



Tobacco Advertising and Promotion Act 2002

2002 CHAPTER 36

9 Prohibition of free distributions

- (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.

^{F1}(1A)

- (2) It does not matter whether the product or coupon accompanies something else, or is given away separately.
- (3) No offence is committed under subsection (1) if—
- (a) the business referred to in subsection (1) is part of the tobacco trade,
 - (b) the product or coupon is given away for the purposes of that trade,
 - (c) each person to whom it is given—
 - (i) is engaged in, or employed by, a business which is also part of the tobacco trade, and
 - (ii) falls within subsection (4), and
 - (d) the product or coupon is given to each such person in his capacity as such a person.
- (4) A person falls within this subsection if—
- (a) he is responsible for making decisions on behalf of the business referred to in subsection (3)(c)(i) about the purchase of tobacco products which are to be sold in the course of that business,
 - (b) he occupies a position in the management structure of the business in question which is equivalent in seniority to, or of greater seniority than, that of any such person, or

Changes to legislation: There are currently no known outstanding effects for the Tobacco Advertising and Promotion Act 2002, Section 9. (See end of Document for details)

- (c) he is the person who, or is a member of the board of directors or other body of persons (however described) which, is responsible for the conduct of the business in question.
- (5) A person does not commit an offence under this section—
- (a) where it is alleged that the purpose of giving the product or coupon away was to promote a tobacco product, if he did not know and had no reason to suspect that that was its purpose, or
 - (b) where it is alleged that the effect of giving the product or coupon away was to promote a tobacco product, if he could not reasonably have foreseen that that would be its effect.
- [^{F2}(5A) Nothing in subsection (1) makes it an offence for a service provider established outside the United Kingdom to do anything in the course of providing information society services.]
- (6) “Coupon” means 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.
- (7) The Secretary of State may make regulations providing for this section to apply to making products or coupons available for a nominal sum or at a substantial discount as it applies to giving them away.
- (8) If regulations under subsection (7) provide for this section to apply to making products or coupons available at a substantial discount, the regulations must provide for the meaning of “substantial discount”.
- (9) The regulations may provide that this section is to apply in that case with such modifications (if any) specified in the regulations as the Secretary of State considers appropriate.

Textual Amendments

- F1** S. 9(1A) 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(8)**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** S. 9(5A) inserted (12.1.2010) by [Health Act 2009](#) (c. 21), s. 40(7)(b), **Sch. 4 para. 5(3)**
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Commencement Information

- I1** S. 9 partly in force; s. 9 not in force at Royal Assent see s. 22(1)(2); s. 9 in force for certain purposes at 14.2.2003 and for certain further purposes at 14.5.2003 by [S.I. 2002/2865](#), **art. 2(2)(f)(3)(b)** (with [art. 3](#)) (as amended by [S.I. 2003/258](#), **art. 2(3)-(6)**) and [S.S.I. 2002/512](#), **art. 2(2)(f)(3)(b)** (with [art. 3](#)) (as amended by [S.S.I. 2003/80](#), **art. 2(3)-(6)**)
- I2** S. 9 in force at 31.7.2005 for S. so far as not already in force by [S.S.I. 2004/546](#), **art. 2(2)(b)**
- I3** S. 9 in force at 31.7.2005 for E.W.N.I. so far as not already in force by [S.I. 2004/3138](#), **art. 2(2)(b)**

Changes to legislation:

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