

*This Scottish Statutory Instrument has been made to correct an omission in S.S.I.2002/512 and is being issued free of charge to all known recipients of that instrument.*

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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 80 (C. 3)**

**CONSUMER PROTECTION**

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

*Made - - - - 11th February 2003*

The Scottish Ministers in exercise of the powers conferred by section 22(1) to (3) of the Tobacco Advertising and Promotion Act 2002(1) and all other powers enabling them in that behalf, hereby make the following Order:

**Citation and extent**

1.—(1) This Order may be cited as the Tobacco Advertising and Promotion Act 2002 (Commencement No. 4) (Scotland) (Amendment and Transitional Provisions) Order 2003.

(2) This Order extends to Scotland only.

**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(2) 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—

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(1) 2002 c. 36; “appropriate Minister” is defined in section 21.

(2) S.S.I. 2002/512.

- (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 indication 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.”.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, which extends to Scotland only, amends the Tobacco Advertising and Promotion Act 2002 (Commencement) (Scotland) Order 2002 (“the 2002 Order”).

Article 2(2) commences section 19 of the Tobacco Advertising and Promotion Act 2002 (“the Act”) for the purposes of making Orders under that Act.

Paragraphs (3) to (5) of article 2 amend the 2002 Order so that sections 2, 3, 9 and 10 of the Act do not come into force where the transitional provisions relating to brandsharing apply. Those transitional provisions are inserted as article 3 of the 2002 Order by article 2(6) of this Order.

An equivalent order is being made for England, Wales and Northern Ireland.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

The provisions of the Tobacco Advertising and Promotion Act 2002 have been brought into force by the 2002 Order, as amended by this Order, except—

- (a) section 2 in relation to any tobacco advertisement which is, or is to be, published, printed, devised or distributed solely for the promotion of a tobacco product in a place or on a website where tobacco products are offered for sale;
- (b) sections 2, 3, 9 and 10 where the transitional provisions relating to brandsharing apply (*see* the Explanatory Note); and
- (c) section 22, which commenced on Royal Assent.