

TOBACCO ADVERTISING AND PROMOTION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 4: Advertising: Exclusions

14. This section sets out the exceptions to the advertising ban set out in sections 2 and 3.
15. *Subsection (1)(a)* deals with communications between those engaged in the sale of tobacco products. As the sale of tobacco products to adults is lawful, appropriate commercial communications are not prohibited. So long as these communications do not reach the wider public they will be excluded from the ban. Those to whom communications may be sent are defined in subsection (2).
16. *Subsection (1)(b)* allows information on tobacco products to be sent to individuals who request that information. However, this does not permit tobacco advertisements to be sent to all consumers on a database; each must individually request that information on each and every occasion. A request for information cannot be considered as a request for further information in the future.
17. *Subsection (1)(c)* deals with publications whose principal market is not the UK market which are exempted from the general ban. In the final analysis, the courts would decide the meaning of "principal market" in any particular case. Internet versions of foreign publications are also covered by this exemption. In-flight magazines are not covered by the exemption.

18 *Subsection (2)* sets out those engaged in the tobacco trade who are covered by the exemption in subsection (1)(a). It makes it clear that the exemption extends only to communications specifically directed at those who are responsible for making decisions on purchasing tobacco products as well as their managers and to those, including directors, who are responsible for the conduct of the business.
19. *Subsection (3)* provides that advertising where tobacco products are offered for sale is allowed as long as it is in accordance with regulations to be made by the Secretary of State or the Scottish Ministers. This covers shops and sales over the internet. In shops, the intention is to allow some advertising of the products around the till area, typically on a gantry in a corner shop or in a kiosk in a supermarket, but to ban the advertising material elsewhere on the premises, for example in window displays. It is intended that the regulations will also clarify how the exemption applies to sales over the internet to ensure that responsible e-commerce in this area is not hindered.
20. *Subsection (4)* provides that the regulations referred to in subsection (3)(a) may define the meaning of "place", to make clear the limit of permissible advertising; for example the place where tobacco products are sold would not mean the whole of a large supermarket.