

TOBACCO ADVERTISING AND PROMOTION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 11: Brandsharing

48. Brandsharing, or brandstretching as it is sometimes known, is a form of indirect advertising involving the use of tobacco branding on non-tobacco products or services, or vice versa. The rationale for taking action against this form of advertising is that it also increases consumption of tobacco.
49. *Subsection (1)* enables the Secretary of State to make regulations concerning the use of such branding. It is intended that the regulations will set out limited circumstances in which brandsharing will be permissible. There has been full consultation on the scope of these regulations. *Paragraphs (a)* and *(b)* indicate that the regulations will apply to shared branding both in tobacco and non-tobacco products and services.
50. *Subsection (2)* provides that, consistently with the rest of the Act's provisions, the regulations may be made only in relation to brandsharing where the purpose or effect is to promote a tobacco product.
51. *Subsection (3)* provides that if regulations made under this section allow for an exception, then that exception may also apply to offences under other sections. This would mean that if the use of branding was allowed under the brandsharing regulations then other uses of that branding, including advertising, would not fall foul of other parts of the Act. This is to avoid the situation where, for example, a company could legally trade their product but might find themselves prosecuted under the advertising prohibition.