



# Tobacco Products Duty Act 1979

## 1979 CHAPTER 7

An Act to consolidate the enactments relating to the excise duty on tobacco products. [22nd February 1979]

### Modifications etc. (not altering text)

- C1** Act amended by Value Added Tax Act 1983 (c. 55, SIF 40:2), s. 24(1)(3) and Police and Criminal Evidence Act 1984 (c. 60, SIF 95), s. 114(1)
- C2** Act modified by S.I. 1990/2167, art. 5
- C3** Act modified by Alcoholic Liquor Duties Act 1979 (c. 4), Sch. 2A para. 3(5) (as inserted (22.2.2006) by Finance Act 2004 (c. 12), Sch. 1; S.I. 2006/201, art. 2)

### Commencement Information

- I1** Act wholly in force at 1.4.1979 see s. 12(2)

## 1 Tobacco products.

(1) In this Act “tobacco products” means any of the following products, namely,—

- (a) cigarettes;
- (b) cigars;
- (c) hand-rolling tobacco;
- (d) other smoking tobacco; and
- (e) chewing tobacco,

which are manufactured wholly or partly from tobacco or any substance used as a substitute for tobacco, but does not include herbal smoking products.

<sup>F1</sup>(2) .....

<sup>F1</sup>(2A) .....

(3) The Treasury may by order made by statutory instrument provide that in this Act references to cigarettes, cigars, hand-rolling tobacco, other smoking tobacco and chewing tobacco shall or shall not include references to any product of a description specified in the order, being a product manufactured as mentioned in subsection (1)

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above but not including herbal smoking products; and any such order may amend or repeal subsection (2) [<sup>F2</sup>or (2A)] above.

- (4) Subject to subsection (5) below, a statutory instrument by which there is made an order under subsection (3) above shall be laid before the House of Commons after being made; and unless the order is approved by that House before the expiration of 28 days beginning with the date on which it was made, it shall cease to have effect on the expiration of that period, but without prejudice to anything previously done under it or to the making of a new order.

In reckoning any such period no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than 4 days.

- (5) Subsection (4) above shall not apply to any order containing a statement by the Treasury that the order does not extend the incidence of the duty or involve a greater charge to duty or a reduction of any relief; and a statutory instrument by which any such order is made shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (6) In this section “herbal smoking products” means products commonly known as herbal cigarettes or herbal smoking mixtures.

#### Textual Amendments

- F1** S. 1(2)(2A) repealed (1.8.2003) by [Tobacco Products \(Descriptions of Products\) Order 2003 \(S.I. 2003/1471\)](#), arts. 1, 3
- F2** Words in s. 1(3) inserted (27.7.1993) by 1993 s. 14(5)

## 2 Charge and remission or repayment of tobacco products duty.

- (1) There shall be charged on tobacco products imported into or manufactured in the United Kingdom a duty of excise at the rates shown, . . . <sup>F3</sup>, in the Table in Schedule 1 to this Act.
- (2) Subject to such conditions as they see fit to impose, the Commissioners shall remit or repay the duty charged by this section where it is shown to their satisfaction [<sup>F4</sup>that —
- (a) the products in question have been—
    - (i) exported or shipped as stores, or
    - (ii) used solely for the purposes of research or experiment; and
  - (b) any fiscal marks carried by the products have been obliterated;]
- and the Commissioners may by regulations provide for the remission or repayment of the duty in such other cases as may be specified in the regulations and subject to such conditions as they see fit to impose.

#### Textual Amendments

- F3** Words repealed by [Finance Act 1981 \(c. 35, SIF 40:1\)](#), s. 139(6), [Sch. 19 Pt. III](#)
- F4** Words and paras. (a) and (b) in s. 2(2) substituted (28.7.2000) by 2000 c. 17, s. 15(2)

#### Modifications etc. (not altering text)

- C4** S. 2(2) excluded (20.10.1995) by [S.I. 1995/2518](#), [reg. 118\(f\)](#)

*Status: Point in time view as at 24/03/2010.*

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**3** ..... <sup>F5</sup>

**Textual Amendments**

**F5** S. 3 repealed by [Finance Act 1981 \(c. 35, SIF 40:1\)](#), s. 139(6), [Sch. 19 Pt. III](#)

**4** **Calculation of duty in case of cigarettes more than 9 cm. long.**

For the purposes of the references to a thousand cigarettes in paragraph 1 in the Table in Schedule 1 to this Act . . . <sup>F6</sup> any cigarette more than 9 cm. long (excluding any filter or mouthpiece) shall be treated as if each 9 cm. or part thereof were a separate cigarette.

