MEMORANDUM

TOBACCO ADVERTISING AND PROMOTION BILL

Background

1. Responsibility for tobacco advertising is devolved to the Scottish Parliament. The introduction of a ban on tobacco advertising is a Scottish Executive Programme for Government commitment. To effect a ban the Executive had prepared draft regulations under the European Communities Act 1972 which it was originally proposed to make before the end of 1999. However, this was prevented by a challenge against the Directive in the European Courts, brought by the German Government and joined by the UK tobacco companies, and by action in the English Courts brought by the UK tobacco companies to prevent implementation by the UK Government. On 5 October 2000 the European Court of Justice (ECJ) decided to annul the Directive which means that it is no longer possible to make regulations under the European Communities Act.

Content of the Bill

General

2. Following the ECJ ruling the Executive has worked closely with other UK Health Departments to find the best means to effect a ban in primary legislation. These discussions have led to the Tobacco Advertising and Promotion Bill which was introduced, and published, at Westminster on 14 December. The Bill introduces measures to ban tobacco advertising and promotion throughout the United Kingdom. The main provisions of the Bill are to: -

- Ban tobacco advertising in UK published print and electronic media.
- Ban tobacco advertising on billboards in the UK
- Ban direct mail advertising of tobacco products.
- Ban the free distribution of products that promote tobacco brands (beermats, umbrellas etc.)
- Restrict the display of tobacco products in shops and other sales outlets.
- Confer powers on Ministers to regulate the advertising of other products which have names or distinguishing remarks reminiscent of tobacco products (brandsharing).
- End sponsorship by tobacco companies (see para 3.3 below).

Regulation making powers

3. There are several regulation-making powers contained in the Bill. These powers are to:-

3.1 specify conditions for the purposes of the exemption for advertising at the point of sale;

3.2 specify requirements for the purposes of the defence that a retailer is a specialist tobacconist and, therefore, exempt from the advertising ban within shops and point of sale (this is a backup power);

3.3 to provide a timetable for when tobacco sponsorship will end and to set out the conditions under which it may continue in the interim;

3.4 restrict or prohibit the use of tobacco branding for non-tobacco products, or services and vice-versa (i.e. more commonly known as brandsharing or brand stretching);

3.5 to extend the ban on free distributions to nominal distributions; and

3.6 to amend the Act to cater for technological developments.

4. It is proposed that these powers will be conferred on the Scottish Ministers in respect to the first three sets of regulations listed (paras 3.1 to 3.3). These would all be subject to negative resolution procedure (i.e. regulations are made and laid and come into force 21 days later).

5. The regulations concerning brandsharing (para. 3.4) and nominal distribution (para 3.5) and technological developments (para 3.6) would be subject to affirmative resolution as an infringement would be a criminal offence. These sets of regulations are complex both from a technical and legal standpoint and may involve notification to the European Commission under the Technical Standards Directive. It is proposed that the Secretary of State should be allowed to legislate on these matters for Scotland. Scottish interests will be consulted on the terms of the draft regulations.

Offences, penalties and enforcement

6. The Bill creates offences and sets penalties in respect of tobacco advertising and promotion which will be enforced in the most part by local trading standards officers. There will also be a power for the Scottish Ministers to take over enforcement.

The proposal

7. Given the cross-border flow of newspapers media etc, Scotland can sensibly take only very limited action in isolation from the rest of the UK. Northern Ireland and Welsh Ministers have agreed to Westminster legislation. Having looked carefully at the options available to effect a ban, the Executive has concluded that there is a compelling case for a single Bill to effect a ban throughout the UK. A UK Bill would avoid any inconsistencies in statute which could be exploited by the tobacco industry and would ensure the ban comes into effect in all parts of the UK at the same time. Moreover, crucially, it would also avoid difficulties in enforcement.

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