



SCOTTISH EXECUTIVE

Health Department
Substance Misuse Division

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Your ref:
Our ref:

22 August 2002

Dear Sir/Madam

TOBACCO ADVERTISING AND PROMOTION BILL

CONSULTATION DOCUMENT AND DRAFT REGULATORY IMPACT ASSESSMENT ON REGULATIONS CONCERNING SPONSORSHIP, BRANDSHARING AND POINT OF SALE ADVERTISING

Introduction

The purpose of this letter is to invite comments on proposals for regulations under powers contained in the Tobacco Advertising and Promotion Bill which is currently before the Westminster Parliament. *A consultation document setting out these proposals which has been prepared in conjunction with other UK administrations is attached. Comments are invited by Friday, 8 November 2002.*

Background

Responsibility for tobacco advertising is devolved to the Scottish Parliament. The introduction of a ban on tobacco advertising is a Scottish Executive Programme for Government commitment. However, given the cross-border flow of newspapers media etc, Scotland could sensibly take only very limited action in isolation from the rest of the UK. Having looked carefully at the options available, the Executive concluded that there was a compelling case for a single Bill to effect a ban throughout the UK. A UK Bill would avoid any inconsistencies in statute which could be exploited by the tobacco industry and would ensure the ban comes in effect in all parts of the UK at the same time. Moreover, crucially, it would also avoid difficulties in enforcement. The Scottish Executive, therefore, sought the approval of the Scottish Parliament's consent to the UK Parliament legislating to effect a ban on tobacco advertising and promotion in relation to Scotland. That consent was granted on 17 January 2001.

The Bill is currently before the Westminster Parliament and has completed all its stages in the House of Lords and has had a Second Reading and Committee stage in the House of Commons. If

approved, the Bill is likely to become law in the autumn and most provisions will start to come into effect around the end of this year. The proposed legislation will include a ban on press, billboard and Internet advertising of tobacco products and a prohibition on the promotion of smoking through free distribution of tobacco products, coupons and mailshots.

The Bill contains a number of regulation making powers. Ministers do not intend to exercise all of these at present. However if the Bill is approved by Parliament it is proposed to bring into effect at an early stage regulations under the following powers:

Clause 4(3) in relation to tobacco advertisements in a place or on a website where tobacco products are offered for sale;

Clause 11 in connection with

(i) the use by any service or product (other than a tobacco product) of any name, emblem or other feature of a description specified in the regulations which is the same as, or similar to, a name, emblem or other feature so specified which is connected with a tobacco product;

(ii) the use by any tobacco product, of any name, emblem or other feature of a description specified in the regulations which is the same as, or similar to, a name, emblem or other feature so specified which is connected with any service or product other than a tobacco product;

Clause 20 allowing sponsorship agreements which would otherwise be prohibited by clause 10 to continue, on such conditions as may be specified, to a date specified not later than October 1 2006.

The Consultation Process

If approved by the Westminster Parliament, the Tobacco Advertising and Promotion Bill will cover the whole of the UK. By virtue of clause 19 the Secretary of State for Health may make regulations under clause 11 for the whole of the UK. Regulations under clauses 4 and 20 may be made by the Scottish Ministers in relation to Scotland and by the Secretary of State of Health for the remainder of the UK.

The enclosed document invites comments on the provisions of all three sets of regulations. A similar document will be distributed by the UK Government and the other devolved administrations in England, Wales and Northern Ireland. Scottish Executive and United Kingdom Ministers will consider all responses to both consultation exercises before making any regulations.

The three sets of regulations are proposed to deal with health risks. As the consultation document suggest, it is difficult to quantify the exact risk and impact of the measures contained in each set of regulations. A Regulatory Impact Assessment has been done on a UK-wide basis, consultees are invited to comment on this and to provide details of any specific impact in Scotland which needs to be borne in mind by the Scottish Executive.

Comments are invited on the proposed terms of all three sets of regulations. A list of questions on which we would particularly welcome comments is at Page 4 of the document.

A list of Scottish consultees is attached. Consultations on these regulations will run from 22 August 2002. Responses must reach the Department of Health before Friday, 8 November 2002.

All organisations and individuals with an interest in these issues are invited to submit their responses on this consultation document. Responses should be sent to:-

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Tel: 0131 244 2280

Fax: 0131 244 2689

Any enquiries about the consultation process for the rest of the UK should be directed to Penny Allsop, Department of Health, Room 646, Wellington House, Waterloo Road, London SE1-8UG. E-mail: tobaccobillregulations@doh.gsi.gov.uk

Please note that, unless you request that your response is kept confidential, your response may be made publicly available.

Yours faithfully



Mrs Mary Cuthbert
Alcohol and Tobacco Policy Team

Consultation List (Tobacco Advertising & Promotion Bill)

Action on Smoking and Health (Scotland)
Association of the British Pharmaceutical Industry Scotland
BBC Scotland
Bonded Warehousekeepers Association
Boot Company Plc
British Dental Association, Scottish Office
British Greyhound Racing Board
British Institute of Innkeepers
British Medical Association (Scotland)
CBI Scotland
COSLA
Dean of the Faculty of Advocates
District Courts Association
Federation of Small Businesses
Forum of Private Businesses (Scotland)
Health Education Board for Scotland
Institute of Directors
Local Authority Chief Executives
National Federation of Retail Newsagents (Scottish Branch)
NHS Boards, Chief Executives
NHS Boards, Directors of Public Health
NHS Boards, General Managers
NHS Boards, Health Promotion Managers
NHS Trusts
Royal College of Nursing
Royal College of Physicians
Royal Environmental Health Institute of Scotland
Scottish Beer & Pub Association
Scottish Chambers of Commerce
Scottish Civic Forum
Scottish Consumer Council
Scottish Council for Voluntary Organisations
Scottish Darts Association
Scottish Football Association
Scottish Grocers Federation
Scottish Licensed Trade Association
Scottish Newspaper Publishers Association
Scottish Premier League
Scottish Retail Consortium
Scottish Rugby Union
Scottish Sports Association
Scottish Tobacco Control Alliance
Sheriff Principals Association
Society of Chief Officers of Trading Standards in Scotland (SCOTSS)
Sportscotland
STV
The Law Society of Scotland
The University of Edinburgh



SCOTTISH EXECUTIVE

*Tobacco Advertising and
Promotion Regulations:*

Consultation Document

August 2002



SCOTTISH EXECUTIVE

Consultation on the draft:

Tobacco Advertising and Promotion
(Sponsorship) Transitional (Scotland)
Regulations

Tobacco Advertising and Promotion (Point of
Sale) (Scotland) Regulations

Tobacco Advertising and Promotion
(Brandsharing) Regulations

To be made under powers contained in the
Tobacco Advertising and Promotion Bill (if
passed by Parliament)

This document invites comments on the draft regulations made under powers contained in the Tobacco Advertising and Promotion Bill. Please send your comments to the address below by **8 November 2002**.

