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The Tobacco Advertising and Promotion Bill

Bill 6 of 2000-2001

The *Tobacco Advertising and Promotion Bill* was introduced in the House of Commons on 14 December 2000. The main aim of the Bill is to control the advertising and promotion of tobacco products in the UK. This was a manifesto commitment of the Labour Government.

The Bill follows the failure of the Tobacco Advertising Directive 98/43/EC, which was adopted on 6 July 1998 but was declared unlawful by the European Court of Justice (ECJ) on 5 October 2000. The Directive had required Member States to phase out tobacco advertising, including promotion and sponsorship, in its entirety by 1 October 2006. On the day of the ECJ ruling, the UK Government reconfirmed its manifesto commitment to introduce legislation to ban tobacco advertising and promotion.

This Research Paper looks briefly at the current regulation of tobacco advertising and promotion by voluntary agreement in the UK. It outlines the background to the annulled Directive and considers the main provisions of the *Tobacco Advertising and Promotion Bill*.

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Summary of main points

Council Directive 98/43/EC, adopted on 6 July 1998, was concerned with the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.¹ It intended to impose a staged abolition of tobacco advertising, sponsorship and promotion, resulting in a **total** ban on all tobacco advertising in the European Community by the year 2006.

The UK Labour Government had made a manifesto commitment to ban tobacco advertising in 1997. In its December 1998 White Paper, *Smoking Kills*, the Government pledged to implement the Tobacco Advertising Directive more quickly than was required under Article 6(1).² Draft *Tobacco (Prohibition of Advertising and Promotion) Regulations 1999* were subsequently published for consultation on 17 June 1999 with the intention of bringing a general ban on tobacco advertising into force in the UK on 10 December 1999.

However, following a number of legal challenges, the Directive was annulled by the ECJ on 5 October 2000. The ECJ ruled that the legal base used for the Directive (Article 100a of the EC Treaty, which deals with internal market issues) was inappropriate. This judgment was in line with the opinion of the Advocate-General given on 15 June 2000.

As a result of the Directive's annulment, the UK Government's manifesto commitment is now to be fulfilled by the *Tobacco Advertising and Promotion Bill*. The main aim of this Bill is to ban advertising and promotion (including sponsorship) of tobacco products, subject to certain limited exceptions. If passed, it will come into force on a date or dates to be appointed by the Secretary of State. According to the Department of Health, the broad intention is to implement the advertising ban within a few months of Royal Assent and the sponsorship ban by 30 July 2003, with a special extension for certain global events such as snooker and Formula One until 1 October 2006. The Bill will apply to England and Wales, Scotland and Northern Ireland.

Tobacco advertising is a wide-ranging issue. However, this Paper is concerned only with the background to, and the main provisions of, the *Tobacco Advertising and Promotion Bill*. It does not attempt to value the benefits to health afforded by a ban on tobacco advertising and promotion. Neither does it attempt to quantify the cost to business of implementing a ban.³

¹ OJ 1998 L213 p.9

² Department of Health, *Smoking Kills – A White Paper on Tobacco*, Cm 4177, December 1998

³ The Department of Health Explanatory Notes to the *Tobacco Advertising and Promotion Bill* (Bill 6 EN) estimate that the proposed ban on tobacco advertising and promotion would eventually reduce consumption of tobacco products by approximately 2.5%. Assuming this estimate is accurate, the turnover of the UK tobacco industry could be expected to fall by around £300m per annum

CONTENTS

I	Current self-regulation of tobacco advertising in the UK	7
A.	Background	7
B.	Regulation by voluntary agreements	8
	1. Voluntary Agreement on Tobacco Advertising and Promotion	8
	2. Voluntary Agreement on the Sponsorship of Sport by Tobacco Companies	10
C.	Health warnings	11
II	The EU Tobacco Advertising Directive	14
A.	Background	14
B.	Principal Provisions of the Directive	17
C.	Matters Exempted from the Directive.	18
III	UK Government policy on tobacco advertising	20
IV	Legal challenges to the Directive	24
A.	The case before the ECJ	24
B.	The case before the courts in the UK	27
V	The Tobacco Advertising and Promotions Bill	30
A.	Background	30
B.	The main provisions of the Bill	30
	1. General prohibition of tobacco advertising	31
	2. Exemptions to the general tobacco advertising ban	33
	3. Statutory defences	35
	4. Prohibition on the free distribution of tobacco products	36
	5. Prohibition on tobacco sponsorship	37
	6. Brandsharing	38

7. Enforcement	39
8. Regulation and order making powers under the Bill	41
9. Commencement	42
VI The UK overall action plan to combat smoking	43
VII Further reading	46

I Current self-regulation of tobacco advertising in the UK

A. Background

In the UK, Governments have operated voluntary agreements with the tobacco industry. These voluntary agreements currently regulate tobacco advertising and sponsorship and will remain in place until, and if, the *Tobacco Advertising and Promotion Bill* is brought into force.

Restrictions on tobacco advertising were first imposed in 1964, following the publication two years earlier of *Smoking and Health* by the Royal College of Physicians. As a result, manufacturers stopped advertising on television before 9pm, and a year later a total ban on television advertising was adopted. In 1971, the tobacco industry set up a voluntary code of advertising, to prevent cigarettes being over-glamorised, although it was not until 1975 that control of this code was transferred to an independent body, the Advertising Standards Authority [the ASA]. Radio tobacco advertising was banned following the development of commercial radio in the early 1970s. Health warnings on cigarette packets were introduced in 1971, and included information about the tar content of the particular brand after 1974. The scope and extent of tobacco advertising continued to be gradually restricted under this voluntary system for the next decade.

A new voluntary agreement on advertising and promotion was published on 9 September 1991 and revised on 1 January 1992 to reflect the requirements of the EC Directive on tobacco products labelling. The agreement was replaced in November 1992 by a new agreement in identical terms, save for an additional clause designed to ensure compliance with the *Restrictive Trade Practices Act 1976*. In May 1994, the Government and the tobacco industry agreed a new package of measures on advertising and promotion, and these formed the basis of a new voluntary agreement which was published in December 1994 and which came into effect on 1 January 1995.

In announcing this new voluntary code in May 1994, Tom Sackville, then Parliamentary Under Secretary of State for Health, stated that stricter controls were to be placed on the location, content and distribution of cigarette advertising.⁴ When challenged as to why he opposed an outright ban on tobacco advertising, he explained:

We take the view that to seek to ban the advertising of a substance that is itself legal is wrong. We seek, therefore, to take action that is in proportion to the available evidence of the impact of advertising. That is what controls our entire policy.⁵

⁴ Department of Health Press Release 94/235, *New voluntary agreement to control tobacco advertising*, 13 May 1994

⁵ HC Deb 13 May 1994 vol 243 c520

On 31 January 1995, Iain Sproat, then Sports Minister, announced that the tobacco industry had also accepted a new voluntary agreement on the industry's sponsorship of sporting events. The new sponsorship agreement brought it into line with changes to the voluntary agreement on tobacco advertising and promotion.

B. Regulation by voluntary agreements

1. Voluntary Agreement on Tobacco Advertising and Promotion

The current voluntary agreement covers two main areas:

- (i) the content of cigarette advertisements;
- (ii) the placement of tobacco advertisements, limits on expenditure, promotional activities, the use of health warnings, and related matters.

Content of cigarette advertisements

- No advertisement should incite people to start smoking or, if they are already smokers, to increase their consumption.
- Advertisements should never suggest that smoking is safe, healthy, natural, necessary for relaxation or concentration, or popular.
- Smoking should not be associated with social, sexual, romantic or business success.
- Advertisements should not employ any approach, which is more likely to attract the attention or sympathy of those under 18.
- Humour is acceptable provided it is used with care and is not likely to have a particular appeal to the young.
- Advertisements should not associate smoking with sport or with active or outdoor games. Advertisements for sporting events sponsored by UK tobacco companies are governed separately by the voluntary agreement on sports sponsorship.

Placement of advertisements

The main rules that apply to the placement of advertisements are:

- No cigarette or hand-rolling tobacco brand advertising should be placed on posters which are smaller than a 48 sheet (120" by 240").

- No cigarette or hand-rolling tobacco advertising should be placed on the exterior of any public or private vehicles.
- No posters advertising any tobacco products should be placed within 200 metres of the front entrance of schools and other places of education for young people under 18 years of age. In addition, no poster advertising cigarettes or hand-rolling tobacco should be clearly visible from and clearly identifiable from within such establishments.
- All permanent shop-front advertising material, for all tobacco products, was to be removed by 31 December 1996. The industry should not replace this permanent material with non-permanent material that is similar in terms of its impact, its extent or coverage, or the materials used.
- No advertisements should appear in any publication aimed wholly or mainly at a readership under eighteen years of age, nor should they appear in magazines where 25 % or more of the adult readerships (aged fifteen or over) are young women between the ages of fifteen and twenty-four.
- Advertising cigarette brands or hand-rolling tobacco at cinemas or on rental or retail video cassettes is not allowed.
- Tobacco advertising is not allowed on computer games or on any other computer equipment or software.

Promotional activities

Promotional offers should be confined to adult smokers aged 18 or over. Companies will adhere to the 'Cigarette Promotion Code' and the 'Cigarette Sampling Code' which include the following:

- Companies should avoid using promotional material which will appeal more particularly to young people than to the public at large.
- All promotional letters and leaflets containing offers should bear a prominent statement that the offer is restricted to smokers aged 18 and over, and all application forms for promotional offers should require the applicant to sign a statement that he or she is a smoker aged 18 or over.
- Special care should be taken to avoid offering free samples of cigarettes or hand-rolling tobacco to non-smokers or anyone aged under 18. Where a company wishes to offer samples at an organised event, it should establish in advance that at least 70% of those expected to attend will be adults aged 18 or over.

