

TOBACCO CONTROL ACT, 2021

No. 19



of 2021

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An Act to establish the Tobacco Control Committee and set out its functions; to regulate the demand and supply for consumption of tobacco and tobacco products; to control the production, manufacture, sale, labelling, advertising, promotion and sponsorship of tobacco and tobacco products; and to provide for related matters.

Date of Assent: 18.10.2021

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — Preliminary

Short title and commencement	<p>1. This Act may be cited as the Tobacco Control Act, 2021, and shall come into operation on such date as the Minister may, by Order published in the <i>Gazette</i>, appoint.</p>
Interpretation	<p>2. In this Act, unless the context otherwise requires —</p> <p>“advertising” or “promotion” in relation to tobacco products, means any form of commercial communication, recommendation or action with the aim, effect, or likely effect of promoting a tobacco product or tobacco use directly or indirectly;</p> <p>“authorised officer” means a person appointed in accordance with section 61;</p> <p>“Chairperson” means the Chairperson of the Committee appointed in accordance with section 6 (1);</p> <p>“Committee” means the Tobacco Control Committee established under section 3 (1);</p> <p>“emission yields” means figures representing measurement of the tobacco product’s emissions and includes the emission of tar, nicotine, carbon oxide or other emissions;</p> <p>“health warnings and messages” means the prescribed text and accompanying full colour pictures required to be displayed on tobacco packaging and labelling that convey the health and other consequences of tobacco use and exposure to tobacco smoke and any other messages;</p> <p>“indoor” or “enclosed” means any space covered by a roof or one or more walls or sides, regardless of the type of material used and regardless of whether the structure is permanent or temporary;</p> <p>“licence” means a licence issued in accordance with section 23;</p> <p>“manufacturer” in relation to tobacco products, means a person that manufactures, fabricates, produces, processes, packages or labels tobacco products;</p> <p>“member” means a member of the Committee appointed in accordance with section 3 (2);</p> <p>“packaging and labelling” in relation to tobacco products, means any packaging and labelling used in the retail sale of the products;</p> <p>“public body” means any office, organisation, establishment or body created by or under any enactment or under powers conferred by any enactment; or any organisation, trust, company or body where public moneys are used, and includes —</p> <ul style="list-style-type: none">(a) any Ministry or Department;(b) a local authority;(c) statutory body; and(d) a company registered under the Companies Act being a company in which the Government or an agency of the Government through holding of shares or otherwise, is in a position to direct the operations of that company;

- “public place” means any place accessible to the general public or place for collective use, regardless of ownership or right of access;
- “public service vehicle” has the same meaning ascribed to it under the Road Traffic Act and shall, for the purposes of this Act, also include a private hire vehicle as defined under the Road Traffic Act;
- “retailer” means a person who sells tobacco or tobacco products to consumers;
- “seller” means any person who is a wholesaler, importer, exporter, retailer or other distributor of tobacco products;
- “smoking” means inhaling, exhaling, or being in control of a lighted tobacco product;
- “sponsorship” means any form of contribution to any event, activity, organisation, or individual that has the aim, effect, or likely effect of promoting a tobacco product or tobacco use directly or indirectly;
- “tobacco industry” means the tobacco manufacturers, wholesale distributors, and importers of tobacco products;
- “tobacco product” means any product entirely or partly made of tobacco leaf as raw material and which are manufactured to be used for smoking, sucking, chewing or snuffing, and includes electronic cigarettes and non-nicotine delivery devices;
- “unit packaging and labelling” means the packaging and labelling in which a tobacco product is directly placed; and
- “work place” means any place used by one or more persons during their compensated or voluntary employment or work, including all associated or attached areas commonly used in or incidental to the course of work, as well as work vehicles.

Cap. 69:01

PART II — *Establishment of Tobacco Control Committee*

3. (1) There is hereby established a body to be known as the Tobacco Control Committee.

Establishment of Committee

(2) The Committee shall consist of 11 members appointed by the Minister being —

- (a) an environmental health officer;
- (b) a physical planner;
- (c) an officer from the Ministry responsible for trade;
- (d) two officers from the Ministry responsible for health;
- (e) two members of the public;
- (f) two non-governmental organisation representatives;
- (g) a legal practitioner from the Attorney Generals’ office;
- (h) a member of the Botswana Police Service; and
- (i) two members from the private sector.

4. (1) The Committee shall —

- (a) provide oversight in the implementation of the provisions of this Act and exercise the powers conferred upon it by this Act;
- (b) monitor the issuance of licences in accordance with this Act;

Functions of Committee

- (c) monitor health trends resulting from tobacco consumption and exposure;
 - (d) monitor and review the effectiveness of the requirements contained in this Act, and recommend amendments to the Minister as it deems appropriate; and
 - (e) develop and implement a national programme for tobacco control, including public awareness campaigns and cessation activities.
- (2) The Committee may, at the request of any person and on the grounds of quality, safety or efficacy, carry out or cause to be carried out investigations in respect of any tobacco products.

Directions
by Minister

5. The Minister may, after consultation with the Committee, give the Committee directions of a general or specific nature regarding the exercise of its powers and the performance of its functions, which directions shall not be inconsistent with this Act or with the contractual or other obligations of the Government, and the Committee shall give effect to any such directions.

Appointment
of members
of Committee

6. (1) The Minister shall appoint the Chairperson of the Committee from among the members of the Committee appointed under section 3 (2).

(2) A member of the Committee shall hold office on terms and conditions specified in his or her instrument of appointment.

(3) The Minister may appoint other persons to sit on the Committee as alternates to the substantive members of the Committee appointed under section 3 (2).

(4) The alternate members appointed by the Minister under subsection (3) shall be appointed, if the Minister is satisfied that such persons meet the requirements for qualifications for members set out under section 8.

(5) The Minister shall, by notice in the *Gazette*, publish the appointment of the members and their alternates, specifying the dates of their appointment and the period for which they are appointed to the Committee.

