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An Act of the Scottish Parliament to control the advertising and promotion of tobacco products; and for connected purposes.

1 Prohibition of tobacco advertising

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

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

(3) Distributing a tobacco advertisement includes transmitting it in electronic form, participating in doing so, and providing the means of transmission.

(4) It is not an offence under subsection (1) for a person who does not carry on business in Scotland to publish or cause to be published a tobacco advertisement by means of a website which is accessed in Scotland; and, in that case, devising the advertisement or causing it to be devised is not an offence under subsection (2).

2 Advertising: newspapers, periodicals etc.

If a newspaper, periodical or other publication (“the publication”) containing a tobacco advertisement is in the course of a business published in Scotland—

(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.

3 Advertising: exclusions

(1) No offence is committed under section 1 or 2 in relation to a tobacco advertisement—

1 Tobacco Advertising and Promotion (Scotland) Bill

[AS INTRODUCED]
(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 printed and published outside Scotland and is not printed or published mainly or specially for distribution in Scotland.

(2) The Scottish Ministers may provide in regulations that no offence is committed under section 1 in relation to a tobacco advertisement which—

(a) is in a place or on a website where tobacco products are offered for sale; and

(b) complies with requirements specified in the regulations.

(3) The regulations may, in particular, provide for the meaning of “place” in subsection (2)(a).

4 Advertising: defences

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

(2) It is a defence for a person charged with such an offence in connection with an advertisement whose effect is to promote a tobacco product to prove that the person charged could not reasonably have foreseen that that would be the effect of the advertisement.

(3) It is a defence for a person charged with an offence under section 1(2) or 2(a) or (b) to prove that the person charged did not know, and had no reason to suspect, that the tobacco advertisement would be published in Scotland.

(4) It is a defence for a person charged with an offence under section 1(2) of distributing or causing the distribution of a tobacco advertisement, otherwise than as mentioned in section 1(4), to prove that the person charged did not know, and had no reason to suspect, that what the person charged distributed or caused to be distributed was, or contained, a tobacco advertisement.

(5) In relation to a tobacco advertisement which is published or caused to be published by electronic means by an internet service provider, it is a defence for that provider, if charged with an offence under section 1(1), to prove that the provider was unaware that what the provider published or caused to be published was, or contained, a tobacco advertisement.

(6) In relation to a tobacco advertisement which is distributed as mentioned in section 1(3), it is a defence for a person charged with an offence under section 1(2) of distributing it or causing its distribution to prove—

(a) that the person charged was unaware that what the person charged distributed or caused to be distributed was, or contained, a tobacco advertisement;

(b) that, having become aware of it, the person charged was not able to prevent its further distribution; or

(c) that the person charged did not carry on business in Scotland at the relevant time.
(7) It is a defence for a person charged with an offence under section 2(c) to prove that the person did not know, and had no reason to suspect, that the publication contained a tobacco advertisement.

5 Specialist tobacconists

1. It is a defence for a person charged with an offence under section 1 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
   (c) complied with any requirements specified by the Scottish Ministers in regulations under section 3(2) in relation to tobacco advertisements on the premises of specialist tobacconists.

2. A “specialist tobacconist” is a shop selling tobacco products by retail (whether or not it also sells other things) more than half of whose sales on the premises in question derive from the sale of cigars, snuff, pipe tobacco and smoking accessories.

3. The sales referred to in subsection (2) are to be measured by sale price—
   (a) during the most recent period of twelve months for which accounts are available; or
   (b) 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.

4. “Shop”, in subsections (2) and (3), includes a self-contained part of a shop; and, in that case, “premises” in subsections (1) and (2) means that self-contained part of the shop.

6 Developments in technology

The Scottish Ministers may by order amend any provision of this Act if they consider it appropriate to do so in consequence of any developments in technology relating to publishing or distributing by electronic means.

7 Displays

1. A person who in the course of a business displays tobacco products or causes them to be displayed in a place or on a website where tobacco products are offered for sale is guilty of an offence if the display does not comply with such requirements (if any) as may be specified by the Scottish Minister in regulations.

