

STATUTORY INSTRUMENTS

2019 No. 594

EXCISE

The Tobacco Products (Traceability and Security Features) Regulations 2019

<i>Made</i>	- - - -	<i>18th March 2019</i>
<i>Laid before Parliament</i>		<i>19th March 2019</i>
<i>Coming into force</i>	- -	<i>20th May 2019</i>

The Commissioners for Her Majesty's Revenue and Customs have been designated for the purposes of section 2(2) of the European Communities Act 1972 ^{M1} in relation to traceability of, and security features for, tobacco and tobacco products ^{M2}.

The Commissioners for Her Majesty's Revenue and Customs make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Marginal Citations

- M1** 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the [Legislative Reform Act 2006 \(c. 51\)](#) and Part 1 of the Schedule to the [European Union \(Amendment\) Act 2008 \(c. 7\)](#).
- M2** [S.I. 2014/2705](#).

PART 1 **U.K.**

Preliminary

Citation, commencement and effect **U.K.**

1.—(1) These Regulations may be cited as the Tobacco Products (Traceability and Security Features) Regulations 2019.

(2) These Regulations come into force on 20th May 2019.

(3) Subject to paragraph (4), regulation 6 has effect in relation to—

(a) cigarettes or hand-rolling tobacco supplied in the United Kingdom on or after 20th May 2019, and

(b) tobacco products (other than cigarettes or hand-rolling tobacco) supplied in [^{F1}any part of]the United Kingdom on or after 20th May 2024.

- (4) Regulation 6 does not have effect in relation to—
- (a) cigarettes or hand-rolling tobacco manufactured, or imported into the United Kingdom, before 20th May 2019 unless the product in question is supplied in the United Kingdom on or after 20th May 2020, and
 - (b) tobacco products (other than cigarettes or hand-rolling tobacco) which are manufactured, or imported into the United Kingdom, before 20th May 2024 unless the product in question is supplied in [^{F2}any part of] the United Kingdom on or after 20th May 2026.
- (5) Regulations 7 to 10 have effect in relation to—
- (a) cigarettes or hand-rolling tobacco—
 - (i) manufactured in the United Kingdom on or after 20th May 2019, or
 - (ii) manufactured in a country which is not a member State that are imported into the United Kingdom on or after that date for supply in the United Kingdom or another member State, and
 - (b) tobacco products (other than cigarettes or hand-rolling tobacco)—
 - (i) manufactured in the United Kingdom on or after 20th May 2024, or
 - [^{F3}(ii) imported into the United Kingdom on or after that date for supply in any part of the United Kingdom.]
- (6) Regulation 13 has effect in relation to—
- (a) cigarettes or hand-rolling tobacco—
 - (i) manufactured in the United Kingdom on or after 20th May 2019, or
 - (ii) imported into the United Kingdom on or after that date, for supply in the United Kingdom, and
 - (b) tobacco products (other than cigarettes or hand-rolling tobacco)—
 - (i) manufactured in the United Kingdom on or after 20th May 2024, or
 - (ii) imported into the United Kingdom on or after that date, for supply in [^{F4}any part of] the United Kingdom.

Textual Amendments

- F1** Words in [reg. 1\(3\)\(b\)](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 2\(a\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F2** Words in [reg. 1\(4\)\(b\)](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 2\(a\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F3** [Reg. 1\(5\)\(b\)\(ii\)](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 2\(b\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F4** Words in [reg. 1\(6\)\(b\)](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 2\(c\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))

Commencement Information

- I1** [Reg. 1](#) in force at 20.5.2019, see [reg. 1\(2\)](#)

Interpretation **U.K.**

2. In these Regulations—

“anti-tampering device” has the meaning given in Article 2(7) of the Commission Implementing Regulation;

“authentication elements” are the authentication elements set out in the Annex to the [^{F5}relevant Security Features Decision];

“authentication elements provider” means a person meeting the description in regulation 15(1);

[^{F6}“Category A, B, C or D contravention” have the meanings given in regulation 20A;]

“cigarette” means a tobacco product that can be consumed by means of a combustion process and which is—

