

Assented to in Her Majesty’s name and on her Majesty’s behalf this 24th June 2021.

Philip Rushbrook
Governor

L.S.



ST HELENA
NO 7 OF 2021

Enacted 24 June 2021
Date of Commencement..... in accordance with section 1
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AN ORDINANCE

to amend the Control of Tobacco and Related Products Ordinance, 2020, to prohibit the sale of flavoured 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.

Short title, commencement and interpretation

1. (1) This Ordinance may be cited as the Control of Tobacco and Related Products (Amendment) Ordinance, 2021, and comes into force on a date or dates fixed by the Governor by Order.

- (2)** An Order under subsection (1) may—
 - (a)** appoint different dates for different provisions or for different purposes of the same provision; and
 - (b)** contain such transitional or consequential provisions as appear to the Governor to be necessary or convenient.

(3) In this Ordinance “the principal Ordinance” means the Control of Tobacco and Related Products Ordinance, 2020.

Amendment of section 2 - Interpretation

2. Section 2 of the principal Ordinance is amended by inserting, in the appropriate alphabetical sequence, the following definitions—

“**application**” means an application for registration as a registered dealer in tobacco or a related product;

“**characterising flavour**” means a smell or taste other than one of tobacco which—

- (a) is clearly noticeable before or during consumption of a tobacco or related product; and
- (b) results from an additive or a combination of additives such as but not limited to fruit, spices, herbs, alcohol, candy, menthol or vanilla to a tobacco or related product;

“**Director of Police**” includes any member of the Police Service to whom the Director of Police may delegate duties pursuant to the Police Service Ordinance, 1975;

“**Legislative Council**” refers to the Legislative Council established by the St Helena, Ascension and Tristan da Cunha Constitution Order 2009;

“**public officer**” has the same meaning as that construed in the definition of the words “public office” in the Interpretation Ordinance, 1968; and

“**register**” means the register maintained by the Licensing Officer pursuant to section 8A containing the names of persons registered as dealers in tobacco or related products.”.

Insertion of Part 2A - Registration and Inspection

3. The principal Ordinance is amended by inserting after part 2 the following part—

“PART IIA REGISTRATION AND INSPECTION

Application and inspection

8A. (1) There is established a register in which the name of a person registered as a dealer in tobacco or a related product is to be entered and which is to be maintained by the Director of Police who is the Licencing Officer for the purpose of the registration of a person pursuant to this section.

(2) An application for registration as a registered dealer in tobacco or a related product must be—

- (a) made to the Licensing Officer by a person in the form and manner designated by the department of government charged with responsibility for health promotion in St Helena;
- (b) accompanied by any supporting information requested by the Licensing Officer which is pertinent to registration; and
- (c) accompanied by the relevant application fee prescribed in regulations.

(3) Premises to which an application for registration relate must be inspected as prescribed before an application for registration is approved.

(4) The Licensing Officer, after consultation with the Committee charged with responsibility for public health, must publish, by Notice in the Gazette—

- (a) the requirements to be satisfied for registration as a dealer in tobacco or a related product; and
- (b) any conditions to which registration under paragraph (a) may be subject.

(5) Upon receipt of an application for registration the Licensing Officer must cause an inspection of the premises to which an application relates to be made in accordance with the requirements specified in subsection (4).

(6) Subject to subsection (7) a public officer from the department of government charged with responsibility for environmental health accompanied by the Director of Police may, inspect any premises to which an application relates for the purpose on ensuring that the premises satisfy the requirements or conditions specified in subsection (4).

(7) The owner or person in possession of premises to which an application relates, must in writing, at least 48 hours before an inspection is scheduled, be served with notice of the inspection by the Licensing Officer.

(8) Subject to subsection (1) an application for registration may be made during the period from September 1st to December 31st preceding the year for which a certificate of registration as a registered dealer in tobacco or a related product pursuant to section 8B is required to be issued.

(9) The Licensing Officer must by Notice in the Gazette publish every application for registration received by the Licensing Officer.

(10) A person who has not previously been registered under this Ordinance may, if the person is unable to apply to apply during the period prescribed under subsection (8), apply for registration outside of the period prescribed under subsection (8).

(11) A person who knowingly or wilfully impedes the inspection of premises pursuant to this section commits an offence.
Penalty: A fine of £500.

Certificate

8B. (1) A person who satisfies the requirements for registration pursuant to section 8A and is approved for registration by the Licensing Officer is entitled, upon payment of the fee prescribed in regulations, to be issued with a certificate of registration as a registered dealer in tobacco or a related product by the Licensing Officer.

(2) Unless revoked, a certificate of registration as a registered dealer in tobacco or a related product is valid until the last day of the year, that is December 31st, in which the certificate was issued.

(3) Upon the expiration of a certificate, an application may be filed in accordance with section 8A.

(4) The fee for a certificate of registration as a registered dealer in tobacco or a related product issued or renewed after January 1st is not eligible to be pro-rated and is, at the time of issue of such certificate, due to be paid in full.

(5) Subsection (4) applies in respect of any certificate issued under this Ordinance, including a certificate issued pursuant to an application made pursuant to section 8A(10).