As with other aspects of the tobacco industry's voluntary agreement, tobacco promotions are monitored by the Committee for Monitoring Agreements on Tobacco Advertising and Sponsorship (COMATAS), under an independent chair.

Health warnings

All new press and poster advertisements and shop advertising material for all tobacco products should carry a health warning. The main rules on the use of health warnings are:

- Press and poster advertisements for all tobacco products should carry the health warnings which are required by law to appear by rotation on packets. The warnings shall also be used in rotation in advertisements.
- The area of press and poster advertisements used for the health warning should be 20% for cigarette and hand-rolling tobacco brands and 10% for cigar and pipe tobacco brands.
- The presentation of warnings on cigarette and hand-rolling tobacco advertisements should be evenly rotated between white lettering on a black background and black lettering on a white background.
- New permanent promotional material (ashtrays, jugs, ice buckets and beer mats) for cigarettes and hand-rolling tobacco should also carry a general health warning.
- Advertising material in duty-free areas, airline and shipping line magazines and newspapers or magazines with more than 80% of the circulation overseas are excluded from the agreement.

2. Voluntary Agreement on the Sponsorship of Sport by Tobacco Companies

The principal features of this UK agreement are:

- Tobacco companies shall not sponsor sporting activities where the majority of the participants or of the target audience is under 18.
- The maximum amount tobacco companies can spend on promoting a sponsored event is 15% of their total sponsorship expenditure. In other words at least 85% of tobacco spending on sponsorship must go directly to the events themselves.
- All press and poster advertising for sponsored events has to carry a health warning covering 20% of the total area.
- Static promotional signs at both televised and non-televised sponsored events have to carry health warnings covering 20% of the total area.
- Cinema advertising of tobacco-sponsored events is prohibited.
- Press, poster and shop-front advertisements for sponsored events:

- must comply as far as practicable with the Cigarette Promotion Code;
 - must seek primarily to direct attention to the event and venue;
 - must not depict a cigarette or a cigarette/hand-rolling tobacco pack, nor echo any elements in the design of a cigarette/hand-rolling tobacco pack/advertisement other than the house or brand name;
 - must not depict any participants in a sport nor anybody smoking.
- Advertisements or promotional signs for tobacco-sponsored events may not be displayed within 200 metres of the front entrances of schools, except where an event is taking place at a venue within that area. In the latter case, advertisements or promotional signs may be displayed during the course of the event or for up to six weeks beforehand.
 - Television coverage of sponsored events is subject to Codes of Practice laid down by the BBC and ITC.
 - Static promotional signs at sporting events should not be located within camera sightlines for prolonged, uninterrupted periods. Signs which are likely to come within television coverage should carry only the official title of the event and a health warning.
 - There are limits on the maximum number and size of signs allowed to appear in television coverage for each type of event.
 - Brand names or symbols may not be displayed on participants and officials, nor their vehicles and equipment, if they are likely to come within the television coverage of an activity in the UK.
 - The design of the set for small arena sports should not resemble the sponsor's product, except that promotional signs may be printed in the style and colours normally associated with the sponsor's house or brand name.

The industry's adherence to both agreements is monitored by the Committee for Monitoring Agreements on Tobacco Advertising and Sponsorship (COMATAS). The Committee reports annually to the Secretary of State for Health.

C. Health warnings

All tobacco products manufactured in the European Community are required to carry health warnings of a minimum size, under two Council Directives. The first Council Directive on the labelling of tobacco products (89/622/EEC) was adopted in November 1989, and came

into force on 1 January 1992.⁶ All unit packages of tobacco products must show the general warning "**Tobacco seriously damages health**" on their most visible surface; cigarette packets must show a specific warning chosen from a list attached to the Directive. In the case of cigarettes the warning has to cover at least 4% of the surface on which it is printed. (However, Member States have the option to go further and the UK has opted for the warning to cover at least 6% of the surface of the pack).

This Directive was amended in May 1992 by a second Directive (92/41/EEC), that extended the list of specific warnings to all other tobacco products.⁷ The deadline for implementing this amending legislation was 1 January 1994. Rolling tobacco, other smoking tobacco products and smokeless tobacco products are all required to carry health warnings to cover at least 1% of the packet. Tobacco products can be imported into the EC provided they comply with the Directive, and that the health warnings, along with notice of tar and nicotine yields, appear in the relevant language of the recipient country.

Both Directives have been implemented in the UK, and the minimum standards for health warnings on tobacco products sold in the UK are now greater than those required under EC legislation. The Secretary of State implemented both EC Directives by making regulations under section 11 of the *Consumer Protection Act 1987* (the CPA 1987), which gave him the power to make safety regulations subject to the negative resolution procedure. Under section 11(2)(i) of the CPA 1987, such regulations may contain provision:

...for requiring a mark, warning or instruction or any other information relating to goods to be put on or to accompany the goods or to be used or provided in some other manner in relation to the goods, and for securing that inappropriate information is not given in relation to goods either by means of misleading marks or otherwise.

The *Tobacco Products Labelling (Safety) Regulations 1991* (SI No.1530), which implemented the first Council Directive (89/622/EEC), came into effect on 1 January 1992. Under these Regulations, all cigarette packets must carry health warnings on both the front and back of the packet, taking up 6% of the surface on which they are printed (rather than the EC mandatory 4%). Tobacco companies are required to change the warning regularly, rotating through a list of six specified warnings, to make it more likely that the warning is noticed. Notice of tar and nicotine yields must also be printed on the side of the packet (the same 6% minimum applies). These stricter Regulations also apply to any cigarette product imported into the UK from outside the European Community.⁸

The *Tobacco Products Labelling (Safety) Amendment Regulations 1993* (SI No. 1947), which implemented the second Council Directive (92/41/EEC), came into effect on 1 January 1994. Hand-rolling tobacco must now carry the same list of six warnings as

⁶ OJL 359, 19 December 1989

⁷ OJL 158, 11 June 1992

⁸ HC Deb 22 July 1991 vol 195 cc 411-2W

cigarettes; cigars, cigarillos and pipe tobacco must use a list of four warnings; smokeless tobacco is required to carry the single warning: "**Causes cancer**". These warnings have to account for at least 1.5% of the **total** surface of the packet, though the minimum set out in the Directive is 1%.

Regulation 5(2)(a) of the *Tobacco Products Labelling (Safety) Regulations 1991* states that in the case of cigarettes the general health warning shall be **printed** on the packet clearly and legibly in bold letters.

Regulation 4(1)(a) of the *Tobacco Products Labelling (Safety) Amendment Regulations 1993* states that the general warning on tobacco products other than cigarettes (e.g. cigars, cigarillos, pipe tobacco and smokeless tobacco products) "**shall be printed on, or irremovably affixed to, each packet**". For the purposes of these Regulations, the term 'packet' is taken to mean any box, package, container or other receptacle that contains the tobacco product.

Health warnings on tobacco products are closely monitored by both the Department of Health and COMATAS.

The European Commission has been trying to increase the impact of health warnings. On 16 November 1999, the Commission adopted a proposal for a "Directive on the approximation of the laws, regulations and administrative provisions of Member States concerning the manufacture, presentation and sale of tobacco products".⁹ On 14 June 2000, the European Parliament approved, subject to some 44 amendments, this proposal. The Commission amended its proposal, which was subsequently approved by the European Parliament on second reading on 13 December 2000. This revised draft Directive includes provisions to:

- use graphic images of smoking-related diseases on cigarette packets;
- increase the size of health warnings on cigarette packets to 30% of the surface area of the front of a pack and 40% of the back (an increase on the current percentage of 4%);
- print health warnings in black on a white background (as opposed to the current system which requires only 'contrasting colours');
- restrict the use of terms like 'mild' and 'light' to describe cigarettes; and
- introduce stricter limits on tar and nicotine content.

However, on 14 December 2000, EU health ministers failed to endorse these provisions and the draft Directive has been sent back to a conciliation committee made up of the European Council and Parliament for further consideration.

II The EU Tobacco Advertising Directive

This section considers the EU Tobacco Advertising Directive 98/43/EC.

Initially the Labour Government proposed to fulfil its manifesto commitment to ban tobacco advertising through implementing this Directive. However, the Directive was declared unlawful by the European Court of Justice (ECJ) on 5 October 2000 on the grounds of an incorrect legal (treaty) base. This made the draft *Tobacco (Prohibition of Advertising and Promotion) Regulations 1999* already published in the UK, redundant. As a result, the Government's manifesto commitment is now to be fulfilled by the *Tobacco Advertising and Promotion Bill*. However, the significance of this Bill can only be properly assessed in the context of the failed Directive. This is particularly the case since many of the Bill's provisions are similar in purpose and effect to provisions of the annulled Directive.

A. Background

Council Directive 98/43/EC was concerned with the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.¹⁰ Adopted on 6 July 1998, the Directive required all Member States to introduce legislation to phase out tobacco advertising, promotion and sponsorship, in their entirety by 1 October 2006.

The passage of the Directive from its initial proposal by the European Commission in 1989, through its adoption in July 1998, to its annulment on 5 October 2000 has been long drawn out. Its history is briefly outlined below.

A proposal for a Directive to ban advertising for tobacco products in publications intended for young people under eighteen and to restrict the advertising of tobacco products in the general press and by means of bills and posters was first published by the European Commission on 18 April 1989.¹¹ The Commission's proposal was amended by the European Parliament on 14 March 1990 to limit advertisements to a portrayal of the packaging only, a ban on direct advertising and a standardised list of health warnings.

