

F. No. P.16012/25/2019-TC  
Government of India  
Ministry of Health & Family Welfare  
(Tobacco Control Division)


**Subject:** Placing the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Bill, 2019 in public domain-**reg**

\*\*\*\*\*

The Government of India promulgated an Ordinance namely "Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Ordinance, 2019" on 18<sup>th</sup> September, 2019.

The Department of Health and Family Welfare proposes to introduce the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Bill, 2019 in the forthcoming session of Parliament. The said Bill is placed in public domain ([www.mohfw.gov.in](http://www.mohfw.gov.in)), as part of pre-legislative consultations, with a view to elicit the comments/views of public. The comments should be specific and focused on the provisions of the Bill.

The comments/views may be forwarded to Under Secretary (Tobacco Control), Department of Health and Family Welfare, Room No- 414 'D', Nirman Bhawan, New Delhi-110011 or e-mailed at [ntcp.mohfw@gmail.com](mailto:ntcp.mohfw@gmail.com) on or before 8<sup>th</sup> November, 2019.

  
(Pradip Kumar Pal)  
Under Secretary to Govt. of India  
Tele: 23063019

	<b>THE PROHIBITION OF ELECTRONIC CIGARETTES (PRODUCTION, MANUFACTURE, IMPORT, EXPORT, TRANSPORT, SALE, DISTRIBUTION, STORAGE AND ADVERTISEMENT) BILL, 2019</b>	
	<i>A Bill to prohibit the production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes in the interest of public health to protect the people from harm and for matters connected therewith or incidental thereto;</i>	
	WHEREAS India is a signatory to the World Health Organisation Framework Convention on Tobacco Control adopted in Geneva, Switzerland on 21 <sup>st</sup> day of May, 2003 which came into force on the 27 <sup>th</sup> day of February, 2005;	
	AND WHEREAS, the Conference of Parties established under article 23 of the said Convention took a decision on the 18 <sup>th</sup> day of October, 2014 to invite the Parties to the Convention to consider prohibiting or regulating the electronic cigarettes or the Electronic Nicotine Delivery Systems and the Electronic non-Nicotine Delivery Systems, including as tobacco products, medicinal products, consumer products or other categories, as appropriate, taking into account a high level of protection for human health;	
	AND WHEREAS the Conference of Parties took a decision to urge the Parties to the Convention to consider banning or restricting advertising, promotion and sponsorship of the said Delivery Systems;	
	AND WHEREAS since these devices are injurious to health and proliferation of these products has negative impact on public health, it is expedient to prohibit the production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes as enjoined by article 47 of the Constitution of India;	
	AND WHEREAS article 51 of the Constitution of India requires the State to endeavour to foster respect for international law and treaty obligations in the dealings of organised people with one another;	
	Be enacted by the Parliament in the Sixty Ninth Year of the Republic of India as follows;	

	1. (1) This Act may be called the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019.	Short title and commencement.
	(2) It shall come into force at once.	
	2. It is hereby declared that it is expedient in the public interest that the Union should take under its control the electronic cigarettes industry.	Declaration as to expediency of control by Union.
	3. In this Act, unless the context otherwise requires,—	Definitions.
	(a) “advertisement” means any audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website or social media and includes through any notice, circular, label, wrapper, invoice or other documents or device;	
	(b) “authorised officer” means—	
	(i) any Police officer not below the rank of Sub-Inspector of Police or ;	
	(ii) any other officer, not below the rank of Sub-Inspector of Police, authorised by the Central Government or the State Government by notification;	
	(c) “distribution” includes distribution by way of samples, whether free or otherwise and the expression “distribute” shall be construed accordingly;	
23 of 1940.	(d) “electronic cigarette” means an electronic device that heats a substance, with or without nicotine and flavours, to create an aerosol for inhalation and includes all forms of Electronic Nicotine Delivery Systems, Heat Not Burn Products, e- <i>Hookah</i> and the like devices, by whatever name called and whatever shape, size or form it may have, but does not include any product licensed under the Drugs and Cosmetics Act, 1940.	
	<i>Explanation.</i> — For the purposes of this clause, the expression “substance” includes any natural or artificial substance or other matter, whether it is in a solid state or in liquid form or in the	

	form of gas or vapour;	
	(e) “export” with its grammatical variations and cognate expressions, means taking out of India to a place outside India;	
	(f) “import” with its grammatical variations and cognate expressions, means bringing into India from a place outside India;	
	(g) “manufacture” means a process for making or assembling electronic cigarettes and any part thereof, which includes any sub-process, incidental or ancillary to the manufacture of electronic cigarettes and any part thereof;	
	(h) “notification” means a notification published in the Official Gazette;	
	(i) “person” includes–	
	<ul style="list-style-type: none"> <li>(i) any individual or group of individuals;</li> <li>(ii) a firm (whether registered or not);</li> <li>(iii) a Hindu Undivided Family;</li> <li>(iv) a trust;</li> <li>(v) a limited liability partnership;</li> <li>(vi) a co-operative society;</li> <li>(vii) any corporation or company or body of individuals; and</li> <li>(viii) every artificial juridical person not falling within any of the preceding sub-clauses;</li> </ul>	
	(j) “place” includes any house, room, enclosure, space, conveyance or the area in like nature;	
	(k) “production” with its grammatical variations and cognate expressions, includes the making or assembling of electronic cigarettes and any part thereof;	
	(l) “sale” with its grammatical variations and cognate expressions, means any transfer of property in goods (including online sale) by one person to another, whether for cash or on credit, or by way of exchange, and whether wholesale or retail, and includes an agreement for sale, and offer for sale and	

