

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3534 of 25th May, 2006

B. 20/06

BILL

FOR

AN ORDINANCE to transpose into the law of Gibraltar Council Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Ordinance may be cited as the Tobacco (Advertising and Sponsorship) Ordinance 2006 and comes into operation on the day the Minister appoints by notice in the Gazette.

Interpretation.

2.(1) In this Ordinance and unless the context otherwise requires—

“advertising” means any form of commercial communications with the aim or direct or indirect effect of promoting a tobacco product;

“competent authority” means such person or persons as the Minister may designate by notice in the Gazette;

“Directive” means Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products;

“information society services” means, subject to the Schedule, any service normally provided for remuneration, at a distance, by electronic means for the transmission of data and at the individual request of a recipient of services;

“Minister” means the Minister with responsibility for trade;

“sponsorship” means any form of public or private contribution to any event, activity or individual with the aim or direct or indirect effect of promoting a tobacco product;

“tobacco products” means all products intended to be smoked, sniffed, sucked or chewed inasmuch as they are made, even partly, of tobacco.

(2) For the purposes of the definition of “information society services” in subsection (1) above—

“at a distance” means that the service is provided without the parties being simultaneously present,

“by electronic means” means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

(3) Terms used in this Ordinance but not defined shall be construed in accordance with the Directive.

Application.

3.(1) This Ordinance applies to the advertising of tobacco products and their promotion in the following media—

- (a) in the press and other printed publications;
- (b) in radio broadcasting;
- (c) in information society services;
- (d) through tobacco related sponsorship, including the free distribution of tobacco products; and

- (e) other forms of advertisements.

(2) Nothing in this Ordinance shall prejudice the application of the Electronic Commerce Ordinance 2001 in relation to the advertising of tobacco through information society services.

Advertising in the printed media and information society services.

4.(1) It shall be an offence—

- (a) for any person to publish, print, distribute, procure, offer for sale, or otherwise make available any advertisement; or
- (b) for any information society services other than ones to which subsection (2) applies,

to advertise tobacco products.

(2) This subsection applies to—

- (a) printed publications and information society services intended exclusively for professionals in the tobacco trade; and
- (b) publications which are printed and published, and information society services originating, in third countries and not principally intended for the Community market.

Radio advertising and sponsorship.

5.(1) It shall be an offence for any radio broadcaster in Gibraltar to advertise tobacco products.

(2) It shall be an offence for any radio broadcaster to accept sponsorship of its radio programmes by undertakings whose principal activity is the manufacture or sale of tobacco products.

Sponsorship of events.

6. It shall be an offence for the organiser of an event or activity—

- (a) taking place in Gibraltar; or

- (b) involving Gibraltar and another Member State; or
- (c) having cross-border effects at that event or activity–
 - (i) to accept sponsorship from undertakings whose principal activity is the manufacture or sale of tobacco products;
 - (ii) to distribute or consent to the distribution of tobacco products free of charge with the purpose of promoting such products, whether directly or indirectly.

Other advertisements.

7. It shall be an offence for any person to place any other form of advertisement in any public place, or in any place visible from any public place, or in any club or commercial premises whatsoever in order to advertise tobacco products.

Enforcement.

8.(1) Persons or groups of persons may apply to the Minister for designation under this section.

(2) The Minister shall designate by notice in the Gazette, such persons or groups of persons who apply to him for designation pursuant to subsection (1) and who, in his opinion, have a legitimate interest in the suppression of advertising, sponsorship or other matters contrary to this Ordinance.

(3) Persons or groups of persons designated by the Minister under the provisions of this section (hereinafter the “designated person”), may–

- (a) consider any complaint that any act or omission is contrary to the provisions of this Ordinance; or
- (b) bring the complaint to the attention of the competent authority.

(4) If–

- (a) where subsection (3)(a) above applies the designated person; or
- (b) where subsection (3)(b) applies, the competent authority,

considers that any act or omission is contrary to the provisions of this Ordinance, the designated person or competent authority as the case may be, if appropriate to do so, may bring proceedings for an injunction (including an interlocutory injunction) or such other relief as may be appropriate in the circumstances against any person appearing to be responsible for the act or omission.

(6) The Supreme Court on an application pursuant to subsection (4) may grant an injunction or other relief on such terms as it thinks fit.

(7) Nothing in this section shall prejudice the right of the competent authority or the Attorney General to bring proceedings of a civil or criminal nature, pursuant to the provisions of this Ordinance.

Penalties.

9. A person found guilty of an offence contrary to sections 4, 5, 6 or 7 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Corporate responsibility.

10. Where an offence under this Ordinance has been committed by a legal person and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person, being a director, manager, secretary or other officer of that body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

SCHEDULE

Section 2

**INDICATIVE LIST OF SERVICES NOT COVERED BY THE
DEFINITION OF “INFORMATION SOCIETY SERVICES”**

The following is an indicative list of services not covered by the definition of “information society services”.

1. Services not provided “at a distance”.

Services provided in the physical presence of the provider and the recipient, even if they involve the use of electronic devices—

- (a) medical examinations or treatment at a doctor's surgery using electronic equipment where the patient is physically present;
- (b) consultation of an electronic catalogue in a shop with the customer on site;
- (c) plane ticket reservation at a travel agency in the physical presence of the customer by means of a network of computers;
- (d) electronic games made available in a video-arcade where the customer is physically present.

2. Services not provided “by electronic means”.

Services having material content even though provided via electronic devices—

- (a) automatic cash or ticket dispensing machines (banknotes, rail tickets);
- (b) access to road networks, car parks, etc., charging for use, even if there are electronic devices at the entrance/exit controlling access and/or ensuring correct payment is made,

Off-line services: distribution of CD roms or software on diskettes,

Services which are not provided via electronic processing/inventory systems—

- (a) voice telephony services;
- (b) telefax/telex services;
- (c) services provided via voice telephony or fax;
- (d) telephone/telefax consultation of a doctor;
- (e) telephone/telefax consultation of a lawyer;
- (f) telephone/telefax direct marketing.

3. Services not supplied “at the individual request of a recipient of services”.

Services provided by transmitting data without individual demand for simultaneous reception by an unlimited number of individual receivers (point to multipoint transmission)–

- (a) television broadcasting services (including near-video on-demand services), covered by point (a) of Article 1 of Directive 89/552/EEC;
 - (b) radio broadcasting services;
 - (c) (televised) teletext.
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EXPLANATORY MEMORANDUM

Save for clause 7, this Bill transposes into the law of Gibraltar Council Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.

The Bill makes it an offence the sponsorship of events and activities by undertakings whose principal activity is the manufacture or sale of tobacco products. It also makes it an offence the advertising of tobacco products by radio, newspaper or the electronic media.

Clause 7 has the effect of banning other forms of tobacco advertisements from the public highway, visible from the public highway and in buildings to which the public have access or in any club or commercial premises.