



# Tobacco Advertising and Promotion Act 2002

## 2002 CHAPTER 36

### 5 Advertising: defences

- (1) A person does not commit an offence under section 2 [<sup>F1</sup>, section 3(a) or (b) or section 3A(1)(a) <sup>F2</sup>...], in connection with an advertisement whose purpose is to promote a tobacco product, if he did not know, and had no reason to suspect, that the purpose of the advertisement was to promote a tobacco product.
  - (2) A person does not commit such an offence in connection with an advertisement whose effect is to promote a tobacco product if he could not reasonably have foreseen that that would be the effect of the advertisement.
  - (3) A person does not commit an offence under section 2(2) [<sup>F3</sup>, 3(a) or (b) or 3A(1)(a)] if he did not know, and had no reason to suspect, that the tobacco advertisement would be published in the United Kingdom.
- <sup>F4</sup>(3A) .....
- (4) A person does not commit an offence under section 2(2) of distributing or causing the distribution of a tobacco advertisement, otherwise than as mentioned in section 2(3), if he did not know, and had no reason to suspect, that what he distributed or caused to be distributed was, or contained, a tobacco advertisement.
  - (5) In relation to a tobacco advertisement which is distributed as mentioned in section 2(3), a person does not commit an offence under section 2(2) of distributing it or causing its distribution if—
    - (a) he was unaware that what he distributed or caused to be distributed was, or contained, a tobacco advertisement,
    - (b) having become aware of it, it was not reasonably practicable for him to prevent its further distribution, <sup>F5</sup>...
- [<sup>F6</sup>(c) in relation to transmission by means of information society services, he did not carry on business in [<sup>F7</sup>the United Kingdom] at the relevant time, or
- (d) in relation to transmission by any other means of electronic transmission, he did not carry on business in the United Kingdom at the relevant time.]

---

*Changes to legislation: There are currently no known outstanding effects for the Tobacco Advertising and Promotion Act 2002, Section 5. (See end of Document for details)*

---

<sup>F8</sup>(5A) .....

- (6) A person does not commit an offence under section 3(c) if he did not know, and had no reason to suspect, that the publication contained a tobacco advertisement.

#### Textual Amendments

- F1** Words in s. 5(1) substituted (28.9.2006) by Tobacco Advertising and Promotion Act 2002 (Amendment) Regulations 2006 (S.I. 2006/2369), regs. 1(1), **5(2)**
- F2** Words in s. 5(1) omitted (31.12.2020) by virtue of The Tobacco Products and Nicotine Inhaling Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/41), regs. 1, **2(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in s. 5(3) substituted (28.9.2006) by Tobacco Advertising and Promotion Act 2002 (Amendment) Regulations 2006 (S.I. 2006/2369), regs. 1(1), **5(3)**
- F4** S. 5(3A) omitted (31.12.2020) by virtue of The Tobacco Products and Nicotine Inhaling Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/41), regs. 1, **2(5)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Word in s. 5(5) omitted (28.9.2006) by virtue of Tobacco Advertising and Promotion Act 2002 (Amendment) Regulations 2006 (S.I. 2006/2369), regs. 1(1), **5(5)(a)**
- F6** S. 5(5)(c)(d) substituted (28.9.2006) for s. 5(5)(c) by Tobacco Advertising and Promotion Act 2002 (Amendment) Regulations 2006 (S.I. 2006/2369), regs. 1(1), **5(5)(b)**
- F7** Words in s. 5(5)(c) substituted (31.12.2020) by The Tobacco Products and Nicotine Inhaling Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/41), regs. 1, **2(5)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F8** S. 5(5A) omitted (31.12.2020) by virtue of The Tobacco Products and Nicotine Inhaling Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/41), regs. 1, **2(5)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I1** S. 5 wholly in force at 14.2.2003; s. 5 not in force at Royal Assent see s. 22(1)(2); s. 5 wholly in force at 14.2.2003 by S.I. 2002/2865, **art. 2(2)(e)**; S.S.I. 2002/512, **art. 2(2)(e)**

**Changes to legislation:**

There are currently no known outstanding effects for the Tobacco Advertising and Promotion Act 2002, Section 5.