EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose fees on industry in relation to tobacco products and herbal products for smoking.

The Tobacco Products Directive 2014(**1**), in so far as relevant, requires Member State to carry out the following functions.

First, to approve and monitor laboratories which are to verify the tar, nicotine and carbon monoxide emissions from cigarettes. See Article 4.

Second, to require manufacturers and importers of tobacco products, and herbal products for smoking, to submit certain information, which must be stored and made available to the European Commission and the public. See Articles 5, 19 and 22.

In the United Kingdom, these functions are carried out by the Secretary of State for Health, acting by Public Health England (PHE).

The Tobacco and Related Products Regulations 2016 ("the 2016 Regulations") implement the provisions of the Tobacco Products Directive 2014 referred to above. See regulation 14, and Parts 4 and 5.

These Regulations supplement the 2016 Regulations by introducing fees to recover PHE's costs.

Regulation 2 introduces an annual fee to cover the cost of approving and monitoring laboratories, and arranging for such approved laboratories to verify the tar, nicotine and carbon monoxide emissions from cigarettes, as well as the cost of the laboratories carrying out the verifications. The fee is payable by manufacturers, including those who manufacture for export.

Regulations 3 and 5 introduce a reporting fee, which is intended to cover the cost of administering the information that must be submitted by producers of tobacco products and herbal products for smoking.

Regulations 4 and 6 introduce an annual fee intended to cover the on-going costs associated with reporting under Parts 4 and 5 of the 2016 Regulations, including maintaining and managing the website on which information is published, and, in relation to tobacco products, administering information that is submitted on an ad hoc or annual basis, including studies on the effects of tobacco products, and sales data and market research information.

Regulation 7 makes provision to enable recovery of any unpaid fees.

Regulation 8 amends regulations 18, 23, 27, 29 and 30 of the 2016 Regulations so as to provide consequences for failure to pay fees in connection with the submission of information.

The amendments to regulations 18, 23 and 29 of the 2016 Regulations provide that if a fee which is payable under regulation 3 or 5 of these Regulations is not paid by the date specified in its invoice, for the purposes of regulation 48(b), the submission or notification to which it relates is to be regarded as not having been made or submitted in accordance with regulation 18(2)(b), 23(1) or 29(2)(b) of the 2016 Regulations, which set out the deadlines for submission or notification, until the fee has been paid.

(**1**) Directive 2014/40/EU of the European Parliament and of the Council on the approximation of laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC. OJ L 127, 29.4.2014, p.1 as amended by Commission Delegated Directive 2014/109/EU, OJ L 360, 17.12.2014, p.22.

Under regulation 48(b) of the 2016 Regulations it is a criminal offence for a person to fail to submit information to the Secretary of State in accordance with a provision of Part 4 or regulation 29.

Regulation 8 amends regulations 27 and 30 of the 2016 Regulations so as to provide that producers who fail to submit information in accordance with any provisions of Part 4 or regulation 29 of the 2016 Regulations must not supply the relevant product until the information has been submitted, and any fees due under regulation 3 or 5 of these Regulations has been paid.

Under regulation 48(a)(iii) and (c) of the 2016 Regulations it is a criminal offence for a person to supply the product in these circumstances.

An impact assessment of the effects that this instrument will have on the costs of business and the voluntary sector is available from the Department of Health, 79 Whitehall, London, SW1A 2NS, and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.