2. It is not an offence under subsection (1) for a person who does not carry on business in Scotland to display or cause to be displayed tobacco products or their prices by means of a website which is accessed in Scotland.

3. The regulations may, in particular, provide for the meaning of “place” in subsection (1).

4. The regulations must make provision for a display which also amounts to an advertisement to be treated for the purpose of offences under this Act—
   (a) as an advertisement and not as a display; or
   (b) as a display and not as an advertisement.
8  **Prohibition of sponsorship**

(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 Scotland.

(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).

(3) It is a defence for a person charged with an offence under this section to prove—

(a) if it is alleged that the purpose of what was done as a result of the agreement was to promote a tobacco product in Scotland, that the person charged did not know, and had no reason to suspect, that that was its purpose; or

(b) if it is alleged that the effect of what was done as a result of the agreement was to promote a tobacco product in Scotland, that the person charged could not reasonably have foreseen that that would be its effect.

(4) It is a defence for a person charged with an offence under this section to prove that the person charged did not know and had no reason to suspect that the contribution in subsection (2) was made in the course of a business.

9  **Enforcement**

(1) For the purposes of this Act, “enforcement authority” means a local weights and measures authority.

(2) It is the duty of an enforcement authority to enforce within its area the provisions of this Act and regulations made under it.

(3) The Scottish Ministers may direct, in relation to cases of a particular description or a particular case, that any duty imposed on an enforcement authority by subsection (2) shall be discharged by the Scottish Ministers and not by the enforcement authority.

10  **Powers of entry, etc.**

(1) A duly authorised officer of an enforcement authority has the right, on producing, if so required, written authority—

(a) at any reasonable hour to enter any premises, other than premises used only as a private dwelling house, which the officer considers it necessary to enter for the purpose of the proper exercise of that officer’s functions under this Act;

(b) to carry out on those premises such inspections and examinations as the officer considers necessary for that purpose;

(c) to require the production of any book, document, data, record (in whatever form it is held) or product and inspect it, take copies of or extracts from it, or take possession of it and retain it for as long as the officer considers necessary for that purpose;

(d) to require any person to give such information, or afford such facilities and assistance, as the officer considers necessary for that purpose.

(2) A duly authorised officer of an enforcement authority may make such purchases and secure the provision of such services as the officer considers necessary for the purpose of the proper exercise of that officer’s functions under this Act.
(3) A person is not obliged by subsection (1) to answer any question or produce any
document which that person would be entitled to refuse to answer or to produce in or for
the purposes of proceedings in a court, where the question is asked or the document is
required by a duly authorised officer of an enforcement authority.

(4) If a sheriff is satisfied by any written information on oath—
   (a) that, for the purpose of the proper exercise of the functions of an enforcement
       authority under this Act, there are reasonable grounds for entry into any premises,
       other than premises used only as a private dwelling house; and
   (b) that one of the conditions set out in subsection (5) is satisfied,
the sheriff may by warrant signed by the sheriff authorise any duly authorised officer of
an enforcement authority to enter the premises, if need be by force.

(5) Those conditions are—
   (a) that admission to the premises has been or is likely to be refused and that notice of
       intention to apply for a warrant under this subsection has been given to the
       occupier;
   (b) that—
       (i) an application for admission, or the giving of such notice, would defeat the
           object of the entry;
       (ii) that the premises are unoccupied; or
       (iii) that the occupier is temporarily absent and it might defeat the object of the
           entry to await the occupier’s return.

(6) A warrant under subsection (4) shall continue in force until the end of the period of one
month beginning with the date on which the sheriff signs it.

(7) A duly authorised officer entering any premises by virtue of subsection (1) or of a
warrant under subsection (4) may take such other persons and such equipment as the
officer considers necessary.

(8) On leaving any premises which a duly authorised officer is authorised to enter by a
warrant under subsection (4), that officer shall, if the premises are unoccupied or the
occupier is temporarily absent, leave the premises as effectively secured against
trespassers as the officer found them.