Tenure of
office

7. The members shall be appointed for a period not exceeding three years and may, subject to a review of their performance, be eligible for re-appointment for a further period not exceeding two terms.

Disqualification,
removal and
resignation

8. (1) A person shall not qualify to be appointed as a member nor shall any person continue to serve as a member who —

- (a) is engaged, whether directly or indirectly, in the tobacco industry as an owner, shareholder, partner, grower, importer, distributor, retailer or otherwise;
- (b) has a financial or proprietary interest in an organisation engaged in the manufacture, importation or distribution of tobacco products;
- (c) has, in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt or insolvent and has not been discharged, or
 - (ii) made any assignment to or arrangement with his or her creditors which has not been rescinded or set aside; or

(d) has, within a period of 10 years immediately preceding the date of his or her proposed appointment, been convicted —

- (i) in Botswana, of a criminal offence, or
- (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence,

and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.

(2) The Minister may, in writing, remove a member from office where the member —

- (a) is absent without reasonable cause from three consecutive meetings of the Committee of which he or she has had notice;
- (b) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a medical certificate to that effect;
- (c) contravenes the provisions of this Act or otherwise conducts himself or herself to the detriment of the objectives of the Committee, or of public interest; or
- (d) has been convicted of an offence under this Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine.

(3) For the purposes of subsection (2) (c), “detriment of the objectives of the Committee” includes any act done without reasonable excuse by a member which —

- (a) amounts to failure to perform in a proper manner any duty imposed on him or her as a member;
- (b) is prejudicial to the efficient conduct of the Committee; or
- (c) tends to bring the Committee into disrepute.

(4) A member may resign from office by giving 30 days’ notice in writing to the Minister.

(5) The Minister may, in writing, suspend from office, a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties under this Act or be entitled to any remuneration or allowances as a member of the Committee.

9. The office of a member shall become vacant —

- (a) if he or she becomes disqualified in terms of section 8 to hold office as a member of the Committee;
- (b) if he or she is absent from three consecutive meetings of the Committee without reasonable excuse;
- (c) upon his or her death;
- (d) upon the expiry of such time as the Minister may specify, in writing, notifying the member of his or her removal from office by the Minister;
- (e) upon the expiry of one month’s notice, in writing, to the Chairperson, of his or her intention to resign from office;

Vacation of
office

- (f) if he or she becomes mentally or physically incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;
- (g) if he or she is convicted of an offence under this Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine; or
- (h) if he or she is summarily dismissed by the Minister on the grounds of contravening the provisions of this Act.

Filling of vacancies

10. (1) Where the office of the member becomes vacant before the expiry of the member's term of office, the Minister shall appoint the alternate of that member in place of the member who vacates the office until the expiry of the period, during which such member would have otherwise continued in the office.

(2) Subsection (1) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have been less than six months.

Co-opted members

11. (1) The Committee may invite any person whose presence it deems necessary to attend and participate in the deliberations of any meeting of the Committee, but such person shall have no right to vote.

(2) The provisions of sections 8 and 9 shall, with the necessary modifications, apply in respect of a member co-opted under subsection (1).

Reports to Minister

12. (1) The Chairperson shall, from time to time, submit to the Minister, reports with regard to matters relating to the activities of the Committee which, in the opinion of the Committee, should be brought to the notice of the Minister.

(2) The Committee shall, when so requested by the Minister, furnish him or her with advice in connection with tobacco control matters and shall communicate, to the Minister, information acquired by it in the course of its duties on matters regarded by it as being of public importance.

Remuneration and allowances

13. A member shall be paid such remuneration and allowances, if any, as the Minister may determine.

PART III — Meetings and proceedings of Committee

Election of Vice Chairperson

14. (1) At the first meeting of the Committee, the members shall elect from among their number, a Vice Chairperson.

(2) The Chairperson and Vice Chairperson shall hold office for a period of not more than three years.

(3) On the expiry of the terms of office of the Chairperson or the Vice Chairperson, or where the Chairperson or the Vice Chairperson vacates office, a new Chairperson shall be appointed by the Minister and a new Vice Chairperson shall be elected by the members from among their number at the next meeting of the Committee or as soon thereafter as may be convenient.

(4) The Chairperson or Vice Chairperson may vacate his or her office as such even though he or she remains a member.

(5) The Vice Chairperson shall exercise the functions of the Chairperson during the period that the Chairperson is absent to act as Chairperson.

15. (1) Subject to the provisions of this Act, the Committee may regulate its own proceedings.

Meetings of
Committee

(2) The Committee shall hold its first meeting on such date and at such a place as the Minister may determine and thereafter, the Committee shall meet for the discharge of its functions as often as necessary but shall meet at least once in every three months at such time and place as the Chairperson may determine.

(3) There shall preside at any meeting of the Committee —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson; or

(c) where both the Chairperson and the Vice Chairperson are not present, the members present shall appoint one amongst their number to preside for the purposes of a meeting.

(4) The Chairperson shall, in writing, give each member at least 10 days' notice of a meeting of the Committee but may, at the written request of at least two members, call an urgent meeting of the Committee upon giving a shorter notice.

(5) The notice referred to under subsection (4) shall state —

(a) the place and time of the meeting;

(b) the agenda for the meeting; and

(c) the text of any resolution to be submitted to the meeting.

(6) The Secretariat shall cause to be recorded and kept by the Committee, minutes of all meetings of the Committee.

16. (1) The quorum at any meeting of the Committee shall be a simple majority of the members.

Quorum and
procedure at
meetings

(2) A decision of the Committee on any question shall be by a simple majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his or her deliberative vote.

(3) A decision of the Committee shall not be rendered invalid by reason of a vacancy in its membership, by any defect in the appointment or qualification of a member or by reason that a person was not entitled to sit as a member did so sit.

(4) Where an alternate member is appointed by the Minister under section 6 (3), such alternate member shall attend and take part in the voting at meetings whenever the member to whom he or she is alternate is absent from such meeting.

17. (1) The Committee may, for the purpose of performing its functions, establish such committees as it considers appropriate, and may delegate to any such committees, such of its functions as it considers necessary.