**Textual Amendments**

**F6** Words repealed by [Finance Act 1981 \(c. 35, SIF 40:1\)](#), s. 139(6), [Sch. 19 Pt. III](#)

**5** **Retail price of cigarettes.**

(1) For the purposes of the duty chargeable at any time under section 2 above in respect of cigarettes of any description, the retail price of the cigarettes [<sup>F7</sup> shall be taken to be—

- (a) the higher of—
  - (i) the recommended price for the sale by retail at that time in the United Kingdom of cigarettes of that description, and
  - (ii) any (or, if more than one, the highest) retail price shown at that time on the packaging of the cigarettes in question,

or

- (b) if there is no such price recommended or shown, the highest price at which cigarettes of that description are normally sold by retail at that time in the United Kingdom.]

[<sup>F8</sup>(1A) In subsection (1) above “ recommended price ”—

- (a) in relation to a case in which cigarettes of the applicable description are manufactured by a manufacturer in a member State, means any price recommended by that manufacturer; and
- (b) in relation to a case which does not fall within paragraph (a) above, means any price recommended by an importer of cigarettes of the applicable description.]

(2) The duty in respect of any number of cigarettes shall be charged by reference to the price which, in accordance with subsection (1) above, is applicable to cigarettes sold in packets of 20 or of such other number as the Commissioners may determine in relation to cigarettes of the description in question; and the whole of the price of a packet shall be regarded as referable to the cigarettes it contains notwithstanding that it also contains a coupon, token, card or other additional item.

(3) In any case in which duty is chargeable in accordance with [<sup>F9</sup>paragraph (b) of subsection (1)] above—

- (a) the question as to what price is applicable under that paragraph shall, subject to subsection (4) below, be determined by the Commissioners; and

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*Status: Point in time view as at 24/03/2010.*

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- (b) the Commissioners may require security (by deposit of money or otherwise to their satisfaction) for the payment of duty to be given pending their determination.
- (4) Any person who has paid duty in accordance with a determination of the Commissioners under subsection (3)(a) above and is dissatisfied with their determination may require the question of what price was applicable under [F10 subsection (1)(b)] above to be referred to the arbitration of a referee appointed [F11 in accordance with subsections (7) to (9).]
- (5) If, on a reference to him under subsection (4) above, the referee determines that the price was lower than that determined by the Commissioners, they shall repay the duty overpaid together with interest on the overpaid duty from the date of the overpayment at such rate as the referee may determine.
- (6) The procedure on any reference to a referee under subsection (4) above shall be such as may be determined by the referee; and the referee's decision on any such reference shall be final and conclusive.
- [F12(7) The Lord Chancellor is to appoint the referee.
- (8) The appointment is to be made only with the concurrence of—
- (a) the Lord Chief Justice of England and Wales, if the determination of the Commissioners was made in relation to England and Wales;
  - (b) the Lord President of the Court of Session, if the determination was made in relation to Scotland; or
  - (c) the Lord Chief Justice of Northern Ireland, if the determination was made in relation to Northern Ireland.
- (9) None of the following may be appointed—
- (a) an official of any government department;
  - (b) an office holder in, or a member of the staff of, the Scottish Administration.
- (10) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.
- (11) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under this section.
- (12) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this section—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

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#### Textual Amendments

- F7** Words and paras. (a) and (b) in s. 5(1) substituted (28.7.2000) by [2000 c. 17, s. 13\(2\)](#)
- F8** S. 5(1A) inserted (16.7.1992) by [Finance \(No.2\) Act 1992 \(c.48\), s. 8 \(b\)](#).
- F9** Words in s. 5(3) substituted (28.7.2000) by [2000 c. 17, s. 13\(3\)](#)
- F10** Words in s. 5(4) substituted (28.7.2000) by [2000 c. 17, s. 13\(4\)](#)

*Status: Point in time view as at 24/03/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Tobacco Products Duty Act 1979. (See end of Document for details)*

- F11** Words in s. 5(4) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 4 para. 98\(2\)](#); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)
- F12** S. 5(7)-(12) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 4 para. 98\(3\)](#); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)

**6 Alteration of rates of duty.**

- (1) The Treasury may by order made by statutory instrument increase or decrease any of the rates of duty for the time being in force under the Table in Schedule 1 to this Act by such percentage of the rate, not exceeding 10 per cent., as may be specified in the order, but any such order shall cease to be in force at the expiration of a period of one year from the date on which it takes effect unless continued in force by a further order made under this subsection.
- (2) In relation to any order made under subsection (1) above to continue, vary or replace a previous order so made, the reference in that subsection to the rate for the time being in force is a reference to the rate that would be in force if no order under that subsection had been made.
- (3) A statutory instrument under subsection (1) above by which there is made an order increasing the rate in force at the time of making the order shall be laid before the House of Commons after being made; and unless the order is approved by that House before the expiration of 28 days beginning with the date on which it was made, it shall cease to have effect on the expiration of that period, but without prejudice to anything previously done under it or to the making of a new order.  
  
