

To Åland Legislative Assembly

Amendment of the Tobacco Act

The provincial act of the Åland Islands on Tobacco and Related Products is proposed to be amended to expand the areas where smoking is prohibited, introduce requirements for neutral packaging, and restrict the sale and content of smokeless nicotine products.

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General Justification

1. Background

1.1. General

Tobacco is one of the most dangerous products for human health. Tobacco use increases the risk of contracting diseases such as cardiovascular diseases, cancers and lung diseases.

Tobacco smoke contains 4 000 substances, of which at least 70 have been identified as carcinogenic. Passive smoking, also known as second-hand tobacco smoke, consists of both main smoke (smoke that is exhaled by the person who smokes) and side-stream smoke (smoke that comes from the cigarette between puffs). In poorly ventilated areas, passive smoking is estimated to correspond to the levels of smoking in the air we breathe. Passive smoking carries a risk of developing cancer, cardiovascular disease, asthma, ear infections in children, reduced lung development in the foetal stage and low birth weight in the child. Children are particularly sensitive to passive smoking, which in their infancy can lead to sudden infant death syndrome (SIDS). Third-hand smoking, i.e. substances remaining in carpets, walls and the like, has also been found to pose health risks, especially for children.

The Provincial Government's objectives for tobacco and smoking are set out in the ANDTS policy programme¹. Objective 3 of the ANDTS programme is to reduce the total consumption of alcohol, tobacco, narcotics, doping preparations and gambling. The long-term target for tobacco is a smoke-free Åland by 2030 and a tobacco-free Åland by 2040.

1.2. The Tobacco Act

Provisions regulating how tobacco products and related products may be sold, marketed, purchased and used in Åland are contained in the provincial act of the Åland Islands (1978:52) on tobacco and related products (the Tobacco Act). The purpose of the Act is to restrict the use of tobacco products and related products that is harmful to health and to reduce the harmful effects caused by their use, while at the same time increasing the comfort and well-being of those who do not use tobacco products and related products.

2. The Provincial Government's considerations

2.1. Smoking ban

2.1.1. General

The WHO Framework Convention on Tobacco Control was ratified in Finland in 2004² and the Åland Legislative Assembly approved the³ Act in December 2004 in so far as the Convention falls within the jurisdiction of the Province.

The aim of the Convention is to permanently reduce and prevent the harmful effects of tobacco on health. It also strengthens international cooperation with the aim of reducing smoking. Article 8 of the Convention states that there is irrefutable scientific evidence that exposure to tobacco smoke causes death, ill health and disability. It is decided that each Party shall, within its national jurisdiction and as provided for in its national legislation, adopt and implement, and actively promote at other levels of

¹ The Åland Provincial Government's alcohol, narcotics, doping, tobacco and gambling policy programme for 2022-2024.

² FFS 1207/2004

³ 2006:118

government, effective legislative, regulatory, administrative and/or other measures to protect against exposure to tobacco smoke in indoor workplaces, public transport, public buildings and, where appropriate, other public places.

The 2009 European Council Recommendation⁴ on the restriction of smoking in an environment where children are present includes ‘develop and/or strengthen strategies and measures to reduce exposure to second-hand tobacco smoke of children and adolescents’.

According to the Tobacco Act, smoking is currently prohibited in areas intended for childcare, school activities or other activities for children, sports activities and health and medical care; in outdoor areas primarily intended for persons under the age of eighteen and which are part of areas intended for childcare, school activities or other activities for children; in public transport and in areas available to passengers using public transport; in public areas of authorities, government agencies and other public institutions; in individual workrooms and other areas where work covered by the Occupational Safety and Health Act is performed, when two or more employees usually work there; in areas where a public entertainment event referred to in the provincial act of the Åland Islands (1969:28) on public entertainment events and a public gathering as referred to in the Act on gatherings are held, as well as in areas that participants in the above-mentioned events need to pass through or visit, and in restaurants and other serving areas where food or refreshments are served for commercial purposes, except when such serving takes place outdoors.

2.1.2. Private means of transport

The passive smoke that passengers in the car are exposed to contains toxins to a much greater extent than passive smoking in, for example, restaurants and bars. The level of passive smoke in a car, even with the windows open, is very high and therefore very harmful to passengers.

Smoking in private means of transport where there are children under the age of 15 has been prohibited in the country since 2016 under section 74, subsection 2 of the National Tobacco Act (549/2016).

In⁵ 2009, the Constitutional Committee found that a provision prohibiting smoking in private means of transport occupied by persons under the age of 18 infringed personal rights and freedoms to such an extent that it could not be included in the legislation. Particularly problematic from a constitutional point of view was the right of inspection to check compliance with the provision and the punishability.

In 2016, the government submitted a revised proposal⁶ that took into account the views of the Constitutional Committee. The smoking ban now included occasions when passengers up to 15 years of age were in the car and compliance with the law was not accompanied by criminal provisions or by the right to inspect the car. The Constitutional Committee found⁷, after an overall examination, that the new proposal could be considered acceptable in view of the personal freedom and the protection of privacy and the inviolability of the home which is provided for by the Constitution. The committee noted that research has demonstrated the dangers of passive smoking and its negative effects on health, and that the public sector should also promote the health of the population. Adults have excellent means of

⁴ Council Recommendation of 30 November 2009 on smokeless environments (2009/C 296/02) C 296/6

⁵ GrUU 21/2010 rd

⁶ RP 58/2016

⁷ GrUU 17/2016 rd

being involved in deciding whether or not to smoke in the car and the person who smokes can stop the car and get out to smoke. A child does not have the same options. The Committee noted that Section 6(3) of the Constitution stipulates that children shall be treated as equal individuals and that they shall have the right to a voice in matters affecting them in accordance with their level of development. On the other hand, the provision provides a basis for children to need special protection and care, as they are minors and a group that is weaker than the adult population in society.

There is no similar provision in the Åland Tobacco Act. Smoking bans in private means of transport have been introduced in several countries in Europe, such as France and Italy, and outside Europe, for example in some states in the United States.

2.1.3. Housing associations

Smoking in housing associations has been prohibited in Finland since 2016. According to Section 78 of the National Tobacco Act, smoking tobacco is prohibited in communal areas and areas intended for public use in housing associations. There is also a possibility under Section 79 to apply to the municipality for a smoking ban on the balconies of the apartments, outdoor areas used by the apartments and inside the apartments. In the bill to the Finnish Tobacco Act, it was stated that the aim was to ensure that nobody should be exposed to tobacco smoke against their will. This goal had not been fully achieved in terms of people's living spaces. In particular, smoking on balconies causes a smoke nuisance for the occupants of the balconies closest to it and, in the worst case, also for the occupants of the premises closest to it.

2.1.4. Public outdoor playgrounds, public beaches and outdoor sports areas

Children should be able to spend time in outdoor playgrounds without having to be exposed to tobacco smoke. The purpose of banning smoking in playgrounds is not only to reduce the direct health risks to children, but also to ensure that children are not exposed to role models who smoke in these places. A European study⁸ conducted in 11 countries found that 20% of outdoor playgrounds had people smoking on or in the immediate vicinity of the playgrounds, and nicotine was detected at 40% of the playgrounds. In more than half of the playgrounds, cigarette ends were visible inside the playground and, in 74% of the playgrounds, cigarette ends were visible in the area just outside. Second-hand exposure to tobacco smoke is lower where prohibitions exist and where good control of tobacco smoking is in place.

The rights of the child shall be protected and children shall have access to the highest attainable standard of health in accordance with the Convention on the Rights of the Child. For the best possible health of the child, it is important that they are not exposed to tobacco smoke in places where they spend time.