Committees

(2) The Committee may appoint to the committees established under subsection (1), such number of members of the Committee and such number of persons with specialised skills, not being members of the Committee, as it considers appropriate, to be members of the committees and such persons shall hold office for such period as the Committee may determine.

(3) The Committee shall appoint a Chairperson and a Vice Chairperson for any of its committees from among its members.

(4) Subject to the specific or general directions of the Committee, a committee shall regulate its own procedure and the Committee may attach any conditions to the delegation of any of its powers to such committees.

(5) The Committee may confirm, vary or revoke any decision taken in consequence of a delegation or assignment, but no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(6) Meetings of a committee shall be held at such times and places as the committee may determine, or as the Committee may direct.

Secretariat of
Committee

18. (1) The Committee shall have a Secretariat which shall be headed by the focal person from the Tobacco Control Unit of the Ministry.

(2) The functions of the Secretariat shall be to —

(a) coordinate meetings of the Committee and meetings of the committees of the Committee;

(b) provide technical support for the implementation of tobacco control interventions within the Ministry and other sectors;

(c) produce and disseminate information on tobacco control; and

(d) carry out any other duties related to tobacco control.

Disclosure of
interest

19. (1) If a member or any person assisting the Committee is present at a meeting, at which any matter in which the member or immediate family member of the member is directly or indirectly interested in a private capacity is the subject of consideration, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Committee otherwise directs, take part in any consideration or discussion of, or vote on, any question concerning the matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it was made.

(3) Where a member fails to disclose his or her interest in accordance with subsection (1) and a decision by the Committee is made benefitting such member, or an immediate family member of the member, such decision shall be null and void to the extent that it benefits such member or family member.

(4) A member who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P5 000 or imprisonment for a term not exceeding six months, or to both.

20. (1) A member and any other person assisting the Committee shall observe and preserve the confidentiality of all matters coming before the Committee, and such confidentiality shall subsist even after the termination of the member's term of office or mandate.

Confidentiality

(2) Any member or any person to whom confidential information is revealed through working with the Committee shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Any member or any other person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P5 000 or imprisonment for a term not exceeding six months, or to both.

21. No matter or thing done or omitted to be done by a member or any other person, shall, if the matter or thing is done or omitted to be done bona fide in the course of the operations of the Committee, render such member or any other person acting by his or her direction, personally liable to an action, claim or demand.

Protection
from personal
liability

PART IV — Licences

22. (1) A person shall not sell tobacco or any tobacco product unless he or she has a licence issued in accordance with this Act.

Licence
required

(2) A person shall not purchase tobacco or any tobacco product from any person who does not have a licence issued in accordance with this Act.

(3) Any person who contravenes the provisions of subsection (1) or (2) commits an offence and is liable —

(a) in the case of a person who is a manufacturer, to a fine of P750 000 or to imprisonment for a term not exceeding a period of four years, or to both;

(b) in the case of a person who is a wholesaler, importer or exporter, to a fine of not more than P5 000 or to imprisonment for a term not exceeding six months, or to both; and

(c) in the case of a person referred to in subsection (2), to a fine not exceeding P2 000, or to imprisonment for a term not exceeding five months, or to both.

(4) In addition to the penalties specified in subsection (3), the Committee may seize and destroy any tobacco or tobacco products being sold or manufactured without a licence.

(5) In the case of a continuing offence, the offender shall be liable to a fine of P2 000 for every day on which the offence continues to be committed after he or she was first notified of the offence, but such fine shall not exceed P100 000.

23. (1) For the purposes of this Act, the Committee may issue licences of the following descriptions —

Licences to be
issued

(a) a tobacco manufacturing licence;

(b) a tobacco importing licence;

(c) a tobacco exporting licence; and

(d) a tobacco sales licence.

(2) The Minister may prescribe any other licence which may become necessary to be prescribed under this Act.

Application
for licence

24. (1) A person who wishes to manufacture, import, export or sell tobacco or any tobacco product shall apply to the Committee for a licence in such form and on payment of such fees as may be prescribed.

(2) An applicant shall, at his or her own expense, cause notification of his or her application under subsection (1) to be published in two consecutive issues of the *Gazette*, the *Daily News* or any private local newspaper with wide circulation calling upon any person who objects to the application to notify the Committee, in writing, of such objection and the grounds of the objection, within 30 days of the last publication of the notification.

(3) An application for the issue of a licence shall not be considered by the Committee unless the applicant produces proof of compliance with subsection (2).

(4) Any person wishing to object to the issue of a licence of which notice of application has been given in terms of subsection (2) shall, within 30 days of the last publication of such notice, lodge his or her grounds of objections in writing with the Committee.

(5) The Committee shall, upon receipt of any grounds of objections under subsection (4), invite the applicant to comment in writing on the grounds of objections and the Committee shall take the objections and the applicant's response into consideration in approving or rejecting the application for the licence as the case may be.

(6) The Committee shall, on an application for a licence, cause the premises to which the application relates to be inspected by an authorised officer appointed in terms of this Act in respect of its suitability for the operation of the business which is the subject of the application.

(7) The authorised officer shall, upon completion of his or her inspection, forward a copy of his or her inspection report to the Committee, which shall take such report into account in its consideration of the application.

Issue and
duration of
licence

25. (1) The Committee shall, where it is satisfied that an application meets the prescribed requirements for the issuance of a licence, issue to the applicant, a licence in the prescribed form and upon payment of a prescribed fee.

(2) A licence issued under this section shall, unless previously renewed or revoked, be valid for a period of one year from the date of issue.

Renewal of
licence

26. (1) A licensee shall, unless his or her licence has been revoked, make an application to the Committee for renewal of his or her licence, in such form as may be prescribed.

(2) A licensee shall, when applying for a renewal under subsection (1) —

- (a) pay outstanding fines, if any;
- (b) pay such fees as may be prescribed; and
- (c) comply with any other conditions that the Committee may impose.

