
SCOTTISH STATUTORY INSTRUMENTS

2003 No. 80

**The Tobacco Advertising and Promotion Act 2002
(Commencement No. 4) (Scotland) (Amendment
and Transitional Provisions) Order 2003**

**Amendment of the Tobacco Advertising and Promotion Act 2002 (Commencement)
(Scotland) Order 2002**

2.—(1) The Tobacco Advertising and Promotion Act 2002 (Commencement) (Scotland) Order 2002(1) is amended as follows.

(2) The following paragraph is inserted after article 2(1):—

“(1A) In so far as it is not already in force, 12th February 2003 is the appointed day for the coming into force of section 19.”.

(3) In article 2(2) at the beginning there are inserted the words “Subject to article 3,”.

(4) For article 2(2)(b) there is substituted—

“(b) section 2, except in the case of a tobacco advertisement which is, or is to be, published, printed, devised or distributed solely—

(i) for the purposes of a distribution that is restricted to those members of the public who before 8th October 1999 requested their inclusion in such distributions; or

(ii) for the purposes of the promotion of a tobacco product in a place or on a website where tobacco products are offered for sale;”.

(5) In article 2(3)(b) for the words “not already in force” there are substituted the words “it relates to an advertisement excepted by virtue of paragraph (2)(f)”.

(6) The following article is inserted after article 2:—

“Brandsharing transitional provisions

3.—(1) Where in the course of business a person uses—

(a) 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; or

(b) in connection with any tobacco product, a 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;

the appointed days specified in article 2 for sections 2, 3, 9 and 10 do not apply during the transitional period in the circumstances specified in paragraph (2).

(2) The following circumstances are specified for the purposes of paragraph (1):—

(a) the person—

- (i) did not know and had no reason to suspect that the purpose of the use was to promote a tobacco product, and
- (ii) could not reasonably have foreseen that that would be its effect; or
- (b) the person 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 and–
 - (i) the name, emblem or other feature was first so used before 1st September 2002, and
 - (ii) 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) In this article–

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

“transitional period” means the period which begins on 14th February 2003 and ends on the day on which the first regulations made under section 11 of the Act come into force.”.