and any garage, outhouse or other structure for the exclusive use of persons living in the dwelling;
- (c) **“work”** includes work done for compensation and voluntary work.

Meaning of enclosed and substantially enclosed premises

- 5. (1)** For the purposes of sections 3,4 and 7, premises are—
- (a) enclosed if they have a ceiling or roof and, except for doors, windows and passageways, are wholly enclosed either permanently or temporarily;
 - (b) substantially enclosed if they have a ceiling or roof, but the opening (or an aggregate area of openings) in the walls is less than half of the area of walls.
- (2)** In determining the area of opening (or aggregate area of openings) under subsection (1)(b), no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut.
- (3)** In this section—
- (a) **“roof”** includes any fixed or moveable structure or device which is capable of covering all or part of the premises as a roof, including a canvas awning, whether or not the roof is connected to the walls; and
 - (b) **“walls”** include other structures that serve the purpose of walls and constitute the perimeter of the premises.

Vehicles

- 6. (1)** A person must not smoke in any vehicle which is occupied by a passenger under the age of 18 years.
- (2)** A vehicle must be smoke-free if it is used—
- (a) by members of the public or a section of the public (whether or not for reward or hire); or
 - (b) in the course of paid or voluntary work by more than one person (even if those persons use the vehicle at different times or only intermittently).
- (3)** A vehicle is not used in the course of paid or voluntary work for purposes of subsection (2)(b) if it is used primarily for the private purposes of a person who owns the vehicle, or has a right to use it, and such use is not restricted to a particular journey.

Additional smoke-free places

7. (1) The Governor in Council may by Order designate as smoke-free any place or description of place or vehicle, which is not otherwise smoke-free under this Ordinance if, in the opinion of the Governor in Council, there is a significant risk that, without that designation, persons present there would be exposed to significant quantities of smoke.

(2) A place or vehicle designated as smoke-free under subsection (1) need not be

enclosed or substantially enclosed.

(3) An order under this section may provide that the smoke-free requirement applies to such place or a description of place or vehicle only—

- (a) in specified circumstances;
- (b) at specified times;
- (c) if specified conditions are satisfied;
- (d) in specified areas.

No-smoking signs in premises and vehicles

8. A person who occupies or is concerned with the management of smoke-free premises or any person with the management responsibilities for a smoke-free vehicle must ensure that no-smoking signs complying with prescribed requirements are displayed in those premises or in that vehicle, as the case may be.

PART III IMPORTATION AND SALE OF TOBACCO AND RELATED PRODUCTS

Importation of tobacco and related products

9. (1) No person other than a registered dealer may import any tobacco or related products into St Helena, whether by mail or otherwise.

(2) Subsection (1) does not apply to a person importing tobacco or related products as part of the person's duty-free allowance under the Customs and Excise Ordinance, 1999, provided such tobacco and related products are for personal use only.

(3) No person may import any heated tobacco product into St Helena.

Sale of tobacco or related products

10. (1) A person supplying tobacco or related products must be a registered dealer and must not sell or offer for sale any tobacco or related products unless that person is registered as a dealer in tobacco and related products under this Ordinance.

(2) An applicant for a certificate of registration as a dealer in tobacco and related products must apply for registration in the prescribed form and pay the prescribed fee.

(3) A person must not sell or offer for sale any heated tobacco product.

Specific provisions relating to electronic cigarettes

11. (1) Subject to any other requirements applicable to tobacco and related products under this Ordinance, no person may import, manufacture, acquire, offer for sale, sell, or supply—

- (a) electronic cigarettes unless they are sealed in a child-proof and tamper-proof container which contains a label warning that the product contains nicotine and should not be used by non-smokers;
- (b) electronic cigarettes which contain any label suggesting or implying that it must

- reduce smoking or assist a person to quit smoking;
 - (c) products for use with electronic cigarettes which contain more than 19mg/ml of nicotine;
 - (d) products for use with electronic cigarettes which contain any flavour other than tobacco flavour.
- (2) Subsection (1) does not apply to a person importing electronic cigarettes for personal use only.
- (3) A person importing electronic cigarettes in accordance with subsection (2) must not sell or otherwise distribute for personal gain or profit the electronic cigarettes imported by the person.