In Finland, smoking is prohibited in accordance with Section 74 all year round at outdoor playgrounds for which a safety document is to be drawn up in accordance with Section 7 of the Consumer Safety Act and on public bathing beaches during the period 1 May to 30 September.

⁸ E Henderson et al. Second-hand smoke exposure in outdoor children's playgrounds in 11 European countries (Environment international 2021)

2.2. Plain packaging

The Tobacco Products Directive⁹ contains provisions laying down requirements for the provision of information to consumers, such as health warnings in the form of pictorial and textual warnings, standardisation of packaging and information on harmful substances. The Tobacco Products Directive has been implemented into Åland's legislation by means of provisions in the Tobacco Act. Section 5a of the Tobacco Act specifies the information that must be included on retail packaging for tobacco products, electronic cigarettes and refill containers. In addition, Section 3 of the Tobacco Act states that advertising for tobacco products or related products is prohibited. Although there are provisions in the Tobacco Act on the labelling of the packaging of tobacco products, electronic cigarettes and refill containers, and although all forms of advertising of these products are prohibited, the marketing of the products is nevertheless promoted in practice by means of the packaging. The Tobacco Act does not currently determine the colour, pattern or material of the packaging, and it has in principle been difficult to intervene with regard to the design of the packaging on the basis of the marketing ban. Thus, packaging that attracts attention, for example in terms of colour or shape, interesting packaging or packaging that is visually pleasing in some other way, could de facto be used as a marketing tool. For example, the colours used on packaging have been designed to give consumers an idea of the characteristics of the tobacco product, such as its flavour or strength. Despite the provisions of the current Tobacco Act, sales promotion measures using retail packaging cannot be completely prevented in practice. This conflicts with the unequivocal prohibition on all marketing of the products referred to in the Tobacco Act.

Attractive retail packaging is also problematic in relation to Section 1 of the Tobacco Act, according to which the purpose of the Tobacco Act is to limit the harmful use of tobacco products and related products.

Article 13 of the World Health Organisation Framework Convention on Tobacco¹⁰ Control contains provisions on tobacco related advertising, promotion and sponsorship, and the instructions for the implementation of Article 13 invite Parties to consider the introduction of homogeneous packaging.

According to Article 24(2) of the Tobacco Products Directive, the Directive shall not affect the right of a Member State to maintain or introduce further requirements, applicable to all products placed on its market, in relation to the standardisation of the packaging of tobacco products, where it is justified on grounds of public health, taking into account the high level of protection of human health achieved through the Directive. However, these measures may not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. Those measures shall be notified to the Commission together with the grounds for maintaining or introducing them. The Tobacco Products Directive does not require Member States to introduce provisions on plain packaging, but gives each Member State the right to introduce such regulations in its own legislation. This has also been confirmed by the EU Court of Justice¹¹, which has held that the Tobacco Products Directive is

⁹ Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC

¹⁰ WHO Framework Convention on Tobacco Control (WHO FCTC)

¹¹ C-358/14, C-477/14 och C-547/14

valid in all respects, including the right of Member States to introduce plain packaging.

Plain packaging de facto means that logos and other elements associated with a trademark are prohibited. The Finnish Tobacco Act introduced requirements for plain packaging from 1 May 2023. There is no corresponding legal requirement in the Åland Tobacco Act.

2.3. Smokeless nicotine products

Smokeless nicotine products are products that are used like tobacco products but do not contain tobacco. The products are intended to be chewed, consumed through the nose or used in the mouth.

2.3.1. Nicotine pouches

Nicotine pouches are smokeless nicotine products in powder or particle form for use in the mouth. Nicotine pouches are intended to be used in the same way as tobacco snus, but do not contain tobacco. There are many synonymous names for these nicotine products, including tobacco-free snus, nicotine snus and white snus.

Nicotine pouches can contain large amounts of nicotine and can cause acute poisoning, especially if ingested. A dose of about 0.5–1 mg per kg body weight is fatal for humans. Children are therefore particularly sensitive. Use during pregnancy increases the risk of multiple pregnancy complications, such as pre-eclampsia, premature birth and stillbirth.

Nicotine increases heart rate and blood pressure as well as sensitivity to insulin. The role of nicotine exposure in atherosclerosis and acute heart disease is unclear. However, there are research results that show that the risk of dying for those who fall ill with a heart attack can be halved if you stop using tobacco snus. Research also suggests that nicotine itself causes increased vascular stiffness when using e-cigarettes. It is possible that nicotine pouches also have these negative health effects.

With regard to the link between nicotine and the risk of cancer in humans, there is currently insufficient evidence from human studies to suggest that nicotine itself has carcinogenic properties. However, cell experiments have shown that nicotine activates a number of signalling substances in cells that are relevant for promoting cancer development when cancer has already been initiated by other carcinogenic substances. There are also animal studies showing that nicotine can promote already ongoing cancer development.

The Tobacco Act does not contain any provisions on nicotine pouches. The sale of nicotine pouches in Åland is currently regulated only by the provincial act of the Åland Islands (1990:32) on the application in the Province of Åland of national regulations on chemicals (the Chemicals Act). Provided that the requirements of the chemicals legislation are met, the import and sale of nicotine pouches in Åland is permitted.

The import and sale of nicotine pouches was previously regulated as medicinal products by the classification of nicotine pouches by the Finnish Medicines Agency (Fimea). At that time, Fimea considered that nicotine pouches meet the definition of a medicinal product based on the pharmacological effect of nicotine. Pharmaceutical legislation is the competence of the Finnish State and the same regulation therefore applied to Åland.

At the beginning of April 2023, Fimea announced that it had changed its interpretation regarding nicotine pouches and had concluded that nicotine pouches without the kind of sales licence absent from the Medicines Act do not fall within the scope of the Medicines Act unless they are expressly marketed for a medical purpose or it can otherwise be demonstrated that

they are generally used in the same way as medicinal products. Following a change in interpretation by the Finnish Medicines Agency, the provisions of the Tobacco Act and the Chemicals Act (FFS 599/2013) apply to nicotine pouches. It thus became permissible to sell nicotine pouches in Finland to persons aged 18 and over without a special sales licence and without any restrictions on nicotine content.

General sale was only permitted for a short period of time. The Finnish Safety and Chemicals Agency (Tukes) prohibited the sale of nicotine pouches containing more than 20 milligrams of nicotine from 21 June 2023. The decision concerns the import and sale of products in the retail trade. The prohibition applies not only to sale but also to placing on the market, that is to say making available or otherwise transferring. Nicotine pouches that violate the restrictions are available for sale abroad, and it is still possible to order such pouches from abroad for personal use.

The Council of State confirmed the nicotine content restriction imposed by Tukes in September 2023. The decision applies until an amendment to the Finnish Tobacco Act enters into force.

The Government sent out a draft bill for referral in November 2024. The bill was withdrawn and a new proposal was submitted on 30 January 2025. The bill proposes to add to the Tobacco Act a definition of 'smokeless nicotine products' that would include nicotine pouches and products closely resembling these. The proposal means that the provisions on smokeless nicotine products will essentially correspond to the provisions on tobacco products and nicotine liquids. It is proposed that the sale of smokeless nicotine products be allowed, but with a nicotine content limit of a maximum of 16.6 mg per gram of product. The level is determined to be below the limit for hazard class 3, acute oral toxicity, under the CLP Regulation, which is 16.7 mg per gram of product. Nicotine products must not have a characteristic smell or taste, with the exception of the taste of menthol or mint. The presentation of the packages shall be uniform and the packages shall bear health warnings. Authorisation for the products is required in retail trade, and distance selling is proposed to be completely prohibited. The import of smokeless nicotine products is limited to 1,000 grams per calendar day for personal use and is only permitted for persons aged 18 years or older. It is proposed to prohibit the sale or transfer of smokeless nicotine products to persons under the age of 18. The draft act has not yet been fully examined by the Finnish Parliament.

