

2018 No. 75

EXCISE

The Tobacco Products Manufacturing Machinery (Licensing Scheme) Regulations 2018

Made - - - - - *23rd January 2018*

Laid before the House of Commons *25th January 2018*

Coming into force in accordance with regulation 1

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 8V of the Tobacco Products Duty Act 1979(a).

PART 1

PRELIMINARY

Citation and commencement

1.—(1) These Regulations may be cited as the Tobacco Products Manufacturing Machinery (Licensing Scheme) Regulations 2018.

(2) Except Parts 2, 5 and 6, these Regulations come into force on 1st April 2018.

(3) Parts 2, 5 and 6 of these Regulations come into force on 1st August 2018.

Interpretation

2. In these Regulations—

“licensee” means a person to whom a licence is granted under these Regulations,

“prescribed” means prescribed by the Commissioners in a published notice and “prescribe” is construed accordingly,

“regulated activity” has the meaning given in regulation 3(4).

(a) 1979 c. 7. Section 8V of Tobacco Products Duty Act 1979 was inserted by section 47 of the Finance (No. 2) Act 2017 (c. 32). The power to make regulations under section 8V is conferred on “the Commissioners” and by virtue of section 10(3) of that Act, “the Commissioners” has the same meaning as provided in the Customs and Excise Management Act 1979 (c. 2). Section 1(1) of the Customs and Excise Management Act 1979 (as amended by paragraphs 20 and 22(b) of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11)) defines “the Commissioners” as “the Commissioners for Her Majesty’s Revenue and Customs”.

PART 2

REQUIREMENT FOR A LICENCE

Requirement for a licence

3.—(1) A person may not carry out a regulated activity otherwise than in accordance with a licence granted by the Commissioners under these Regulations.

(2) Paragraph (1) does not apply to a person carrying out a regulated activity in respect of an item of tobacco products manufacturing machinery which—

- (a) requires tobacco and paper to be loaded manually into the item,
- (b) makes cigarettes or cigars only by manual operation, and
- (c) makes only one cigarette or cigar before it requires further loading as described in subparagraph (a).

(3) Paragraph (1) does not apply to a person if the only regulated activity carried out by that person is being in possession of an item of tobacco products manufacturing machinery for the purpose of transporting the item on behalf of a licensee, where the transport is made in accordance with the conditions and restrictions of the licence of the licensee.

(4) A regulated activity is to manufacture, purchase, acquire, own or be in possession of an item of tobacco products manufacturing machinery^(a).

PART 3

COMMISSIONERS

Eligibility

4. The Commissioners may grant a licence to a person to carry out a regulated activity only if the Commissioners are satisfied that the person—

- (a) is a fit and proper person to carry out the regulated activity, and
- (b) will not use an item of tobacco products manufacturing machinery for the purpose of, or with a view to, the fraudulent evasion of the duty of excise charged on tobacco products under section 2(1) of the Tobacco Products Duty Act 1979^(b).

Conditions and restrictions

5.—(1) The Commissioners may prescribe conditions and restrictions which may be imposed in a licence and different conditions and restrictions may be prescribed for different cases.

(2) The Commissioners may specify in a licence that restrictions and conditions are imposed in addition to those prescribed.

Variation or revocation of a licence by the Commissioners

6.—(1) The Commissioners may at any time for reasonable cause vary or revoke a licence.

(2) Where paragraph (1) applies, the Commissioners must give written notice of the variation or revocation to the licensee and state in that notice—

- (a) the date the variation or revocation has effect,

(a) Tobacco products manufacturing machinery has the meaning given in section 8V(1) of the Tobacco Products Duty Act 1979.

(b) Section 2(1) was amended by Part 3 of Schedule 19 to the Finance Act 1981 (c. 35).

- (b) in the case of a variation, the variation made, and
- (c) the reasons for the variation or revocation.

PART 4 APPLICATIONS

Communications

7.—(1) The Commissioners must prescribe the form and manner for an application and the information to be included in an application.

(2) The Commissioners may prescribe that an application, and any communication relating to it, is to be made electronically.

(3) The Commissioners may prescribe different provisions for different cases.

(4) In this Part, “application” means an application—

- (a) for a licence,
- (b) to vary a licence, or
- (c) to renew a licence.

Applications for a licence and to vary or renew a licence

8.—(1) A person must make an application as prescribed.

(2) The Commissioners must, as soon as reasonably practicable after receiving the application,—

- (a) grant a licence or agree to vary or renew a licence, as the case may be,
- (b) refuse the application in writing, giving reasons for the refusal, or
- (c) request additional information in accordance with regulation 9.