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Sponsorship (Transitional Regulations) Consultation Document and Regulatory Impact Assessment

KEY POINTS

Subject to the results of this consultation the Government and devolved administrations intend:

To allow existing sponsorship agreements to run until 30 July 2003, with the exception of global events, which will be allowed to run until 1 October 2006, subject to certain conditions (*Paragraphs 9-12*).

During these periods the intention is to allow advertising by the sponsor at permitted events as set out in the existing voluntary agreement (*Paragraph 16*), subject to the provision that the total area of visible tobacco advertising at any exceptional global event taking place in the United Kingdom is reduced each year at an annual rate of not less than 20% compared to the previous year.

Consultees may wish to comment on the costs and benefits of these proposals and, in particular, whether the end of tobacco sponsorship will leave any shortfall in sponsorship income for events affected and, if so, what the extent of that shortfall might be (*Paragraph 23*).

Issue and objective

1. The Government and devolved administrations intend to prohibit all forms of tobacco advertising and promotion, with certain limited exceptions. Clause 10(1) of the Bill states that a person who is party to a sponsorship agreement is guilty of an offence if the purpose or effect of anything done as a result of that agreement is to promote a tobacco product in the UK. A sponsorship agreement is defined as:

“an agreement under which, in the course of a business, a party to it makes a contribution towards something, whether the contribution is in money or takes any other form (for example the provision of services or of contributions in kind)” [*Clause 10(2)*].

It is a defence if a person can prove that he did not know, and had no reason to know, that the purpose of the agreement was to promote a tobacco product in the UK; or that he could not reasonably have foreseen that the effect of the agreement would have been to promote a tobacco product [*Clause 10(3)(a)&(b)*].

2. The Bill gives the Secretary of State for Health and, in Scotland, the Scottish Ministers a power to make regulations disapplying the sponsorship ban (subject to any specified conditions) until a date specified in the regulations (clause 20). The Bill provides that the date agreed cannot be later than 1 October 2006.

Risk Assessment

3. The evidence cited for the effectiveness of an advertising ban suggests that such bans are only really effective if they are comprehensive, i.e., they cut off more or less all legal avenues for tobacco marketing and promotion.¹ Otherwise spending shifts from one banned area of marketing to another legal area. Tobacco sponsorship of sports events, for example, has offered tobacco companies a way of getting their brands onto television, despite the fact that cigarette advertising on television has been banned in the UK since 1965 and that tobacco sponsorship of television programmes has been specifically banned following the Broadcasting Directive of 1989. This points to the importance of regulating sponsorship as well as other forms of advertising and promotion.

¹ See, eg, The World Bank. *Curbing the Epidemic: Governments and the Economics of Tobacco Control*. Washington DC: The World Bank, 1999. Page 50.

4. There is evidence that tobacco sponsorship undermines health promotion activity aimed at communicating the health risks of smoking. For example over a quarter of 11-16 year old smokers agreed with the statement; “*smoking can’t be all that dangerous, or the Government would ban sports sponsorship by tobacco companies*”² This suggests that tobacco sponsorship plays a role in legitimising smoking as an acceptable teenage activity. Another survey showed that teenage boys who are fans of motor-sport are twice as likely to smoke as those who are not.³ While the direction of causation is not established, the finding does suggest a significant link and grounds for concern.

5. There is clear evidence from industry documents that tobacco companies have seen sponsorship as a vital means of promoting their products as exciting and glamorous. This can be seen from documents obtained by the House of Commons Health Select Committee in the course of its Inquiry into tobacco.⁴ For example, research conducted for Gallaher identified Formula One, Big Boat Sailing, Basketball and Ice Hockey as “more active sports, with potential to create a more dynamic, exciting brand image” and Darts, Snooker, Bowls, Golf, Cricket, Tennis and Horse Riding as “less active sports, more appropriate to reinforce existing brand imagery”. The report concludes on Formula One that:
 - “ - Formula One is one of the least contentious sports for association with cigarette sponsorship, indeed there is a natural fit between the two.
 - The image is dynamic, macho and international and consequently can potentially bring these image values to a brand.
 - Formula One is seen to be an appropriate fit for Benson and Hedges and can help to drive the more youthful and exciting elements of the brand imagery.”⁵

² MORI Research Ltd, Schools Omnibus Survey (1996)

³ Charlton A., White D., Kelly S. Boys’ smoking and cigarette-brand sponsored motor racing, Letter to the *Lancet*, 15 November 1997. Research funded by Cancer Research Campaign.

⁴ Hastings G, MacFadyen L. *Keep smiling, no one’s going to die*. London: Tobacco Control Resource Centre, British Medical Association, 2000.

⁵ Hastings G, MacFadyen L. *Keep smiling, no one’s going to die*. London: Tobacco Control Resource Centre, British Medical Association, 2000.p.22-23.

6. This does not merely apply to Formula One:

“By celebrating Silk Cut’s involvement in Rugby League, people should think that Silk Cut is an exciting, dynamic and less pretentious brand”

“What should they think after seeing the advertising?”

That Silk Cut is sponsoring a boat in the Whitbread yacht race and therefore is actually quite a masculine, adventurous brand.”⁶

7. The UK Government and devolved administrations are therefore fully satisfied that sponsorship should be banned alongside other means of tobacco promotion.

EC Directive

8. The UK Government has consistently stated its intention of implementing a ban on tobacco advertising and sponsorship with as little impact on affected businesses and sports as possible. There were two consultations on the implementation of the now annulled Directive 98/43/EC banning tobacco advertising, promotion and sponsorship. The intention as set out in those documents was to ban tobacco sponsorship from 30 July 2003, but to allow exceptional global events a further period until 1 October 2006. That further period was conditional on the tobacco sponsorship of those events decreasing at a rate of not less than 20% per annum and the area of visible advertising reducing by not less than 20% on an annual basis. There are therefore two broad issues to consider, first, the length of the transitional period or periods for different sports and, second, the treatment of sports in the interim.

