



Number 39 of 2010

PUBLIC HEALTH (TOBACCO) (AMENDMENT) ACT 2010

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[No. 39.]

*Public Health (Tobacco)
(Amendment) Act 2010.*

[2010.]

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Redundancy Payments Acts 1967 to 2007	
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Number 39 of 2010

PUBLIC HEALTH (TOBACCO) (AMENDMENT) ACT 2010

AN ACT TO PROVIDE FOR THE DISSOLUTION OF THE OFFICE OF TOBACCO CONTROL; TO REPEAL PART 2 OF THE PUBLIC HEALTH (TOBACCO) ACT 2002; AND TO PROVIDE FOR RELATED MATTERS.

[22nd December, 2010]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Definitions.

“Act of 2002” means the Public Health (Tobacco) Act 2002;

“Executive” means the Health Service Executive;

“Minister” means the Minister for Health and Children;

“Office” means the Office of Tobacco Control established under section 9 of the Act of 2002.

2.—The Office is dissolved.

Dissolution of Office.

3.—(1) The administration and business in connection with the performance of any of the functions transferred by *subsection (2)* are transferred, on the commencement of this Act, to the Executive.

Transfer of functions of Office.

(2) The functions vested in the Office by or under:

(a) the Act of 2002, other than—

(i) section 10(1)(h) (amended by section 75 of the Health Act 2004), and

(ii) section 22,

and

(b) the European Communities (Manufacture, Presentation and Sale of Tobacco Products) Regulations 2003 (S.I. No. 425 of 2003) (amended by the European Communities (Manufacture, Presentation and Sale of Tobacco Products) (Amendment) Regulations 2008) (S.I. No. 255 of 2008)),

shall, on the commencement of this Act, stand transferred to the Executive.

Transitional provisions consequent upon transfer of functions of Office.

4.—(1) References (however expressed) to the Office in any enactment shall, unless the context otherwise requires, be construed as references to the Executive.

(2) Anything commenced by or under the authority of the Office and not completed before the commencement of this Act may, in so far as it relates to a function transferred to the Executive under *section 3*, be carried on or completed on or after the commencement of this Act by the Executive.

(3) Without prejudice to the generality of *subsection (1)*, the register established and maintained by the Office under *section 37* (amended by *section 5* of the Public Health (Tobacco) (Amendment) Act 2009) of the Act of 2002 is continued in being and shall be maintained, on or after the commencement of this Act, by the Executive.

Land and other property of Office.

5.—(1) All land which, immediately before the commencement of this Act, was vested in the Office and all rights, powers and privileges relating to or connected with that land shall, on that commencement and without any conveyance, transfer or assignment, stand vested in the Executive for all the estate or interest for which it was vested in the Office but subject to all trusts and equities affecting that land subsisting and capable of being performed.

(2) All property other than land (including choses-in-action) which, immediately before the commencement of this Act, was the property of the Office shall, on that commencement and without any transfer or assignment, stand transferred to the Executive.

(3) Every chose-in-action transferred by *subsection (2)* may, on and after the commencement of this Act, be sued on, recovered or enforced by the Executive in its name and it shall not be necessary for the Executive to give notice to a person bound by any such chose-in-action of the transfer effected by that subsection.

(4) Any money, stocks, shares or securities transferred to the Executive by *subsection (2)* which, immediately before the commencement of this Act, are in the name of the Office shall, on the request of the Executive, be transferred into its name.

Transfer of rights and liabilities of Office.

6.—(1) All rights and liabilities of the Office arising by virtue of any contract or commitment (express or implied) entered into by the Office before the commencement of this Act shall, on that commencement, stand transferred to the Executive.

(2) Every right and liability transferred by *subsection (1)* to the Executive may, on and after the transfer, be sued on, recovered or enforced by or against the Executive in its name and it shall not be necessary for the Executive to give notice to a person whose right or liability is transferred by that subsection of that transfer.

Preservation of contracts made by Office.

7.—Every contract or agreement made between the Office or any trustee or agent thereof acting on its behalf, and any other person, which is in force immediately before the commencement of this Act, shall continue in force and shall be construed and have effect as if

the name of the Executive were substituted therein for that of the Office or, as may be appropriate, its trustee or agent, and shall be enforceable by or against the Executive.

8.—Where, immediately before the commencement of this Act, any legal proceedings to which the Office is a party are pending, the name of the Executive shall be substituted for that of the Office in the proceedings and the proceedings shall not abate by reason of that substitution. Pending legal proceedings.