27. A licensee whose licence is lost, destroyed or mutilated, may make an application to the Committee for a duplicate licence in such form and on payment of such fees as may be prescribed.

Duplicate
licence

28. (1) The Committee may suspend a licence where —

Suspension of
licence

- (a) an inspection report made in accordance with section 24 (7) has recommended its suspension;
- (b) a licensee breaches a condition of his or her licence; or
- (c) a licensee contravenes any of the provisions of this Act.

(2) A suspension under this section shall be for such period as the Committee may determine, to enable the licensee to take remedial action so as to comply with the requirements of his or her licence or the provisions of this Act.

29. The Committee may revoke a licence where —

Revocation of
licence

- (a) a licensee has failed to take any remedial action recommended by the Committee, at the expiration of the time given; or
- (b) a licensee has been convicted of any offence under this Act.

30. (1) A licensee may, on application in such form as may be prescribed, apply to the Committee for a licence to be transferred to another person.

Transfer of
licence

(2) Without prejudice to the generality of subsection (1), the Committee may transfer a licence where —

- (a) the licensee has died, to his or her heir or beneficiary, on a written application by an executor named in the will of the deceased licensee or any person appearing to the Committee to be entitled to take out letters of administration;
- (b) the licensee has been declared insolvent or has surrendered his or her estate for the benefit of his or her creditors, to his or her trustees, on a written application by the liquidator of the licensee's business;
- (c) the licensee becomes the subject of any legal disability, to his or her legal representative, upon a written application by such legal representative; or
- (d) a person acquires the business for which a licence is issued or acquires a controlling interest in that business, to that person, upon a written application by the owners of such business.

(3) The Committee shall not grant the transfer of a licence where it has reason to believe that as a result of that transfer, a person who is disqualified from acquiring a licence under this Act would acquire it.

PART V — *Protection from tobacco smoke*

Prohibition on smoking in public places, etc.

31. (1) A person shall not smoke —

- (a) in any part of an enclosed public place or enclosed private or public workplace;
- (b) on or in any public service vehicle; or
- (c) in any public place.

(2) For the purposes of this Act, “enclosed public place or enclosed private or public workplace” includes —

- (a) all parts of any office and office building, including public areas, corridors, lounges, eating areas, reception areas, elevators, escalators, foyers, stairwells, restrooms, amenity areas, laundry rooms and individual offices;
- (b) factories;
- (c) health institutions;
- (d) educational facilities;
- (e) any premises in which children are cared for;
- (f) any means of commercial or private transportation used for conveying persons under 21 years of age;
- (g) any means of transportation used for commercial, public or professional purposes;
- (h) public transportation terminals;
- (i) retail establishments, including stores, shops and shopping malls;
- (j) cinemas and theatres;
- (k) concert halls and other entertainment facilities;
- (l) sports stadia;
- (m) bars, restaurants and clubs;
- (n) pool and bingo halls;
- (o) prisons and detention centres;
- (p) police and military barracks;
- (q) facilities rented out for public events; and
- (r) any other facilities accessible to the public.

(3) A person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding five months, or to both.

Obligations to ensure compliance

32. (1) An owner or occupier of any public place or enclosed private or public workplace, or his or her agent, or an owner or operator of any public service vehicle, or his or her agent, shall take all reasonable steps to ensure that no person contravenes the provisions of this Part.

(2) For the purposes of subsection (1) “take all reasonable steps” includes, but is not limited to —

- (a) asking an offending person to stop smoking;
- (b) demanding that an offending person who continues to smoke in contravention of this Part leaves the premises immediately or leaves the public service vehicle at the next scheduled stop, as applicable and practicable; or

- (c) seeking the assistance of law enforcement personnel in cases where the offending person refuses to stop smoking or to leave the premises or public service vehicle.
- (3) An owner or occupier of any public place or enclosed private or public workplace, or his or her agent, or an owner or operator of any public service vehicle, or his or her agent shall —
 - (a) not permit the placement of ashtrays in any place or public service vehicle under his or her control where smoking is prohibited;
 - (b) supervise observance of the requirements of this Part; and
 - (c) investigate complaints and take necessary action to ensure compliance, and do so without explicit or implicit threat or act of retaliation against the complainant.
- (4) A person who contravenes the provisions of this section commits an offence and is liable to —
 - (a) a written warning, in the case of a first offence;
 - (b) suspension of a licence for a period of three years or until remedial action has been taken or licence revocation, as applicable; or
 - (c) a fine not exceeding P10 000 or imprisonment for a term not exceeding one year, or to both.

33. (1) An owner or occupier of any enclosed public place or workplace, or a public service vehicle, or his or her agent, shall prominently display “no smoking” signs that comply with such standards that the Minister may prescribe in relation to the format, content, design, size, display, location and any other detail relating to such signs.

No smoking signs

(2) An owner referred to in subsection (1) shall be given a grace period of one month to comply with the provisions of this section.

(3) An owner who contravenes the provisions of subsection (1) commits an offence and is liable to —

- (a) a written warning, in the case of a first offence;
- (b) licence suspension for a period of three years or until remedial action has been taken or licence revocation, as applicable; or
- (c) a fine not exceeding P10 000 or imprisonment for a term not exceeding one year, or to both.

34. The Minister may, by Order published in the *Gazette*, prohibit or restrict smoking in certain outdoor spaces, and prescribe the signs to be displayed in public outdoor spaces where persons are likely to congregate within close proximity to one another, where smoking might pose a health or fire or other hazard.

Prohibition of smoking in certain outdoor spaces

35. In interpreting the provisions of this Part, the rights of non-smoking members of the public and workers shall prevail and any question that may arise as to whether smoking is permitted in any given situation shall be resolved in favour of protecting non-smokers.

Rights of non-smokers to prevail

PART VI — *Advertising, sponsorship and promotion*

Tobacco advertising, sponsorship and promotion prohibited

- 36.** (1) A person shall not —
- (a) initiate any tobacco advertising and promotion, or sponsorship;
 - (b) produce, publish, or make accessible any tobacco advertising and promotion, or sponsorship content; or
 - (c) engage or participate in any tobacco advertising and promotion or sponsorship as media or event organiser or other participant, as a recipient of any sponsorship contribution, or as an intermediary that facilitates any such contribution.