In reckoning any such period no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than 4 days.
- (4) A statutory instrument made under subsection (1) above to which subsection (3) above does not apply shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (5) For the purposes of this section—
  - (a) the percentage and the amount per thousand cigarettes in paragraph 1 in the Table in Schedule 1 to this Act shall be treated as separate rates of duty; . . . <sup>F13</sup>
  - (b) . . . . . <sup>F13</sup>

**Textual Amendments**

**F13** S. 6(5)(b) together with the word “and” immediately preceding it repealed by [Finance Act 1981 \(c. 35, SIF 40:1\), s. 139\(6\), Sch. 19 Pt. III](#)

**7 Regulations for management of duty.**

- (1) The Commissioners may with a view to managing the duty charged by section 2 above make regulations—
  - (a) prescribing the method of charging the duty and for securing and collecting the duty;
  - [<sup>F14</sup>(aa) for charging the duty, in such circumstances as may be specified in the regulations, by reference to the weight of the tobacco products at a time

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specified in the regulations or by the Commissioners (whether the time at which the products become chargeable or that at which the duty becomes payable or any other time);]

- (b) for the registration of premises for the safe storage of tobacco products and for requiring the deposit of tobacco products in, and regulating their [<sup>F15</sup>storage and]treatment in and removal from, premises so registered;
- [<sup>F16</sup>(ba) for the registration of premises for the manufacture of tobacco products, for restricting or prohibiting the manufacture of tobacco products otherwise than in premises so registered and for regulating their storage and treatment in, and removal from, such premises;]
- (c) for the registration of premises where—
  - <sup>F17</sup>(i) .....
  - (ii) materials for the manufacture of tobacco products are grown, produced, stored or treated; or
  - (iii) refuse from the manufacture of tobacco products is stored or treated, and for regulating the storage and treatment in, and removal from, premises so registered of such materials and refuse;
- (d) for requiring the keeping and preservation of such records, [<sup>F18</sup>the notification of such information, and the making of such returns, as may be specified in the regulations or required by the Commissioners]; and
- (e) for the inspection of goods, documents and premises.

[<sup>F19</sup>(1A) Regulations under subsection (1) above may, in particular, include provision—

- (a) imposing, or providing for the imposition under the regulations of, conditions and restrictions relating to any of the matters mentioned in that subsection;
- (b) enabling the Commissioners to dispense with compliance with any provision contained in the regulations in such circumstances and subject to such conditions (if any) as they may determine.]

- (2) If any person fails to comply with any regulation made under subsection (1) above [<sup>F20</sup>his failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any article in respect of which any person fails to comply with any such regulation, or which is found on premises in respect of which any person has failed to comply with any such regulation, shall be liable to forfeiture]

#### Textual Amendments

- F14** S. 7(1)(aa) inserted (28.7.2000) by 2000 c. 17, s. 15(4)
- F15** Words in s. 7(1)(b) inserted (28.7.2000) by 2000 c. 17, s. 15(5)
- F16** S. 7(1)(ba) inserted (28.7.2000) by 2000 c. 17, s. 15(6)
- F17** S. 7(1)(c)(i) repealed (28.7.2000) by 2000 c. 17, ss. 15(7), 156, Sch. 40 Pt. I(2)
- F18** Words in s. 7(1)(d) substituted (28.7.2000) by 2000 c. 17, s. 15(8)
- F19** S. 7(1A) inserted (28.7.2000) by 2000 c. 17, s. 15(9)
- F20** Words substituted (1.1.1995) by virtue of 1994 c. 9, s. 9, Sch. 4 para. 59 (with s. 19); S.I. 1994/2679, art. 3

#### Modifications etc. (not altering text)

- C5** S. 7(2) applied (1.12.2002) by The Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2000 (S.I. 2000/426), art. 5A (as inserted by The Channel Tunnel (Alcoholic Liquor and Tobacco Products) (Amendment) Order 2002 (S.I. 2002/2693), art. 7)

*Status: Point in time view as at 24/03/2010.*

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**C6** S. 7(2) applied (24.11.2003) by [Channel Tunnel \(Alcoholic Liquor and Tobacco Products\) Order 2003 \(S.I. 2003/2758\)](#), arts. 1, 4(c)