Proposals

(i) The Timing of the Ban

9. Subject to the responses to this consultation document, the Government and devolved administrations do not believe there is any persuasive evidence to justify changing its policy on transitional periods for sponsorship. The proposed deadline of July 2003 for most sports has been policy for a number of years, so the sports affected should have had time to find alternative sources of support. Moreover, the Department for Culture, Media and Sport and the Scottish Department of Tourism, Culture and Sport will continue to provide advice and support to the

⁶ Op. Cit., p.24

sports affected in finding alternative sponsorship, should they ask for such assistance.

10. In the case of “exceptional global events” the Government and devolved administrations believe it is right that recognition should be given to the very large sponsorship amounts involved. In “Smoking Kills” the Government estimated that Formula One relied on around £100m tobacco sponsorship per annum, around £35m of which came from the UK. More recent figures suggest that Formula One receives £177m per annum from tobacco sponsorship, 18% of its total revenue. The next largest source of sponsorship is the communications sector (£81m). Team sponsorship provides Formula One with just over half its income. Around 40% of Formula One tobacco sponsorship income (£70m) comes from UK tobacco companies.⁷ Formula One’s governing body, the Fédération Internationale de l’Automobile (FIA) said in April 2002 that the precise value of tobacco industry sponsorship is hard to estimate but probably exceeds \$350 million per annum in total. The FIA has indicated that there is a significant trend of diversification into alternative sources of sponsorship.
11. Another event which might justify a longer transition is World Championship Snooker. Direct tobacco sponsorship of snooker in the UK is around £4m per annum, with a similar amount being spent on promoting tobacco sponsored events. The majority of this expenditure goes to the World Championship. This is a very significant sum. It is reasonable to give a longer period for the sport to find new sponsors for the World Championship.
12. Given the scale of tobacco sponsorship in both sports the Government and devolved administrations believe it is right to maintain the existing extended transition periods, along with annual reductions in sponsorship and reduced visibility of sponsorship between 2003 and 2006. In the case of Formula One, the FIA has indicated that it would like to see a global ban on tobacco sponsorship implemented by October 2006 if that were to coincide with the coming into force of the World Health Organisation’s proposed Framework Convention on Tobacco Control. If however the sports concerned are able to end tobacco sponsorship to a faster timetable then the Government would expect them to do so.
13. The definition of an “exceptional global event” in the regulations drafted to implement the 1998 EU Directive was “an event or activity that takes place in at least two continents and three countries and which is the subject of a sponsorship contract for which the financial consideration is in excess of two and a half million pounds per annum”. Subject to any views expressed in consultation, it is intended to adopt this definition for

⁷ Rines, S. *Driving Business through Sport*. International Marketing Reports Ltd, 2000. p.11-13

the purposes of this legislation, making clear that a 'country' equates to a sovereign state and that the United Kingdom is one country for this purpose.

14. There are also current proposals for a new European Directive on tobacco advertising and sponsorship. These proposals include a prohibition on the sponsorship of events or activities involving or taking place in several Member States or otherwise having cross-border effects.

(ii) Controls on sponsorship during transitional period

15. As far as global sports are concerned, the intention is to require a 20% reduction in tobacco sponsorship each year, and a similar reduction in the visibility of tobacco advertising at global events, between 2003 and 2006.
16. There remains the issue of the control of tobacco-sponsored events more generally. The existing Voluntary Agreement on Sports Sponsorship, signed in 1995, was intended to be effective until at least June 1999. Given the intention to introduce a statutory ban it has not been re-negotiated. The key provisions included in the Voluntary Agreement are as follows:
 - Tobacco companies, as sponsors of sporting activities have agreed that their press and poster advertising for, and static signs at, such activities will carry health warnings,
 - advertisements or signs for tobacco-sponsored events shall not be displayed within a 200 metre radius from the front entrance of schools,
 - the display of sponsors' signs and other aspects of publicity relating to sponsored sporting activities should be compatible with the Cigarette Code contained in the British Codes of Advertising and Sales Promotion and
 - the television coverage of sponsored activities is subject to Codes of Practice laid down by the BBC and ITC.
17. As regards the conditions under which sponsorship may continue the options are to:
 - (i) put into regulations the terms of the 1995 Voluntary Agreement on Sponsorship of Sport by Tobacco Companies in the UK (with any desired amendments);
 - (ii) seek to renegotiate the voluntary agreement; or
 - (iii) seek to keep the current voluntary agreement in place.

18. Setting out in regulations the conditions under which sponsorship may continue until such time as it is banned would represent a coherent approach to implementing the ban. Trading Standards Officers (Environmental Health Officers in Northern Ireland) would have powers to investigate local breaches of the overall advertising ban and, during the transitional period, breaches of the conditions under which sponsorship might continue. Termination of alleged breaches of the latter is likely to be achieved quickly at a local level. Given that the tobacco companies are already committed to abiding by the voluntary agreement, there should be no increased costs placed on them if those conditions were largely transferred into regulations. There would be the potential for an increased enforcement burden for Trading Standards Officers (Environmental Health Officers in Northern Ireland) but the existing levels of complaints under the voluntary agreement suggests this burden would be extremely small.
19. On the other hand, there is an existing voluntary arrangement and well-established complaints mechanism in place to which the UK Tobacco companies are committed and the small number of complaints suggests that this has worked satisfactorily. Translating it into statute for a relatively short period seems unnecessary. The FIA has pointed out that for many years there has been very little visible tobacco advertising at the British Grand Prix. The Government and devolved administrations do not believe it is necessary to renegotiate the voluntary agreement. The preference is therefore to keep the current voluntary agreement in place (option (iii) in Paragraph 26 above).
20. Consultees are invited to comment on the proposals.

Partial Regulatory Impact Assessment

(i) Risks involved

21. These regulations are proposed to deal with health risks. It is very difficult to quantify the exact risk; however, it is estimated that the impact of the Tobacco Advertising and Promotion Bill as a whole will be to reduce the consumption of tobacco products by about 2.5% in the longer term. A proportion of this reduction can be attributed to the ban on tobacco sponsorship, although it is difficult to estimate exactly what that proportion will be.

(ii) Benefits of these regulations

22. The Government and devolved administrations expect that the impact of the Tobacco Advertising and Promotion Bill as a whole will be to reduce the consumption of tobacco products by about 2.5 % in the longer term. Although it would be extremely difficult to isolate the impact of short-term restrictions on tobacco sponsorship and the eventual ban, the evidence is that while comprehensive bans on tobacco advertising and promotion work, less comprehensive bans do not. Therefore a ban on sponsorship is a key part of an effective ban and without it the overall effectiveness of the ban would be severely compromised. The Government and devolved administrations do not believe that quantifying the effect of any individual element of the ban is particularly helpful or analytically robust in this instance, but notes the relative importance of sponsorship money for the tobacco industry.