9.—(1) Every person who, immediately before the commencement of this Act, is a member of staff of the Office shall, on that commencement, be transferred to and become an employee of the Executive. Transfer of members of staff of Office.

(2) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (1)* shall not, on the commencement of this Act, be made subject to less beneficial terms and conditions of service (including those relating to tenure of office) or of remuneration than the terms and conditions of service (including those relating to tenure of office) or of remuneration to which he or she was subject immediately before that commencement.

(3) The previous service of a person transferred under *subsection (1)* shall be reckonable for the purposes of, but subject to the exceptions or exclusions in, the following:

- (a) the Redundancy Payments Acts 1967 to 2007;
 - (b) the Protection of Employees (Part-Time Work) Act 2001;
 - (c) the Protection of Employees (Fixed-Term Work) Act 2003;
 - (d) the Organisation of Working Time Act 1997;
 - (e) the Terms of Employment (Information) Acts 1994 and 2001;
 - (f) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
 - (g) the Unfair Dismissals Acts 1977 to 2007;
 - (h) the Maternity Protection Acts 1994 and 2004;
 - (i) the Parental Leave Acts 1998 and 2006;
 - (j) the Adoptive Leave Acts 1995 and 2005;
 - (k) the Carer's Leave Act 2001.
- (4) (a) Any superannuation benefits awarded to or in respect of a person transferred under *subsection (1)*, and the terms and conditions relating to those benefits, shall be no less favourable than those applicable to or in respect of the person immediately before the commencement of this Act;

(b) For the purposes of the superannuation benefits and the terms and conditions relating to those benefits referred to in *paragraph (a)* a person transferred under *subsection (1)* shall, on the commencement of this Act, be deemed to be a member of the Scheme and any previous service of that person as a member of staff of the Office, and in respect of which contributions have been made, shall be reckonable for the purposes of calculating such superannuation benefits.

(5) (a) The pension payments and other superannuation liabilities of the Office in respect of its former members of staff shall, on the commencement of this Act, become the liabilities of the Executive.

(b) For the purposes of the pension payments and superannuation liabilities referred to in *paragraph (a)* any previous service of a former member of staff of the Office as such a member, and in respect of which contributions have been made, shall be reckonable for the purposes of calculating such payments and liabilities, and the terms of the Scheme may be applied when calculating such payments and liabilities in respect of the person.

(6) A person referred to in *subsection (1)* shall be subject to and employed in accordance with the Health Acts 1947 to 2009.

(7) In this section—

“recognised trade union or staff association” means a trade union or staff association recognised by the Executive for the purposes of negotiations which are concerned with the remuneration, conditions of employment or working conditions of the persons concerned;

“Scheme” shall be construed in accordance with section 23 of the Health Act 2004.

Records of Office.

10.—Each record held by the Office immediately before the commencement of this Act shall, on that commencement, stand transferred to the Executive and shall, on and after that commencement, be regarded as being held by the Executive.

Final accounts of Office.

11.—(1) As soon as may be, but not more than one year, after the commencement of this Act, the Executive shall cause to be prepared final accounts of the Office in respect of the accounting period or part thereof of the Office ending immediately before that commencement.

(2) Accounts prepared pursuant to this section shall be submitted by the Executive to the Comptroller and Auditor General as soon as may be for audit and, immediately after the audit, a copy of the accounts as so audited and a copy of the Comptroller and Auditor General’s report thereon shall be presented to the Minister who shall cause copies of those accounts and that report to be laid before each House of the Oireachtas.

Final report of Office.

12.—(1) As soon as may be, but not more than one year, after the commencement of this Act, the Executive shall cause to be prepared and shall furnish a final report of the activities of the Office to the

Minister in respect of the period that has not already been the subject of a report to the Minister and that ends immediately before the commencement of this Act.

(2) The Minister shall cause copies of the report referred to in *subsection (1)* to be laid before each House of the Oireachtas.

13.—Part 2 of the Act of 2002 is repealed.

Repeals.

14.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Expenses.

15.—(1) This Act may be cited as the Public Health (Tobacco) (Amendment) Act 2010.

Short title,
commencement and
collective citation.

(2) This Act shall come into operation on 1 January 2011.

(3) The Public Health (Tobacco) Acts 2002 to 2009 and this Act may be cited together as the Public Health (Tobacco) Acts 2002 to 2010.