(3) Where the Commissioners have requested additional information, they must, as soon as reasonably practicable after receiving the additional information,—

- (a) grant a licence or agree to vary or renew a licence, as the case may be, or
- (b) refuse the application in writing, giving reasons for the refusal.

Additional information

9.—(1) In order to determine an application, the Commissioners may, by notice, request an applicant to provide additional information to that prescribed.

(2) Any such notice must specify—

- (a) the additional information required, and
- (b) the date by which the information must be provided to the Commissioners.

(3) The Commissioners may, by notice given to the applicant, extend the date to comply with the request for additional information.

(4) Where an applicant does not provide the additional information requested by the date given by the Commissioners, the application is treated as being withdrawn on that date.

(5) Where paragraph (4) applies, the Commissioners must give notice to the applicant stating that the application has been treated as withdrawn.

Licences

10.—(1) Where the Commissioners grant a licence, they must provide a licence to the applicant which specifies—

- (a) a unique licence number,
 - (b) the name and address of the applicant and, in the case of a company, the company registration number,
 - (c) each regulated activity permitted,
 - (d) a description of each item of tobacco products manufacturing machinery in respect of which the licence is granted,
 - (e) the address at which each item of tobacco products manufacturing machinery must be kept,
 - (f) the date on which the licence will expire, which must be a date within 2 years of the date on which the licence is issued, and
 - (g) any conditions or restrictions to which the licence is subject.
- (2) Where the Commissioners agree to vary or renew a licence, they must, as the case may be, give written notice to the applicant of—
- (a) the variations which are made to the licence and the date from which the variations have effect, or
 - (b) the date on which the licence will expire, which must be a date within 2 years of the date on which the licence is renewed.

PART 5

PENALTIES AND FORFEITURE

Penalties

11. A person who does not comply with regulation 3(1) is liable to a penalty of the amount specified in section 9(2)(b) of the Finance Act 1994^(a) (penalties for contraventions of statutory requirements).

Assessment of penalties

12.—(1) Where a person becomes liable for a penalty under regulation 11, the Commissioners may assess the penalty, and if they do so, they must notify the person liable.

(2) A notice under paragraph (1) must state the contravention in respect of which the penalty is assessed.

(3) Two or more contraventions may be treated by the Commissioners as a single contravention for the purposes of assessing a penalty.

(4) A penalty assessed under paragraph (1) must be paid before the end of the period of 30 days beginning with the day on which the notification of the penalty is issued.

(5) An assessment is to be treated as an amount of duty due from the person liable and may be recovered accordingly.

(6) An assessment may not be made later than one year after the evidence of facts sufficient in the opinion of the Commissioners to indicate the contravention comes to their knowledge.

Exceptions from liability to a penalty

13.—(1) A person is not liable to a penalty under regulation 11 in respect of a contravention if—

- (a) the contravention is not deliberate, and

(a) 1994 c. 9.

- (b) the person satisfies the Commissioners that there is a reasonable excuse for the contravention.
- (2) For the purposes of paragraph (1)(b)—
 - (a) where the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the contravention,
 - (b) where the person had a reasonable excuse for the relevant act or failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the contravention is remedied without unreasonable delay after the excuse has ceased.

Double jeopardy

14. A person is not liable to a penalty under regulation 11 in respect of a contravention in respect of which the person has been convicted of an offence.

Forfeiture

15. Where a person carries out a regulated activity contrary to regulation 3(1), the item of tobacco products manufacturing machinery in respect of which the person carried out the activity is liable to forfeiture.

PART 6

ENFORCEMENT

Application of the revenue trader provisions of the Customs and Excise Management Act 1979

16. The following provisions of the Customs and Excise Management Act 1979(a) have effect in relation to licensees as they have effect in relation to revenue traders—

- (a) section 112 (power of entry upon premises, etc. of revenue traders)(b),
- (b) section 112A (section 112: supplementary powers)(c),
- (c) section 118 (liability of ostensible owner or principal manager),
- (d) section 118BD (inspection powers: supplementary provision)(d), and
- (e) section 158 (power to require provision of facilities)(e).

17.—(1) Section 118B of the Customs and Excise Management Act 1979 (duty of revenue traders and others to furnish information and produce documents)(f) has effect in relation to licensees as it has effect in relation to revenue traders as modified by paragraph (2).