The CLP Regulation¹² includes, among other things, requirements for hazard classification as well as warnings, child-resistant design and sealing of packages. Packaging labels must be available in Swedish as a minimum. The requirements set out in the REACH Regulation shall also apply to nicotine pouches¹³. Supervision of chemicals in Åland is carried out by the Provincial Government.

Since nicotine pouches do not contain tobacco, they are not covered by the EU Tobacco Products Directive, which prohibits the sale of tobacco snus. Nicotine pouches are available on the market in several EU and EEA countries, but the regulation of these products has not yet been harmonised at EU level. Depending on the Member State, nicotine pouches are subject to legislation on, for example, tobacco, chemicals, foodstuffs, medicinal

¹² European Parliament and Council Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures

¹³ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals, establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC

products or general product safety. The update of the Tobacco Products Directive is part of the implementation of the EU Beating Cancer Plan 2021-2025. To date, no official estimates have been made of the timetable for the preparation of the update of the Tobacco Products Directive. Belgium and the Netherlands have banned smokeless nicotine products in their national legislation.

Of the Nordic countries, only Iceland has issued regulations on a nicotine limit for tobacco pouches, 20 mg per gram of product.

2.4. Products that create a characteristic aroma or flavour

Section 5a(3)(1) of the Tobacco Act prohibits the sale of cigarettes and rolling tobacco with a characterising flavour or smell other than that of tobacco. It is also prohibited to sell electronic cigarettes and refill containers that have been flavoured or scented with anything other than tobacco.

Article 7 of the Tobacco Products Directive states that the placing on the market of tobacco products with certain additives or characteristic fragrances and flavours (such as vitamins, caffeine and additives which are carcinogenic) is prohibited.

In recent years various products have appeared on the market that make it possible to add characteristic fragrances or flavours to tobacco products. These include various types of flavour filters or flavour cards that are sold separately and which consumers can insert into cigarette packets or rolling tobacco packaging to change the taste of the tobacco product itself. These types of products are not covered by the prohibition under Section 5a(3)(1) because the products are sold separately from the tobacco product.

2.5. Age limit for the sale of tobacco products

Under Section 2(2) of the Tobacco Act, a person aged 15 or over may sell tobacco and related products under the supervision of a person aged 18 or over. The provision is consistent with the provisions on age limits for the sale of tobacco products in Section 56 of the National Tobacco Act.

Similarly, according to the provincial act of the Åland Islands (2021:140) on the application of the Alcohol Act in Åland, a person aged 16 or over is permitted to sell alcoholic products in retail outlets provided that a person aged 18 or over is present to supervise the sale.

The Provincial Government concludes in the action programme for ANDTS that the suitability of raising the age limit for sellers of tobacco under supervision to 16 years, as well as the need for and possibility of increasing the ban on displaying products as part of the sale of tobacco products, must be evaluated. The evaluation takes into account the proposals made by the Committee on Social Affairs and the Environment in its report 5/2019–2020:

“The Committee calls on the Provincial Government to carry out an evaluation of the impact of the amended legislation within a reasonable time after the entry into force of the Act, while considering the need for further legislative measures to reduce tobacco use and the harmful effects of tobacco. The committee urges the Provincial Government to consider whether the lower age limit of 15 years for the sale of tobacco under the Tobacco Act can be harmonised with the corresponding lower age limit of 16 years for the sale of alcoholic beverages containing a maximum of 5.5% ethyl alcohol by volume under the Alcohol Act (FFS 1102/2017). The evaluation may also take into account the extent to which the new provisions have reduced the occurrence of situations where minors have to deal with conflicts over purchasing rights, extortion or other occupational health and safety risks. In the committee’s opinion, there is also a need to consider a stricter ban on the display of tobacco and related products in retail outlets.”

Increasing the minimum age for the sale of tobacco to 16 years would be in line with the provisions in place for the age limit for the sale of alcohol. Increasing the age limit to 18 years for the sale of tobacco would

further highlight the risks of tobacco and related products and reduce the risk of occupational health and safety problems that may arise in connection with the sale of tobacco products. The ANDTS programme shows that minors in the Åland Islands buy their own tobacco products from retailers to a greater extent than minors in other regions. There may therefore be grounds for reviewing the provisions governing sales. It can be assumed that a person of the same age as the minor who wishes to purchase tobacco does not have sufficient resistance to refuse another minor to purchase tobacco or related products. The Provincial Government notes that a provision setting a minimum age limit for the sale of tobacco that is consistent with the age limit for the purchase of tobacco and related products, i.e. 18 years without exception, would be justified.

In Finland, a working group on the development of tobacco and nicotine policy was set up in 2022. In the final report¹⁴, the working group proposed, among other things, to increase the purchase age of tobacco from 18 to 20 years. The reason for this is that the majority of smokers start smoking before the age of 20, after which it is unusual to start using tobacco products. If the age of tobacco debut can be delayed, the risk of more people starting to use tobacco products will decrease. The proposal has not been implemented.

3. The Provincial Government's proposal

3.1. Smoking ban

3.1.1. General

The Provincial Government proposes that the ban on smoking be extended to include private means of transport, housing associations, fenced outdoor areas for sports, public beaches and public outdoor playgrounds.

The Provincial Government notes that smoking is already prohibited in places where children and young people spend a relatively large amount of time on a daily basis. However, there is no regulation of smoking in private means of transport, in public outdoor playgrounds, on public beaches, in outdoor areas intended for sports or in housing associations. A ban on smoking in and around these places would reduce the risk of children and adults being exposed to passive smoking. The littering of cigarette ends has a negative impact on the environment. A ban on smoking and littering would reduce the risk of a small child accidentally picking up and ingesting a cigarette end.

According to the provisions of Section 13a of the Tobacco Act, anyone who smokes in a place where smoking is prohibited shall be fined.

3.1.2. Private means of transport

The Provincial Government proposes that smoking should be prohibited in private means of transport where children up to the age of 15 are present. The provision does not entail any right of inspection or any penalty. The prohibition does not apply to living quarters in the means of transport.

The Provincial Government notes and agrees with the Constitutional Committee's view¹⁵ that the provision is overly restrictive, that it is not justified to prohibit by law everything that is not considered acceptable or desirable in society, and that symbolic prohibitions that can only be monitored in a symbolic sense should be avoided. However, the Provincial

¹⁴ Ministry of Social Affairs and Health 13/2023. Development of tobacco and nicotine policies: Actions proposed by the Working Group 2023

¹⁵ GrUU 17/2016 rd

Government notes that the health of children is so worthy of protection that a ban is nevertheless justified.

3.1.3. *Housing associations*

The Provincial Government proposes that tobacco smoking be prohibited directly by law in premises of housing associations that are common or intended for the general public. It is proposed that a housing association should have the option of prohibiting tobacco smoking in the association's communal outdoor areas. Finally, it is proposed that a housing association should be able to apply for the Åland Environment and Health Protection Authority (ÅMHM) to issue smoking bans on the balconies of the apartments in the housing association's building, on outdoor areas used by the apartments and inside the apartments.