## **[<sup>F21</sup>7A Duty not to facilitate smuggling**

- (1) A manufacturer of cigarettes or hand-rolling tobacco shall so far as is reasonably practicable avoid—
  - (a) supplying cigarettes or hand-rolling tobacco to persons who are likely to smuggle them into the United Kingdom,
  - (b) supplying cigarettes or hand-rolling tobacco where the nature or circumstances of the supply makes it likely that they will be resupplied to persons who are likely to smuggle them into the United Kingdom, or
  - (c) otherwise facilitating the smuggling into the United Kingdom of cigarettes or hand-rolling tobacco.
- (2) In particular, a manufacturer—
  - (a) in supplying cigarettes or hand-rolling tobacco to persons carrying on business in or in relation to a country other than the United Kingdom, shall consider whether the size or nature of the supply suggests that the products may be required for smuggling into the United Kingdom,
  - (b) shall maintain a written policy about steps to be taken for the purpose of complying with the duty under subsection (1), and
  - (c) shall provide a copy of the policy to the Commissioners on request.
- (3) In this section a reference to smuggling products into the United Kingdom is a reference to importing them into the United Kingdom without payment of duty which is—
  - (a) chargeable under section 2, and
  - (b) payable by virtue of section 1(1) of the Finance (No. 2) Act 1992 (c. 48) (power to fix excise duty point).
- (4) The Commissioners may notify a manufacturer in writing that they think the risk of smuggling into the United Kingdom is particularly great in relation to—
  - (a) products marketed under a specified brand name;
  - (b) products supplied to persons carrying on business in or in relation to a specified country or place.
- (5) The Commissioners may by notice in writing require a manufacturer of cigarettes or hand-rolling tobacco to provide, within a specified period of time, specified information about—
  - (a) supply of products marketed under a brand name specified under subsection (4)(a);
  - (b) supply to persons carrying on business in or in relation to a country or place specified under subsection (4)(b);
  - (c) demand for cigarettes or hand-rolling tobacco in a country or place specified under subsection (4)(b).
- (6) The Commissioners may issue guidance about the content of policies under subsection (2)(b).
- (7) The Commissioners may make regulations—



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*Status: Point in time view as at 24/03/2010.*

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- (a) under which they are required to notify manufacturers of cigarettes or hand-rolling tobacco where products of a kind specified in the regulations are seized under section 139 of the Customs and Excise Management Act 1979 (c. 2) in circumstances specified in the regulations,
- (b) specifying the procedure for notification,
- (c) including provision about access to seized products for the purpose of determining who manufactured them, and
- (d) requiring manufacturers to provide the Commissioners with information or documents, of a kind specified in the regulations or determined by the Commissioners, in relation to notified seizures.

#### Textual Amendments

**F21** Ss. 7A-7D inserted (1.10.2006) by [Finance Act 2006 \(c. 25\)](#), s. 2(1)(3); S.I. 2006/2367, art. 2

### 7B Penalty for facilitating smuggling: initial notice

- (1) Where the Commissioners think that a manufacturer has without reasonable excuse failed to comply with the duty under section 7A(1) they may give him written notice that they are considering requiring him to pay a penalty.
- (2) In determining whether to give notice to a manufacturer under subsection (1) the Commissioners shall have regard to—
  - (a) the content of the manufacturer's policy under section 7A(2)(b),
  - (b) compliance with that policy,
  - (c) action taken pursuant to any notice under section 7A(4),
  - (d) compliance by the manufacturer with any notice under section 7A(5),
  - (e) the number, size and nature of seizures of which the manufacturer has been given notice by virtue of section 7A(7)(a),
  - (f) compliance by the manufacturer with any requirement by virtue of section 7A(7)(d),
  - (g) evidence about the level of demand for the manufacturer's products for consumption outside the United Kingdom, and
  - (h) any other matter that they think relevant.
- (3) A notice must specify the matters to which the Commissioners have had regard in determining to give it.
- (4) After the end of the period of six months beginning with the date on which a notice is given to a manufacturer, the Commissioners shall give him notice in writing either—
  - (a) that they require payment of a penalty, or
  - (b) that they do not require payment of a penalty.
- (5) The Commissioners shall comply with subsection (4) during the period of 45 days beginning with the end of the period specified in that subsection; and for that purpose they shall consider—
  - (a) any representations made by the manufacturer during that period in such form and manner as the Commissioners may direct, and
  - (b) action taken by the manufacturer during that period.



*Status: Point in time view as at 24/03/2010.*

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### Textual Amendments

**F21** Ss. 7A-7D inserted (1.10.2006) by [Finance Act 2006 \(c. 25\), s. 2\(1\)\(3\)](#); S.I. 2006/2367, art. 2

## 7C Penalty for facilitating evasion: penalty notice

- (1) A notice under section 7B(4)(a) (a “penalty notice”) must—
  - (a) specify the amount of the penalty which the manufacturer is required to pay, and
  - (b) state the grounds on which the Commissioners think that the manufacturer has failed to comply with the duty under section 7A(1).
- (2) The amount specified under subsection (1)(a) must not exceed £5 million; and in determining the amount to specify the Commissioners shall have regard to—
  - (a) the nature or extent of the manufacturer's failure to comply with the duty under section 7A(1),
  - (b) action taken by the manufacturer to secure compliance with that duty,
  - (c) the content of the manufacturer's policy under section 7A(2)(b),
  - (d) compliance with that policy,
  - (e) action taken pursuant to any notice under section 7A(4),
  - (f) compliance by the manufacturer with any notice under section 7A(5),
  - (g) the number, size and nature of seizures of which the manufacturer has been given notice by virtue of section 7A(7)(a),
  - (h) the loss of revenue by way of duty under section 2, or VAT , in respect of the products seized, and
  - (i) any other matter that they think relevant.