- (a) a roll of tobacco (or of tobacco and another substance) capable of being smoked as it is, but which is not a cigar or a cigarillo, or
- (b) a roll of tobacco (or of tobacco and another substance) which is designed to be, by simple non-industrial handling—
 - (i) wrapped in cigarette paper, or
 - (ii) inserted into a cigarette-paper tube;

“cigar” means a tobacco product that can be consumed by means of a combustion process and, given its properties and normal consumer expectations, is exclusively intended to be smoked as it is, and which is—

- (a) a roll of tobacco (or of tobacco and another substance) which has an outer wrapper of natural tobacco, or
- (b) a roll of tobacco (or of tobacco and another substance) which—
 - (i) has an outer wrapper—
 - (aa) of the normal colour of a cigar,
 - (bb) made of reconstituted tobacco, and
 - (cc) covering the product in full (including the filter but not, in the case of a cigar with a mouthpiece, the mouthpiece),
 - (ii) is filled with a threshed blend of tobacco (or of tobacco and another substance),
 - (iii) has a unit weight, not including any filter or mouthpiece, of not less than 2.3 grams and not more than 10 grams, and
 - (iv) has a circumference, over at least one third of its length, of not less than 34 millimetres;

“cigarillo” means a cigar with a unit weight of not more than 3 grams;

“the Commission” means the Commission of the European Union;

^{F7} ...

[^{F8}“the Commission Implementing Regulation” means, except in regulation 13(4), the Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products as it applies in the United Kingdom;]

“consumer” means a person who is acting for purposes which are outside that person's trade, business, craft or profession;

^{F9} ...

[^{F10}“customs suspensive procedure or arrangement” has the meaning given in regulation 3(1) of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 as those Regulations apply in respect of tobacco products entering the United Kingdom;]

[^{F10}“the data repository” means the data storage facility established under Article 26(1) of the Commission Implementing Regulation;]

“deactivation notice” means a notice given under regulation 18(4);

[^{F10}“the GB Security Features Decision” means the Commission Implementing Decision (EU) 2018/576 of 15 December 2017 on technical standards for security features applied to tobacco products;

“GB tobacco product” means a tobacco product which is manufactured for, or imported into the United Kingdom for, supply in Great Britain;

“the GB travel retail sector” means retail outlets in Great Britain at which tobacco products or related products may be purchased only by people travelling on journeys to destinations outside Great Britain;]

“economic operator” has the meaning given in Article 2(2) of the Commission Implementing Regulation;

[^{F6}“economic operator identifier code” or “EOID” means a code issued in accordance with Article 15 of the Commission Implementing Regulation;]

^{F11}
...

[^{F10}“the EU Security Features Decision” means the Commission Implementing Decision (EU) 2018/576 of 15 December 2017 on technical standards for security features applied to tobacco products as it has effect by [^{F6}virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;]

[^{F6}“facility” has the meaning given in Article 2(6) of the Commission Implementing Regulation;]

[^{F6}“facility identifier code” or “FID” means a code issued in accordance with Article 17 of the Commission Implementing Regulation;]

“hand-rolling tobacco” means a tobacco product—

- (a) in relation to which more than 25% by weight of the tobacco particles have a cut width of less than 1.5 millimetres,
- (b) which is sold or intended to be sold for making into cigarettes by hand, including making into cigarettes by hand with the aid of a mechanical device, or
- (c) which is of a kind used for making into cigarettes by hand, including making into cigarettes by hand with the aid of a mechanical device;

“HMRC” means Her Majesty's Revenue and Customs;

[^{F10}“import” means the entry of tobacco products into the United Kingdom unless those products are placed under a customs suspensive procedure or arrangement on their entry, as well as their release from a customs suspensive procedure or arrangement, and “imported” is to be construed accordingly;]

“manufacturer” means a person who—

- (a) manufactures tobacco products, or
- (b) puts a name, trademark, or other distinguishing mark, on tobacco products by which the person is held out to be the manufacturer or originator,

and “manufacture” is to be construed accordingly;

[^{F10}“NI tobacco product” means a tobacco product which is manufactured for, or imported into the United Kingdom for, supply in Northern Ireland;

“the NI travel retail sector” means retail outlets in Northern Ireland at which tobacco products or related products may be purchased only by people travelling on journeys to destinations outside Northern Ireland;]

“officer” means a person appointed under section 2(1) of the Commissioners for Revenue and Customs Act 2005 ^{M3};

“prescribed” means prescribed in a direction of the Commissioners for Her Majesty's Revenue and Customs made under regulation 24;

^{F12}
...