On 6 June 1991, the European Commission introduced a modified proposal, which fully took into account the views expressed by the European Parliament. However, a blocking minority in the Council of Ministers precluded progress. The proposal was for a Directive to be introduced on the basis of Article 100a of the EC Treaty, which is directed towards removing barriers to trade and the completion of the single market. Those opposing the draft Directive argued that the proposal could not be justified on these grounds and that the measure was more accurately related to health and social policy. They rejected the

⁹ See European Parliament Document A5 - 0348/2000 Final

¹⁰ OJ 1998 L213, p 9

¹¹ EC Draft 5684/89

argument that a ban on tobacco advertising would reduce overall consumption of tobacco and argued that voluntary codes offered sufficient protection.

On 11 February 1992, the European Parliament voted at First Reading in favour of the revised Tobacco Advertising Directive. However, the blocking minority in the Health Council (which always included Germany, the Netherlands and the UK) prevented any further progress during 1992-1996.

The situation changed in January 1995, because two of the three new states joining the Community, Finland and Sweden, had already implemented bans on tobacco advertising. The UK election in May 1997 of a new Labour Government, in support of an overall ban on tobacco advertising and sponsorship, raised the possibility that the EU draft directive blocked for six years would now be implemented. A switch of vote by the UK would enhance the prospect of obtaining the necessary majority for the draft Directive to be passed to the European Parliament for a second reading.

Consequently, negotiations among officials gained new momentum during the middle of 1997. Tessa Jowell, UK Health Minister, expressed concern about the tobacco sponsorship of sports and arts events being banned immediately preferring the phased withdrawal of tobacco sponsorship while indicating basic support for the Directive.¹²

In September 1997, the Luxembourg Presidency of the EU produced a compromise document to try to address the concerns of those countries opposing the Directive.¹³ For example, it was suggested that sponsorship could be banned alongside other forms of tobacco advertising, but any Member State might maintain a three-year grace period.

At a meeting of the Council Working Party on Health, the compromise proposals were examined and the UK representative apparently indicated the willingness of the UK Government to accept the compromise text.¹⁴ However, the subsequent announcement by the UK Government that it wanted to allow the sport of Formula One a permanent exception from the sponsorship ban led to speculation that the Directive would fail.¹⁵ The UK Government confirmed its policy and the reasons behind it in a written answer from Tony Banks, then Minister for Sport:

We are looking very carefully at how best to achieve an end to the advertising and promotion of tobacco at sports events in a way which will minimise any damage to the sports concerned. Discussions are underway within Government on how best to achieve this and I am consulting the sports concerned. Plans include a transitional period. The Government will publish a White Paper next year setting out measures to tackle tobacco consumption.

¹² "Strong Signals on Smoking", *Financial Times*, 14 July 1997

¹³ *European Report* No. 2248, 6 September 1997, Section IV, p.9

¹⁴ *European Report* No. 2250 13 September 1997, Section IV, p. 3

¹⁵ "Tobacco ban strategy spins off the track", *Financial Times*, 6 November 1997

After considering the issue of sponsorship in great depth the Government has proposed excluding Formula One from the scope of the proposed EU Directive on tobacco advertising and sponsorship which is currently being negotiated. We have always made clear that we are pursuing twin objectives of reducing smoking and of safeguarding sport from any effects arising from the loss of tobacco sponsorship. The fact is that a blanket Europe-wide ban on Formula One sponsorship would not only mean fewer Grand Prix in Europe but also perversely, more tobacco advertising on our TV screens beamed in from events outside the European Union.¹⁶

The UK Government was also concerned about prospective job losses if Formula One moved outside the EU to overcome a ban on tobacco sponsorship.

The press linked the Government's position to a £1 million donation to Labour Party funds from Bernie Ecclestone, Head of Formula One Construction. To avoid any appearance of a conflict of interest, the Labour Party donated the £1 million to charity.¹⁷

On 4 December 1997, a common position text on a draft Directive to ban tobacco advertising was agreed at the Council of Health Ministers Meeting. The ban was approved by 11 of the 15 EU countries (the narrowest margin possible under qualified majority rules). Germany and Austria opposed the Directive and Spain and Denmark abstained. Under this Directive, tobacco sponsorship of Formula One would be ended by the year 2006.

On 16 April 1998, the Legal Affairs and Economic & Monetary Committees of the European Parliament announced that the EU's decision to implement a Directive to phase out tobacco advertising had 'no legal basis' under the EU constitution. However, on 22 April 1998, the lead committee examining the Directive for the European Parliament, the Environment Committee, supported the advice of its Rapporteur, M. Christian Cabrol, and voted to recommend no amendments to the Council's Common Position. This formed the basis of the Committee's advice to the plenary session of the Parliament.

When the European Parliament met to consider the Directive there were a total of 65 proposed amendments, which, had they been successful, would have triggered the Conciliation Process (a process for resolving disputes between the Parliament and Council of Ministers). However, on 13 May 1998, the European Parliament approved the Directive without amendment. The European Parliament voted to support the common position of the Council. Voting was 314 in support of the Directive, 211 against and 25 abstentions.

¹⁶ HC Deb 11 November 1997 vol 300 cc 467-8W

¹⁷ "Labour to give Ecclestone's £1m to cancer charity", *Guardian*, 24 November 1997 and "MPs renew attacks on Health Minister in F1 row", *Guardian*, 28 November 1997

Directive 98/43/EC was adopted by the European Union Council of Ministers and was published in the Official Journal on 30 July 1998.¹⁸ Germany and Austria voted against the ban; Denmark and Spain abstained.

Following legal challenges, the Directive was subsequently annulled by the ECJ on 5 October 2000 [See Section IV below].

B. Principal Provisions of the Directive

Directive 98/43/EC required Member States to introduce legislation to phase out tobacco advertising, including promotion and sponsorship. Under Article 2.1 the effect of the Directive was to provide a total ban on advertising and sponsorship by 1 October 2006.

The scope of the ban was very broad. Under Article 2.2, the Directive would have applied to all forms of commercial communication or of sponsorship with the direct or indirect effect of promoting a tobacco product, including the use of symbols without a product name. The aim was to ban in the Community all forms of tobacco advertising and sponsorship, including advertising which, while not specifically mentioning the tobacco product, tried to circumvent the advertising ban by using brand names, trademarks, emblems or other distinctive feature of tobacco products.

However, there were defined exemptions (see below). There was also scope for introducing tougher, broader and faster legislation at the national level.

The Directive stipulated the following timetable for its implementation:

- 1) By the end of 30 July 2001 - a ban on tobacco advertising and promotion except in print media (e.g. cinema and billboard advertising banned).
- 2) By the end of 30 July 2002 – a ban on all tobacco advertising in print media (e.g. newspapers and magazines).
- 3) By the end of 30 July 2003 – a ban on all tobacco sponsorship except for specified global events nominated by Member States allowed to continue as special cases.
- 4) By 1 October 2006 – tobacco sponsorship of events organised at global level must end.

Under Article 6, the final date by which the Directive had to be implemented in its entirety was 1 October 2006, although Member States were free to implement any part of the Directive on a faster time-scale.

¹⁸ OJL 213, 30 July 1998

The EC Directive contained provisions that would have made it illegal to advertise tobacco products indirectly using other products (i.e. brand sharing). Article 3.2 of the Directive permitted tobacco product names already in use prior to 30 July 1998 by other products to continue to be so used, provided that their appearance was clearly distinct from the use for the tobacco product. However, no new tobacco product was to carry the name or branding features of a non-tobacco product. Article 3.3 stipulated that any new non-tobacco products carrying tobacco names must have their names and branding features clearly distinguished from the tobacco products. Under Article 3.4, tobacco companies were also banned from giving out free cigarettes to promote their brand.

C. Matters Exempted from the Directive.

Article 3.5 of the Directive contained the following exemptions to the total ban on advertising and sponsorship:

(i) Internal tobacco trade communications

The Directive would not have applied to communications intended exclusively for professionals in the tobacco trade.

(ii) Display and pricing of tobacco products at tobacco sales outlets

The Directive would not have applied to the presentation of tobacco products offered at 'point of sale' and the indication of their prices at tobacco sales outlets.

(iii) Advertising aimed at purchasers in establishments specialising in the sale of tobacco products and on their shop fronts

This provision aimed to protect small specialist tobacco retailers.

(iv) Advertising aimed at purchasers at locations reserved for the sale of tobacco products in establishments selling a variety of goods and services

The UK Government intended to define the extent of this exemption in its own regulations, effectively limiting it to what takes place on the stock display unit.

(v) Sale of publications containing advertising for tobacco products that are produced outside the EU and are not primarily intended for the EU market

This provision was designed to allow magazines to be imported from outside the EU even though they may contain tobacco advertising, but to preclude the creation and importation of such magazines carrying tobacco advertising intended to circumvent the Directive.

Article 3 required all Member States to ensure that there were adequate and effective means to implement and monitor the application of the Directive. However, Article 5 allowed

Member States to implement stricter measures on tobacco advertising, if they judged this to be necessary on public health grounds.

III UK Government policy on tobacco advertising

The Labour Party had made a commitment in its election manifesto to take action to ban tobacco advertising:

Smoking is the greatest single cause of preventable illness and premature death in the UK. We will therefore ban tobacco advertising.¹⁹

To this end, it had announced during the Queen's Speech on 14 May 1997, that a White Paper would be published outlining proposals to reduce tobacco consumption, including legislation to ban tobacco advertising.²⁰

Speaking on the day of the Queen's Speech, Tessa Jowell, then Minister of State for Public Health, gave details of the Government's planned approach to reduce the number of tobacco related deaths. She said:

Firstly, let me be completely clear about one thing: the Government is fully committed to banning tobacco advertising. This is an essential first step in building an effective strategy to deal with smoking.