Objection

8C. A person specified as follows, may in writing to the Licensing Officer and within 14 days of the date of the publication of a Notice published pursuant to section 8A(9) make known to the Licensing Officer an objection to an application for registration—

- (a) any person in the person's private capacity; or
- (b) a public officer.

Refusal, revocation and effect on registration

8D. (1) The Licensing Officer may refuse to register a person as a dealer in tobacco or a related product if the Licensing Officer is satisfied, in the discretion of the Licensing Officer, that the person is unfit for registration.

(2) A certificate of registration as a registered dealer in tobacco or a related product may be revoked if a person registered pursuant to section 8A to whom such certificate is issued is found by the Licensing Officer to be in breach of section 14 of the Ordinance.

(3) If a certificate of registration as a registered dealer in tobacco or a related product is revoked, the registration of the person to whom such certificate is issued is cancelled and the Licensing Officer may remove the name of the person from the register.

(4) If a person is refused registration pursuant to section 8A, or a certificate of registration as a registered dealer in tobacco or a related product issued to the person is revoked, the Licensing Officer must, in writing, notify the person of such refusal of registration or revocation and must include in the notification, the reasons for such refusal of registration or revocation.

(5) Where a certificate of registration as a registered dealer in tobacco or a related product is revoked, neither the application fee, nor any part of the application fee is refundable.

(6) For the avoidance of doubt, if a person whose registration is cancelled pursuant to subsection (3) becomes eligible for re-registration subsequent to such revocation, the

person must, if the person satisfies the requirements for registration, apply for registration in accordance with section 8A and thereafter be issued with a certificate of registration as a registered dealer in tobacco or a related product.

Reasons and appeal

8E. (1) A person who is refused registration pursuant to section 8A or whose certificate of registration as a registered dealer in tobacco or a related product is revoked is entitled to and must be provided with the reasons for the refusal or revocation in writing by the Licensing Officer in accordance with section 8D(4).

(2) A person to whom subsection (1) applies may, within 14 days subsequent to the date upon which the person is notified of the refusal or revocation, in writing, appeal against the decision made in respect of the refusal or revocation to the Licensing Officer.

(3) Where an appeal is made pursuant to subsection (2) the Licensing Officer, must in writing and within 28 days of receipt of the appeal provide a decision in respect of the appeal to the person in respect of whom the appeal is made.

(4) A person who is dissatisfied with a decision of the Licensing Officer provided pursuant to subsection (3) may, in writing and within 14 days of the date of receipt of the decision, appeal, in writing to the Magistrate's Court.

(5) An appeal pursuant to subsection (4) must be made in accordance with the Magistrate's Court Ordinance, 2011 and follow the procedure specified in the Courts (Appeals and Rules) Ordinance, 2017 in respect of appeals.”

Insertion of section 9A - Restrictions on importation and sale

4. The principal Ordinance is amended by inserting after section 9 the following section—

“Restrictions on importation and sale

9A. (1) The following subsections do not apply to the sale, importation, acquisition, or supply of a tobacco or related product which is in the form of a cigar.

(2) A person who is a wholesaler must not sell tobacco or a related product at a wholesale price to a person who is not registered as prescribed.

(3) A person must not import, acquire, offer for sale, or supply tobacco or a related product—

(a) in individual cigarettes;

(b) in packets containing less than 20 cigarettes; or

(c) as a unit of tobacco to be used for hand-rolling containing less than 30 grams of tobacco.

(4) A person who does not comply with subsection (2) or (3) commits an offence. Penalty: A fine of £800.”

Amendment of section 10 - Supply of tobacco or related products

5. Section 10 of the principal Ordinance is amended by repealing subsection (3) and substituting the following subsection—

- “(3) A person must not —
- (a) supply or offer for supply any tobacco for sucking, chewing or snuffing or heated tobacco product; or
 - (b) produce or supply a tobacco or related product which has —
 - (i) a characterising flavour;
 - (ii) a filter, paper, capsule or other component containing a characterising flavour; or
 - (iii) a technical feature which allows a person to modify the smell, taste, or smoke intensity of a tobacco or related product.”.

Amendment of section 14 - Prohibition on public displays

6. Section 14 of the principal Ordinance is amended by repealing subsection (4) and substituting the following subsections—

“(4) Subject to subsection (5) a person must not display any material related to the pricing of tobacco or a related product.

(5) A price list for a tobacco or a related product may be made available to a customer on request only and must be printed—

- (a) in standard font on plain white A4 sized paper; and
- (b) in a font that is readable to a person who is sight impaired.”.

Amendment of section 19 - Requirements for tamper-proof packaging and labelling

7. Section 19 of the principal Ordinance is amended by repealing the following words—

- (a) “manufacturer,”;
- (b) “exporter,”;
- (c) “manufacturer’s,”; and
- (d) “exporter’s,”.

EXPLANATORY NOTE
(This note is not part of the Ordinance)

This Ordinance amends the Control of Tobacco and Related Products Ordinance, 2020 so that the production and supply of flavoured tobacco or a related product is prohibited. The Ordinance also provides that a price list for tobacco or a related product must be readable to a person who is sight impaired and that the provision requiring tamper proof packaging and labelling can be enforced.