[<sup>F22</sup>(3) Sections 13A to 16 of the Finance Act 1994 apply to a decision to issue a penalty notice as they apply to the decisions mentioned in section 13A(2)(a) to (h) of that Act.]

### Textual Amendments

**F21** Ss. 7A-7D inserted (1.10.2006) by [Finance Act 2006 \(c. 25\), s. 2\(1\)\(3\)](#); S.I. 2006/2367, art. 2

**F22** S. 7C(3) substituted for s. 7C(3)-(5) (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\), art. 1\(2\), Sch. 1 para. 93\(2\)](#)

## 7D Sections 7A to 7C: supplemental

- (1) Payment of a penalty imposed under section 7B(4)(a) shall not be allowed as a deduction in computing income, profits or losses for purposes of income tax or corporation tax.
- (2) A penalty may be enforced as a debt due to the Commissioners.
- (3) In sections 7A to 7C and this section a reference to a manufacturer of cigarettes or hand-rolling tobacco includes a reference to a person who, in the opinion of the Commissioners—
  - (a) arranges to have cigarettes or hand-rolling tobacco manufactured, and
  - (b) is wholly or partly responsible for the initial supply of the products after manufacture.

*Status: Point in time view as at 24/03/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Tobacco Products Duty Act 1979. (See end of Document for details)*

- (4) Where a manufacturer is a parent undertaking or a subsidiary undertaking (within the meaning of <sup>F23</sup>section 1162 of the Companies Act 2006]) the Commissioners may—
- (a) treat the parent and its subsidiaries as a single undertaking for the purpose of sections 7A to 7C and this section, and
  - (b) in particular, enforce a penalty imposed on the single undertaking as a debt owed by—
    - (i) the single undertaking,
    - (ii) the parent, or
    - (iii) any of the subsidiaries.
- (5) A notice or guidance under section 7A(4) to (6)—
- (a) may be issued to manufacturers generally or to one or more manufacturers or classes of manufacturer,
  - (b) may be expressed to apply to or in respect of manufacturers generally or only to or in respect of one or more specified manufacturers or classes of manufacturer,
  - (c) may make provision generally or only in relation to specified cases or circumstances,
  - (d) may make different provision in relation to different cases or circumstances, and
  - (e) may be varied, replaced or revoked.
- (6) The Treasury may by order—
- (a) amend the list in section 7B(2) or 7C(2) so as to—
    - (i) add an entry,
    - (ii) remove an entry, or
    - (iii) amend an entry;
  - (b) amend sections 7A to 7C and this section so as to alter the class of tobacco products in relation to which they apply.
- (7) An order under subsection (6)—
- (a) may include transitional, consequential or incidental provision,
  - (b) shall be made by statutory instrument,
  - (c) shall be laid before the House of Commons, and
  - (d) shall cease to have effect unless approved by resolution of the House of Commons within the period of 28 days beginning with the date on which it is laid (disregarding any period of dissolution or prorogation or of adjournment for more than four days).]

#### Textual Amendments

**F21** Ss. 7A-7D inserted (1.10.2006) by [Finance Act 2006 \(c. 25\)](#), s. 2(1)(3); S.I. 2006/2367, art. 2

**F23** Words in s. 7D(4) substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), 5 (with art. 4)

## 8 Charge in cases of default.

- (1) Where the records or returns kept or made by any person in pursuance of regulations under section 2 or 7 above show that any tobacco products or materials for

*Status: Point in time view as at 24/03/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Tobacco Products Duty Act 1979. (See end of Document for details)*

their manufacture are or have been in his possession or under his control, the Commissioners may from time to time require him to account for those products or materials.

(2) Unless a person required under subsection (1) above to account for any products or materials proves—

- (a) that duty has been paid or secured under section 7 above in respect of the products or, as the case may be, products manufactured from the materials; or
- (b) that the products or materials are being or have been otherwise dealt with in accordance with regulations under section 2 or 7 above,

the Commissioners may [<sup>F24</sup>assess an amount as duty due from him] under section 2 above in respect of those products or, as the case may be, in respect of such products as in their opinion might reasonably be expected to be manufactured from those materials [<sup>F25</sup>, and they may notify him or his representative accordingly].

<sup>F26</sup>(3) .....

**Textual Amendments**

**F24** Words in s. 8(2) substituted (1.10.1998) by 1998 c. 36, s. 20, **Sch. 2 para. 5(a)**; S.I. 1998/2243, **art. 2(1)**

**F25** Words in s. 8(2) substituted (1.10.1998) by 1998 c. 36, s. 20, **Sch. 2 para. 5(b)**; S.I. 1998/2243, **art. 2(1)**

**F26** S. 8(3) repealed (1.1.1995) by 1994 c. 9, s. 258, **Sch. 26, Pt. III** (with s. 9); S.I. 1994/2679, **art. 3**

[<sup>F27</sup>**8A Fiscal marks: introductory.**

Fiscal marking applies to tobacco products that are—

- (a) cigarettes, or
- (b) hand-rolling tobacco.]