(2) In subsection (3)(b) for “virtue of section 118A above” substitute “by or under regulations made under section 8V of the Tobacco Products Duty Act 1979”.

(a) 1979 c. 2.
 (b) Section 112 was amended by paragraph 6 of Schedule 8 to the Finance Act 1981 (c. 35), paragraph 1(a) of Schedule 2 to the Finance Act 1991 (c. 31) and paragraphs 9 and 10 of Schedule 13 to the Finance (No. 3) Act 2010 (c. 33).
 (c) Section 112A was inserted by paragraphs 9 and 11 of Schedule 13 to the Finance (No. 3) Act 2010.
 (d) Section 118BD was inserted by paragraphs 9 and 12 of Schedule 13 to the Finance (No. 3) Act 2010 and amended by paragraphs 10 and 13 of Schedule 28 to the Finance Act 2014 (c. 26).
 (e) Section 158 was amended by sections 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 114(1) of the Police and Criminal Evidence Act 1984 (c. 60) and S.I. 2015/664.
 (f) Section 118B was inserted by Schedule 5 to the Finance Act 1991 and amended by paragraph 3 of Schedule 2 to the Finance Act 1997 (c. 16).

PART 7

REVIEWS AND APPEALS

Reviews and appeals

18.—(1) Any decision by the Commissioners that a person is liable to a penalty under regulation 11, or as to the amount of the person’s liability, is to be treated as if it were listed in section 13A(2) of the Finance Act 1994^(a) (customs and excise reviews and appeals: meaning of “relevant decisions”), and accordingly, as if it were a relevant decision for the purposes mentioned in section 13A(1).

(2) Each of the decisions of the Commissioners listed in paragraph (3) is to be treated as if it were listed in Schedule 5 to the Finance Act 1994 (decisions subject to appeal and review).

(3) The decisions referred to are—

- (a) the refusal of an application to grant, vary or renew a licence,
- (b) the imposition of conditions or restrictions on a licence,
- (c) any other variation of a licence, and
- (d) the revocation of a licence.

Angela MacDonald
Nick Lodge

23rd January 2018

Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide that a person may not manufacture, purchase, acquire, own or be in possession of machinery designed for manufacturing tobacco products otherwise than in accordance with a licence.

Part 1 of the Regulations makes provision for commencement and definitions.

Part 2 of the Regulations provides:

- that a person may not carry out a regulated activity otherwise than in accordance with a licence;
- for exemptions from the requirement to have a licence in respect of tobacco machinery designed for the manual production of a single cigarette or cigar and in relation to the transportation of machinery on behalf of licensees;
- that a regulatory activity is to manufacture, purchase, acquire, own or be in possession of an item of tobacco products manufacturing machinery.

Part 3 of the Regulations provides that the Commissioners:

- can only grant a licence if they are satisfied that the applicant is a fit and proper person and will not use the machinery for the fraudulent evasion of duty charged on tobacco products;
- may prescribe in a notice, and specify in a licence, conditions and restrictions to which a licence is subject;
- may vary or revoke a licence at any time for reasonable cause.

(a) 1994 c. 9. Section 13A was inserted by S.I. 2009/56 and amended by S.I. 2011/1043. There are other amendments to this provision but none are relevant.

Part 4 of the Regulations makes provision about the administrative procedures for the licence scheme, including:

- that the Commissioners must prescribe the form, manner and content of applications for licences and applications for variation and renewals of licences;
- making applications;
- determining applications, including provision for when additional information is required;
- granting and refusing applications, including the information the Commissioners need to provide.

Part 5 of the Regulations makes provision about penalties and forfeiture, in particular:

- a person who contravenes the prohibition is liable to a penalty in the amount specified in section 9(2)(b) of the Finance Act 1994 and the machine is liable to forfeiture
- the assessment of penalties and exceptions from liability to a penalty.

Part 6 of the Regulations provides for enforcement: certain provisions of the Customs and Excise Management Act 1979 have effect in relation to licensees as they have effect in relation to revenue traders.

Part 7 of the Regulations provides for review and appeal of decisions.

A Tax Information and Impact Note covering this instrument was published on 5 December 2016 alongside a Summary of Responses document entitled – licensing (or equivalent) of tobacco machinery. This has been updated as a result of changes to the impacts as a result of this instrument and is available on the website at <https://www.gov.uk/government/publications/tobacco-duty-illicit-trade-protocol-licensing-of-tobacco-manufacturing-machinery/tobacco-duty-illicit-trade-protocol-licensing-of-tobacco-manufacturing-machinery>

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