“retail sale” means sale to a consumer;

“retailer” means a person who sells, or offers or agrees to sell, a tobacco product to a consumer;

[^{F6}“second, third or subsequent contravention” have the meanings given in regulation 20A;]

“security feature” means the security feature required to be carried by unit packets of tobacco products by regulation 13;

[^{F13}“supplied in any part of the United Kingdom” has the meaning given in regulation 3;]

[^{F10}“the relevant Security Features Decision” means—

(a) in relation to GB tobacco product, the GB Security Features Decision, and

(b) in relation to NI tobacco product, the EU Security Features Decision;]

“tobacco product” means a product that can be consumed and consists, in whole or in part, of tobacco;

[^{F14}“travel retail sector” means—

(a) the GB travel retail sector, or

(b) the NI travel retail sector;]

“the UK ID Issuer” means the entity appointed for the United Kingdom in accordance with Article 3(1) of the Commission Implementing Regulation ^{M4};

“unique identifier” has the meaning given in Article 2(1) of the Commission Implementing Regulation;

“unit packet” in relation to a tobacco product, means the smallest individual packaging in which that product is, or is intended to be, presented for retail sale, but does not include any transparent wrapper.]

Textual Amendments

- F5** Words in [reg. 2](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 3\(a\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F6** Words in [reg. 2](#) inserted (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), [regs. 1, 3](#)
- F7** Words in [reg. 2](#) omitted (31.12.2020) by virtue of [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 3\(b\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F8** Words in [reg. 2](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 3\(c\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))

- F9** Words in reg. 2 omitted (31.12.2020) by virtue of The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 3(d)** (with regs. 8, 9, 10(2)-(5), 11, 12)
- F10** Words in reg. 2 inserted (31.12.2020) by The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 3(i)** (with regs. 8, 9, 10(2)-(5), 11, 12)
- F11** Words in reg. 2 omitted (31.12.2020) by virtue of The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 3(e)** (with regs. 8, 9, 10(2)-(5), 11, 12)
- F12** Words in reg. 2 omitted (31.12.2020) by virtue of The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 3(f)** (with regs. 8, 9, 10(2)-(5), 11, 12)
- F13** Words in reg. 2 substituted (31.12.2020) by The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 3(g)** (with regs. 8, 9, 10(2)-(5), 11, 12)
- F14** Words in reg. 2 substituted (31.12.2020) by The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 3(h)** (with regs. 8, 9, 10(2)-(5), 11, 12)

Commencement Information

- I2** Reg. 2 in force at 20.5.2019, see **reg. 1(2)**

Marginal Citations

- M3** 2005 c. 11.
- M4** The contract award notice for the appointment of the UK ID Issuer was published in the 42nd issue of the Official Journal of the EU (supplementary S series) for 2019, reference number: 2019/S 042-096012. It is available at <https://ted.europa.eu/udl?uri=TED:NOTICE:96012-2019:TEXT:EN:HTML> and <https://www.delta-esourcing.com/delta/respondToList.html?jsessionid=47E23C9D5C6DA38BB18D3AE18AFF0A0E?noticeId=342424410>.

Meaning of tobacco products supplied in ^{F15}any part of] the United Kingdom **U.K.**

3.—(1) For the purposes of these Regulations, tobacco products are supplied in ^{F16}any part of] the United Kingdom if ^{F17}... a person—

- (a) supplies the product—
- (i) for consumption in ^{F18}any part of] the United Kingdom or through the ^{F19}travel retail sector], or
- (ii) with a view to it being supplied for consumption in ^{F20}any part of] the United Kingdom or through the ^{F21}travel retail sector],
- (b) offers or agrees to supply it in those circumstances, ^{F22}...
- (c) exposes or possesses it for supply in those circumstances ^{F23}, or
- (d) causes or allows the supply of tobacco products at a facility,]

and “supply in ^{F24}any part of] the United Kingdom” is to be construed accordingly.