The basic principle in a housing association is that everyone has the right to smoke in their own home, on their own balcony and in their own outdoor area, provided that this does not have a negative impact on other residents. It follows that a general smoking ban applicable to all balconies cannot be imposed. If, for example, smoking on an open balcony on the top floor does not disturb anyone, there is no need for a smoking ban. At a certain point, the right of those around to fresh breathing air is still above a smoker's rights. No one should have the right to prevent their neighbours from using their balconies or leaving their balcony or bedroom windows open on summer nights by smoking tobacco. It follows that smoking bans are necessary in certain situations.

Regarding smoking bans in housing associations, the Constitutional Committee has noted¹⁶ that the provisions are important with regard to the individual's right to self-determination and thus also with regard to personal freedom under Section 7(1) of the Constitution and the protection of private life under Section 10(1) of the Constitution. The basis for the protection of private life under Section 10 of the Constitution is that everyone has the right to live his or her own life without arbitrary or unjustified interference by the authorities or other third parties in his or her private life. On the other hand, the provisions exist to fulfil the public sector's duty under Section 19(3) of the Constitution to promote the health of the population.

The Constitutional Committee does not consider it inconceivable that the legislature may prohibit smoking that causes harmful effects in places covered by the protection of the inviolability of the home. However, in the case of interference with the protection of fundamental rights and freedoms, the law must meet the requirements applicable to such laws, in particular the requirements of necessity, proportionality and strict delimitation. The concept of a housing association must be clearly defined, and the conditions for issuing a prohibition must be specified in terms of how harmful the spread of smoke is to others and how significant and substantial the nuisance is to the residents.

The Supreme Administrative Court has made a ruling¹⁷ on a case in which a housing company wanted to ban smoking in residential properties. The court considered that when interpreting the conditions for imposing a smoking ban in a living room in an apartment, the purpose of the law to protect the population from exposure to tobacco smoke and the obligation under the constitution for the public authorities to promote the health of the population must be taken into account. The starting point for banning smoking is the right of each and everyone to avoid repeated exposure to tobacco smoke in their home. When a smoking ban is imposed in a living room in an apartment, it must be ensured, taking into account the

¹⁶ Ibid.

¹⁷ HFD 2021:162

provisions of the constitutions regarding the protection of the privacy of individuals and the inviolability of the home, that the spread of smoke cannot reasonably be prevented by repairing or altering the structures and that it occurs more frequently than exceptionally.

3.1.4. *Public outdoor playgrounds, public beaches and outdoor sports areas*

The Provincial Government proposes that smoking should be prohibited in public outdoor playgrounds for children and young people. The prohibition shall apply 24 hours a day all year round. Children play on playgrounds at all times of the year, and the place is designed for children to play. Even though children do not as a rule spend 24 hours a day in outdoor playgrounds, there is still a risk that cigarette ends will be left behind, increasing the risk of children accidentally ingesting them.

The Provincial Government also proposes that smoking on public beaches should be prohibited. A beach may be seen as a place of recreation, in which there shall not be any substances harmful to health and the environment. Public beaches where bathing is prohibited or where bathing is discouraged should also be covered by the smoking ban. A bathing ban is usually temporary, and people also spend time on beaches without swimming in the water. ÅMHM defines¹⁸ beaches and bathing areas as follows:

'A public beach is a place that is suitable for bathing and is open for everyone. The use of a public beach has not been restricted in advance, and a maintainer, such as a public body or a travel company, has been appointed for the beach. On a beach with minimum equipment there is a natural place where you can enter the water and/or a bathing pier, rescue equipment, a notice board, necessary signs, as well as a rubbish bin and a toilet. In Åland, all registered public bathing areas are considered public beaches! A public bathing area is a more natural and modestly equipped place suitable for bathing, for which a caretaker has been appointed. A bathing area must have rescue equipment, a notice board and signs. In Åland, all notified public places for bathing are counted as public beaches!'

The ban on smoking on public beaches is proposed to apply from 1 May to 30 September. The Constitutional Committee has noted in its consideration of amendments¹⁹ to the National Tobacco Act that no acceptable grounds have been presented for a smoking ban on public beaches at times when no one is normally on the beaches.

The Provincial Government also proposes that smoking should be prohibited in enclosed outdoor areas that are primarily intended for sports activities. The requirement for enclosures means that the ban is tied to a clearly defined location that becomes clearer and easier to monitor. If public outdoor playgrounds, public beaches or areas for sports activities are not clearly demarcated, an assessment must be made regarding the scope of the smoking ban in each individual case. Particular attention shall be paid to ensuring that children can move around these areas without being exposed to tobacco smoke or otherwise perceiving someone to be smoking.

The prohibitions are proposed to cover all types of tobacco and related products in accordance with Section 1(1) and (2) of the Tobacco Act. This means that, in addition to cigarettes, the use of heated tobacco products and electronic cigarettes in outdoor playgrounds and public beaches and sports areas would be prohibited. This is justified by the fact that these products have similar effects to passive tobacco smoking, pollute the environment and may cause poisoning if swallowed, especially in children.

3.2. Plain packaging

¹⁸ The Åland Environment and Health Protection Authority's Safety instructions for beaches

¹⁹ GrUU 7/2022 rd

The Provincial Government proposes that, in terms of labelling or other design, the retail packaging of tobacco products, electronic cigarettes, refill containers and smokeless nicotine-containing products should not differ from the unit packets of other equivalent products and that the packaging should not be used to promote the sale of the products. The Provincial Government proposes provisions regarding the information that retail packaging may contain in addition to the information that is mandatory under the current Tobacco Act. The packaging may indicate the product name, the company name and contact details of the manufacturer or importer, the packaging size and the bar code of the product.

The proposed provisions prohibit, for example, logos, designs and appealing colours, which have in practice promoted the sale of products but against which it has often been difficult to take action by virtue of the marketing ban. All packaging shall look the same, with the exception of certain specifically permitted deviations. The ban does not make it possible to make retail packaging prominent, impactful or otherwise attractive, in order to thereby induce new users to choose the product or connecting old users to the product.

The Provincial Government proposes that the provisions on neutral packaging should not apply to sales on board vessels that are registered in Åland and are mainly engaged in international traffic.

3.3. Smokeless nicotine products

The Provincial Government proposes the introduction of a definition of what smokeless nicotine-containing products and nicotine pouches, which are a type of smokeless nicotine-containing product, are, in the same way that there currently are definitions of tobacco products and related products. The Government of Åland also proposes that it should be prohibited to sell smokeless nicotine-containing products in the same way as tobacco products and related products, with the same reservations as apply to those.

The Provincial Government also proposes that the sale of smokeless nicotine-containing products with a characteristic aroma or flavour should be prohibited. Today, nicotine pouches are flavoured with a variety of different flavours. Many of these are likely to appeal to children and young people in particular, such as berries, liquorice, energy drinks and fruit sweets. Many are also flavoured with flavours of various alcoholic beverages. The flavours are not used to hide the product's own taste but to make the product more attractive. It is proposed that the Provincial Government should have the option of providing exemptions from the ban on flavours and fragrances in a provincial regulation, and the intention is that a regulation containing provisions on exemptions should enter into force at the same time as the Act. When assessing which aromas and flavours should be exempted from the ban, the Provincial Government will follow developments primarily in our Nordic neighbouring countries and take note of studies on the impact of flavours and aromas on young people, in particular, and their willingness to use smokeless nicotine-containing products.

The Provincial Government also proposes a ban on the sale of nicotine pouches containing more than 16.6 mg of nicotine per gram of the product. This means that there is a limit on the maximum amount of nicotine per pouch in order to minimise the direct toxic effects of nicotine (especially for children in case of ingestion), its harmful effects on health, and the risk of developing an addiction. In addition, all packaging shall bear information based on the requirements laid down in the chemicals legislation.

