

TOBACCO ADVERTISING AND PROMOTION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 9: Prohibition of free distributions

38. This section bans any free distribution carried out in the course of a business whose purpose or effect is to promote a tobacco product. Experience elsewhere has been that where other areas of marketing are banned, the focus of tobacco marketing moves to direct marketing techniques such as free distributions, for example in clubs and bars. The effect of the section will be a ban on the giving away of branded products such as cigarette lighters so as to reduce the amount of tobacco branding on display to the public as much as possible. The section also bans the use of coupons such as the schemes whereby coupons inserted into cigarette packs are collected by customers and can later be redeemed for tobacco or other goods.
39. *Subsection (3)* allows for products to be given away free to persons in the tobacco trade for the purposes of that trade. Those persons in the tobacco trade to whom products may be given are defined in subsection (4).
40. *Subsection (4)* sets out those engaged in the tobacco trade who are covered by the exemption in subsection (3). It makes it clear that the exemption extends only to the giving of products or coupons to 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.
41. *Subsection (5)* provides a defence for someone who can adduce sufficient evidence to raise an issue that he did not know and had no reason to suspect that the purpose of the distribution was to promote a tobacco product, or that he could not reasonably have foreseen the effect of the distribution would be the promotion of a tobacco product. Once again this is a defence which could not be relied on once the effect of the distribution had been pointed out.
42. *Subsection (6)* defines "coupon". It would include, for example, tear-off strips of a cigarette packet which allows the consumer money off their next purchase.
43. *Subsections (7) and (8)* enable the Secretary of State to make regulations covering distributions at a nominal price or at a substantial discount. The intention is that this power would only be used if it emerged that products were being offered to consumers at nominal sums or at a substantial discount to promote tobacco products. For example, branded clothing might be sold for two thirds or more off the usual price. In the Government's view such a discount would amount to a substantial discount which went beyond normal marketing practice. Any such regulations would be preceded by a consultation process (and be subject to the affirmative resolution procedure).