(2) The provisions of subsection (1) include any commercial communication, act or practice that promotes or is likely to promote a seller or tobacco manufacturer.

(3) Where a person involved in the dissemination of communications content becomes or reasonably should become aware of any prohibited tobacco content and where such a person is in a position to control the publication or dissemination of the content, that person shall remove the prohibited content or take reasonable steps to disable access to it where technically possible.

(4) The Minister may prescribe any other requirements necessary to give effect to the provisions of this Part.

(5) A person who contravenes the provisions of subsections (1) and (3) commits an offence and is liable to —

- (a) a written warning, in the case of a first offence;
- (b) suspension of the licence for a period of three years or until remedial action has been taken or licence revocation, as applicable; or
- (c) a fine not exceeding P1 000 000 or imprisonment for a term not exceeding five years, or to both, and for a second or subsequent offence, a fine not exceeding P2 000 000 or imprisonment for a term not exceeding 10 years, or to both.

Prohibition on tobacco products displays

37. (1) A person shall not commercially display or arrange for the commercial display of tobacco product packages, including at point of sale.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P1 000 000 or imprisonment for a term not exceeding five years, or to both, and for a second or subsequent offence, to a fine not exceeding P2 000 000 or imprisonment for a term not exceeding 10 years, or to both.

Required disclosures

38. For the purpose of monitoring compliance with this Part, a seller or a tobacco manufacturer shall provide reports as may be required by the Minister with respect to certain expenditures, in such form and at such intervals as the Minister may prescribe.

Penalties for non-compliance

39. In addition to any penalty authorised under this Part, a court may order corrective action, with the costs of the action borne or reimbursed by the offender including, but not limited to —

- (a) an order to cease and desist from any conduct that violates any provision of this Part;
- (b) where applicable, removal or blockage of tobacco advertising, promotion or sponsorship content and confiscation of any advertising and promotion, or sponsorship materials or items containing such content;
- (c) recall, removal or confiscation and destruction of any prohibited tobacco product, item or materials; or
- (d) any other corrective action ordered by the court.

PART VII — Tobacco products packaging and labelling

40. (1) A person shall not manufacture or import any tobacco product that is not packaged and labelled in a manner that complies with the requirements of this Act.

Prohibition on sales of non-compliant tobacco products

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable to —

- (a) a written warning in the case of a first offence;
- (b) suspension of the licence for a period of three years or until remedial action has been taken or licence revocation, as applicable; or
- (c) a fine —
 - (i) in the case of an importer other than a manufacturer, not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both, and for a second or subsequent offence, a fine not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both, and
 - (ii) in the case of a manufacturer, not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both, and for a second or subsequent offence, a fine not exceeding P2 000 000 or to imprisonment for a term not exceeding 10 years, or to both.

41. (1) A person shall not import or purchase, for commercial purposes, any tobacco product which is not packaged and labelled in a manner that complies with the requirements of this Act.

Prohibition on commercial purchase of non-compliant tobacco products

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable to —

- (a) a written warning in the case of a first offence;
- (b) suspension of the licence for a period of three years or until remedial action has been taken or licence revocation, as applicable; or
- (c) a fine not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both.

42. (1) A manufacturer or an importer of a tobacco product shall ensure that the packaging and labelling of the tobacco product displays such health warnings and messages as may be prescribed.

Prescribed health warnings and messages on tobacco products and packages

(2) The health warnings and messages referred to in subregulation (1) shall be displayed on tobacco product packaging and labelling such that —

- (a) the text and pictures comprising the warnings and messages shall appear together and shall occupy the top portion of each principal display area, covering not less than 70 per cent of each principal display area, not counting the space taken up by any border surrounding the health warnings and messages;
- (b) the text of the warnings and messages shall be in the official languages or any other specified language; and
- (c) visibility of the warnings and messages shall not be susceptible at any time to being damaged, concealed, obstructed, obscured, disrupted, covered, or changed by any markings, stamps, package design feature or mechanism or by anything supplied by the manufacturer or seller.

(3) Without derogating from the provisions of subsections (1) and (2), the Minister may prescribe —

- (a) the minimum number of health warnings and messages to be permanently displayed on each principal display area of the packaging and labelling of all tobacco products for sale; and
- (b) the period for which the warnings and messages referred to in paragraph (a) shall appear on packaging and labelling and how the warnings and messages shall appear on the packaging and labelling.

(4) The Minister may, notwithstanding —

- (a) the provisions of this section, prescribe for the plain packaging of tobacco products; and
- (b) subsection (2) (a), prescribe that the text and pictures comprising warnings and messages cover more than 70 per cent of each principal display area as he or she may determine.

(5) For purposes of subsection (4) (a), “plain packaging” means packaging that requires the removal of all branding such as colours, imagery, corporate logos and trademarks, permitting manufactures to print only the brand name in a mandated size, font and place on the pack, including health warnings and any other permitted information.

(6) A person who contravenes the provisions of this section commits an offence and is liable to —

- (a) a written warning, in the case of a first offence;
- (b) suspension of the licence for a period of three years or until remedial action has been taken or licence revocation, as applicable; and
- (c) a fine —
 - (i) in the case of an importer, not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both, and for a second or subsequent offence, a fine not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both, and

- (ii) in the case of a manufacturer, not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both, and for a second or subsequent offence, a fine not exceeding P2 000 000 or to imprisonment for a term not exceeding 10 years, or to both.

(7) A seller, other than a manufacturer or an importer referred to in subsection (1) —

- (a) shall not sell any tobacco product which is not packaged and labelled in a manner that complies with the requirements of this Act; and
- (b) who contravenes paragraph (a) commits an offence and is liable to the penalties specified in subsection (6) (a), (b) and (c) (i).

