
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to Directive [2003/33/EC](#) of the European Parliament and Council of 26th May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (“the Directive on tobacco advertising and sponsorship”). They do so by amending the Tobacco Advertising and Promotion Act 2002 (“the Act”) to include provision about information society services (“ISS”) to the extent that the Act does not yet do so. In doing so, these Regulations also give effect to Directive [2000/31/EC](#) of the European Parliament and Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (“the electronic commerce Directive”).

Regulation 2 amends section 2 (prohibition of tobacco advertising) of the Act. Regulation 2(2) replaces subsection (4) to create new offences in relation to publishing, devising or distributing a tobacco advertisement in the EEA⁽¹⁾ by ISS from an establishment in the United Kingdom. The old subsection (4) provided that it was not an offence under subsection (1) for persons not carrying on business in the United Kingdom to publish, etc. a tobacco advertisement on a website which is accessible in the United Kingdom. This exclusion has been moved to create a new section 4(1)(d) of the Act, which is now limited to persons carrying on business outside the EEA.

Regulation 3 inserts a new section 3A (advertising: information society services) to provide for new offences in relation to any proprietor or editor of an ISS which contains a tobacco advertisement and any person who directly or indirectly commissioned the offending advertisement, e.g. advertising agencies.

Regulation 4 amends section 4 (advertising: exclusions) of the Act. It limits the exclusion in section 4(1)(c) of the Act to publications printed outside the EEA which do not have the EEA (or any part of it) as its principal market. It also inserts new subsections (1A) and (1B) to exclude from the offences under sections 2, 3 and 3A information on tobacco products provided by ISS only in reply to a particular request by a person for such information (provided certain conditions are met), or to persons who have initiated a purchase of a tobacco product from an ISS. Regulation 4 also inserts a new section 4(5) to give effect to a new Schedule which implements Articles 12, 13 and 14 of the electronic commerce Directive. This new Schedule, inserted by regulation 9, excludes from sections 2, 3A and 9 (prohibition of free distributions) ISS providers who act as a mere conduit, or who are caching or hosting information containing a tobacco advertisement, if certain conditions are met.

Regulation 5 amends section 5 (advertising: defences) of the Act to extend the defences contained in this section to the new offences created by the new sections 2(4) and 3A. Regulation 6 amends section 8(2) (displays) of the Act, by limiting the persons liable to an offence under subsection (1) to those carrying on business in the EEA.

Regulation 7 amends section 16 (penalties) of the Act to provide for maximum penalties for the new offences created by the new sections 2(4) and 3A. Regulation 8 amends section 21 (interpretation) of the Act by inserting a number of new definitions and by making provision for determining when a person is established in a particular place.

Regulation 10 amends the Electronic Commerce (EC Directive) (Extension) Regulations 2003, by omitting paragraph 2 to the Schedule (which extended the provisions of the Electronic Commerce

(1) The EEA is comprised of the member States of the European Union, together with Norway, Iceland and Liechtenstein.

Status: This is the original version (as it was originally made).

(EC Directive) Regulations 2002 ([SI 2002/2013](#)) to the Act). Such provision is no longer necessary as a result of the amendments to the Act made by these Regulations.

A Regulatory Impact Assessment and a Transposition Note have been prepared for these Regulations and a copy of each has been placed in the library of each House of Parliament. Copies of the Regulatory Impact Assessment and the Transposition Note can be obtained from the Cancer & CVD Protection – Tobacco Policy Team, Department of Health, Room 712, Wellington House, 133-155 Waterloo Road, London SE1 8UG.