^{F25}(1A) For the purposes of paragraph (1)(d) a 1A who causes or allows the supply of tobacco products at a facility includes—

- (a) the holder of the EOID, if there is an EOID linked to the facility; and

- (b) the person who is responsible for the facility where the supply occurred, and for this purpose the person responsible for the facility is the person who—
 - (i) is entitled to control its use,
 - (ii) is entrusted with its management, or
 - (iii) is otherwise in charge of it.]

[^{F26}(2) In the case of a cross-border distance sale of a product, the product is to be treated for the purposes of these Regulations—

- (a) where the consumer is located in Great Britain, as supplied and presented for retail sale in Great Britain;
 - (b) where the consumer is located in Northern Ireland, as supplied and presented for retail sale in Northern Ireland.
- (3) In this regulation, cross-border distance sale” means—
- (a) in relation to Great Britain, a distance sale to a consumer (“C”) where, at the time C orders a product from a retailer, C is located in Great Britain and the retailer is established outside Great Britain;
 - (b) in relation to Northern Ireland, a distance sale to a consumer (“C”) where, at the time C orders a product from a retailer, C is located in Northern Ireland and the retailer is established outside Northern Ireland.]

Textual Amendments

- F15** Words in [reg. 3 heading](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), **Sch. 3 para. 4** (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F16** Words in [reg. 3\(1\)](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), **Sch. 3 para. 5(a)(i)** (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F17** Words in [reg. 3\(1\)](#) omitted (20.7.2023) by virtue of [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), [regs. 1, 4\(2\)\(a\)](#)
- F18** Words in [reg. 3\(1\)\(a\)\(i\)](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), **Sch. 3 para. 5(a)(ii)(aa)** (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F19** Words in [reg. 3\(1\)\(a\)\(i\)](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), **Sch. 3 para. 5(a)(ii)(bb)** (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F20** Words in [reg. 3\(1\)\(a\)\(ii\)](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), **Sch. 3 para. 5(a)(ii)(aa)** (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F21** Words in [reg. 3\(1\)\(a\)\(ii\)](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), **Sch. 3 para. 5(a)(ii)(bb)** (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F22** Word in [reg. 3\(1\)](#) omitted (20.7.2023) by virtue of [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), [regs. 1, 4\(2\)\(b\)](#)
- F23** [Reg. 3\(1\)\(d\)](#) and word inserted (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), [regs. 1, 4\(2\)\(c\)](#)
- F24** Words in [reg. 3\(1\)](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), **Sch. 3 para. 5(a)(iii)** (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))

- F25** Reg. 3(1A) inserted (20.7.2023) by The Tobacco Products (Traceability and Security Features) (Amendment) Regulations 2023 (S.I. 2023/606), regs. 1, **4(3)**
- F26** Reg. 3(2)(3) substituted for reg. 3(2) (31.12.2020) by The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 5(b)** (with regs. 8, 9, 10(2)-(5), 11, 12)

Commencement Information

- I3** Reg. 3 in force at 20.5.2019, see **reg. 1(2)**

Meaning of tobacco products supplied in another member State **U.K.**

^{F27}4.

Textual Amendments

- F27** Reg. 4 omitted (31.12.2020) by virtue of The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 6** (with regs. 8, 9, 10(2)-(5), 11, 12)

Competent ID issuer for the purposes of Article 4(1) of the Commission Implementing Regulation **U.K.**

^{F28}5.

Textual Amendments

- F28** Reg. 5 omitted (31.12.2020) by virtue of The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 6** (with regs. 8, 9, 10(2)-(5), 11, 12)

PART 2 **U.K.**

Prohibition from supply of non-compliant tobacco products

Prohibition from supply of non-compliant tobacco products **U.K.**

6.—(1) A person must not supply tobacco products in [^{F29}any part of] the United Kingdom unless those products meet the requirements in paragraphs (2) to (4).

- (2) The unit packet of a tobacco product must be marked with a unique identifier that—
 - (a) has been issued by [^{F30}, or has been paired with a unique identifier that has been issued by,] the UK ID Issuer and meets the technical specifications set out in Chapters II and IV of the Commission Implementing Regulation, and
 - (b) meets the requirements in—
 - (i) regulation 7(2), or
 - (ii) in cases where the unique identifier has been applied by a person [^{F31}outside the United Kingdom, regulation 7(2) as if it applied to that person] .