**Textual Amendments**

**F27** Ss. 8A-8J inserted (28.7.2000) by 2000 c. 17, s. 14

[<sup>F28</sup>**8B Power to alter range of products to which fiscal marking applies.**

(1) The Commissioners may by order made by statutory instrument amend section 8A above for the purpose of causing fiscal marking—

- (a) to apply to any description of tobacco products to which it does not apply, or
- (b) to cease to apply to any description of tobacco products to which it does apply.

(2) Where fiscal marking applies to any description of tobacco products, the Commissioners may by regulations provide that fiscal marking does not apply to such products of that description as are of a description specified in the regulations.

(3) A statutory instrument containing (whether alone or with other provisions) an order under subsection (1)(a) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(4) A statutory instrument that—

*Status: Point in time view as at 24/03/2010.*

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- (a) contains (whether alone or with other provisions) an order under subsection (1) above, and
  - (b) is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,
- shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F28** Ss. 8A-8J inserted (28.7.2000) by 2000 c. 17, s. 14

### [<sup>F29</sup>8C Fiscal mark regulations.

- (1) The Commissioners may make provision by regulations—
  - (a) requiring the carrying of fiscal marks by tobacco products to which fiscal marking applies, and
  - (b) as to such matters relating to fiscal marks as appear to the Commissioners to be necessary or expedient.
- (2) In this Act “ fiscal mark ” means a mark carried by tobacco products indicating all or any of the following—
  - (a) that excise duty has been paid on the products;
  - (b) the rate at which excise duty was paid on the products;
  - (c) the amount of excise duty paid on the products;
  - (d) when excise duty was paid on the products;
  - (e) that sale of the products—
    - (i) is only permissible on dates ascertainable from the mark;
    - (ii) is not permissible after (or on or after) a date so ascertainable;
    - (iii) is not permissible before (or before or on) a date so ascertainable.
- (3) Regulations under this section may, in particular, make provision about—
  - (a) the contents of a fiscal mark;
  - (b) the appearance of a fiscal mark;
  - (c) in the case of tobacco products that have more than one layer of packaging, which of the layers is (or are) to carry a fiscal mark;
  - (d) the positioning of a fiscal mark on the packaging of any tobacco products;
  - (e) when tobacco products are required to carry a fiscal mark.
- (4) Regulations under this section may make different provision for different cases.]

#### Textual Amendments

**F29** Ss. 8A-8J inserted (28.7.2000) by 2000 c. 17, s. 14

### [<sup>F30</sup>8D Fiscal marks: public notices.

- (1) The Commissioners may by notices published by them regulate any of the matters mentioned in paragraphs (a) to (d) of section 8C(3) above.

*Status: Point in time view as at 24/03/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Tobacco Products Duty Act 1979. (See end of Document for details)*

- (2) A notice under this section may provide for provision made by regulations under section 8C above to have effect subject to provisions of the notice.
- (3) A notice under this section may make different provision for different cases.]

#### Textual Amendments

**F30** Ss. 8A-8J inserted (28.7.2000) by [2000 c. 17, s. 14](#)

#### [<sup>F31</sup>8E Failure to comply with fiscal mark regulations and public notices.

- (1) This section applies if a person fails to comply with any requirement imposed by or under—
  - (a) regulations made under section 8C above, or
  - (b) a notice published under section 8D above.
- (2) Any article in respect of which the person fails to comply with the requirement shall be liable to forfeiture.
- (3) The person's failure to comply shall attract a penalty under section 9 of the <sup>M1</sup>Finance Act 1994 (civil penalties).
- (4) The Commissioners may by regulations make such provision as is mentioned in subsection (5) below about the calculation of the penalty in a case where the failure involves post-dating of any tobacco products.

For this purpose “ post-dating ” means that the products carry a fiscal mark (“ the later period mark ”) that—

- (a) is not one they are required to carry by virtue of this Act, and
  - (b) is one they would be required to carry by virtue of this Act if the requirement to pay the duty charged on them under section 2 above took effect at a time later than that at which it in fact takes effect.
- (5) The provision that may be made by regulations under subsection (4) above is for the penalty to be calculated by reference to the duty currently charged on the products.

For this purpose “the duty currently charged” on the products is the amount of the duty charged under section 2 above that would be payable on the products if the requirement to pay the duty took effect at the time of the failure.]