But controlling tobacco consumption requires a much wider range of measures if we are to have a real impact and see a significant and lasting reduction. We need to explore and assess the full range of possible measures which might augment a ban on advertising to reduce tobacco consumption. This is a major exercise which I take very seriously. I am therefore calling together a high level seminar of British and international experts in the field of smoking reduction. The seminar will examine all the avenues which might be of practical value in reducing the number of smokers and the incidence of smoking-related diseases and premature death. The results of the seminar will inform Government policy which will then be set out in a White Paper on our strategy to reduce smoking.

At the same time, we will be drafting legislation to ban tobacco advertising. There are some complex issues here, including the use of sports sponsorship as a way of advertising tobacco brands. We will need to look carefully at how to remove tobacco advertising from sporting events without creating any risk to those events in the UK.²¹

On the same day, the Department of Health held its international anti-smoking seminar. The Government drew the lesson that an end to tobacco advertising was the cornerstone of any effective policy to reduce tobacco consumption:

¹⁹ Labour Party Manifesto, *New Labour because Britain deserves better*, 1997

²⁰ Her Majesty's Most Gracious Speech to Both Houses of Parliament, 14 May 1997, page 2

²¹ Department of Health Press Release 97\094, *Government fully committed to banning tobacco advertising - Tessa Jowell*, 14 May 1997

The key message was that to make a lasting impact on smoking, we would need a wide and integrated range of measures. An end to tobacco advertising should be the cornerstone of any strategy, and be as broad as possible, including sponsorship and other forms of tobacco promotion. Any other measures we took would not work as well if they had to compete with stylish and powerful tobacco advertising. Without a range of further measures, ending tobacco advertising would not deliver a large enough impact on the problem.²²

On 13 May 1998, speaking after the European Parliament had supported the common position on the Directive, Tessa Jowell said:

The common position agreed at the 4 December Health Council, is a practical compromise which takes into account the different key interests of Member States. The European Parliament's decision today is an emphatic endorsement of the UK Government's determination to see Europe-wide action to phase out tobacco advertising.²³

After the Directive was adopted on 6 July 1998, the UK Government outlined its proposals for its implementation in *Smoking Kills - A White Paper on Tobacco*, published on 10 December 1998.

On 17 June 1999, the Department of Health published for consultation the *Draft Tobacco (Prohibition of Advertising and Promotion) Regulations 1999*.²⁴ Although under Article 6, Member States were not required to comply with the Directive until 30 July 2001, the draft Regulations sought to implement the Directive with effect from 10 December 1999, even though the validity of the Directive was being challenged in the ECJ.

The draft Regulations proposed:

- all general tobacco advertising in shops and newsagents (except price lists and behind the counter stock display units) to be banned from 10 December 1999;
- all forms of direct and indirect tobacco advertising on billboards, in newspapers and in magazines to be banned from 10 December 1999;
- virtually all tobacco sponsorship to be banned from 30 July 2003;
- exceptional global events with a high dependency on tobacco sponsorship (such as Formula One motor racing) to be granted an additional 3 years in which to end tobacco sponsorship, but only if they cut tobacco advertising and sponsorship by

²² Department of Health, *Smoking kills – A White Paper on Tobacco*, Cm 4177, December 1998, page 14

²³ Department of Health Press Release 98\181, *European Parliament gives go-ahead to tobacco advertising ban*, 13 May 1998

²⁴ Department of Health Press Release 1999\0358, *Tobacco advertising to end by December*, 17 June 1999

at least a fifth in each of those 3 years (in any event, all tobacco sponsorship must end on 1 October 2006);

- to allow existing brand sharing to continue, provided distinctness criteria were met; and
- to exempt trade communications; the prices and presentation of products at the point of sale; advertising on stock display units; advertising in specialist retailers and advertising in third country publications from the ban.

In effect, the draft Regulations would have implemented early a general ban on tobacco advertising and promotion on 10 December 1999. However, since Formula One motor racing fell within the definition of a global sporting event, under the draft Regulations it would have been given the extra time allowed under the Directive to phase out tobacco sponsorship. The Government explained this decision on the basis that:

..Formula One is a single competition spread across a large number of countries. So legal regulation of it is a much more complex proposal.

Formula One is believed to depend on around £35 million a year from sponsorship in the UK and around £100 million worldwide, a major part of which will be from the tobacco industry. It is simply not realistic to assume that this scale of investment can automatically be replaced for all teams within the general period allowed for sports generally.

That is why we argued along with other EU member states for a clause in the Directive which would allow individual member states to continue to authorise existing sponsorship of global events for three years more than other sporting events in exceptional cases. In allowing this, the Directive requires the sums involved in the sponsorship to diminish over the extended period and that the visible advertising also reduces. So in order to be eligible for a longer period of adjustment until 2006 Formula One racing will have to demonstrate by 2003 at the latest that it is complying with these requirements.²⁵

Consultation on the draft Regulations ended on 13 August 1999. On 11 October 1999, the Department of Health announced the following ministerial changes to the draft Regulations:

Ministers have considered the responses very carefully with a view to minimising the effect of the regulations on business as far as possible. They have today agreed a number of transitional provisions to the regulations. These provisions will give affected companies more time to make the necessary changes.

The principal transitional arrangements are as follows:

²⁵ Department of Health, *Smoking Kills – A White Paper on Tobacco*, Cm 4177, December 1998

- (i) direct marketing: current direct marketing contracts will be allowed to continue until the end of the contract, or 1 July 2000, whichever is the sooner;
- (ii) in-pack promotion schemes: customers will be able to redeem coupons contained in cigarette packs until 1 July 2000;
- (iii) retail outlets: retail outlets will be given until 10 March 2000 to make any necessary changes to their premises to abide by the ban;
- (iv) brandsharing: companies producing products which shared branding with tobacco products in good faith before 30 July 1998 will be given until 30 July 2001 to ensure that their branding is distinct;
- (v) EU publications: EU publications carrying tobacco advertising may be sold in the UK until July 2002, subject to a maximum UK circulation.
- (vi) in-flight magazines carrying tobacco advertising on flights operated by non-EU airlines: these publications will be granted the maximum time allowable under the Directive, namely until July 2002.

We will keep enforcement arrangements under review to ensure that enforcement is effective and adequately resourced. In particular, we plan to grant the Secretary of State powers of enforcement in addition to routine enforcement by Trading Standards Officers.²⁶

Frank Dobson, then Secretary of State for Health, stressed that the transitional arrangements were a sensible compromise between the health benefits that the ban would bring and the legitimate concerns of industry.²⁷

In any event, the draft Regulations became redundant on 5 October 2000 when, following various legal challenges, the tobacco advertising Directive was annulled by the ECJ. [See section IV below].

²⁶ Department of Health press release 1999/0606, *Department of Health Announces Final Decisions on Regulations to Ban Tobacco Advertising*, 11 October 1999

²⁷ Department of Health press release 1999/0609, *Dobson Comments on Tobacco Advertising Ban*, 11 October 1999

IV Legal challenges to the Directive

Immediately after Directive 98/43/EC was adopted, its legality was challenged before the ECJ by tobacco companies, other trading companies and by the German Government.²⁸ They all sought the Directive's annulment. In the UK, tobacco companies also challenged in the courts the Government's plans to implement the Directive before the ECJ had given its ruling on the validity of the Directive.

A. The case before the ECJ

All European law has to be grounded in the treaties establishing the European Union. The preamble to the Directive states that the Tobacco Advertising Directive was adopted on the basis of Article 57(2) (now, after the Amsterdam Treaty, Article 47(2)), Article 66 (now Article 55) and Article 100a (now Article 95) of the EC Treaty.

Articles 57(2) and 66 concern respectively the freedom of establishment and the freedom to provide services. Article 100a allows the European Community to introduce harmonising measures with a view to establishing a single market without internal frontiers. Article 100a provides:

(1)...The Council shall...adopt the measures for the approximation of the provisions laid down...in member states which have as their objective the establishment and functioning of the internal market.

The legal challenges were based on the argument that in reality the Directive was intended as a public health measure and not a single market measure. It was argued that the Directive went beyond the intended scope of Article 100a of the EC Treaty. Germany (with the tobacco companies) argued that Article 129 of the Treaty (the Article on health policy) should have been used as the legal base instead. Article 129 is essentially voluntary whereas Article 100a allows mandatory harmonisation. An article in the *European Report* outlined the problem with using Article 129:

Article 129 has never been used for prescriptive legislation in the form of Regulations or Directives, as it merely calls for "co-operation" between the Member States and specifically excludes harmonisation of laws and regulations.²⁹

In the UK, on 21 September 1998, Imperial Tobacco Ltd, Gallaher Ltd, Rothmans (UK) Ltd and British American Tobacco (Investments) Ltd applied to the High Court for leave to bring judicial review proceedings challenging the validity of the Directive. On 16 December 1998, leave was granted and the High Court of Justice referred a question to the ECJ under

²⁸ Germany sought annulment of the Directive in the ECJ under Article 230 (formerly Article 173) of the EC Treaty

²⁹ *European Report* No. 2259 15 October 1997, Section IV, page 1

Article 177 (now Article 234) of the EC Treaty.³⁰ In effect, a preliminary ruling as to the validity of the Directive was sought from the ECJ.

The companies challenged the Directive on the following grounds:

- The Directive was outside the competence of the Community and had no legal basis. The Directive was introduced under Article 100a of the EC Treaty, which covers harmonisation provisions for the single market: Brussels had no authority to make a public health Directive under its powers to harmonise the internal market.
- The Directive was incompatible with the general principle of proportionality, namely it was not necessary to include a complete ban on advertising and promotion; there were less restrictive alternatives.
- The Directive was incompatible with the principle of subsidiarity. The companies claimed that the ban had nothing to do with harmonisation since tobacco marketing does not cross borders in the EU.
- Finally, it was claimed that the Directive infringed the European Convention on Human Rights – in particular, the freedom of expression and the right to property.