	exposure for sale.	
	4. On and from the date of commencement of this Act, no person shall, directly or indirectly,—	Prohibition on production, manufacturing, import, export, transport, sale, distribution, advertisement of electronic cigarettes.
	(i) produce or manufacture or import or export or transport or sell or distribute electronic cigarettes, whether as a complete product or any part thereof; and	
	(ii) advertise electronic cigarettes or take part in any advertisement that directly or indirectly promotes the use of electronic cigarettes.	
	5. On and from the date of commencement of this Act, no person, being the owner or occupier or having the control or use of any place shall, knowingly permit it to be used for storage of any stock of electronic cigarettes:	Prohibition on storage of electronic cigarettes.
	Provided that any existing stock of electronic cigarettes as on the date of the commencement of the Act kept for sale, distribution, transport, export or advertisement shall be disposed of in the manner hereinafter specified—	
	(a) the owner or occupier of the place with respect to the existing stock of electronic cigarettes shall, on <i>suomoto</i> , prepare a list of such stock of electronic cigarettes in his possession and without unnecessary delay submit the stock as specified in the list to the nearest office of the authorised officer; and	
	(b) the authorised officer to whom any stock of electronic cigarettes is forwarded under clause (a) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to the law for the time being in force.	
	6. (1) An authorised officer, if he has reason to believe that any provision of this Act has been, or is being contravened, may enter and search any place where—	Power to enter, search and seize without warrant.



	(a) any trade or commerce in electronic cigarettes is carried on or electronic cigarettes are produced, supplied, distributed, stored or transported; or	
	(b) any advertisement of the electronic cigarettes has been or is being made.	
	(2) After completion of the search referred to in sub-section (1), the authorised officer shall seize any record or property found as a result of the search in the said place, which are intended to be used, or reasonably suspected to have been used, in connection with any matter referred to in sub-section (1) and if he thinks proper, take into custody and produce, along with the record or property so seized, before the Court of First Class Magistrate, any such person whom he has reason to believe to have committed any offence punishable under this Act.	
	(3) Where it is not practicable to seize the record or property, the officer authorised under sub-section (1), may make an order in writing to attach such property, stocks or records maintained by the producer, manufacturer, importer, exporter, transporter, seller, distributor, advertiser or stockist about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with any offence in contravention of the provisions of this Act and it shall be binding on the person concerned with the said offence.	
2 of 1974.	(4) All searches, seizures and attachment under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.	
	7. Whoever contravenes the provisions of section 4, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees.	Punishment for contravention of section 4.
	8. Whoever contravenes the provisions of section 5, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees or with both.	Punishment for contravention of section 5.
	9. (1) Any person committing an offence under section 4 or	Jurisdiction and

	section 5 shall be triable for such offence in any place in which he is liable to be tried under any law for the time being in force.	trial of offences.
2 of 1974.	(2) All offences under this Act shall be tried by the court of First Class Magistrate in accordance with the procedure provided for trials in the Code of Criminal Procedure, 1973.	
2 of 1974.	10. After completion of the proceedings before the court and if it is proved that the stock seized by the authorised officer under the provisions of this Act are stocks of electronic cigarettes, such stocks shall be disposed of in accordance with the provisions contained in Chapter XXXIV of the Code of Criminal Procedure, 1973.	Power to dispose of stock seized.
	11. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:	Offences by Companies.
	Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.	
	(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.	
	<i>Explanation.</i> — For the purpose of this section—	
	(a) “company” means anybody corporate and includes a firm or other association of individuals; and	
	(b) “director” means a whole-time director in the company and in relation to a firm, means a partner in the firm.	

	12. No court shall take cognizance of an offence punishable under this Act, except upon a complaint in writing made by an authorised officer under this Act.	Cognizance of offences.
2 of 1974.	13. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under section 4 shall be cognizable.	Offences to be cognizable.
	14. Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.	Act to have overriding effect.
	15. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes.	Application of other laws not barred.
	16. No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or any officer of the Central Government or any State Government for anything which is in good faith done or intended to be done under this Act.	Protection of action taken in good faith.
	17. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by an order published in the Official Gazette, make such provision not inconsistent with the provisions of this Act, as may appear to be necessary or expedient for removing the difficulty.	Power to remove difficulties.
	(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.	
	18. (1) The Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Ordinance, 2019 is hereby repealed.  (2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.	Repeal and savings

-----