Sale or supply of tobacco or related products to children

- 12. (1)** A person must not—
- (a) sell a tobacco or related product to a child, whether or not for the child's own use;
 - (b) supply a tobacco or related product to a child; or
 - (c) hire or use a child to sell any tobacco or related product.

(2) A person registered to deal in tobacco or related products must, in an attempt to verify that the prospective purchaser of a tobacco or related product is over the age of 18 years, require that prospective purchaser to produce documentary identification that contains proof of the prospective purchaser's identity and age.

Prohibition on self service

- 13.** A person must not sell or offer for sale a tobacco or related product—
- (a) in such a way that a consumer may handle the product without the assistance of a sales clerk or other employee or agent of the seller prior to purchase;
 - (b) through any self-service means, including automatic vending machines, mail or internet; or
 - (c) any other means of sale where the age of the purchaser of a tobacco or related product cannot be verified at the point of sale.

Prohibition on public displays

14. (1) A person must not display a tobacco or related product or its packaging in such a way that the tobacco or related product is visible to the public.

(2) The prohibition under subsection (1) does not apply to individuals incidentally or accidentally displaying a tobacco or related product during carrying or use.

(3) This section also applies to cigarette dispensers provided by a manufacturer, and these devices must not be used for the purposes of advertisement or the promotion of a tobacco or related product and must meet the prescribed requirements.

(4) A person must not display any material related to the pricing of a tobacco or related product and a price list for such product may be made available to a customer on request only and must be printed in standard font on plain white A4 sized paper.

Prohibition on sales of tobacco or related products in certain places

- 15.** A person must not sell or offer for sale a tobacco or related product in—
- (a) facilities where health care services are provided;
 - (b) sports, athletic or recreational facilities;
 - (c) government buildings;
 - (d) educational facilities; or
 - (e) any other place as may be prescribed.

Prohibition on toy or candy cigarettes

- 16.** A person must not—
- (a) import or manufacture; or
 - (b) sell or supply, display for sale or distribute,
- sweets, snacks, toys or other non-tobacco items or objects in the form of tobacco or related products, or which imitate tobacco or related products.

PART IV ADVERTISING, SPONSORSHIP AND PROMOTION

Prohibition against advertising, promotion and sponsorship

17. (1) A person must not initiate, produce, publish, engage or participate in advertising, promotion or sponsorship of tobacco or related products or of tobacco or related product company brands.

(2) A person must not offer a free tobacco or related product and must not offer or provide a direct or indirect consideration for the purchase or use of a tobacco or related product, including a bonus, premium, cash rebate or right to participate in a game, lottery or contest.

(3) Any form of tobacco or related product sponsorship, advertising and promotion, where the name of a sponsoring entity is publicised, is prohibited.

(4) A person must not sell, display for sale, supply, or advertise any non-tobacco product or service that contains either on the product, or in an advertisement of the product or service, a depiction of a tobacco or related product or a tobacco or related product company brand.

(5) For the purposes of subsection (4), a “**non-tobacco product**” includes a building, facility, premises, or business.

PART V PACKAGING, LABELLING AND PRODUCT REQUIREMENTS

Conformity with packaging, labelling and product requirements

18. (1) A person must not import, manufacture, acquire, offer for sale, sell, or supply a tobacco or related product that is not packaged and labelled in the prescribed manner.

(2) A person must not sell any tobacco or related product other than as part of a complete and intact package that meets the packaging and labelling as well as minimum unit or weight requirements.

Requirements for tamper-proof packaging and labelling

19. Every manufacturer, importer, exporter, distributor and retailer of tobacco and related products must exercise all reasonable and necessary precautions to prevent tampering with the packaging and labelling information of tobacco and related products while the tobacco and related products are under the manufacturer's, importer's, exporter's, distributor's and retailer's control or supervision.