In summary, the companies sought a declaration from the ECJ that the Directive was illegal, violated several principles of European law and was, in fact, a health measure and not a harmonisation measure under single market provisions.

In October 1998, Germany brought proceedings for annulment of the Directive pursuant to Article 173 (now Article 230) of the EC Treaty.³¹ Germany challenged the adequacy of Articles 57(2), 66 and 100a of the EC Treaty as a legal base. Germany also challenged the Directive on the basis that a tobacco advertising ban contravened EU law and it hindered freedom of speech and the rights of companies to provide goods and services throughout the EU.

The validity of the Directive was also challenged by separate actions brought by Alma Media (Greece), Davidoff (Switzerland) and Una Film (Austria).³² Despite these legal challenges, the European Commission was determined to defend the Directive.

An assessment of the Directive by the Commission's own *European Report* concluded that the "Commission's jurists are fully satisfied that Article 100a of the EC Treaty provides a suitable platform for a Community wide ban on health grounds." The professional legal

³⁰ Case C-74/99

³¹ Case C-376/98

³² Under Article 230 of the EC Treaty

services of the European Parliament also concluded that Article 100a was an acceptable legal base.

On 15 June 2000, Advocate General Fennelly, delivered his opinion on the legality of the Directive in respect of the two cases before the ECJ: the *Federal Republic of Germany v European Parliament and Council of the European Union* and *The Queen v Secretary of State for Health and Others ex parte: Imperial Tobacco Ltd and others*.³³ In his view the Community legislature was not competent to enact the Directive. A European Court of Justice press notice summarised his reasoning:

On 6 July 1998, a European Parliament and Council Directive was adopted concerning the advertising and sponsorship of tobacco products within the European Union. The Directive provides for a wide-ranging prohibition of advertising of tobacco products and of sponsorship on behalf of tobacco products. The Directive was adopted to pursue the internal- market objective of the Treaty, by harmonising national laws which hinder trade in the Community. Differences in national rules were said to hinder trade in products and services used in tobacco advertising and sponsorship.

Both cases concern the validity of this Directive under Community law. In the first case, Germany has brought proceedings before the Court of Justice for the annulment of the Directive. In the second case, a number of tobacco manufacturers (Imperial Tobacco and others) brought proceedings in the United Kingdom for judicial review. The national court referred a question to the Court of Justice regarding the validity of the Directive.

According to Germany and the tobacco companies, the Community legislator has exceeded its powers by adopting the Directive. The two principal arguments relied upon are firstly that the Directive is in reality a measure for the protection of public health whose effect on the internal market, if any, is merely incidental; and secondly, that the Directive is not in any event a valid internal- market measure.

Advocate General Fennelly considers that the central issue is whether the internal market constitutes on its own a sustainable legal basis for the Directive. In his view, if this condition is satisfied, the fact that the Directive seeks simultaneously to protect public health is not relevant to its validity.

The Advocate General considers that the ban on tobacco advertising and sponsorship in the Directive can be described as comprehensive; it prohibits all consumer-oriented advertising by Community operators away from the point of sale. He then assesses the benefits of the Directive to the internal market. He considers that the sole effect of the Directive is to prohibit trade in goods and services to which it relates. According to the Advocate General, under

³³ Case C-376/98 and case C-74/99 respectively. The Advocate General assists the ECJ by preparing a detailed opinion of a given case.

Community law, a measure whose sole effect is to prohibit an economic activity cannot remove barriers to trade which affect that activity.

Consequently, as the advertising ban cannot be said to advance the interests of the internal market, Advocate General Fennelly concludes that the Community was not competent to enact it on the basis of the Treaty provisions cited. He proposes, therefore, that the Court annul the Directive.³⁴

On 5 October 2000, the ECJ ruled that Article 100a did not constitute the proper legal base for the Directive and it would be annulled:

The conclusion was that since, in order to adopt the directive on the basis of articles 100a, 57(2) and 66, the Community legislature could not rely on either the need to eliminate obstacles to the free movement of advertising media and the freedom to provide services, or the need to eliminate distortions of competition in the advertising or tobacco products sectors, those articles did not constitute an appropriate legal basis for the directive.

It had been noted at certain points in the judgment that a directive prohibiting certain limited forms of tobacco advertising or sponsorship could have been adopted on the basis of article 100a, but it was not possible for the court to annul the directive partially as, given the general nature of the prohibition of advertising and sponsorship of tobacco products laid down in it, that would entail amendment by the court of the directive, which was a matter for the Community legislature alone.

Accordingly the directive must be annulled in its entirety.³⁵

Whilst overturning the Directive, the ECJ acknowledged that advertising does cross national boundaries (for example, in printed publications), and that legislation prohibiting this type of advertising would be within the scope of the European Union. It is expected, therefore, that the European Commission will draft revised proposals for a Directive. In any event, the ECJ's ruling does not prevent member States from bringing in their own domestic legislation to ban tobacco advertising.³⁶

B. The case before the courts in the UK

The UK Government's plan to implement the Tobacco Advertising Directive to a much quicker timetable than was required under Article 6(1), and before the ECJ had given its ruling on the legality of the Directive, was challenged in the Courts.³⁷

³⁴ European Court of Justice press release No. 45/00, <http://europa.eu.int/cj/en/cp/aff/cp0045en.htm>

³⁵ "Tobacco advertising ban had no legal basis – Case C-376/98", *Times Law Report*, 10 October 2000

³⁶ Indeed, France, Finland, Norway and Sweden have already banned tobacco advertising

³⁷ Department of Health, *Smoking Kills – A White Paper on Tobacco*, Cm 4177, December 1998

On 29 October 1999, four tobacco companies were successful in obtaining a High Court injunction against the UK Government.³⁸ This injunction prevented the Government from laying regulations before Parliament to implement the Directive (with effect from 10 December 1999), until the ECJ had ruled on the validity of the Directive.³⁹ However, Mr Justice Turner gave the Government leave to appeal against this decision in the Court of Appeal.

Responding to this High Court ruling, Alan Milburn, Secretary of State for Health, said:

I am appalled that the tobacco companies are trying to undermine a clear manifesto commitment for which there is such widespread public support.

We and the majority of European Member States support the Directive and are convinced of its validity. The legal obligation to implement the Directive remains. We are appealing against this judgment.

The tobacco industry was prepared to offer a voluntary ban on press and poster advertising by the end of this year. In the meantime, I expect to see them honour this offer. We remain resolute in our plans to introduce the ban.⁴⁰

On 16 December 1999, the Court of Appeal over-turned the decision of the High Court by ruling two-to-one in favour of the Government. The Court of Appeal held that:

..the tobacco companies had a strongly arguable case that the Directive was invalid. However, the UK Government should not be restrained from making regulations implementing the Directive until its validity had been determined by the Court of Justice of the European Communities since such an injunction would interfere with the Government's freedom to legislate as it considered appropriate in the important area of public health.⁴¹

However, the Court of Appeal upheld the injunction granted to the tobacco firms pending the companies petitioning the House of Lords for permission to appeal against its judgment.⁴²

After the Court of Appeal ruling, Alan Milburn, Secretary of State for Health, said:

³⁸ The four tobacco companies were Imperial Tobacco Ltd, Gallagher Ltd, Rothmans (UK) Ltd, and British American Tobacco (Investments) Ltd

³⁹ *R v (1) Secretary of State for Health (2) Secretary of State for Trade & Industry (3) HM Attorney-General (Respondents), Ex Parte (1) Imperial Tobacco Ltd (2) Gallagher Ltd (3) Rothmans (UK) Ltd (4) British American Tobacco (Investments) Ltd (Applicants)* QBD Crown Office List (Turner J), 29 October 1999

⁴⁰ Department of Health press notice 1999/0640, *Government to appeal tobacco ban judgment*, 29 October 1999

⁴¹ "Court cannot presume invalidity of tobacco advertising Directive", *Times Law Report*, 17 December 1999

This is a victory for public health. Banning tobacco advertising is widely supported both by the public and by the medical profession. Now we have the backing of the courts.

Introducing a ban on tobacco advertising is one of our manifesto pledges. I am delighted that the Court of Appeal has confirmed our right to do so. Evidence shows that banning tobacco advertising reduces death and disease caused by smoking. Banning tobacco advertising is part of our battle against cancer and coronary heart disease.⁴³

The House of Lords granted the tobacco companies leave to appeal and a full hearing was held in May 2000. However, before the House of Lords could give its formal ruling in this matter, the ECJ ruled on 5 October 2000 that the Directive was adopted on the wrong legal base and should be annulled.⁴⁴ The UK Government's response was to announce its intention to introduce primary legislation to deliver its manifesto commitment to ban tobacco advertising.⁴⁵

⁴² *Regina v Secretary of State for Health and Others, Ex parte Imperial Tobacco Ltd and others*, 16 December 1999

⁴³ Department of Health press notice 1999/0765, *Tobacco advertising ban upheld by Court of Appeal*, 16 December 1999

⁴⁴ "Reference required if Directive order sought", *Times Law report*, 20 December 2000. In fact, the House of Lords gave its ruling in December 2000, when it held that a reference to the ECJ would be required to establish whether domestic or Community law was applicable when a domestic court was asked to restrain the Government from making regulations to implement a Directive.