3.4. Prohibition of products that create a characteristic aroma or flavour

The Provincial Government proposes that products intended to create a characteristic aroma or flavour in tobacco products and related products, as well as smokeless nicotine-containing products, should be prohibited. The proposal prohibits the use of, inter alia, so-called 'flavour cards', which are intended to be placed in cigarette packets and which allow cigarettes to absorb the smell or taste of, for example, menthol. Other products intended for the flavouring of tobacco products, such as flavouring liquids or flavouring sprays, flavouring filters, flavoured cigarette paper and similar products intended to impart a characteristic aroma or flavour to the product are also proposed to be prohibited.

If there is any doubt as to whether a product is intended to impart a characteristic aroma or flavour to a tobacco product, an assessment must be made on a case-by-case basis. The product's instructions for use and other information available about the product, as well as the information provided by the responsible seller, can be examined, as can the location of the product at the retail outlet. The assessment may also be affected by where a product is sold. For example, if the product is sold in a tobacconist's shop, it is clear that it is intended to give the tobacconist's product a characteristic smell or taste.

3.5. Age limit for the sale of tobacco products

The Provincial Government proposes that the age limit for sellers of tobacco and related products be amended so that the age limit for sales under the supervision of a person over 18 years of age is increased from 15 to 16 years of age. The age limit is therefore the same as for the sale of alcohol.

The Provincial Government notes that the long-term objective is to change the age limit for the sale of tobacco and alcohol so that the age limit shall be 18 years without the possibility of exemption.

4. Legislative competence

The provisions of the Tobacco Act relate to health care and have elements of marketing and can thus also be said to fall partly within the scope of consumer protection.

According to Section 18(12) and (22) of the Act on the Autonomy of Åland (1991:71), the province has legislative authority in matters concerning health care and economic activity, with the exceptions specified in Section 27(24), (29) and (30). It is the responsibility of the county council to legislate on the protection of the health of those who use tobacco products or who are otherwise exposed to the harmful effects of tobacco products. On the other hand, under section 27(10) of the Autonomy Act, consumer protection falls within the competence of the state.

According to Section 27(12) of the Act on the Autonomy of Åland, the competence to legislate on foreign trade and commercial policy restrictions on the import and export of goods rests with the State. However, according to the explanatory memorandum to the Act on the Autonomy of Åland²⁰, the right to restrictions on foreign trade for reasons other than commercial policy is to be assessed on the basis of the area of law to which the measure most objectively relates. Insofar as a provincial act of the Åland Islands regulates the import of tobacco products and related products, the

²⁰ RP 73/1990 rd

provisions fall within the scope of health care and are therefore the responsibility of the province pursuant to Section 18(12) of the Act on the Autonomy of Åland.

Both tobacco and related products contain chemicals that are hazardous to health, which are toxins referred to in Section 27(30) of the Act on the Autonomy of Åland, for which the state has legislative authority in terms of their manufacture and determination of their intended use. In accordance with Section 30(8) of the Act on the Autonomy of Åland, administration that, under the legislation on the production and use of chemicals hazardous to health, falls within the remit of a national authority shall be carried out in the province by the Provincial Government or by another authority specified in provincial act of the Åland Islands.

As regards the sale of ships etc., the Åland Delegation has noted²¹ that: *'Section 3 of the provincial act of the Åland Islands prohibits advertising for tobacco products and related products. However, the ban does not apply to advertising in foreign publications whose main purpose is other than to advertise tobacco products or related products, nor to publications provided on board ships registered in the province that mainly operate in international traffic. It should therefore be noted that, according to Section 27(13) of the Act on the Autonomy of Åland, although commercial shipping falls within the competence of the State, the Province's above-mentioned competence with regard to commercial activities also includes the adoption of provisions on advertising and the sale of goods and services on board vessels registered in the province. The fact that Section 3 allows for the provision of printed matter containing advertising referred to in that section on the aforementioned vessels even when they are outside the province's borders does not give rise to any objections in terms of jurisdiction.'*

Based on this, the Provincial Government concludes that it is within the province's competence to adopt provisions relating to economic activities on vessels registered in the province, in the same way as in other parts of the province.

5. Effects of the Proposal

5.1. Economic impact

Tobacco smoking and nicotine use lead to increased risks of developing diseases. The economic cost related to tobacco use amounts to approximately 1.8% of GDP in an international comparison.²² The direct and indirect costs caused by smoking in Finland amounted to approximately EUR 1.3 billion in 2020.²³

In addition to economic disadvantages, tobacco products and other products covered by the Tobacco Act also generate income for various actors in society; tax revenue for the public sector and earned income for importers and retailers of the products. The purpose of extending the smoking ban and introducing plain packaging is to support the Tobacco Act's goal of ending the use of tobacco products and similar products. The economic impacts of the proposed changes can be assessed by examining, on the one hand, the direct costs and income losses of the proposals as a result of reduced demand and, on the other hand, the savings that reduced tobacco smoking and reduced use of other nicotine products entail for society.

It is clear that the proposed amendments entail direct additional expenditure for manufacturers and importers of the products referred to in the Tobacco Act. Stricter tobacco legislation adversely affects the income of manufacturers, importers and retailers as a result of reduced demand. However, measures that help people to stop using tobacco and nicotine

²¹Opinion No 16/2016 of the Åland Delegation

²² M. Goodchild, N. Nargis and E.T. d'Espaignet. *Global economic cost of smoking-attributable diseases* (2017)

²³ Ministry of Social Affairs and Health. *Development of tobacco and nicotine policies: Actions proposed by the Working Group 2023*

products improve the productivity of the economy, promote public health and reduce the Åland Islands' healthcare and regional expenditure, particularly in terms of healthcare services. To this extent, the proposal entails positive external effects and savings for society. Ultimately, reducing tobacco and nicotine use leads to improved public health, a reduction in the burden of disease and a reduction in the economic burden for society.

The proposed provisions on plain packaging have direct economic impact for manufacturers and importers of tobacco products, electronic cigarettes, nicotine liquids and smokeless nicotine products. Costs arise from the fact that the packaging must be changed to conform to the proposal. However, these costs will in principle be of a one-off nature. Furthermore, manufacturers and importers have already begun this work, as the regulations have already been implemented in the country.

Increasing the age limit from 15 to 16 years for sellers of tobacco products under the supervision of a person aged 18 or over may marginally increase difficulties for traders selling tobacco products to employ additional staff. Many of the traders have a likely recurring need for extra staff, for example during the summer, which attracts many younger people. For traders who also sell alcohol, raising the age limit means that the age limits for selling tobacco and alcohol will be the same, so there won't be any practical change for those traders when hiring extra staff.

5.2. Administrative consequences

ÅMHHM is the supervisory authority for tobacco and beaches and, with the proposed legislative measures, will be entrusted with additional monitoring tasks and will handle smoking ban applications. This means that the supervisory authority's tasks will increase.

The provisions on the unification of the retail packaging make it easier for ÅMHHM to monitor the legality of the retail packaging, since all texts, figures and other markings that do not comply with the proposed provisions are unequivocally prohibited.

5.3. Impact on children and young people

Protecting children and young people against harmful substances is a high priority according to both the objectives of Åland and national and international objectives.

The draft acts extending the number of smoke-free places where children are present reduce the risk of children being exposed to passive smoking and thus protect children from the harmful substances contained in tobacco.