PART VI OFFENCES

Offences relating to smoking in smoke-free place

20. (1) A person who smokes in a smoke-free place or vehicle commits an offence.
Maximum penalty: A fine of £200.

(2) It is a defence for a person charged with an offence under subsection (1) to show that the person did not know, and could not reasonably have been expected to know, that it was a smoke-free place.

(3) A person who smokes in a vehicle in contravention of section 6(1) commits an offence.
Maximum penalty: A fine of £200.

Offences relating to no-smoking signs

21. (1) A person who fails to comply with the duty in section 8 to display no-smoking signs commits an offence.
Maximum penalty: A fine of £800

(2) It is a defence for a person charged with an offence under subsection (1) to show that—

- (a) the person did not know, and could not reasonably have been expected to know, that the premises were, or the place or vehicle was, smoke-free;
- (b) the person did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the requirements of this Ordinance were not being displayed in accordance with the requirements of this Ordinance; or
- (c) on any other grounds it was reasonable for the person not to comply with the duty.

Offence of failing to prevent smoking in smoke-free place

22. (1) A person who controls or is concerned in the management of any smoke-free place (and, in the case of a smoke-free vehicle, also the driver) must take all reasonable steps to cause any person smoking in the place or vehicle to stop smoking.

(1A) A person who controls or is concerned in the management of any smoke-free place

may pursuant to the obligation under subsection (1) request a person smoking in the place to exit the place and may, if the person smoking in the place refuses to comply with the request, if it is practicable, deliver that person to the nearest police station.

(2) A person who fails to comply with the duty in subsection (1) commits an offence.
Maximum penalty: A fine of £800.

(3) It is a defence for a person ('P') charged with an offence under subsection (2) to show that—

- (a) P took reasonable steps to cause the person in question to stop smoking;
- (b) P did not know, and could not reasonably have been expected to know, that the person in question was smoking; or
- (c) on any other grounds it was reasonable for P not to comply with the duty.

Offences relating to children

23. (1) A person who sells or supplies a tobacco or related product to a child or who uses a child to sell a tobacco or related product in contravention of section 12, commits an offence.

Maximum penalty: A fine of £800.

(2) A person supervising a child or who has responsibility for the welfare of a child who causes or permits that child to smoke or have in the child's possession any tobacco or related product, commits an offence.

Maximum penalty: A fine of £200.

(3) A court may, on conviction of a person for an offence under subsection (1) or (2), make an order that the relevant child attend and comply with a programme or treatment for the cessation of smoking as the court deems appropriate.

(4) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Offences relating to importation, sale or display

24. (1) A person who imports, sells, offers for sale or displays any tobacco or related product in contravention of section 9, 10, 11, 13, 14 or 15 commits an offence.

Maximum penalty: A fine of £800.

(2) A person who contravenes the provisions of section 16 commits an offence.

Maximum penalty: A fine of £200.

Offences relating to advertising, promotion or sponsorship

25. A person who contravenes the provision of section 17 commits an offence.

Maximum penalty: A fine of £800.

Offences relating to packaging, labelling or product requirements

26. A person who fails to comply with the provision of sections 18 or 19 with respect to packaging, labelling or product requirements, commits an offence.
Maximum penalty: A fine of £800.

Obstruction

27. (1) A person who intentionally obstructs the enforcement of this Ordinance commits an offence.
Maximum penalty: A fine of £500.

(2) A person who without reasonable excuse or lawful authority fails to permit access to any facilities, or to provide assistance or information reasonably required for the enforcement of this Ordinance, commits an offence.
Maximum penalty: A fine of £500.

(3) A person who, in purported compliance with any requirement under this Ordinance makes a statement which is false or misleading in a material particular and either knows that it is false or misleading or is reckless as to whether it is false or misleading, commits an offence.
Maximum penalty: A fine of £500.