⁴⁵ Department of Health press notice 2000/0559, *Government confirms intention to ban tobacco advertising*, 5 October 2000

V The Tobacco Advertising and Promotions Bill

A. Background

Following the ECJ decision on 5 October 2000, the Public Health Minister, Yvette Cooper, said that, if it were not possible to implement a European ban, the Government would implement a tobacco advertising and promotions ban in the UK through domestic legislation:

This ruling is a disappointment, but it will not deflect us from implementing our manifesto commitment to ban tobacco advertising. We said at the time of the Advocate General's opinion in June that we would consider primary legislation to ban tobacco advertising and that is what we are doing.

Smoking kills over 120,000 people each year in the UK and the Government is determined to reduce this toll. Seventy per cent of smokers say they want to give up. That's why we are providing advice and support to those who give up. We also want to discourage children from starting to smoke. Tobacco advertising promotes a deadly habit and those brands that are advertised the most are smoked the most, especially by children.

We know that a ban would save thousands of lives in the UK each year, and many thousands more across the European Union. We would like to implement a ban at European level because the UK is part of a European market but if that isn't going to be possible then we will implement a ban at UK level. We hope that the European Commission will bring forward new proposals in this area as soon as it possibly can.⁴⁶

The *Tobacco Advertising and Promotion Bill* was announced during the Queen's Speech on 6 December 2000 and had its first reading in the House of Commons on 14 December 2000.

B. The main provisions of the Bill

As outlined in the Explanatory Memorandum that accompanies it, the Bill deals with the following matters:

- Clause 2 deals with the general prohibition on tobacco advertising.
- Clause 3 deals with the advertising of tobacco products in newspapers, periodicals etc.
- Clause 4 deals with the exceptions to the tobacco advertising ban.

⁴⁶ Ibid

- Clause 5 sets out the various possible defences for anyone charged with an offence under clause 2 or 3.
- Clause 6 deals with the treatment of specialist tobacconist shops.
- Clause 7 deals with developments in technology.
- Clause 8 bans any free distribution of tobacco products where the purpose or effect is to promote a tobacco product.
- Clause 9 deals with the prohibition on sponsorship.
- Clause 10 is concerned with brandsharing.
- Clause 11 considers the treatment of broadcast advertising of tobacco products.
- Clause 12 deals with enforcement of the Bill, clause 13 deals with powers of entry and clause 14 makes obstructing an officer of an enforcement body an offence.
- Clause 15 sets out the penalties for offences under the Bill.
- Clause 16 deals with offences by corporate bodies and Scottish partnerships.
- Clause 17 sets out further details on regulation and order-making powers.
- Clause 18 deals with transitional provisions.

An outline of the main provisions of the Bill is set out below. This outline relies, in part, on the interpretation given to the provisions in the Bill's own Explanatory Memorandum.

1. General prohibition of tobacco advertising

Clause 1 defines the meaning of 'tobacco advertisement' and 'tobacco product' for the purposes of the Bill. It states:

1. In this Act-

'tobacco advertisement' means an advertisement-

- (a) whose purpose is to promote a tobacco product, or
- (b) whose effect is to do so, and

'tobacco product' means a product consisting wholly or partly of tobacco intended to be smoked, sniffed, sucked or chewed.

The definition of a tobacco advertisement is deliberately wide and would include direct advertising, (for example, posters, billboards and press advertising) and indirect marketing and promotion.

New offences are created in relation to tobacco advertising under clauses 2 and 3 of the Bill.

Clause 2 prohibits all forms of tobacco advertising in the UK by anyone ‘acting in the course of a business’. Under clauses 2(1) and 2(2) it is an offence to publish (or cause to be published) a tobacco advertisement in the UK:

2.- (1) A person who in the course of a business publishes a tobacco advertisement, or causes one to be published, in the United Kingdom is guilty of an offence.

(2) A person who in the course of a business prints, devises or distributes in the United Kingdom a tobacco advertisement which is published in the United Kingdom, or causes such a tobacco advertisement to be so printed, devised or distributed, is guilty of an offence.

Essentially anyone who is involved in the commissioning, design, printing, publishing, sale or distribution of a tobacco advertisement in the UK could be guilty of an offence.

However, only a person acting “in the course of a business” can be held liable. It is clear that what is prohibited under clause 2 is promoting tobacco products as part of a commercial enterprise designed to persuade others to use the tobacco products. The Bill does not make incidental commentary on smoking or tobacco products an offence. This is an important distinction.

As well as their general meaning, under clause 2(3), publishing or distributing a tobacco advertisement would also include:

...publishing or distributing something else which is accompanied by a separate entity containing, or being, a tobacco advertisement.

In other words, the Bill also covers indirect advertising where, for example, an advertisement is included as a separate insert in another publication or is attached to a free give away included with another publication.

In addition to paper advertisements, clause 2(4) of the Bill also covers the distribution of a tobacco advertisement by electronic means (for example, by video or the Internet):

...transmitting it in electronic form, participating in doing so, and providing the means of transmission.

The effect of clause 2 is that each member of the advertising chain is potentially liable to commit an offence, from the tobacco manufacturer who may have commissioned the advertisement to those who distribute or sell the advertisement.

However, clause 2(5) specifically exempts persons who do not carry on business in the United Kingdom from the offence of publishing (or causing publication) where they do so via the Internet. It is recognised that access to a website cannot be controlled by its originator.

Similarly, clause 2(6) recognises the fact that an Internet Service Provider (ISP) may not be in a position to know that a particular electronic communication promotes a tobacco product. However, once his attention has been brought to the offending communication the ISP must remove it if he is to avoid committing an offence under clause 2 of the Bill.

A new offence is also created under **Clause 3**, which is specifically concerned with tobacco advertising in newspapers, periodicals and other publications. It states:

3. If a newspaper, periodical or other publication ('the publication') containing a tobacco advertisement is in the course of a business published in the United Kingdom-

- (a) any proprietor or editor of the publication is guilty of an offence,
- (b) any person who (directly or indirectly) procured the inclusion of the advertisement in the publication is guilty of an offence, and
- (c) any person who sells the publication, or offers it for sale, or otherwise makes it available to the public, is guilty of an offence.

It is clear from clause 3 that if a tobacco advertisement appears in a publication, anyone in the chain from the person who procures the inclusion of the advert to the person selling the offending publication could be guilty of an offence. This includes proprietors, editors and advertising agencies. This clause also applies where publication is by electronic means.

2. Exemptions to the general tobacco advertising ban

Clause 4 sets out the following specific exemptions to the total ban on tobacco advertising and promotion in the UK:

4.-(1) No offence is committed under section 2 or 3 in relation to a tobacco advertisement-

- (a) if it is, or is contained in, a communication made for the purposes of the tobacco trade and directed solely at persons engaged in any capacity in that trade (even if they are also engaged in another trade);
- (b) if it is, or is contained in, the communication made in reply to a particular request by an individual for information about a tobacco product;

- (c) if it is contained in a publication (other than an in-flight magazine) which is printed outside the United Kingdom and whose principal market is not the United Kingdom (or any part of it), or if it is contained in any internet version of such a publication, or
- (d) if it is contained in an in-flight magazine provided on board an aircraft by an airline which is not a United Kingdom airline.

Under clause 4(1)(a), no offence is committed if the tobacco advertisement is contained within a communication intended exclusively for persons working in the tobacco trade. The aim of this clause is to prevent the Bill from impeding the tobacco industry from carrying out its legitimate business. It allows normal communication between all persons engaged in the tobacco industry (for example, communications between manufacturers and retailers, their printers, accountants, designers and other normal business contacts). However, these trade communications must not reach the wider public.

Clause 4(1)(b) allows information on tobacco products to be sent to consumers who request that information. However, according to the Bill's Explanatory Memorandum, this clause does not permit tobacco advertisements to be sent to all consumers on a database (i.e. mail shots); each consumer must individually request that information on each and every occasion. Moreover, a request for information cannot be considered as a request for further information in the future.

Clause 4(1)(c) exempts from the general tobacco advertising ban, publications printed outside the UK whose principal market is not the UK market. Internet versions of foreign publications are also covered by this exemption.

Under Clause 4(1)(d), in-flight magazines on non-United Kingdom airlines are also excluded from the general ban on tobacco advertising.⁴⁷

'Point of sale' advertising (i.e. advertising at the point where tobacco products are offered for sale), is also permitted under clause 4(2) provided it is in accordance with regulations to be made by the Secretary of State and the Scottish Ministers. According to the Bill's Explanatory Memorandum, the intention is to allow the display of tobacco products around the till area (typically on a gantry in a corner shop or in a kiosk in a supermarket). However, displays of advertising material elsewhere on the premises (for example, in window displays) are to be banned. Ministers are to consult on regulations to set out further, detailed conditions to ensure that this exemption is not used to widen the scope of permitted advertising.⁴⁸

⁴⁷ The definition of a 'UK airline' builds on that contained in section 4(2) of the *Civil Aviation Act 1982* but excludes airlines whose principal place of business is the Channel Islands and the Isle of Man (as determined by the Civil Aviation Authority) as this Bill does not extend to the Channel Islands and Isle of Man

⁴⁸ Explanatory Memorandum to the *Tobacco Advertising and Promotion Bill*, (Bill 6 – EN), page 4

3. Statutory defences

Clause 5 sets out possible defences for anyone charged with an offence under clause 2 or 3 of the Bill.⁴⁹ First, clause 5(1) sets out a general defence:

5. -(1) It is a defence for a person charged with an offence under section 2 or section 3(a) or (b), in connection with an advertisement whose purpose is to promote a tobacco product, to prove that he did not know, and had no reason to suspect, that the purpose of the advertisement was to promote a tobacco product.

Similarly, a person will have a defence under clause 5(2) in relation to an advertisement whose effect is to promote a tobacco product, if he can prove that he could not reasonably have foreseen that the advertisement would have that effect. Similarly, the defendant might have a valid defence under clause 5(3) if he can prove that he did not know, and had no reason to suspect, that the tobacco advertisement would be published in UK.