(iii) Costs

23. Replacing tobacco sponsorship may cause some short-term difficulties for some sports. Total global sponsorship of sporting events has increased sharply over the last decade,⁸ but inevitably some sports will find it more difficult to market themselves than others. The Government and devolved administrations will offer advice and assistance to those sports which request it through the Department for Culture, Media and Sport and the Scottish Department of Tourism, Culture and Sport.

⁸ See Rines, cited , p.1

24. In Australia, where tobacco sponsorship of sport has been illegal in most circumstances since 1996, it has been claimed however that corporate sponsorship of sport doubled between 1996 and 2000⁹. It is possible though that some sports may not be able to find sponsors willing to support them to the same degree as tobacco companies. The extent of any shortfall is impossible to quantify. We would welcome comments from consultees on what, if any, shortfalls in sponsorship income they foresee as a result of this ban.

(iv) Implementation

25. It is proposed, subject to the Bill becoming law and subject to the views of consultees and the decisions of Ministers, that these regulations will come into force at the same time as clause 10 (the ban on sponsorship), probably two months after the Bill receives Royal Assent.

Summary of Costs and Benefits

26. It is impossible to isolate the benefits of banning tobacco sponsorship per se from the overall benefits of banning tobacco advertising and promotion. That said, some £78m is apparently spent per annum on sponsorship by UK tobacco companies, the lion's share of which goes to Formula One. Potentially this represents a loss of revenue to sports but, given time, sports should find alternative sponsors, albeit possibly at a reduced level of support.
27. The Government and devolved administrations believe that the overall ban will reduce consumption by 2.5% over the longer term and save 3000 lives a year. A ban which did not include tobacco sponsorship would be very much less comprehensive; the evidence demonstrates that comprehensive bans work, partial bans do not. In that sense the ban on tobacco sponsorship is essential to the success of the whole ban.

⁹ Effect on sports of bans on tobacco advertising and sponsorship in Australia : Stephen Woodward quoting from Business Review Weekly www.ash.org.uk/html/advspo/html/ausreport.html

Point of Sale – Consultation Document & Regulatory Impact Assessment

KEY POINTS

Subject to the results of this consultation, the Government and devolved administrations intend:

To allow the advertising of tobacco products on gantries within shops and other places of sale but to restrict the size of such advertising (Paragraphs 31 & 33).

Not to allow any other advertising for tobacco products in shops and most other places of sale (apart from specialist tobacconists as permitted by clause 6 of the Bill) (Paragraph 36).

Not to make any regulations under clause 8 of the Bill concerning the display of tobacco products and their prices (Paragraph 32).

Not to allow branded advertising on the home pages of websites and to restrict any other advertising on websites to pictures of the products offered for sale (Paragraph 40).

To allow on vending machines only a picture of the packets sufficient to show what brands are available in the machine (Paragraph 42).

Not to allow any advertising on catalogues handed to passengers on aircraft and elsewhere. The supply of plain lists indicating what goods are available will be allowed (Paragraph 44).

Issue and Objective

28. The Government and devolved administrations intend that this legislation will provide an appropriate framework for the protection of public health and the transaction of legitimate business. The regulations will cover all situations in which tobacco products may be sold, including shops, pubs, clubs, aircraft, the Internet and vending machines.

29. These proposals cover the following areas:
 - Advertising of tobacco products in shops
 - Application of regulations to specialist tobacconists
 - Advertising of tobacco products on internet sale sites
 - Vending machines
 - Other places where tobacco products are offered for sale (including pubs, clubs, aircraft, ferries and wholesale outlets which sell directly to the public)

30. The sale of cigarettes and other tobacco products is a legal activity and both retailers and adult consumers have a right to carry out transactions without any unnecessary inconvenience. However, the importance of protecting children and young people in particular from tobacco advertisements has long been recognised. The White Paper “Smoking Kills”, published in December 1998, stated that: *“when children go into a shop to buy sweets or a magazine, they are now faced with cigarette adverts on the walls or hanging from the ceiling, tobacco-branded till covers, dispensers with cigarette special-offer leaflets or any other tobacco promotion material.”* The Government made clear in Smoking Kills its intention to: *“protect children as far as possible from exposure to pro-tobacco messages in shops, whilst taking account of the legitimate desire of retailers to display products for sale and indicate their prices.”* These regulations are intended to restrict advertising at point of sale in a way that protects children in particular whilst permitting a reasonable level of information about the products and their prices to be given to consumers so they can make their purchases. In Smoking Kills the Government commended the policy of the Co-op which sold tobacco but did not promote it in any way which could glamourise smoking or induce people to smoke.

31. During debate on the Bill Ministers have made clear that some advertising would be allowed at point of sale but that this should be properly regulated. This can be achieved by allowing limited advertising on the gantries where the products are displayed, but restricting the prominence of this advertising.
32. These regulations will not cover the display (as opposed to the advertisement) of tobacco products or their prices in places or on a website where they are sold. Clause 8 of the Tobacco Advertising and Promotion Bill, if enacted in its present form, will give the Government power to make regulations concerning the display of tobacco products or their prices in a place or on a website where tobacco products are offered for sale. The Government and devolved administrations consider it necessary to have the power in reserve in case it is needed in future to prevent loopholes and abuse. *However it is not intended to change the way in which tobacco products themselves are currently commonly laid out in corner shops, supermarkets and other places of sale. Similarly the Government and devolved administrations do not wish to prohibit notices of prices which do not carry any form of tobacco advertisement.* Therefore, it is not proposed to make regulations at present concerning price notices or the display (as opposed to the advertisement) of tobacco products in places where they are offered for sale.

PROPOSALS

Advertisement of tobacco products in shops and other places where tobacco products are sold from a fixed point, including hospitality venues such as pubs, clubs and bars

At point of transaction

33. Tobacco products are normally displayed for sale in a gantry. In this document the word gantry is used to mean a fixed unit in a place where it can be seen, but not accessed, by customers and which is primarily used and specifically manufactured for the display of tobacco products to customers. Many gantries display conspicuous branded advertisements for a particular tobacco product.
34. It is proposed that some advertising on gantries be allowed to continue, but that the size of such advertising be restricted. The details of this will be determined following comments received during the consultation period. One possibility would be to stipulate the maximum area of advertising allowed on gantries in any one place of sale. Possibly only one advertisement would be allowed or alternatively a number of

advertisements provided the total area did not exceed the prescribed size. Another option might be to allow only pictures of the products on sale, each picture being no larger than the unit packet containing that product. It is proposed that any advertisement will have to indicate a health warning of a size to be prescribed.