(9) Where by virtue of subsection (1)(c) a duly authorised officer takes possession of any
item, the officer shall leave on the premises from which the item was removed a
statement giving particulars of what the officer has taken and stating that the officer has
taken possession of it.

(10) Where a direction of the Scottish Ministers has effect under section 9(3), this section
and section 11 have effect, in relation to any case or case of a description specified in
the direction, as if references to a duly authorised officer of an enforcement authority
were references to a person acting on behalf of the Scottish Ministers.

11 Obstruction, etc. of officers

(1) A person who—
   (a) intentionally obstructs a duly authorised officer of an enforcement authority who
       is acting in the proper exercise of that officer’s functions under this Act; or
(b) without reasonable cause fails to comply with any requirement made of the person by such an officer who is so acting, is guilty of an offence.

(2) A person who, in giving any information which is properly required of that person by a duly authorised officer of an enforcement authority, makes a statement which is false in a material particular is guilty of an offence.

(3) It is a defence for a person charged with an offence under subsection (2) to prove that the person charged—
   (a) did not know the material particular was false; and
   (b) had reasonable grounds to believe that it was true.

12 **Penalties**

(1) A person guilty of an offence under section 11(1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person guilty of an offence under or by virtue of any other provision of this Act is liable—
   (a) on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum, or both; or
   (b) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both.

13 **Offences by bodies corporate and partnerships**

(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 that officer’s part,
the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1) “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with that member’s functions of management as if the member were a director of the body corporate.

(4) If an offence under any provision of this Act committed by a partnership is proved—
   (a) to have been committed with the consent or connivance of a partner; or
   (b) to be attributable to any neglect on that partner’s part,
the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In subsection (4) “partner” includes a person purporting to act as a partner.
14 **Regulations and orders**

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

(2) Regulations, and orders under section 6, may make—

   (a) different provision for different cases or circumstances; and
   
   (b) any supplementary, consequential or transitional provision which the Scottish Ministers consider necessary or desirable.

(3) No statutory instrument containing an order under section 6 or regulations under section 7 is to be made unless a draft of the instrument has been laid before and approved by a resolution of the Scottish 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 the Scottish Parliament.

15 **Transitional provisions: sponsorship**

(1) The Scottish Ministers may make regulations providing that, subject to the satisfaction (or continuing satisfaction) of any conditions specified in the regulations, section 8 is not to apply before a date so specified to a sponsorship agreement of a description so specified.

(2) The date specified in regulations under subsection (1) may not be later than 1st October 2006.

(3) If, by virtue of regulations under this section, section 8 does not apply to a sponsorship agreement, the doing of anything as a result of that agreement is not an offence under any provision of this Act.

16 **Interpretation**

In this Act—

   “enforcement authority” has the meaning given by section 9(1);
   
   “public” means the public generally, any section of the public or individually selected members of the public;
   
   “purpose” includes one of a number of purposes;
   
   “tobacco advertisement” means an advertisement—

   (a) whose purpose is to promote a tobacco product; or
   
   (b) whose effect is to do so;

   “tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed;

and references to publishing include any means of publishing (and include, in particular, publishing by any electronic means, for example by means of the internet).

17 **Commencement and short title**

(1) This Act (other than this section) comes into force at the end of the period of six months beginning with the date of Royal Assent, or on such earlier day as the Scottish Ministers may by order made by statutory instrument appoint.
(2) Different days may be appointed under subsection (1) for different provisions and for different purposes.

(3) Such an order may include such transitional provisions and savings as the Scottish Ministers consider appropriate.

(4) This Act may be cited as the Tobacco Advertising and Promotion (Scotland) Act 2001.
Tobacco Advertising and Promotion (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to control the advertising and promotion of tobacco products; and for connected purposes.

Introduced by: Nicola Sturgeon
On: 5 November 2001
Bill type: Member's Bill

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