Regulating smokeless nicotine products in legislation by setting an age limit of 18 for purchasing them means that children are protected from being able to buy these products. The same applies to heated tobacco products. It can therefore be assumed that the risk of children and young people becoming nicotine dependent is reduced. However, the fact that smokeless nicotine products are regulated in the legislation may pose a risk that these will become a gateway to more extensive dependence on nicotine, tobacco or other addictive substances.

Slightly tightening the age for selling tobacco products from 15 to 16 years under the supervision of a person aged 18 or over should improve the working environment. As 15-year-olds are no longer proposed to have the right to sell tobacco products under the supervision of a person aged 18 or

over, the risk of sales from one young person to another due to social influence is also reduced somewhat.

5.4. Impact on the environment

Cigarette ends are the most common type of litter found on beaches. From beaches, cigarette ends easily end up in waterways, where the toxic chemicals and plastic they contain are washed into the waterway ecosystem. Poisons and plastic cause micro-organisms to die, and even birds and aquatic animals can be damaged or die after eating cigarette ends. On average, it takes one and a half years for a tobacco cigarette butt to decompose in fresh water and approximately three years in sea water.

The increase in the number of places where smoking is prohibited may lead to an increase in cigarette end pollution outside or in the vicinity of the areas where smoking is prohibited. This can be partially remedied by designating specific areas for smoking and increasing the number of litter bins.

Tobacco products containing plastic are subject to the scope of the Single-Use Plastics Directive²⁴, hereinafter referred to as ‘the SUP Directive’. The SUP Directive requires several measures to prevent littering caused by cigarette ends. Goal 3 of the strategic development goals for Åland is good water quality. Sub-goal 3.8 is to reduce the leakage of hazardous substances, such as pharmaceuticals, plant protection products, household chemicals, micro plastics and toxins into the aquatic environment to non-harmful levels and that littering of the aquatic environment has ceased. The reduction in the number of cigarette ends on beaches and in the water contributes to achieving the third strategic development goal.

Globally, tobacco cultivation causes considerable harm to the environment. Forests are being cleared to make way for farmland, which accelerates climate change. In addition, tobacco cultivation depletes the soil so that after a few years, nothing else can be grown there. Tobacco is mainly grown in developing countries, but the negative effects of cultivation can affect the entire world through climate change. The reduction in the consumption of tobacco products in Åland, which the proposals are likely to entail, makes a small but important contribution to reducing climate change.

5.5. Impact on gender equality

In recent years, tobacco smoking has decreased especially among men, and the gender gap in smoking has decreased. However, smoking is a contributing factor to men's average life expectancy being shorter than women's. Women are at greater risk than men of developing tobacco-related diseases. Furthermore, the probability of women dying from tobacco-related diseases is now almost as high as it is for men. Lung cancer is the cancer disease that kills the most women in Åland. Lung cancer mortality has increased among women over the past 40 years and is now at the same level as for men.

In 2022, 10 % of adults (aged 20 and older) in Åland stated that they used snus (tobacco snus or nicotine pouches) daily; 16 % of men and 5 % of women.

The measures proposed should reduce tobacco smoking and the use of other nicotine containing products proportionately equally among men and women. The measures now proposed therefore have no specific impact on gender equality.

²⁴ Directive (EU) 2019/904 of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment

6. The preparatory work

The draft act has been prepared as an official report in the legislative drafting process in consultation with the Department of Social Affairs and Environment.

The matter has been referred to Folkhälsan på Åland (Åland Public Health Association), Företagarna på Åland (Åland Entrepreneurs Association), LR (Åland Regional Council), specialist advisor on gender equality and social welfare office, Rädda barnen på Åland (Save the Children Åland), SKUNK rf. (Young Voices in the Archipelago), Ålands näringsliv (Åland Business Association), Ålands ombudsmannamyndighet (Åland Ombudsman Authority) and ÅMHM (Åland Municipalities Association). Five of the bodies have submitted observations. In addition, Viking Line Abp, Rederiaktiebolaget Eckerö and Tallink Silja Oy have submitted a joint statement. The consultation responses have been taken into account in the further preparation of the matter.

Detailed justification

Provincial act of the Åland Islands amending the provincial act of the Åland Islands on Tobacco and Related Products

Section 1. The first paragraph is proposed to be supplemented by new points 10-13 defining smokeless nicotine products, nicotine pouches, heated tobacco products and what is meant by a characteristic smell or taste.

The definition of smokeless nicotine products is products that correspond to a tobacco product in the manner of use, but that do not contain tobacco. The products contain nicotine and are intended to be chewed, consumed through the nose or used in the mouth. The definition of nicotine pouches is that they are smokeless nicotine products in powder or particulate form for use in the mouth.

The definition of heated tobacco products is introduced for the sake of clarity of legislation. The definition corresponds to the definition in Commission Delegated Directive (EU) 2022/2100 amending Directive 2014/40/EU of the European Parliament and of the Council as regards the withdrawal of certain exemptions in respect of heated tobacco products, the Delegated Directive. According to the definition, only new tobacco products can be heated tobacco products. New tobacco products refer to tobacco products other than cigarettes, cigars, cigarillos, rolling tobacco, pipe tobacco, waterpipe tobacco, chewing tobacco, tobacco for nasal use and tobacco for oral use that have been made available to consumers in the EU after 19 May 2014. It depends on the characteristics of the heated tobacco product whether it is a tobacco product for smoking or a smokeless tobacco product. Smokeless tobacco products are tobacco products that are not consumed via combustion, and tobacco products for smoking are tobacco products other than smokeless tobacco products. When assessing whether a heated tobacco product is a smokeless tobacco product or a tobacco product for smoking, consideration should be given, for example, to the type of device with which the product can be used and whether it can be combusted in the same way as, for example, a cigarette. If it is possible to use a heated tobacco product via combustion, it is in principle justified to consider it a tobacco product for smoking. The manufacturer or importer of a heated tobacco product is responsible for assessing whether the product is a smokeless tobacco product or a tobacco product for smoking and must

provide the product's retail packaging with appropriate packaging markings.

The definition of a characteristic smell or taste: a smell or taste other than that of tobacco, resulting from an additive or combination of additives, which is clearly noticeable before or during the use of a tobacco product, nicotine liquid, nicotine-free liquid for vaporisation, or a smokeless nicotine product.

Section 1a. It is proposed that the section be supplemented so that smokeless nicotine products are also covered by the restrictions in Chapter 2 on the possession, marketing, sale and use of tobacco products.

Section 2. The first paragraph is proposed to be amended so that the provision stating that sellers under the age of 18 may sell tobacco products and related products if this is done under the supervision of a person over the age of 18 is amended to raise the age limit from 15 to 16. The wording of the provision on supervision is also amended to emphasise that the minor must be under the direct supervision of a person who has reached the age of 18.

Section 2a. The section is proposed to be amended so that the term 'tobacco' is changed to the more correct term 'tobacco products'.

Section 4. The section is proposed to be supplemented by three points and a new paragraph so that the places where tobacco smoking is prohibited are extended.

According to the seventh point, smoking is proposed to be prohibited in outdoor playgrounds that are subject to the obligation under the Consumer Safety Act to draw up safety documents. The prohibition applies 24 hours a day and throughout the year.

According to the eighth point, smoking is proposed to be prohibited on public beaches. The ban applies 24 hours a day from 1 May to 30 September.

According to the ninth point, smoking is proposed to be prohibited in enclosed outdoor areas intended for sports activities.

According to a new second paragraph, it is proposed that smoking shall be prohibited in private means of transport when a person under 15 years of age is present in it. The provision does not entail any right of inspection or any penalty. Accommodation in private means of transport is not covered by the provision.