Clause 5(4) of the Bill provides a specific defence for distributors who did not know and had no reason to suspect that what they distributed infringed the tobacco advertising ban. It applies equally to transmission by electronic means.

Clause 5(5) provides a specific defence for distributors involved in the electronic transmission of a tobacco advertisement who do not carry on business in the UK or were unable to prevent the distribution of the tobacco advertisement.

Finally, clause 5(6) provides a specific defence for a seller of a publication where he did not know and had no reason to suspect that the publication contained a tobacco advertisement. However, once the seller's attention has been drawn to the advertisement he must remove the publication from sale. The purpose of this defence is to protect a seller (such as a newsagent) from having to check all the publications he might sell to ensure that no tobacco advertisements appear.

Under clause 6, there is an additional defence for a person charged with an offence under clause 2 of the Bill, if he can prove that he is, in fact, a specialist tobacconist. Clause 6 states:

6.(1)- It is a defence for a person charged with an offence under section 2 to prove that the tobacco advertisement-

(a) was in, or fixed to the outside of the premises of, a specialist tobacconist,

(b) was not for cigarettes or hand-rolling tobacco, and

⁴⁹ The defences outlined in clause 5 are more specific than the general 'due diligence' defence in the draft regulations that were to implement the Advertising Directive. The aim is to ensure that each person in the chain, whose actions will differ, knows what will be a criminal offence and what will be lawful.

- (c) complied with any requirements specified by the appropriate Minister in regulations in relation to tobacco advertisements on the premises of specialist tobacconists.

In effect, specialist tobacconists may continue to advertise non-cigarette and hand-rolling tobacco within, and on the outside, of their shops. The Department of Health has justified the inclusion of this provision on the basis that specialist tobacconists sell products that are generally not bought or used by young people and children.⁵⁰

Clause 6(2) of the Bill provides a statutory definition of specialist tobacconists. These are shops selling tobacco products by retail (whether or not they also sell other things), and more than half of whose sales on the premises is derived from the sale of cigars, snuff, pipe tobacco and smoking accessories. In other words, the sale of these goods must account for the principal part of the tobacconist's income. Under clause 6(3) sales are to be measured by sale price during:

- the most recent period of twelve months for which accounts are available, or
- during the period for which the shop has been established, if it has not been established long enough for twelve months' accounts to be available.

Under **Clause 7** of the Bill, the Secretary of State may by order amend any provision of this Bill if he considers it appropriate to do so, because of developments in the technology relating to publishing or distributing of material by electronic means.

4. Prohibition on the free distribution of tobacco products

Clause 8 bans any free distribution of a tobacco product or coupon where the purpose or effect is to promote a tobacco product. Specifically, clause 8 states:

8.-(1) A person is guilty of an offence if in the course of a business he-

- (a) gives any product or coupon away to the public in the United Kingdom, or
- (b) causes or permits that to happen,

and the purpose or effect of giving the product or coupon away is to promote a tobacco product.

(2) It does not matter whether the product or coupon accompanies something else, or is given away separately.

⁵⁰ The Explanatory Memorandum to the Tobacco Advertising and Promotion Bill, (Bill 6-EN), estimates there to be some 350 specialist tobacconist shops

In addition to branded tobacco products, clause 8 also bans the free distribution of cigarette coupons. To avoid confusion, clause 8(5) defines a cigarette coupon as a document or other thing which (whether by itself or not) can be redeemed for a product or service or for cash or any other benefit.

The short-term effect of clause 8 will be to ban the giving away of branded products (such as cigarette lighters). It is hoped that the long-term effect will be to reduce the amount of tobacco branding on display to the public. However, clause 8(3) of the Bill does permit products to be given away free to persons in the tobacco trade for the purposes of that trade.

Someone accused of committing an offence under clause 8(1), may have a defence under clause 8(4) if he can prove that he did not know and had no reason to suspect that the purpose of the free distribution was to promote a tobacco product.

Clauses 8(6) and 8(7) give the Secretary of State a power to make regulations covering distributions of tobacco products at a nominal price. This power would only be used if it became clear that products (such as branded clothing) were being offered to consumers at nominal sums in order to promote tobacco products and circumvent clause 8.

5. Prohibition on tobacco sponsorship

Clause 9 is an important clause. It effectively prohibits anything from being done pursuant to a sponsorship agreement if the purpose or effect of the agreement is to promote a tobacco product. This prohibition applies to both the sponsor and the recipient. It states:

9.-(1) 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 the agreement is to promote a tobacco product in the United Kingdom.

(2) A sponsorship agreement is an agreement under which 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 9 is carefully worded; it deliberately doesn't specify that the sponsorship agreement must relate to a particular event in sports or the arts. This means that an agreement relating to the sponsorship of a building, institution or service would also be prohibited if the direct or indirect result of that sponsorship was to promote a tobacco product.

Clause 9(2) makes it clear that a sponsorship agreement includes any form of promotion, whereby an event receives help (monetary or otherwise) from an individual or organisation in return for advertising and promoting a particular tobacco product. It is important to emphasise, however, that clause 9 does not prevent a tobacco company from

giving money to support a particular event or activity, provided the company's products are not given any promotion in return.

It is a defence under clause 9(3), if the defendant did not know and had no reason to suspect that the purpose of what was done as a result of the agreement was to promote a tobacco product.

It might be useful to point out, at this stage, that **Clause 18** of the Bill gives the Secretary of State, or Scottish Ministers, powers to make regulations to specify when the ban on sponsorship in Clause 9 is to take effect. However, the Bill also specifies that the effective date may not be later than **1 October 2006**.⁵¹ This date is the same as the final deadline originally given in the annulled European Directive for the ending of tobacco sponsorship. There will be consultation on the detail of the regulations.

According to the Department of Health, the Government's broad intention is to implement the Bill to the same timetable as the annulled Directive, subject to consultation. This would mean that all tobacco sponsorship (except for specified global events) would be banned in the UK by the end of 30 July 2003. Tobacco sponsorship in the UK of events organised at a global level (e.g. snooker and Formula One) would be banned by 1 October 2006. In effect, Formula One and other 'global sports' are being given no more time under this Bill to end their dependence on tobacco sponsorship than they would have been given under the annulled Directive.

6. Brandsharing

Clause 10 of the Bill is concerned with 'brandsharing' (also known as 'brandstretching'). Brandsharing can be explained as taking a name already established for one type of product and using it for a quite different type of product. When this happens, the advertising of each product indirectly promotes the other because they share a brand in common. In the past, non-tobacco products have been used to advertise a tobacco brand.

Clause 10 (1) of the Bill gives the Secretary of State power to make regulations concerning the use of brandsharing and tobacco products. It states:

10.-(1) The Secretary of State may by regulations make provision prohibiting or restricting, in such circumstances and subject to such exceptions as may be specified in the regulations, the use-

(a) 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, or

⁵¹ Clause 18(2) of the *Tobacco Advertising and Promotion Bill*

(b) in connection with 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.

In effect, regulations will set out the limited circumstances in which brandsharing will be permissible. However, clause 10(2) makes it clear that the regulations may be made only in relation to brandsharing where the purpose or effect of the brandsharing is to promote a tobacco product. There will be consultation on the detail of the regulations.

7. Enforcement

The purpose of **clause 11** is to exclude from the scope of the Bill the broadcasting media. Tobacco advertising is already banned under Codes of Practice issued by the Independent Television Commission and the Radio Authority under the *Broadcasting Act 1990* and the *Broadcasting Act 1996*.⁵²

Clause 12(1) of the Bill sets out the authorities that will be responsible for enforcing the ban on tobacco advertising in the UK. It states that for England and Wales, a weights and measures authority will be responsible; in Scotland, a local weights and measures authority; and in Northern Ireland, a district council. However, clause 12(3) and 12(4) give Ministers in England and Wales, Scotland and Northern Ireland power to direct that any of the enforcement functions be taken over by them in any particular case or class of cases.

Clauses 12(5) and (6) give a similar power to the Secretary of State in England and Wales and to the Department of Health, Social Services and Public Safety in Northern Ireland to take over a prosecution under the Bill. In Scotland, the Procurator Fiscal already has the power to decide whether to prosecute (and then deal with any prosecution) once the authority decides that there should be a prosecution.

Under clause 12(7), any magistrates court in England and Wales, and Northern Ireland can hear a case brought under this Bill. There is no equivalent provision for Scotland because the enforcement and prosecution functions are separate there.

Clause 13, although lengthy, simply sets out the powers of entry which enforcement officers may exercise under this Bill.

It is an offence under **clause 14** of the Bill to obstruct intentionally an officer of an enforcement body, or make false statements to an officer. To this latter charge, there is a defence if the accused can prove he did not know that the information was false and had

⁵² In fact, there has been a total ban on tobacco advertising on television since 1965 and tobacco advertising on the radio was banned in the early 1970s

reasonable grounds to believe it was true. The penalty for obstructing an enforcement officer is a fine not exceeding level 3 on the standard scale (currently £1,000).

Clause 15(2) of the Bill sets out the penalties for all other offences under the Bill. It states:

15. (2) A person guilty of an offence under or by virtue of any provision of this Act is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

A fine at level 5 is currently £5,000.

Clause 16(1) provides that if an offence is committed under the Bill, officers of companies as well as the companies themselves are liable to be prosecuted if appropriate. It states:

16.-(1) If an offence under any provision of this Act committed by a body corporate is proved-

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

For the purposes of this Bill, an officer of a company is taken to mean a director, manager, secretary or other similar officer, or a person purporting to act in such a capacity (for example, a shadow director).