#### Textual Amendments

**F31** Ss. 8A-8J inserted (28.7.2000) by [2000 c. 17, s. 14](#)

#### Marginal Citations

**M1** [1994 c. 9.](#)

#### [<sup>F32</sup>8F Sale of marked tobacco when not permitted: penalties.

- (1) This section applies if provision made by or under—
  - (a) regulations made under section 8C above, or

*Status: Point in time view as at 24/03/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Tobacco Products Duty Act 1979. (See end of Document for details)*

(b) a notice published under section 8D above, provides for any tobacco products to carry a period of sale mark.

(2) In this section—

“ a period of sale mark ” means a fiscal mark indicating any of the matters mentioned in subsection (2)(e) of section 8C above; and

“ prohibited time ”, in relation to tobacco products that carry a period of sale mark, means a time when, according to the mark, sale of the products is not permissible.

(3) If—

(a) a person sells by way of retail sale, or exposes for retail sale, any tobacco products that carry a period of sale mark, and

(b) he so sells or exposes the products at a prohibited time,

his so selling or exposing the products shall attract a penalty under section 9 of the <sup>M2</sup>Finance Act 1994 (civil penalties) and the products are liable to forfeiture.]

#### Textual Amendments

**F32** Ss. 8A-8J inserted (28.7.2000) by 2000 c. 17, s. 14

#### Marginal Citations

**M2** 1994 c. 9.

### [<sup>F33</sup>8G Offences: possession and sale etc. of unmarked tobacco.

(1) In this section “unmarked products” means tobacco products that are subject to fiscal marking but do not carry a compliant duty-paid fiscal mark.

(2) For the purposes of this section “ duty-paid fiscal mark ” means a fiscal mark carried by tobacco products indicating that excise duty has been paid on the products.

(3) For the purposes of this section a duty-paid fiscal mark carried by tobacco products of any description is “ compliant ” if it complies with all relevant requirements for any duty-paid fiscal mark that by virtue of this Act is required to be carried by such tobacco products of that description as are by virtue of this Act required to carry such a mark.

For this purpose “ relevant requirement ” means a requirement, imposed by virtue of this Act, as to any of the matters mentioned in paragraphs (a) to (d) of section 8C(3) above (contents, appearance and positioning etc. of fiscal marks).

(4) If a person—

(a) is in possession of, transports or displays, or

(b) sells, offers for sale or otherwise deals in,

unmarked products then, except in such cases as may be prescribed in regulations made by the Commissioners, that person commits an offence and the products are liable to forfeiture.

(5) It is a defence for a person charged with an offence under subsection (4) above to prove that the unmarked products were not required by virtue of this Act to carry a duty paid fiscal mark.

*Status: Point in time view as at 24/03/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Tobacco Products Duty Act 1979. (See end of Document for details)*

- (6) A person guilty of an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.]

**Textual Amendments**

**F33** Ss. 8A-8J inserted (28.7.2000) by 2000 c. 17, s. 14

[<sup>F34</sup>**8H** **Offences: use of premises for sale of unmarked tobacco.**

- (1) A manager of premises commits an offence if he suffers the premises to be used for the sale of unmarked products.

In this section “ unmarked products ” has the same meaning as in section 8G above.

- (2) It is a defence for a person charged with an offence under subsection (1) above to prove that the unmarked products were not required by virtue of this Act to carry a duty-paid fiscal mark.

For this purpose “ duty-paid fiscal mark ” has the same meaning as in section 8G above.

- (3) A person guilty of an offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A court by or before which a person is convicted of an offence under subsection (1) above may make an order prohibiting the use of the premises in question for the sale of tobacco products during a period specified in the order.
- (5) The period specified in an order under subsection (4) above shall not exceed six months; and the first day of the period shall be the day specified as such in the order.
- (6) A manager of premises commits an offence if he suffers the premises to be used in breach of an order under subsection (4) above.
- (7) A person guilty of an offence under subsection (6) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) For the purposes of this section a person is a manager of premises if he—
- (a) is entitled to control their use,
  - (b) is entrusted with their management, or
  - (c) is in charge of them.]

**Textual Amendments**

**F34** Ss. 8A-8J inserted (28.7.2000) by 2000 c. 17, s. 14

[<sup>F35</sup>**8J** **Interfering with fiscal marks: penalties.**

- (1) This section applies where a person—
- (a) alters or overprints any fiscal mark carried by any tobacco products in compliance with any provision made under this Act, or
  - (b) causes any such mark to be altered or overprinted.



*Status: Point in time view as at 24/03/2010.*

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- (2) His altering or overprinting of the mark, or his causing it to be altered or overprinted, shall attract a penalty under section 9 of the <sup>M3</sup>Finance Act 1994 (civil penalties).
- (3) The products that carried the mark shall be liable to forfeiture.
- (4) The penalty under subsection (2) above shall be calculated by reference to the duty currently charged on the products.

For this purpose “the duty currently charged” on the products is the amount of the duty charged under section 2 above that would be payable on the products if the requirement to pay the duty took effect at the time of the conduct attracting the penalty.]