Section 4e. A new paragraph proposes a ban in premises belonging to housing associations. What is meant by a housing association is defined in paragraph 1. In the first instance, this involves direct bans and, in the second, the possibility for housing associations to decide on a smoking ban and, in the third, the possibility for housing associations to apply to ÅMHM to issue a smoking ban. The direct prohibitions cover premises that are shared or intended for public use. The possibility for housing associations to introduce a smoking ban covers common outdoor areas. The possibility for housing associations to request the ÅMHM to issue a smoking ban covers balconies, outdoor areas used by the apartments and inside the apartments.

Section 5a. The provisions in points (a) and (b) of paragraph 2 are proposed to be amended so that the Tobacco Products Directive is implemented more accurately and more clearly. At the present time, reference is made to the national provisions issued pursuant to law. It is now proposed that the

substantive provisions be included in point (a), while the reference to national provisions in point (b) be deleted.

The provisions of paragraph 3 are proposed to be amended. In paragraph 2, the number of the Article in the Tobacco Products Directive referred to is changed because the amendment is changed in the Directive. In addition, new points 5-8 are added to the section.

The fifth point proposes that the sale of nicotine pouches containing more than 16.6 mg of nicotine per gram of product be prohibited. Nicotine pouches often have a size of 0.7 grams. A restriction of 16.6 mg per gram means a restriction of approximately 11.6 mg per bag weighing 0.7 grams. According to the CLP Regulation, the limit for acute oral toxicity is 16.7 mg per gram of product.

The sixth paragraph proposes that smokeless nicotine products with a characteristic aroma or flavour should be prohibited. At the same time, the Provincial Government proposes in a new paragraph 10 that the Provincial Government should be able to deviate from the ban on certain flavours or smells through provisions in provincial regulations. The Provincial Government intends to follow developments in our neighbouring countries and allow certain flavours that are also permitted in other Nordic countries. The intention is that a regulation containing provisions on exemptions will enter into force at the same time as the Act.

The seventh point proposes that products whose purpose is to create a characteristic smell or taste in a tobacco product and related products, as well as smokeless nicotine products, should be prohibited from sale.

In the eighth point, provisions are proposed on the minimum permissible size for retail packaging in accordance with the provisions of Section 14.1 of the Tobacco Products Directive. The purpose of the restriction on package sizes is to prevent small and advantageous packages that may make the products particularly attractive to young people.

Five new paragraphs are also added to the section.

Paragraphs 6 and 7 contain provisions on plain packaging. According to paragraph 6, retail packaging for tobacco products and related products must not differ from other retail packaging for the same tobacco product group in terms of shape, colour, material, wrapping or other design, and the design of the retail packaging must not promote the sale of the product. It is proposed that the Provincial Government be given the right to decide on exemptions from the requirement of uniformity in provincial regulations in cases where the exemptions are minor and do not promote the sale of the product. It is also proposed that the Provincial Government be given the right to issue provincial regulations specifying the form, colour, material, packaging and other design features permitted for retail packaging of tobacco products, as well as the opening mechanism and other characteristics. Under paragraph 7, retail packages for tobacco products and related products must not be different from other retail packages for the same tobacco product group and must not bear markings other than those referred to in the paragraph.

Under paragraph 8, tobacco products, tobacco surrogates, electronic cigarettes, nicotine liquids, smokeless nicotine products or smoking accessories intended for the heating of tobacco products, or the trade marks of these products, shall not be kept visible in the retail trade.

It is proposed that the provisions of paragraphs 6, 7 and 8 do not apply to sales on vessels that are based in the Åland Islands and which mainly travel in international traffic. Similarly, Section 3, paragraph 1, exempts printed matter made available on board vessels resident in Åland and

travelling mainly in international traffic from the prohibition on advertising tobacco or related products.

In subsection 9, it is proposed that the Provincial Government may deviate in the provincial regulations from the provisions on minimum package size in order to implement EU legislation. There is also this possibility of deviating from the regulation in the National Act.

Paragraph 10 proposes provisions to allow the Provincial Government to derogate from the prohibition in paragraph 3 by means of provincial regulations. Point 6 on characteristic flavours and aromas in smokeless nicotine products.

Section 14 In a new section, which replaces Section 14 repealed by provincial act of the Åland Islands 2021/80, provisions are proposed concerning the imposition of smoking bans. Notices shall be set up in premises and outdoor areas where smoking is prohibited pursuant to Section 4, paragraph 1. Notices must also be posted in areas where public entertainment events are held. The notices must be clear and visible to those who visit and stay in the premises.

Entry into force. It is proposed that the date of entry into force of the Act be left open so that the Provincial Government can determine the date in accordance with the provisions of Section 20, paragraph 2 of the Act on the Autonomy of Åland. The intention is for the Act to enter into force as soon as possible after its approval.

Text of the Act

The Provincial Government proposes that the following act be adopted.

PROVINCIAL ACT amending the provincial act of the Åland Islands on Tobacco and Related Products

The following is prescribed in accordance with the decision of the Åland Legislative Assembly:

section 1a, Section 2 (1), Section 2a, Section 4 (1), point 6, Section 5a(2)(a) and (b), and Section 5a(3) of the provincial act of the Åland Islands (1978:52) on tobacco and related products, of which Section 1a is as set out in provincial act of the Åland Islands 2016/52, Section 2(1) as it reads in the provincial act of the Åland Islands 2020/111, Section 2a as it reads in the provincial act of the Åland Islands 2007/101, Section 4(1), point 6, as it appears in the provincial act of the Åland Islands 2007/4 and Section 5a(2) points (a) and (b) as it appears in the provincial act of the Åland Islands 2024/9, are **amended**, and

new points 10-13 shall be **added** to Section 1(1) new points 7-10 to Section 4, new points 6-10 to Section 5a and new Sections 4e and 14 to the Act, of which Section 1(1) as it appears in provincial act of the Åland Islands 2020/111, Section 4 as it appears in provincial act of the Åland Islands 2007/4 and Section 5a as it appears in provincial act of the Åland Islands 2024/9, as follows:

Section 1

The purpose of this Act is to limit the use of tobacco products and related products that is harmful to the health, and to reduce the harmful effects of such use, while also increasing the comfort and well-being of those who do not use these products. For the purposes of this act:

8) *retail trade* means the professional sale of tobacco products or related products directly to consumers;

9) *first retail outlet* means any outlet where tobacco products or related products are made available on the market for the first time;

10) *smokeless nicotine products* means a product that corresponds to a tobacco product in terms of its use, but does not contain tobacco, and which contains nicotine and is intended to be chewed, consumed through the nose or used in the mouth,

(11) *nicotine pouches* means smokeless nicotine products in powder or particulate form for oral use;

(12) *heated tobacco product* means a novel tobacco product that is heated to produce an emission containing nicotine and other chemicals, which is then inhaled by the users, and which, according to its characteristics, is a smokeless tobacco product or a tobacco product for smoking, and

(13) *characteristic smell or taste* means a smell or taste other than tobacco, resulting from an additive or combination of additives, which is clearly discernible before or during the use of a tobacco product, nicotine liquid, nicotine-free liquid for vaporisation or smokeless nicotine product.

Section 1a

Unless otherwise specified, the provisions of this chapter concerning restrictions on the possession, marketing, sale and use of tobacco products shall also apply to electronic cigarettes, smokeless nicotine products, refill containers and herbal products for smoking.

Section 2

Tobacco products and related products may not be sold or otherwise transferred to a person under the age of 18. Where necessary, the seller shall ascertain the age of the customer. Anyone selling tobacco products and related products in a commercial setting must be at least 18 years of age. However, a person who has reached the age of 16 may sell such products if this takes place under the direct supervision of a person who has reached the age of 18.