35. Other information on gantries and any other place where the products are displayed prior to sale should simply be a notice stating the product available and its price. Also, tobacco products may not be displayed in a format which in itself constitutes an advertisement – for example if there were a brand of cigarettes called “Xerxes” the packets could not be arranged in the shape of the letter “X”.

Elsewhere within premises and in windows

36. It is proposed that all advertising will be prohibited (eg “Open/Closed” signs, mats on counters or clocks incorporating branding).
37. Under the Voluntary Agreement on Tobacco Products’ Advertising and Promotion all branded external permanent advertising material should have been removed from shop fronts by 31 December 1996. Unbranded generic signs indicating the fact that, or the location where, tobacco products are sold do not constitute a tobacco advertisement and will not be affected.
38. Each retail outlet selling tobacco products can display lists of products and prices. There should be no pictures or any indication of special offers or price cuts on particular brands, as these will constitute an advertisement.

Application of regulations to specialist tobacconists

39. If the Tobacco Advertising and Promotion Bill is enacted in its current form, specialist tobacconists will be allowed to advertise cigars, pipe tobacco and snuff (but not cigarettes and hand-rolling tobacco) in their shops and on the immediate outside of their shops. A specialist tobacconist is defined as a shop selling tobacco products by retail (whether or not it also sells other things) more than half of whose sales on the premises in question (measured by sale price), taken year by year, derive from the sale of cigars, snuff, pipe tobacco and smoking accessories. Specialist tobacconists will be subject to the same regulations as other shops in respect of the advertising of cigarettes and hand-rolling tobacco.

Advertisements on internet sale sites

40. The Government and devolved administrations do not wish to prevent the sale of tobacco products from websites. However, all points of sale must be treated in the same way to avoid discrimination and to protect people from exposure to tobacco advertisements. Accordingly, it is necessary to regulate tobacco advertising on such sites.
41. Home pages of websites should not show any tobacco advertisements. Only pages within the site, accessed from the home page, may show these and these should be confined to a picture of the products offered for sale with information on price and packet size. This is to ensure that only those people with the intention of buying tobacco products should be confronted with tobacco advertising. This will not stop for example the websites of specialist tobacconists displaying a list of prices and providing factual information about the background and characteristics of particular cigar brands.

Vending Machines

42. Branded advertisements on vending machines are presently used as a way of promoting particular tobacco products. The Government and devolved administrations do not wish to force machines to be redesigned but believe that existing machines could be adapted to remove branded advertising and to restrict information regarding tobacco products on vending machines to what is necessary to allow customers to make their purchases.
43. It is proposed that the only advertising allowed on vending machines will be a picture of the packets available therein no larger than the actual pack size. This would allow people to see what they were getting before making the purchase.

Sales from Mobile Units on Airplanes and Ferries

44. It is proposed that a plain notice of products and prices can be displayed or presented to travellers. Such a list does not constitute an advertisement. However it is proposed that photographs of the products available will not be allowed in those magazines and similar publications which indicate what products are on offer.

Other mobile points of sale

45. It is proposed that only plain lists of products and prices be allowed.

Partial Regulatory Impact Assessment

Risks involved

46. The regulations would permit the sale of a legal product to continue whilst preventing advertising increasing sales and thereby the risk to public health. There is a balance to be struck.

Benefits of these regulations

47. The Government and devolved administrations expect that the impact of the Tobacco Advertising and Promotion Bill will be to reduce the consumption of tobacco products by about 2.5 % in the longer term. It would be extremely difficult to isolate the effect of restrictions of advertising at point of sale, but the evidence is that comprehensive bans on tobacco advertising and promotion work and that less comprehensive bans do not.

Cost of these regulations

Retailers

48. It is difficult to quote costs to retailers with any accuracy at present, although it may be possible to adapt some gantries can be adapted to remove or conceal any advertising which is not permitted without too much difficulty. It is likely that retailers with branded material elsewhere in the shop, such as clocks or “Open/Closed” signs, will be able to obtain these from the manufacturers of other products. The Department of Health will continue to work with the DTI Small Business Service to ensure that the impact on small businesses is properly assessed.

Vending Machines

49. Again, it is difficult to quantify costs to the vending machine sector at present. There may however be some loss of revenue if branded advertisements are not allowed on machines.

Compliance issues

50. The Bill provides for Local Trading Standards Officers (Environmental Health Officers in Northern Ireland) to monitor compliance and ensure enforcement of the regulations. There is a reserve power under clause 13 for the appropriate Minister to discharge the duty of enforcement or take over the conduct of proceedings.

Implementation

51. It is proposed that these regulations will come into force no less than five months after such date as Royal Assent is given to the Tobacco Advertising and Promotion Bill.

Summary of costs and benefits

52. It is impossible to isolate the impact of providing limited advertising at point of sale per se from the overall benefits of banning tobacco advertising and promotion. Limited advertising will permit information to be conveyed to consumers who wish to purchase tobacco products, as is their right, whilst reducing to a minimum advertising which is aimed at encouraging greater consumption. The costs of complying should in general be very limited for the average business.

Branding – Consultation Document and Regulatory Impact Assessment

KEY POINTS

Subject to the results of this consultation the UK Government and devolved administrations intend:

To prohibit the use of tobacco branding for non-tobacco goods, or vice versa, where the purpose or effect of such use is to promote a tobacco product, with certain limited exemptions. A transitional period of 18 months is envisaged before the regulations come into force.

