EXECUTIVE NOTE

The Tobacco Advertising and Promotion Act 2002 (Commencement No. 10) (Scotland) Order 2006 SSI/2006/473 (C.40)

1. The above instrument was made in exercise of the powers conferred by sections 22(1) and (2) of the Tobacco Advertising and Promotion Act 2002.

Policy Objectives

2. The UK requires to transpose the internet provisions of the "Tobacco Advertising Directive" EC Directive 2003/33/EC, which sets down common rules for Member States of the EEA relating to the advertising of tobacco products and their promotion, including internet advertising. Article 3 of the Directive states that "advertising that is not permitted in the press and other printed publications shall not be permitted in information society services" (the internet). Whilst responsibility for tobacco advertising is devolved responsibility for e-commerce is not. Therefore the regulations to implement the e-commerce directive (the Tobacco Advertising and Promotion Act 2002 etc. (Amendment) Regulations 2006 ("the 2006 Regulations")) are being made on a UK wide basis under section 2(2) of the European Communities Act.

3. The UK has had power to ban tobacco advertising on the internet since February 2003 under section 2 of the Tobacco Advertising and Promotion Act 2002 ("the 2002 Act"). Section 2 of the 2002 Act had not however previously been brought into force in relation to website advertising. The UK Government has now made the above regulations which amend the 2002 Act, including section 2 of that Act, and at the same time have made a Commencement Order which will bring into force section 2 of the 2002 Act. That commencement order does not apply to Scotland however. A separate commencement order is required in Scotland to commence section 2 of the 2002 Act (as now amended under the 2006 Regulations) for Scotland.

4. The Scottish Commencement Order to which this Executive Note relates will bring into force the 2002 Act in so far as it is not already in force, such that section 2 of that Act will now be brought into force.

5. A copy of the 2006 Regulations is attached to this Note.

Scottish Executive Health Department
September 2006