43. (1) A manufacturer or an importer shall ensure that all tobacco products' packaging and labelling, in addition to health warnings and messages, shall display only descriptive information on contents and emissions, as the Minister may prescribe.

Contents and emissions disclosures on tobacco product packages

(2) The Minister may require that contents and emissions information be simultaneously displayed and changed after a specified period of time, and may prescribe new contents and emissions information for this purpose.

(3) A manufacturer or an importer who contravenes the provisions of subsection (1) commits an offence and is liable to —

- (a) suspension of the licence for a period of three years or until remedial action has been taken or licence revocation, as applicable; or
- (b) a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both, and for a second or subsequent offence, a fine not exceeding P2 000 000 or to imprisonment for a term not exceeding 10 years, or to both.

44. (1) A manufacturer or a seller shall ensure that all tobacco products' packaging and labelling does not promote the product in any manner that is false, misleading, or deceptive, or that is likely or intended to create an erroneous impression about the characteristics, health effects, or health or other hazards of the tobacco product or its emissions.

Prohibition on deceptive or misleading information

- (2) The prohibition referred to under subsection (1) includes —
 - (a) a term, description, trademark, colour, number or other sign of any kind that directly or indirectly creates, or is likely to create a false impression that a particular tobacco product is less harmful than others;
 - (b) the use of a term such as “light”, “ultra light”, “low tar”, “slim”, “mild”, “extra”, “ultra” or any description that is likely to mislead consumers; and
 - (c) any product package design characteristics, associated with, or likely to be associated with such descriptors.

(3) A manufacturer or a seller shall ensure that the tobacco product emission yields is not displayed anywhere on or inside the product's unit packaging and labelling, or outside packaging and labelling, or on the product itself, including when used as part of a brand name or trademark.

(4) For purposes of subsection (3) "outside packaging and labelling" means any packaging and labelling used in the retail sale of the tobacco product.

(5) A manufacturer or a seller who contravenes the provisions of this section commits an offence and is liable to —

(a) suspension of the licence for a period of three years or until remedial action has been taken or licence revocation, as applicable; or

(b) a fine —

(i) in the case of a seller other than a manufacturer, not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both, and for a second or subsequent offence, a fine not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both, and

(ii) in the case of a manufacturer, not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both, and for a second or subsequent offence, a fine not exceeding P2 000 000 or to imprisonment for a term not exceeding 10 years, or to both.

45. (1) A manufacturer or a seller shall not distribute or sell any smoked tobacco product unless the tobacco product is contained in a sealed unit packet of at least 20 sticks.

(2) A manufacturer or a seller who contravenes the provisions of this section commits an offence and is liable to —

(a) suspension of the licence for a period of three years or until remedial action has been taken or licence revocation, as applicable; or

(b) a fine —

(i) in the case of a seller other than a manufacturer, not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both, and for a second or subsequent offence, a fine not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both, and

(ii) in the case of a manufacturer, not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both, and for a second or subsequent offence, a fine not exceeding P2 000 000 or to imprisonment for a term not exceeding 10 years, or to both.

46. (1) A manufacturer or a seller shall not distribute or sell smokeless tobacco products unless they are contained in a package of at least 30 grams which shall be sealed and labelled in accordance with this Act.

(2) A manufacturer or a seller who contravenes the provisions of this section commits an offence and is liable to —

Minimum
package size
for smoked
tobacco
products

Minimum
package size
for smokeless
tobacco
products

- (a) suspension of the licence for a period of three years or until remedial action has been taken or licence revocation, as applicable; or
- (b) a fine –
 - (i) in the case of a seller other than a manufacturer, not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both, and for a second or subsequent offence a fine not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both, and
 - (ii) in the case of a manufacturer, not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both, and for a second or subsequent offence, a fine not exceeding P2 000 000 or to imprisonment for a term not exceeding ten years, or to both.

47. A seller shall not distribute any tobacco product unless the package contains an insert that complies with the prescribed package insert requirements.

Package insert required

48. A manufacturer or an importer shall ensure that a legal place of sale of a tobacco product is labelled clearly on the package of the tobacco product, in such form and manner as may be prescribed.

Legal place of sale to be stated

49. Nothing contained in this Act shall be construed as relieving a manufacturer or an importer of any other duty, obligation or liability to fully warn consumers of all the dangers associated with tobacco use.

Duty to warn

50. In addition to any penalty authorised under this Part, a court may order corrective action, with the costs of the action borne or reimbursed by the offender, including but not limited to –

Penalties for non-compliance

- (a) an order to cease and desist from any conduct that violates any provision of this Part;
- (b) recall, removal or confiscation and destruction of any prohibited tobacco product, item or materials; or
- (c) any other corrective action ordered by the court.

PART VIII — *Tobacco product sales and distribution*

51. (1) A person shall not sell any tobacco product to any person under 21 years of age.

Prohibition on sales to persons under 21 years of age

(2) A seller shall prominently display at its place of business, a sign as may be prescribed, stating that tobacco sale to a person under 21 years of age is prohibited.

(3) A person who contravenes a provision of this section commits an offence and is liable to –

- (a) licence suspension for a period of 12 months or until remedial action has been taken or licence revocation, as applicable; or
- (b) a fine –

- (i) in the case of a seller other than a manufacturer, not exceeding P5 000 or to imprisonment for a term not exceeding six months, or to both, and for a second or subsequent offence, a fine not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both, and
- (ii) in the case of a seller who is a manufacturer, not exceeding P50 000 or to imprisonment for a term not exceeding three years, or to both, and for a second or subsequent offence, a fine not exceeding P100 000 or to imprisonment for a term not exceeding four years, or to both.

Prohibition on sales by persons under 21 years of age

52. (1) A seller or manufacturer of tobacco products shall not hire or use the labour of any person under 21 years of age to sell any tobacco product or to handle any tobacco product.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both, and for a second or subsequent offence, a fine not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both.

Prohibition on self-service and other means of selling tobacco products

53. (1) A seller shall not sell tobacco products through any self-service means, including automatic vending machines, mail or the internet or through any means by which the age of the purchaser or recipient of the tobacco product cannot be verified reliably or by which the seller and consumer are not in the same physical location.