Consultees may wish to comment on the costs and benefits of the proposals and on the following points in particular:

(i) The Government and devolved administrations believe that there should be a general prohibition on the shared use of names, emblems and other features between tobacco and non-tobacco products where the purpose or effect is to promote a tobacco product (Paragraph 70 et seq)

(ii) The Government and devolved administrations believe that there should be an exception allowing the continued use of existing non-tobacco products with a name or other feature which is the same or similar to that of a tobacco product, even where it has the effect of promoting a tobacco product where the use for the non-tobacco product pre-dated that of the tobacco product and where there is no intention of promoting a tobacco product (Paragraph 78)

(iii) The Government and devolved administrations believe that there should be a transitional period of 18 months before the Regulations come into effect (Paragraph 82)

53. The Government and devolved administrations intend to prohibit all forms of tobacco advertising and promotion, with certain limited exceptions. This means that all displays of tobacco branding would be caught by the ban, unless they fall under one of the exclusions.
54. Once in force, the Bill would enable the Secretary of State to make regulations to prohibit and restrict the use in connection with any service or product (other than a tobacco product) of any name, emblem or other feature of a description specified in the regulations which is the same as, or similar to, a name, emblem or other feature so specified which is connected with a tobacco product, and vice versa (*Clause 11(1)(a)&(b)*), i.e., brandsharing. Regulations would only impact upon brandsharing whose purpose and/or effect was to promote a tobacco product (*Clause 11(2)*). A person contravening a prohibition or restriction contained in regulations made under this section would be guilty of an offence (*Clause 11(4)*).
55. *Clause 11(3)* provides that if regulations made under this section allow for an exception, then that exception may also apply to offences under other sections. This would mean that if the use of a branded product was allowed under the brandsharing regulations, then the advertising of that product would not fall foul of other parts of the Act. This is to avoid the situation where, for example, a company could legally trade its products but might find itself prosecuted under the advertising prohibition, because the product inadvertently had the effect of promoting a tobacco product.
56. The evidence cited for the effectiveness of an advertising ban suggests that such bans are only really effective if they are comprehensive, i.e., they cut off more or less all legal avenues for tobacco marketing and promotion.¹¹ Otherwise spending shifts from one banned area of marketing to another legal area. This points to the importance of regulating brandsharing as well.
57. There is no intention to inhibit business diversification by the tobacco industry. Such diversification is already evident: Philip Morris Companies Inc. has three main businesses: tobacco (Philip Morris), beer (Miller – although recent reports suggest that this is to be sold off) and food (Kraft). Here there is nothing to link the other two business sectors to the tobacco sector.

¹¹ See, eg, The World Bank. *Curbing the Epidemic: Governments and the Economics of Tobacco Control*. Washington DC: The World Bank, 1999. Page 50.

58. What is contentious is the use of tobacco branding on non-tobacco goods, so that the brand values of the tobacco brand are transferred to the other product. The tobacco brand's existing reputation helps to build quickly consumer trust and goodwill. Probably the best-known examples of this in the UK have been Camel boots and clothing and Marlboro Classic clothing.¹²
59. Critics of brandsharing (or 'brandstretching' as it is sometimes called) point out that by transferring tobacco branding into a new but complementary field (eg clothing) the tobacco brand gains high profile and freedom from regulation (eg there are no requirements for health warnings). The tobacco industry and brand diversification companies argue that this is genuine business diversification. But the critics of brandsharing argue that for brandsharing to work at all there must be a symbiotic relationship between the tobacco product and the non-tobacco product. If the new product does not complement the parent product then consumer trust and goodwill will not exist and the venture will not work. Conversely, if there is a complementary relationship, both tobacco product and non-tobacco product will benefit. They point to evidence that countries which introduced early bans on direct advertising, such as Norway, Finland and France, later also banned indirect advertising when advertising for brandshared products appeared.
60. The brand diversification industry could argue that, regardless of the origins of a new brand, over time it develops its own associations and impact quite separate from that of a tobacco product. So the question is, what degree of similarity to a tobacco product can be acceptable.
61. The Tobacco Advertising and Promotion Bill, if enacted in its present form, would allow regulations controlling brandsharing whose purpose or effect is to promote a tobacco product. Documents obtained from the tobacco industry suggest that the intention of brandsharing has been to promote tobacco products. For example a BAT internal document from 1979 states:

“Opportunities should be explored by all companies to find non-tobacco products and other services which can be used to communicate the brand or house name, together with their essential visual identifiers. This is likely to be a long-term and costly operation, but the principle is to ensure that tobacco lines can be effectively publicised when all direct

¹² Note that Worldwide Brands Inc. (WBI), owner of the trademark 'Camel', renamed the brand 'Camel Active' from 2001 and that the company has no involvement with the marketing of Camel cigarettes

lines of communication are denied . . . The importance of bringing plans to fruition and initiating action well before bans or severe restrictions are imposed is absolutely vital.”¹³

62. As mentioned above, several European countries have strengthened their restrictions on tobacco advertising to cover indirect advertising. In France documents from RJ Reynolds France indicated how brandsharing was planned as a way around the Loi Evin 1991, which strengthened restrictions on tobacco advertising. These documents were made public in the Court judgement (Tribunal de Grande Instance de Paris 19 October 1998). For instance the 1993-1997 Strategic Plan for Worldwide Brands Inc, who market Camel products, described the mission of the company as being “to identify, to develop and take responsibility for diversification programmes of the brand, to increase the perception and the effect of the image of the leading brands of RJR Nabisco”¹⁴. [Unofficial translation.]

63. Another document that emerged during the French court action shows the importance attached to brandsharing by RJ Reynolds. The document notes that:

“compared with most of its competitors RJR France seems to be better prepared to face legal restrictions as a result of the greater number of logo licensing activities at its disposal (Camel Trophy watches, Camel Boots, Camel collection/shops, Winston clothes) permitting the maintenance of continuity in communicating [the] Camel and Winston [brands]”¹⁵ [RJ Reynolds Tobacco France 1992-1996 Strategic Plan, unofficial translation]

The French Court duly found WBI and several individuals guilty of breaching the Loi Evin.

¹³ See Hastings G, Aitken PP, MacKintosh AM. *From the Billboard to the Playground*. London: Cancer Research Campaign, 1993.

¹⁴ “d’identifier, développer et prendre en charge des programmes de diversification de marque qui augmenteront la perception et l’effet d’image des principales marques internationale RJRN”

¹⁵ “en comparaison avec la plupart de ses concurrents, RJR France semble mieux préparé à faire face aux nouvelles restrictions légales grâce à un plus grand nombre d’activités de licences de logo à sa disposition (Montres Camel Trophy, Camel Boots, collection/boutique Camel, vêtements Winston) permettant de maintenir une continuité dans le communication derrière Camel et Winston”

64. The process of switching resources from direct advertising on posters, billboards and in the press to indirect advertising via brandshared products is also evident in other parts of the world. In Malaysia there is a ban on direct advertising but not on indirect advertising. BAT opened the Benson and Hedges Bistro in Kuala Lumpur, advertised it heavily on television and saw its market share climb heavily as a result. A newspaper article quoted the shop's manager as follows:

“Of course this is all about keeping the Benson and Hedges brand name to the front. We advertise the Benson and Hedges Bistro on television and in the newspapers. The idea is to be smoker-friendly. Smokers associate a coffee with a cigarette. They are both drugs of a type.”¹⁶