General provisions regarding offences

28. (1) If a person who is registered dealer is convicted of an offence under this Ordinance, the court may, in addition to any other penalty, order that the registration be cancelled and also any fees paid for such registration be forfeited and that the person be disqualified from the day of conviction from being so registered for a period not exceeding 3 years.

(2) If a person who is registered dealer is convicted of an offence under this Ordinance on more than 3 occasions within a 24 month period, the registration of that person automatically lapses.

PART VII MISCELLANEOUS

Regulations

29. The Governor in Council may make regulations necessary or convenient for the purposes of this Ordinance, and without limiting that power, the regulations may specifically—

- (a)* prescribe places that are exempt from the smoke-free requirement, specifying criteria for these smoke-free places, including a requirement for these places to be clearly marked and have arrangements in place to prevent smoke entering other areas, and may specify that these exemptions apply at specified times or in specified circumstances;
- (b)* prescribe the requirements for no-smoking signs to be posted at smoke-free premises or in smoke-free vehicles;
- (c)* prescribe the requirements and process for registration as a dealer in tobacco or related products and procedures for appeal and offences relating to registration;
- (d)* regulate or prohibit the importation or sale of specified tobacco or related products

- listed in the regulations;
- (e) prescribe graphical images that are required to be displayed in health warnings on packages;
- (f) prescribe the manner in which tobacco and related products are to be packaged and labelled;
- (g) prescribe the forms to be used and fees to be paid under the Ordinance; and
- (h) any other matter which must or may be prescribed under the Ordinance.

Repeal of legislation

- 30.** The Tobacco Control Ordinance, 2011, is repealed.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

The purpose of this Ordinance is to review the provisions relating to tobacco control. The Ordinance also covers products other than tobacco products and includes electronic cigarettes, heated tobacco products and herbal products for smoking. The Ordinance revises the provisions with respect to smoke-free premises and vehicles and introduces a new registration process for dealers in tobacco or related products. The Ordinance also regulates advertisement, promotion and sponsorship with respect to tobacco or related products and brands and makes provision for the requirements for packaging and labelling of such products.

Clause 1 would provide the short title and commencement of the Bill.

Clause 2 would provide the interpretation of words and terms used in the Bill.

Clause 3 would make provision for premises “open to the public” to be smoke free.

Clause 4 would make provision for places of work to be smoke free but would provide the exceptions to this requirement.

Clause 5 would provide the meaning of “enclosed” and “substantially enclosed” for the purpose of clauses 3 and 4.

Clause 6 would prohibit smoking in a vehicle in the presence of a minor and if the vehicle is used by the public.

Clause 7 would make provision for the conditions under which the Governor in Council may, by Order, designate places to be smoke-free.

Clause 8 would make provision for the placement of no-smoking signs.

Clause 9 would make provision for the importation of tobacco and related products.

Clause 10 would prohibit the sale of tobacco or related products other than in accordance with the Bill.

Clause 11 would make special provision for the importation of electronic cigarettes.

Clause 12 would prohibit the sale and supply of tobacco and related products to children.

Clause 13 would prohibit the sale of tobacco and related products in any way other than in a manner such that the point of sale could be verified.

Clause 14 would prohibit the public display of tobacco and related products.

Clause 15 would prohibit the sale of tobacco and related products in specified places.

Clause 16 would prohibit the import, manufacture and sale of toy and candy cigarettes.

Clause 17 would prohibit the promotion of tobacco and related products.

Clause 18 would make provision for the packaging and labelling of tobacco and related products.

Clause 19 would provide that every manufacturer, importer, exporter, distributor and retailer of tobacco and related products is required to prevent tampering with the packaging and labelling of tobacco and related products.

Clause 20-26 provide the penalties for contravention of the Bill.

Clause 27 provides the penalty for obstructing the enforcement of the Bill.

Clause 28 makes provision for the registration of a registered dealer to lapse if the dealer is convicted of an offence under the Bill.

Clause 29 would make provision for regulations to be made under the Ordinance.

Clause 30 would repeal the Ordinance currently in force.