Section 2a

It is prohibited to sell or otherwise transfer in the course of trade tobacco products intended for oral use. Furthermore, it is prohibited to otherwise place tobacco products for oral use on the market. Tobacco products intended for oral use means all products for oral use, except those intended to be smoked or chewed, consisting wholly or partly of tobacco in powder or particulate form or in any combination of these forms, in particular those presented in portioned sachets or porous sachets, or in a form resembling a food product.

Section 4

Tobacco smoking is prohibited:

(6) in restaurants and other catering facilities where food or refreshments are served for commercial purposes, except where such service is provided outdoors;

(7) on outdoor playgrounds for which a safety document must be drawn up in accordance with Section 7 of the Consumer Safety Act (FFS 920/2011);

(8) on public beaches during the period from 1 May to the end of September; and

(9) in enclosed outdoor areas intended for sports activities.

Smoking is also prohibited in means of transport that are in private use, when a person under the age of 15 is present in it. The prohibition does not apply to living quarters in the means of transport.

Section 4e

Tobacco smoking is prohibited in the premises of housing associations which are shared or intended for the general public. A housing association refers to a limited company covered by the Limited Liability Housing Companies Act (FFS 1599/2009), associations and foundations covered by the Act on Right-of-Occupancy Housing (FFS 393/2021), housing cooperatives and other rental housing stock owned by associations.

A housing association may ban tobacco smoking in the association's common outdoor areas.

A housing association may apply to the Åland Environment and Health Protection Authority (ÅMHM) to issue a smoking ban on the balconies of the apartments in the housing association's building, in outdoor areas used by the apartments and inside the apartments. The ÅMHM shall issue a smoking ban in the spaces and areas referred to in the application if, due to their design or other circumstances, it is possible for tobacco smoke to

spread to another balcony, to areas where people are present in an outdoor area belonging to another flat, or into another flat, except in exceptional cases. A smoking ban may be issued in a living room in an apartment only if the spread of smoke cannot reasonably be prevented by repairing or altering the structures and the occupants of the living room have been given the opportunity to prevent the spread of smoke by their own measures before the ban is issued. A smoking ban relating to a living room in an apartment does not apply to the use of electronic cigarettes.

ÄMHM shall withdraw a smoking ban upon application by the Housing Association if the ban is no longer justified due to changed circumstances. A smoking ban may also be revoked at the request of the owner of a space or area if the housing association does not apply for revocation despite changed circumstances. Detailed provisions on the application for a smoking ban, on the revocation of a smoking ban and on the reference in the application of hearings arranged by the housing association may be issued by a provincial ordinance.

The owners of the premises and areas referred to in the application shall be consulted before the application is made. A consultation shall be deemed to have been arranged if the housing association provides the owners of the premises and areas referred to in the application with information on the grounds for the proposed application and instructions for submitting comments, at least two weeks before the decision is taken. The information and instructions shall

(1) if the apartment ownership is based on freehold, be delivered to the postal address known to the housing association or to the e-mail address or other equivalent data communication connection that the owner has notified to the housing association, and

(2) if the ownership of the apartment is based on a right of tenancy or other equivalent right, be left on a notice board that is available for public use in the building or provided to each apartment held by a tenant or another occupier.

Section 5a

Anyone who manufactures or imports tobacco products or related products for marketing in the province shall ensure that

(a) the packaging of the products, using the Swedish language as a minimum, bears accurate information, design and health warnings, so that the labels do not promote the sale of a product or encourage the consumption of a product by creating a false perception of the product's characteristics, health effects, risks or emissions; contains any information about the nicotine, tar or carbon monoxide content of the product; suggests that the product is less harmful than other products, that the purpose has been to reduce the effect of any harmful substance in smoke from the product or that the product has revitalising, energizing, healing, rejuvenating, natural or organic properties or other health or lifestyle benefits; refers to taste, smell, flavour or aroma additives or other additives or the absence thereof; is similar to a food or cosmetic product; suggests that the product has environmental benefits; suggests that the product is fire-safe or otherwise gives the impression that the product is harmless or more fireproof than other equivalent products;

(b) the packaging of the products bears health warnings in the form of text and images and information on stopping smoking.

It is prohibited to market:

(1) cigarettes, rolling tobacco and heated tobacco products with a characteristic flavour or aroma other than tobacco, or which contain additives that significantly or measurably enhance the addictive or harmful properties of the tobacco product;

(2) electronic cigarettes and refill containers to which a characterising flavour or smell other than tobacco has been added, which are not child- and tamper-proof, which are not protected against damage or leakage and which do not have a mechanism ensuring refill without leakage or which otherwise do not comply with the requirements of Article 20(5) of the Tobacco Products Directive;

(3) tobacco products and related products to which additives referred to in Articles 7.6 and 7.7 of the Tobacco Products Directive have been added and whose marketing Member States shall prohibit pursuant to that Article;

(4) refill containers with a capacity of more than 10 millilitres or disposable electronic cigarettes with a capacity of more than 2 millilitres;

(5) nicotine pouches containing more than 16.6 mg of nicotine per gram of the product;

(6) smokeless nicotine containing products with a characteristic smell or taste;

(7) products the purpose of which is to create a characteristic smell or taste in tobacco or related products or in smokeless nicotine products; and

(8) retail packaging of tobacco products containing less than 20 cigarettes, 30 grams of rolling tobacco or pipe tobacco, or 10 cigarillos.

In addition to what is stipulated in paragraph 2, points a and b, retail packaging for tobacco products and related products may not differ from other retail packaging for the same tobacco product group in terms of shape, colour, material, wrapping or other design. The design of the retail packaging shall not promote the sale of the product. The Provincial Government may issue provisions in provincial regulations regarding exemptions from the requirement of uniformity, provided that these are minor exemptions that do not promote the sale of the product. The Provincial Government may also issue more detailed provisions in provincial regulations concerning the form, colour, material, packaging and other design features permitted for retail packaging of tobacco products, as well as the opening mechanism and other characteristics. The provision does not apply to sales on board ships that are registered in Åland and mainly operate in international traffic.

Unless otherwise provided by law, retail packages of tobacco products and related products may not bear markings other than those referred to in this paragraph. The provision does not apply to sales on board ships that are registered in Åland and mainly operate in international traffic.

Tobacco products, tobacco surrogates, electronic cigarettes, nicotine liquids, smokeless nicotine products or smoking accessories intended for the heating of tobacco products, or the trade marks of these products, shall not be kept visible in the retail trade. The provision does not apply to sales on board ships that are registered in Åland and mainly operate in international traffic.

For the purpose of implementing EU legislation, the Provincial Government may, by means of a provincial ordinance, issue provisions that deviate from the provisions of paragraph 3, point 8 on the minimum permissible packaging of tobacco products.

The Provincial Government may, by means of a provincial ordinance, issue provisions on exemptions from the prohibition in paragraph 3, point 6 for characteristic aromas or flavours of smokeless nicotine products.

Section 14
No-smoking notices

Owners of premises or outdoor areas and organisers of public entertainment events shall put up notices informing about the smoking ban referred to in section 4(1) and the location of the special smoking areas referred to in section 4a. The content of the notices must be clear, and the size and location of the notices must be such that they are easily visible to people entering and spending time in the premises.

This Act shall enter into force on

Mariehamn, 27 February 2025

Chief Minister

Katrin Sjögren

Rapporteur, minister

Arsim Zekaj

Parallel texts

- Parallel texts to the Provincial Government's bill no. 16/2024-2025