65. A number of Philip Morris documents indicate the importance of Marlboro Classic Clothing. For example, a 1987 letter from Marlboro leisurewear to PM International says:

“We have also noticed that several PM affiliates (Switzerland, France, Scandinavia) are now strongly demanding Marlboro Classics to challenge better the local advertising restrictions”¹⁷

66. These documents and others indicate the importance attached to brandsharing by tobacco companies and brandsharing companies in circumventing tobacco advertising bans.
67. The evidence for the impact of brandsharing is less straightforward than the evidence for the impact of other aspects of tobacco advertising. However a study by the Centre for Tobacco Control Research at Strathclyde University of over 1000 11 to 15 year olds has demonstrated that awareness of brandsharing increases significantly with smoking behaviour (behaviour in this context means whether a respondent has never smoked, has ever tried smoking or is a current smoker) and that nearly one third of young smokers are aware of brandsharing. In addition, it found that 8% of young smokers owned brandshared goods and that ownership of these increased with smoking status – i.e. whether the respondent is a smoker or non-smoker. The conclusion was that

¹⁶ Nuki, P. Tobacco firms brew up coffee to beat ad ban. *Sunday Times* 18 January 1998.

¹⁷ See www.pmdocs.com doc nr 2500026042

awareness of and involvement in tobacco marketing among 15-16 year olds, including awareness of brandshared products, was associated with the probability of being a current smoker.¹⁸

68. A 1985 study examined children's perceptions and understanding of an advertisement for John Player Special Grand Prix Holidays. The research demonstrated that children found the advertisement's imagery both vivid and appealing. Importantly, they also saw the advertisement as promoting cigarettes rather than holidays.¹⁹
69. The Government and devolved administrations believe that there is evidence to make it a reasonable assumption that brandsharing does contribute to greater consumption of tobacco products. This is particularly so as far as children are concerned. There is a compelling case that brandsharing has been used in the past with the intention of promoting tobacco products and therefore an expectation that this will be the case in the future.

Proposals

70. The options are:
 - (i) to make regulations prohibiting or restricting brandsharing;
 - (ii) to leave this area unregulated

For the reasons outlined above the Government and devolved administrations believe it is right to make regulations to control brandsharing as envisaged in the current text of the Tobacco Advertising and Promotion Bill.

¹⁸ MacFadyen L, Hastings GB, MacKintosh AM. Cross sectional study of young people's awareness of and involvement with tobacco marketing. *BMJ* 2001, **322**: 513-7

¹⁹ Aitken PP, Leather DS, O'Hagan FJ. Children's Perceptions of Advertisements for Cigarettes. *Social Science and Medicine* 1985, **21**: 785-797

(i) Prohibition of Brandsharing

71. Therefore, from a date to be set out in regulations the use in connection with a non-tobacco product of any name, emblem or other feature or description which is the same or similar to the name, emblem or other feature used in connection with a tobacco product will be prohibited (with limited exceptions), if the purpose is to promote a tobacco product, or has the effect of doing so.
72. Similarly the use of any tobacco product will not be allowed if the name, emblem or other feature or description is the same or similar to the name, emblem or other feature used in connection with a non-tobacco product, if the use is intended to promote a tobacco product, or has the effect of doing so.
73. Essentially the “name, emblem or other feature” can be described as the branding of the product, good or service. Branding is the collection of features which goes towards creating a brand identity. It can include the brand name itself; any associated trademarks; visual attributes such as the shape, size, colour and typeface of the brand name, trademark and any logos or imagery associated with the product or its advertising. Indeed any attribute one might commonly associate with a product forms part of its branding for the purpose of these regulations. “Other feature” is defined in Regulation 2 of the Draft Regulations.
74. In practical terms this means that companies must take steps to ensure that the branding of tobacco and non-tobacco products is sufficiently distinct so that the use of the non-tobacco product does not have the effect of promoting the tobacco product.
75. For a successful prosecution there would have to be evidence that a company or individual used brandsharing to promote a tobacco product or evidence that shared branding had that effect. The burden of proof would be on the prosecution, i.e. it would be for the prosecution to prove beyond reasonable doubt that a company or individual was using brandsharing with the purpose of promoting a tobacco product or that the brandsharing had the effect of promoting a tobacco product. In addition regulation 4 provides that any prohibition does not apply where the person did not know and had no reason to suspect that the purpose of the use was to promote a tobacco product, and could not reasonably have foreseen that that would be its effect.

76. Where there is no intention to promote a tobacco product the key issue in practical terms is likely to be whether the branding used by tobacco and non-tobacco products is distinct. If brands are distinct they will not be caught by these regulations. Companies which have been involved in marketing brandshared goods should have been able to consider changes to the branding and names of their non-tobacco products to make them dissimilar to the branding used by tobacco products by the time the regulations come into force.
77. In general there is no intention to ban the use by non-tobacco brands of names used by tobacco companies; in many cases this would be impracticable as the name in question is also a commonly used word. However, in some cases the name in question may be so distinctive and so tied to the parent tobacco brand that the use of the same name for both products may be enough in itself to fall foul of the regulations. Certainly if names are shared, other aspects of the non-tobacco product's branding would need to be clearly distinct from that of the tobacco product.
78. There may be instances where non-tobacco goods have been traded for many years and with a similar name or other feature to those of a tobacco product, but where the two businesses are clearly distinct and where the shared name is effectively coincidental. Where a non-tobacco product uses a name, emblem or other feature which is the same as or similar to the name, emblem or other feature of a tobacco product and this use has the effect of promoting a tobacco product, the Government proposes to allow such use if:
- a) the name, emblem or other feature was used for the non-tobacco product prior to its use for the tobacco product; and
 - b) the name, emblem or other feature was first used before 1 September 2002;
 - c) the person using the name, emblem or other feature in connection with a non-tobacco product does not intend to promote a tobacco product.

(ii) Timing of Introduction

79. There are two broad options for the timing of implementing the new regime:
- (i) introduce the restrictions as soon as possible;
 - (ii) give companies affected a transitional period of perhaps 18 months.
80. The process of introducing a new branding might take a considerable period of time, perhaps 18 months or more, to allow for redesigning branding and introducing the new brand into the marketplace. This argues for option (ii). Against that, the Government entered office in May 1997 with a manifesto commitment to ban tobacco advertising and, although the EC Directive banning tobacco advertising and promotion, which included provisions on brandsharing, has been annulled, the Government has consistently reiterated its determination to introduce a comprehensive ban on tobacco advertising and promotion.
81. An extra dimension that needs to be considered here is that the regulations made under this power will have to be notified in draft to the European Commission under the Technical Standards Directive 98/34/EC, as amended by Directive 98/48/EC.²⁰ Directive 98/34/EC lays down a procedure for the provision of information in the field of technical standards and regulations and rules on information society services. The Directive is intended to help avoid creation of new technical barriers to trade within the European Community, and technical regulations that come within the scope of the Directive are required by the Commission to be notified to the European Commission. The definition of a technical standard is very broad and can include prohibitions. A minimum of three months must elapse before the Member State can proceed with the measure. This period can be increased in certain circumstances.

