

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5002 GIBRALTAR Thursday 13th October 2022

B. 15/22

BILL

FOR

AN ACT to amend the Children and Young Persons (Alcohol, Tobacco and Gaming) Act 2006.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Children and Young Persons (Alcohol, Tobacco and Gaming) (Amendment) Act 2022.

Commencement.

2. This Act comes into operation on the day appointed by the Minister by notice in the Gazette.

Amendments to the Children and Young Persons (Alcohol, Tobacco and Gaming) Act 2006.

3.(1) The Children and Young Persons (Alcohol, Tobacco and Gaming) Act 2006 is amended in accordance with this section.

(2) In the long title, for “ALCOHOL AND TOBACCO” substitute “ALCOHOL, TOBACCO AND VAPING PRODUCTS”.

(3) In section 1, for “(Alcohol, Tobacco and Gaming)” substitute “(Alcohol, Tobacco, Vaping Products and Gaming)”.

(4) In section 2-

(a) after the definition of “licence to sell tobacco” insert -

““licence to sell vaping products” means a licence to sell vaping products under the Fair Trading Act 2015 or any other Act;

“medical device” means an instrument, apparatus, appliance, material or other article, whether used alone or in combination, together with any software necessary for its proper application, which—

(a) is intended by the manufacturer to be used for human beings for the purpose of-

(i) diagnosis, prevention, monitoring, treatment or alleviation of disease,

(ii) diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap,

(iii) investigation, replacement or modification of the anatomy or of a physiological process, or

(iv) control of conception; and

(b) does not achieve its principal intended action in or on the human body by pharmacological, immunological or metabolic means, even if it is assisted in its function by such means,

and includes devices intended to administer a medicinal product or which incorporate as an integral part a substance which, if used separately, would be a medicinal product and which is liable to act upon the body with action ancillary to that of the device;

“medicinal product” has the meaning given by the Medical and Health Act 1997;”;

(b) after the definition of “tobacco” insert-

““vaping product” means –

(a) a device which is intended to enable the inhalation of nicotine-containing vapour by an individual;

(b) a device which is intended to enable the inhalation of other vapour by an individual but is intended to resemble and be operated in a similar way to a device within paragraph (a);

(c) an item which is intended to form part of a device within paragraph (a) or (b);

(d) a substance which is intended to be vaporised by a device within paragraph (a) or (b) (and any item containing such a substance),

but the following are not vaping products –

- (i) a medicinal product;
- (ii) a medical device;
- (iii) tobacco;”.

(5) In the heading to Part II, after “Tobacco” insert “and vaping products”.

(6) In section 9-

- (a) in the heading, after “tobacco” insert “or vaping products”;
- (b) in subsection (1) after “tobacco” insert “or a vaping product”;
- (c) after subsection (1A) insert –

“(1B) Without prejudice to subsection (1), if a vaping product is sold to a relevant person on premises licensed to sell vaping products, the licensee is also guilty of an offence punishable in accordance with section 21A.”;

- (d) in subsection (2B) after “tobacco” insert “or vaping products”.

(7) After section 9 insert-

“Prohibition of hire of vaping products to persons aged under 18 years.

9A.(1) Any person who hires out or makes available a vaping product to a person under the age of 18 years (the “relevant person”) is guilty of an offence and is liable on summary conviction to a fine up to level 5 on the standard scale.

(2) Without prejudice to subsection (1), if a vaping product is hired out to a relevant person on licensed premises, within the meaning of Part 1 of this Act, the licensee is also guilty of an offence punishable in accordance with section 21A.

(3) It is a defence for a person charged with the commission of an offence under this section by reason of his own conduct to prove that –

- (a) he believed that the relevant person was aged 18 or over; and
- (b) the relevant person produced as evidence of his age –
 - (i) a passport;
 - (ii) an identity card; or

- (iii) a driver's licence; and
 - (c) that evidence would have convinced a reasonable person.
 - (4) Where a person is charged with an offence under this section by reason of the act or default of some other person, it is a defence that he exercised all due diligence to avoid committing it including the training, monitoring and supervision of staff.
 - (5) For the purposes of this section, "licensee" means the holder of a licence to sell alcohol."
- (8) In section 10 –
- (a) in the heading, after "tobacco" insert "or use of a vaping product";
 - (b) for subsection (1) substitute -
 - "(1) Where a constable has reason to believe that any person under 18 –
 - (a) is or has been smoking, or intends to smoke, tobacco in a public place;
or
 - (b) is or has been using, or intends to use, a vaping product in a public place,he may require the person concerned to surrender anything in his possession which contains, or which the constable reasonably believes to contain tobacco or anything which is, or which the constable reasonably believes to be a vaping product."
- (9) In section 10A –
- (a) in the heading after "tobacco" insert "or vaping products".
 - (b) in subsection (1)-
 - (i) after "tobacco" in both places it occurs insert "or vaping products";
 - (ii) for "is" the first time it occurs substitute "are";
 - (iii) for "it is" substitute "they are".
- (10) In section 11-
- (a) in the heading, after "tobacco" insert "or a vaping product";
 - (b) in subsection (1), after "tobacco" insert "or a vaping product"."

(11) In section 12-

(a) after subsection (1) insert -

“(1A) A notice displaying the following statement–

“It is illegal to sell a vaping product to, or to procure a vaping product for, anyone under the age of 18.”

shall be exhibited at every premises at which vaping products are sold by retail, and shall be so exhibited in a prominent position where the statement is readily visible to persons at the point of sale of the vaping product.”;

(b) in subsection (2)-

(i) for “notice” substitute “notices”;

(ii) for “subsection (1)” substitute “subsections (1) and (1A)”.

(12) In section 13(1)(a) after “tobacco” insert “or vaping products”.

(13) In section 14(1) after “tobacco” insert “or vaping products”.

(14) In section 16 after “tobacco” insert “or a vaping product”.

(15) After section 17 insert-

“Regulations.

17A. The Minister with responsibility for justice may make regulations under this section to amend section 2 so as to modify the definition of “vaping product” and may make any supplementary, consequential, transitional or saving provision which the Minister considers necessary for the purposes of, on in consequence of, or for giving full effect to this section.”.

(16) In section 21A(1) for “or 9(1A)” substitute “, 9(1A), 9(1B) or 9A(2)”.

(17) In section 22 for “or tobacco” substitute “, tobacco or vaping products”.

EXPLANATORY MEMORANDUM

This Bill amends the Children and Young Persons (Alcohol, Tobacco and Gaming) Act 2006. Part II of the Act makes it an offence to sell tobacco to someone aged under 18. It also makes it an offence for an adult to purchase tobacco on behalf of someone under 18.

The Bill amends the Act by including a definition of vaping products. Other amendments made by this Bill depend on the definition. The Bill makes it an offence for a person to sell a vaping product to a person aged under 18. The Bill also makes it an offence for a person aged 18 or over to buy a vaping product for a person aged under 18, in the same way as it is an offence for a person aged 18 or over to buy tobacco for a person aged under 18 years. The existing confiscation powers of the police are extended in relation to vaping products.