(2) A person who contravenes this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both, and for a second or subsequent offence, a fine not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both.

PART IX — Tobacco products requirements and contents and emissions reporting

Regulation of tobacco products

54. The Minister may prescribe requirements for regulating tobacco products and for their testing and measurements of their contents.

Compliance with requirements

55. (1) A person shall not manufacture or import any tobacco product unless it conforms to any requirements prescribed in accordance with this Part.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both, and for a subsequent offence, a fine not exceeding P2 000 000 or to imprisonment for a term not exceeding 10 years, or to both.

Tobacco product research, surveillance and exchange of information

56. The Minister shall, for tobacco control purposes —

- (a) initiate, promote and coordinate national, regional and international research and surveillance programmes; and

- (b) co-operate for financial and technical assistance with competent regional and international inter-governmental organisations and non-governmental bodies in carrying out his or her duties under paragraph (a), so as to promote exchange of information to determine consumption and related social, economic and health indicators.

PART X — Protection of tobacco control policies from commercial and other interests of the tobacco industry

57. (1) A public body's interactions with the tobacco industry shall be limited to interactions necessary for effective regulation of the tobacco industry or tobacco products.

Limitation on interactions between Government and tobacco industry

(2) A public body that interacts with the tobacco industry in accordance with subsection (1), shall ensure full transparency of the interaction.

(3) For the purposes of subsection (2), "full transparency" shall require, at a minimum —

- (a) conducting any interaction in public, such as through public hearings, unless doing so would jeopardise effective regulation or would not be possible, such as in the case of inspections, investigations or litigation interactions;
- (b) providing, for any interaction, timely advance notice and agenda to the public and to the Committee, unless doing so would jeopardise effective regulation or would not be possible, such as in the case of inspections, investigations or litigation interactions;
- (c) requiring minutes or other documentation of all interactions, communications, and contacts that provide sufficient detail to identify, at a minimum, the parties involved, matters discussed or considered, any decisions taken, any follow-up activity planned or anticipated, the date, location, method of the interaction or contact, and any other details as may be prescribed;
- (d) forwarding all documentation to the Committee in a timely manner and making all records of and documents related to interactions, communications, and contacts readily accessible to the public, unless public disclosure would not be legally possible, and provided that timeliness of public accessibility shall be subject to ensuring effective regulation, such as in the case of ongoing investigations; and
- (e) any other transparency measures as may be prescribed.

(4) A person who, acting on behalf of a public body, contravenes this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both, and for a second or subsequent offence, not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both.

Prohibition on Government partnerships, endorsements of tobacco industry, etc.

58. (1) A public body shall not participate in, support, endorse, or accept —

- (a) partnerships of any kind with the tobacco industry, including with respect to initiatives or activities of the tobacco industry described, characterised, implied, or likely to be perceived as socially responsible;
- (b) any non-binding or non-enforceable agreement, memorandum of understanding, voluntary arrangement, or tobacco industry code of conduct in the place of legally enforceable tobacco control measures;
- (c) any direct or indirect financial or resource contribution or involvement in any manner in any initiative, campaign, or programme directly or indirectly related to tobacco control or public health, including but not limited to, youth access and education programmes, public education campaigns, and other initiatives; or
- (d) any proposals, drafts, or offers of assistance with the development or implementation of any tobacco control policies.

(2) A person who, acting on behalf of a public body, contravenes a provision of subsection (1) commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both, and for a second or subsequent offence, not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both.

Prohibition on voluntary contributions from tobacco industry

59. (1) A person —

- (a) in the tobacco industry shall not offer or make; or
- (b) being a public body, shall not accept,

any voluntary contribution of any kind, financial or otherwise from the tobacco industry, unless such contribution results from legal requirements or litigation settlements.

(2) Notwithstanding anything contained in any electoral laws, a person —

- (a) in the tobacco industry or working on its behalf or to further its interests shall not offer or make any financial or other contribution of any kind to a political party, candidate, or campaign; and
- (b) being a political party, candidate or campaign, shall not solicit or accept any financial or other contribution of any kind from the tobacco industry.

(3) A person who contravenes a provision of this section commits an offence and is liable to a fine —

- (a) in the case of a political candidate, not exceeding P10 000 or imprisonment for a term not exceeding one year, or to both;
- (b) in the case of a political party or campaign, a fine not exceeding P100 000; and

- (c) in the case of any person acting on behalf of the tobacco industry, not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both, and for a second or subsequent offence, not exceeding P2 000 000 or to imprisonment for a term not exceeding 10 years, or to both.

60. (1) A public body shall not provide any incentive or privilege to any person to establish or run a tobacco manufacturing, wholesale, or import business, or any incentive or privilege related to any phase of the production or marketing of tobacco products or growing of tobacco.

Prohibition on incentives, etc. to tobacco businesses

(2) The prohibition under subsection (1) includes —

- (a) subsidies;
- (b) investment incentives;
- (c) direct investment or loans;
- (d) tax exemptions or reductions or any other favourable tax treatment; and
- (e) research and development grants or loans.

PART XI — *Inspections and investigations*

61. The Minister may appoint any individual or class of individuals as authorised officers to carry out inspections and investigations as necessary and appropriate under this Act, and to recommend an action to be taken against persons found to have violated any provisions of this Act.

Appointment of authorised officers

62. An authorised officer shall, while carrying out his or her official duties, present proof of identity or of appointment if requested by the person being inspected or investigated.