²⁰ The Directive requires the text of the draft Regulations to be communicated to the European Commission. The Commission will then notify other Member States. Three months must elapse before the Member State can proceed with the measure. If one or more Member States or the Commission make comments, these must be taken into account but otherwise the UK would remain free to make regulations. This three month period is increased by a further three months if the Commission or another Member State enters a detailed opinion on the draft. In cases where the Commission proposes its own legislation the period can be even further delayed.

82. The intention is to choose option (ii) in Paragraph 89 to allow businesses affected by the new regime a transitional period of 18 months between the date these Regulations are made and their coming into force. This would allow time to redesign branding and introduce the new brand into the marketplace.

Partial Regulatory Impact Assessment

(iii) Benefits of these regulations

83. The Government and devolved administrations expect that the impact of the Tobacco Advertising and Promotion Bill will be to reduce the consumption of tobacco products by about 2.5 % in the longer term.
84. Although it would be extremely difficult to isolate the impact of restrictions on brandsharing, the evidence is that comprehensive bans on tobacco advertising and promotion work, less comprehensive bans do not. Therefore restrictions on brandsharing are a key part of an effective ban and without them the overall effectiveness of the ban will be compromised.

Costs

85. Rebranding could be a costly exercise in terms of redesigning logos and ensuring that offending branding does not remain in shops. The leisure goods firm Worldwide Brands, Inc. (WBI) attempted in response to an earlier consultation to assess the cost of changing the logos for advertising for existing product ranges. A brand identity change has implications for all areas of a company's business including advertising creatives, retail design, point of sale material, stationery, branded vehicles, staff clothing, product labelling and the products themselves.
86. WBI calculated that the total cost incurred in the UK alone of a requirement to change its advertising logos would be £2,147,000. This cost is made up of Master Design Development - £170,000, advertising - £75,000, shop logos - £250,000, shop decoration - £777,000 and communicating of logo change - £875,000. In addition, WBI argued that there would be an impact on the business as a result of the potential loss of revenues due to distributor, retailer and consumer uncertainty and an additional cost to register the new trademarks and logos.

87. The provisions would apply to the trading of products as well as advertising. Manufacturing short runs of UK items only, bearing different logos to the rest of the EU would not be commercially viable. Therefore any cost estimates would have to be calculated for the EU as a whole. The cost of changing factory tooling/labelling is estimated at £800,000. However, there is an additional cost of withdrawing and replacing those products with a shelf-life of 2-4 years, such as bags and watches. Based on current ex-factory prices due to the level of product stocks and their wide distribution, these replacement costs could be in excess of £5,500,000.
88. Against this, rebranding is a process which many companies engage in perhaps every decade for a variety of reasons, only occasionally prompted by regulatory action. If anything it can be argued that the planned regulations would merely accelerate the process of rebranding.

Compliance Issue

89. It is proposed that Local Trading Standards Officers (Environmental Health Officers in Northern Ireland) should monitor compliance and ensure enforcement of the regulations, as with other aspects of the Tobacco Advertising and Promotion Bill.

Implementation

90. It is proposed, subject to the Bill being enacted, the views of consultees, the decisions of Ministers and the result of consultation under the Technical Standards Directive, that draft regulations will be laid before Parliament early in 2003. As stated above it is intended to allow a transitional period of 18 months before they come into force.

Summary of Costs and Benefits

91. It is impossible to isolate the benefits of banning brandsharing per se from the overall benefits of banning tobacco advertising and promotion. However, the Government and devolved administrations believe that the overall ban will reduce consumption by 2.5% over the longer term and save 3000 lives a year. A ban that did not include brandsharing would be less comprehensive; the evidence demonstrates that comprehensive bans work, partial bans do not. There is also plentiful evidence, as indicated above, that tobacco companies have sought to evade restrictions on direct advertising by adopting strategies such as brandsharing. In that sense restrictions on brandsharing are essential to the success of the whole ban.
92. The costs of complying could be several million pounds for a large company. However, these costs are likely to be incurred in any case over a slightly longer timescale.

Draft Regulations

Draft regulations are attached.

The Tobacco Advertising and Promotion (Brandsharing) Regulations

Citation, commencement and extent

1. These Regulations may be cited as the Tobacco Advertising and Promotion (Brandsharing) Regulations 200* and shall come into force on

Interpretation

2. In these Regulations:-

“Act” means the Tobacco Advertising and Promotion Act 2002;

“other feature” means logo, trademark, symbol, motto, print, type-face, colour or pattern of colour, picture, artwork, imagery, appearance, selling message or other indicia of product identification.

Brandsharing

3. Subject to regulation 4, the use by a person in the course of a business:
 - (a) in connection with any service or product (other than a tobacco product) of any name, emblem or other feature which is the same as, or similar to, a name, emblem or other feature which is connected with a tobacco product; or
 - (b) in connection with any tobacco product, of any name, emblem or other feature which is the same as, or similar to, a name, emblem or other feature which is connected with any service or product other than a tobacco product, is prohibited, if the purpose or effect of such use is to promote a tobacco product in the United Kingdom.

Exceptions

4. (1) The prohibitions in regulation 3 do not apply where the person:
 - (a) did not know and had no reason to suspect that the purpose of the use was to promote a tobacco product, and
 - (b) could not reasonably have foreseen that that would be its effect.

- (2) The prohibition in regulation 3(a) does not apply to a person who uses, in connection with any service or product (other than a tobacco product), a name, emblem or other feature which is the same as or similar to a name, emblem or other feature connected with a tobacco product if:
 - (a) the name, emblem or other feature was first used in connection with a service or product other than a tobacco product before it was used in connection with a tobacco product;
 - (b) the name, emblem or other feature was first so used before (1st September 2002); and
 - (c) there is no intention on the part of the person who uses the name, emblem or other feature in connection with a service or product other than a tobacco product to promote a tobacco product.

- (3) Where a person uses a name or other feature in circumstances in which the prohibition in regulation 3(a) does not apply, no offence is committed under section 2, 3, 8, 9 or 10 of the Act.