Similarly, the Bill provides that in Scottish partnerships individual partners are liable to prosecution under the Bill if appropriate. Clause 16(4) states:

16.-(4) If an offence under any provision of this Act committed by a partnership in Scotland is proved-

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.

Again, for the purposes of this Bill, a 'partner' will include a person purporting to act as a partner.

8. Regulation and order making powers under the Bill

Clause 17 sets out details on the regulation and order-making powers under the Bill. This is complex because, as the Bill's Explanatory Memorandum points out, the Bill contains regulation and order-making powers in all of the following areas:

- Advertising at point of sale (clause 4(2)).
- Advertising within a specialist tobacconist (clause 6(1)(c)).
- Advertising by electronic means (clause 7).
- Distribution of tobacco products and coupons at nominal amounts (clause 8(6)).
- Brandsharing (clause 10).
- Sponsorship (clause 18).

In regard to regulation and order-making powers, clause 17 of the Bill makes the following provision:

17.-(1) Powers to make regulations and orders under this Act are exercisable by statutory instrument.

(2) Regulations, and orders under section 7, may make-

- (a) different provision for different cases or circumstances, and
- (b) any supplementary, consequential or transitional provision which the appropriate Minister (or the Secretary of State) considers necessary or desirable.

(3) No statutory instrument containing an order under section 7 or regulations under section 8 or 10 is to be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

(4) A statutory instrument containing regulations under any other provision of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament or of the Scottish Parliament.

It is clear from clause 17(3) that the order concerning advertising by electronic means (clause 7 of the Bill), and the regulations on brandsharing (clause 10) and distributions at a nominal cost (clause 8) will be subject to affirmative resolution. This means that they will have to be debated and approved by both the House of Commons and the House of Lords. Other regulations arising from the Bill are subject to the negative resolution process. There is no timetable for implementing these provisions on the face of the Bill.

According to the Bill's Explanatory Memorandum, the Government and the Scottish Executive have agreed that those regulations and the order that are subject to the affirmative resolution process will cover the whole of the UK. The Scottish Parliament will make separate regulations covering advertising at point of sale, specialist tobacconists and sponsorship.

9. Commencement

The Bill will come into force on a day to be appointed by the Secretary of State. According to the Bill's Explanatory Memorandum, the intention is that the appointed date will be two months after the Bill receives Royal Assent, except for the following transitional arrangements for which a further three months will be allowed:

- Advertising within retail outlets.
- In-pack promotion schemes (i.e. promotion schemes where coupons are inserted into packs and are collected by customers who later redeem them for goods).
- Direct marketing contracts (but only those contracts that were set up before 8 October 1999).

VI The UK overall action plan to combat smoking

The aim of this Paper is only to explain the background to, and the implementation of, the *Tobacco Advertising and Promotion Bill*. However, the Bill is just one measure in a package of measures adopted by the Government to combat smoking in the UK. In its White Paper on tobacco, *Smoking Kills*, the Government outlined a series of objectives to reduce smoking, including:

- To reduce adult smoking from 28% [in 1996] to 24% or less by the year 2010, with a fall to 26% by the year 2005. This will mean 1.5 million fewer smokers in England.
- To reduce smoking among children aged eleven to fifteen from 13% [in 1996] to 9% or less by the year 2010. This will mean approximately 110,000 fewer children smoking in England by the year 2010.
- To reduce the number of pregnant women smoking from 23% [in 1995] to 18% by 2005 and 15% by 2010.
- To invest up to £60 million over the next three years in specialist advice and support in the NHS for smokers wanting to stop.
- To increase tobacco taxes by, on average 5% a year in real terms. In December 1998, tax (i.e. duty and VAT) accounted for almost 80 % of the price of a packet of cigarettes. In its White Paper, the Government explained its tobacco taxation policy as follows:

The Government has committed itself to increases in tobacco taxation. As incomes tend to rise significantly each year, the only way to reduce affordability is to put tobacco tax up by more. The last Government said in 1993 that it would increase tobacco duty by at least 3 per cent in real terms each year. But we believe it is right to go further.

In our first Budget, in July 1997, the Chancellor announced that, in future, tobacco duties would be increased on average by at least 5 per cent in real terms a year. Tobacco duties rose by just over 5 per cent in real terms on both 1 December 1997 and again on 1 December 1998. The price of a typical packet of 20 cigarettes at the end of 1998 is about 55p higher than at the end of 1996.

Because of the high taxation of cigarettes, Governments are sometimes accused of exploiting smokers. The charge is made particularly in relation to smokers who are less well off, because tax and price increases hit most heavily those who spend the highest proportions of their income on tobacco.

We recognise this issue, which is why we are going to balance high tobacco tax with real support from the NHS to help smokers quit.⁵³

- To continue to exert pressure for a European-wide fiscal action against tobacco products.
- To embark on a new offensive against tobacco smuggling and fraud.⁵⁴

On 14 June 2000, the Heath Committee published a report on *The Tobacco Industry and the Health Risks of Smoking*.⁵⁵ This was followed in October 2000 by the publication of a Department of Health press release that summarised the key elements of the Government's response to the Health Committee report. An extract from this press notice is reproduced below:

Yvette Cooper MP, Public Health Minister, today announced the publication of the Government's response to the Commons Select Committee Report on Tobacco. Launching the response, she said:

Smoking kills over 120,000 people each year in the UK and the Government is determined to reduce this toll. Seventy per cent of smokers say they want to give up. That's why we are developing the most extensive Government-funded smoking cessation service in Europe. We have already responded to many of the recommendations made by the Select Committee and will be taking up other issues in the future.

Key elements of the Government's response include:

Expanding smoking cessation services - subject to consultation, the Government intends to make Nicotine Replacement Therapy (NRT) available on prescription, as well as Zyban. In the meantime, low- income smokers will now be able to have four or more weeks of free NRT from the new NHS services, as recommended by the Select Committee.

Banning tobacco advertising - the Government is preparing primary legislation to ban tobacco advertising;

Tough new targets - the Government is tackling the biggest cause of health inequalities by setting a new target in the NHS Cancer Plan to cut smoking among manual groups from 32 per cent in 1998 to 26 per cent by 2010;

⁵³ *Smoking Kills – A White Paper on Tobacco*, Department of Health, Cm 4177, December 1998

⁵⁴ Ibid

⁵⁵ *The Tobacco Industry and the Health Risks of Smoking*, Second Report of the Health Committee (HC 27 Session 1999-2000, Volumes I & II), 14 June 2000

Tighter regulation of the tobacco industry - the Government is backing an EU Directive to reduce tar levels in cigarettes and ban misleading descriptions such as 'mild' and 'light'.

Education campaign- the next wave of the Government campaign to give people the information they need to give up smoking will begin shortly. The Government is keen to explore the committee's suggestions on developing the campaign - including working with young people.

Stronger enforcement - in September, the Government launched a new set of guidelines aimed at reducing the number of under-age smokers by identifying breaches of the law and carrying out high-profile prosecutions of retailers who sell to children under 16.⁵⁶

The Tobacco Manufacturers' Association (TMA), a trade association for those companies which manufacture tobacco products in the UK, also chose to respond to the Health Committee report. An extract from a TMA press notice is reproduced below:

Commenting on the Department of Health's statement, Mr David Swan, Chief executive of the TMA, said:

The Health Select Committee raised many important issues that cannot be resolved unless the Government and stakeholders in the tobacco industry work together.

With the EU tobacco advertising ban now declared illegal by the European Court of Justice, there is an opportunity for the Government to look afresh at how best to achieve sensible regulation in the future.

We hope the Government will grasp the opportunity to get us all back round the table with the aim of developing proposals that are workable as well as enforceable.⁵⁷

⁵⁶ Department of Health press notice 2000/622, *Government action in response to select committee report on the tobacco industry*, 30 October 2000

⁵⁷ Tobacco Manufacturers' Association press release, *Comment on the Department of Health's Statement on the Health Select Committee's Report on the Tobacco Industry and the Health Risks of Smoking*, 30 October 2000, http://www.the-tma.org.uk/press_releases/30102000.htm

VII Further reading

Health Committee, *The European Commission's Proposed Directive on the Advertising of Tobacco Products*, 14 December 1992, HC 221 1992-93

Health Committee, *Tobacco Advertising and the Proposed EC Directive*, 26 November 1997, HC 373 1997-98

Department of Health, *Smoking Kills – A White Paper on Tobacco*, Cm 4177, December 1998

The World Bank, *Curbing the Epidemic – Governments and the Economics of Tobacco Control*, 1999

Health Committee, *The Tobacco Industry and the Health Risks of Smoking*, 14 June 2000, HC 27 volumes I & II 1999-2000

Tobacco advertising is a wide-ranging issue and this Paper does not seek to value the benefits to health afforded by a ban on tobacco advertising and promotion. Nor does it seek to quantify the cost to business of implementing a ban. However, for those interested in such issues the following Internet sites may be helpful:

<http://www.the-tma.org.uk/>

This is the address of the Tobacco Manufacturers' Association (TMA), a trade association for those companies which manufacture tobacco products in the UK. According to the TMA, it does not promote smoking in general, but it does defend the freedom of adults to smoke if they so choose. The TMA has estimated that as many as one third of cigarette smokers change brands in the course of a year and many smoke more than one brand. According to the TMA, the main purpose of cigarette advertising is to promote competition by bringing the availability of brands to the attention of the smoker.

<http://www.ash.org.uk/>

This is the address of Action on Smoking and Health (ASH). ASH describes itself as a non-profit making legal action and education organisation. Its aim is to bring about institutional change to stop people smoking. ASH has estimated that about 12.1 million adults in the UK smoke cigarettes. It has also estimated that every year, around 120,000 smokers in the UK die as a result of their habit.