#### Textual Amendments

**F35** Ss. 8A-8J inserted (28.7.2000) by [2000 c. 17, s. 14](#)

#### Marginal Citations

**M3** [1994 c. 9.](#)

## 9 Regulations.

[<sup>F36</sup>(1)] Any power to make regulations under this Act shall be exercisable by statutory instrument and any statutory instrument by which the power is exercised shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F37</sup>(2) Regulations under this Act—

- (a) may enable the Commissioners to dispense with compliance with a provision of the regulations (whether absolutely or conditionally),
- (b) may make provision generally or only in relation to specified cases or circumstances,
- (c) may make different provision in relation to different cases or circumstances, and
- (d) may include transitional, consequential or incidental provision.]

#### Textual Amendments

**F36** [S. 9\(1\)](#): s. 9 renumbered as s. 9(1) (1.10.2006) by [Finance Act 2006 \(c. 25\), s. 2\(2\)\(3\)](#); S.I. 2006/2367, art. 2

**F37** [S. 9\(2\)](#) added (1.10.2006) by [Finance Act 2006 \(c. 25\), s. 2\(2\)\(3\)](#); S.I. 2006/2367, art. 2

## 10 Interpretation.

(1) In this Act—

“hand-rolling tobacco” has the meaning given by section 1(2) above; and  
“tobacco products” has the meaning given by section 1(1) above.

(2) This Act and the other Acts included in the Customs and Excise Acts 1979 shall be construed as one Act but where a provision of this Act refers to this Act that reference is not to be construed as including a reference to any of the others.

*Status: Point in time view as at 24/03/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Tobacco Products Duty Act 1979. (See end of Document for details)*

- (3) Any expression used in this Act or in any instrument made under this Act to which a meaning is given by any other Act included in the Customs and Excise Acts 1979 has, except where the context otherwise requires, the same meaning in this Act or in any such instrument as in that Act; and for ease of reference the Table below indicates the expressions used in this Act to which a meaning is given by any other such Act—

*Customs and Excise Management Act 1979*

- “the Commissioners”
- “the Customs and Excise Acts 1979”
- “goods”
- “importer”
- “shipped”
- “stores”.

**11 Repeals, savings and transitional and consequential provisions.**

- (1) The enactments specified in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule, but subject to the provision at the end of that Schedule.
- (2) Any provision of this Act relating to anything done or required or authorised to be done under or by reference to that provision or any other provision of this Act shall have effect as if any reference to that provision, or that other provision, as the case may be, included a reference to the corresponding provision of the enactments repealed by this Act.
- <sup>F38</sup>(3) .....
- (4) Nothing in this section shall be taken as prejudicing the operation of sections 15 to 17 of the <sup>M4</sup>Interpretation Act 1978 (which relate to the effect of repeals).

**Textual Amendments**

**F38** S. 11(3) repealed (29.4.1996) by 1996 c. 8, s. 205(1), **Sch. 41 Pt. III**

**Marginal Citations**

**M4** 1978 c. 30.

**12 Citation and commencement.**

- (1) This Act may be cited as the Tobacco Products Duty Act 1979 and is included in the Acts which may be cited as the Customs and Excise Acts 1979.
- (2) This Act shall come into operation on 1st April 1979

*Status: Point in time view as at 24/03/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Tobacco Products Duty Act 1979. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Section 2(1).

#### TABLE OF RATES OF TOBACCO PRODUCTS DUTY

#### [<sup>F39</sup>TABLE

1. Cigarettes	An amount equal to 24 per cent of the retail price plus £119.03 per thousand cigarettes
2. Cigars	£180.28 per kilogram
3. Hand-rolling tobacco	£129.59 per kilogram
4. Other smoking tobacco and chewing tobacco	£79.26 per kilogram]

#### Textual Amendments

**F39** Table in Sch. 1 substituted (6pm on 24.3.2010 retrospective) by [Finance Act 2010 \(c. 13\), s. 10\(1\)\(2\)](#)

### <sup>X1</sup>SCHEDULE 2

Section 11(1).

#### REPEALS

#### Editorial Information

**X1** The text of Sch. 2 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Chapter	Short Title	Extent of Repeal
15 & 16 Geo. 6 & 1 Eliz. 2 c. 44.	The Customs and Excise Act 1952.	In the proviso to section 271(3), paragraph (i).
1976 c. 40.	The Finance Act 1976.	Sections 4, 5, 6(1) to (5) and 7.
1977 c. 36.	The Finance Act 1977.	Sections 2(2) and (4) to (8) and 3(1) and (5).
1978 c. 42.	The Finance Act 1978.	Section 1. In Schedule 12, paragraph 7(2).

The repeal in section 271(3) of the Customs and Excise Act 1952 does not affect drawback by virtue of events occurring on or before 30th June 1978.

**Status:**

Point in time view as at 24/03/2010.

**Changes to legislation:**

There are currently no known outstanding effects for the Tobacco Products Duty Act 1979.