Identification of authorised officers

63. (1) An authorised officer may —

Powers of authorised officers

- (a) enter any premises where tobacco is manufactured, sold, transported, received, distributed, packaged, or to have been present during the previous three days, and to enter any public place, work place, public service vehicle, aircraft, train, or other means of transport to conduct inspections or investigations at any time during business or operating hours, or at any other reasonable or necessary time;
- (b) examine, open, and test any equipment, tools, materials, packages or anything the authorised officer reasonably believes is used or capable of being used for the manufacture, packaging, labelling, storage, distribution, or advertising or promotion of tobacco products;
- (c) examine any operation or process carried out on the premises;
- (d) examine and make copies of or from, and seize any books, documents, notes and files, including electronic files, or other records the authorised officer reasonably believes might contain information relevant to determining compliance with this Act;

- (e) interview or question any licensee or other person involved in manufacturing, importing, exporting, transporting, packaging, marketing or distributing tobacco products, any owner of premises, or any person using the premises, and his or her employees, agents, contractors and workers, all of whom shall cooperate fully and truthfully with any inspection or investigation;
 - (f) take samples of tobacco products or components of products from any place in which they are found;
 - (g) stop, search, and detain, for a renewable period of 14 days, any vehicle or other means of transport or storage in which the authorised officer reasonably believes provisions of this Act are being contravened, and examine, open, take samples of any tobacco products or product components found; or
 - (h) seize and detain, or order the storage without removal or alteration of any tobacco product, advertising or promotional material or item, or packaging and labelling material that the authorised officer reasonably believes does not comply with this Act, upon providing the licensee or owner of the tobacco products, or if he or she is not available, any other person on the premises where the tobacco products are located, with written notice of the seizure and detention and the grounds for it.
- (2) Where a tobacco product is seized and detained under this section, the authorised officer shall —
- (a) give a written inventory of the tobacco product to the person from whose custody it is seized;
 - (b) ensure that where the tobacco product, advertising or promotional material or item, or packaging and labelling material, is found to be in compliance with this Act, it is returned to the premises from which it was seized as soon as it is reasonable and practical; or
 - (c) ensure that where a tobacco product, advertising or promotional material or item, or packaging and labelling material seized and detained under subsection (1) is found not to be in compliance with this Act, it is confiscated and destroyed or subjected to other disposal as may be prescribed.

Obstruction of
or interference
with authorised
officers

64. Any person who obstructs, interferes with or hinders an authorised officer in the performance of his or her duties under this Act commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both.

PART XII — Offences and penalties

General
additional
sanctions

65. (1) Where a person is found guilty of an offence under this Act, the court may impose a fine in addition to any other penalty, equal to the amount of monetary benefit gained by the person as a result of the offence, even if the maximum fine is imposed under another provision.

(2) Any person who contravenes any requirement under this Act may be ordered to pay the reasonable costs associated with any inspection, investigation, and enforcement action brought about by the non-compliance.

(3) A corrective action may, in addition to subsections (1) and (2), be ordered by a court, with the cost of the action borne or reimbursed by the offender, including but not limited to —

- (a) an order to cease and desist from any conduct that violates any provision of the Act; or
- (b) any other corrective action as may be prescribed or as may be ordered by the court.

PART XIII — *Miscellaneous*

66. (1) A person aggrieved by a decision of the Committee regarding — Appeals

- (a) its refusal to issue a licence;
- (b) its refusal to renew a licence;
- (c) its refusal to suspend a licence;
- (d) its revocation of a licence; or
- (e) anything done or authorised under this Act,

may appeal, in writing, to the Minister, within 30 days of receiving notice of such decision.

(2) Where a licence is revoked —

- (a) the licence shall be deemed to remain in force during the period within which an appeal may be brought under this section; and
- (b) after the appeal has been brought, the Minister may suspend the revocation until the determination or abandonment of the appeal.

67. (1) The Minister may, by statutory instrument make regulations Regulations providing for any matter which under this Act is to be provided for by regulations or is to be prescribed for the better carrying out of the objects and purpose of this Act or to give force or effect to its provisions or for its better administration.

(2) The Minister may make regulations —

- (a) prescribing information and the manner of reporting that manufacturers and importers shall provide to the Committee and the public about tobacco products and their emissions, including sales data and information on product composition;
- (b) prescribing places where tobacco products may not be sold;
- (c) prescribing the location, content and format of any signs required under the Act;
- (d) prescribing additional requirements related to tobacco product sales as necessary or appropriate to prevent youth access to tobacco products or to prevent sales methods that violate any provision of this Act;
- (e) prescribing additional requirements and prohibitions to protect tobacco control policies from the commercial and other vested interests of the tobacco industry;

- (f) prescribing the taking of samples of tobacco products;
- (g) to provide for the procedure to be followed by the inspector during an inspection;
- (h) to provide for the procedure to be followed during an inspection for seizure, as well as the one to be applied on restoration of any tobacco product;
- (i) prescribing additional requirements for any aspect of the tobacco product packaging and labelling and of the tobacco product itself;
- (j) prescribing measures and procedures to be followed to prevent and control illicit trading in tobacco and tobacco products;
- (k) prescribing anything that is to be prescribed under this Act; and
- (l) to provide for anything for the better carrying into effect of this Act.

Repeal of Cap.
65:04

Savings and
transitional
provisions

68. The Control of Smoking Act (hereinafter referred to as “the repealed Act”) is hereby repealed.

69. (1) Notwithstanding the repeal effected under section 68 any application or process commenced, or determination, order or other ruling made, under the repealed Act, immediately before the coming into operation of this Act shall be dealt with in accordance with the provisions of the repealed Act.

(2) Any subsidiary legislation made under the repealed Act and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue in force and be of effect as if made under this Act.

(3) Every decision made under the repealed Act shall continue to have force and effect according to its substance as if it was made under this Act.

(4) The repeal of the Control of Smoking Act shall not be construed as invalidating any process to resolve a complaint begun or undertaken under or in accordance with the provisions of the repealed Act.

(5) Any penalty in respect of an offence under the repealed Act shall be imposed as if this Act had not come into operation, but where, under this Act, the penalty in respect of the offence is reduced or mitigated in relation to the penalty or punishment that would have been applicable before the coming into operation of this Act, the provisions of this Act relating to penalties shall apply.

PASSED by the National Assembly this 16th day of August, 2021.

BARBARA N. DITHAPO,
Clerk of the National Assembly.