(3) All movements of, and all transactions relating to, the unit packet of a tobacco product must have been recorded and transmitted in accordance with Chapter VI of the Commission Implementing Regulation.

(4) The unit packet of a tobacco product must carry a security feature.

^{F32}(5)

Textual Amendments

- F29** Words in [reg. 6\(1\)](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 7\(a\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F30** Words in [reg. 6\(2\)\(a\)](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 7\(b\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F31** Words in [reg. 6\(2\)\(b\)\(ii\)](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 7\(c\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F32** [Reg. 6\(5\)](#) omitted (31.12.2020) by virtue of [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 7\(d\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))

Commencement Information

- I4** [Reg. 6](#) in force at 20.5.2019, see [reg. 1\(2\)](#)

PART 3 U.K.

Traceability system

Integrity requirements of a unique identifier U.K.

7.—(1) Where a manufacturer or importer of tobacco products is required to mark each unit packet with a unique identifier under Article 6 of the Commission Implementing Regulation, the manufacturer or importer must ensure that, in addition to meeting the requirements in Section 2 of Chapter II and Chapter IV of that Regulation, the requirements in paragraph (2) are also met.

(2) The unique identifier—

- (a) must be—
 - (i) irremovably printed or affixed, and
 - (ii) indelible,
- (b) must remain intact when the packet is opened, and
- (c) must not be partially or totally hidden or interrupted by any other item, including through tax stamps or price marks.

Commencement Information

- I5** [Reg. 7](#) in force at 20.5.2019, see [reg. 1\(2\)](#)

Provision of equipment for recording and transmitting information **U.K.**

8. Manufacturers of tobacco products must provide all economic operators with the equipment necessary for those operators to comply with the recording and electronic transmission of information requirements in Articles 32 and 33 of the Commission Implementing Regulation.

Commencement Information

I6 Reg. 8 in force at 20.5.2019, see **reg. 1(2)**

Primary repository requirements **U.K.**

^{F33}9.

Textual Amendments

F33 Reg. 9 omitted (31.12.2020) by virtue of [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), reg. 1(2), **Sch. 3 para. 8** (with regs. 8, 9, 10(2)-(5), 11, 12)

Access to anti-tampering device records **U.K.**

10. Where HMRC have made a request in writing under Article 7(5) of the Commission Implementing Regulation to a manufacturer or importer of tobacco products for full access to the record of the verification process created by an anti-tampering device, the manufacturer or importer must provide HMRC with such access within a period of 30 days beginning on the day on which the request is made.

Commencement Information

I7 Reg. 10 in force at 20.5.2019, see **reg. 1(2)**

External auditor: annual report on primary repository **U.K.**

^{F34}11.

Textual Amendments

F34 Reg. 11 omitted (31.12.2020) by virtue of [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), reg. 1(2), **Sch. 3 para. 9** (with regs. 8, 9, 10(2)-(5), 11, 12)

Access to stored data in duly justified cases **U.K.**

12.—(1) The Commissioners for Her Majesty's Revenue and Customs may grant manufacturers and importers of tobacco products access to stored data in cases where they are satisfied that—

- (a) access is duly justified, and
- (b) commercially sensitive information remains adequately protected.

(2) An application for access must be made to HMRC in a prescribed manner.

(3) The Commissioners for Her Majesty's Revenue and Customs must, as soon as reasonably practicable after receiving the application, give notice to the applicant—

- (a) granting access, or
- (b) rejecting the application.

(4) Where access is granted, the notice under paragraph (3)(a) must specify the rights of access granted to the applicant, including the duration and purpose of those rights.

(5) In this regulation, “stored data” means information stored in the [^{F35}data repository].

Textual Amendments

F35 Words in [reg. 12\(5\)](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 10](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))

Commencement Information

I8 [Reg. 12](#) in force at 20.5.2019, see [reg. 1\(2\)](#)

PART 4 U.K.

Security feature system

Unit packets must carry a security feature U.K.

13.—(1) Manufacturers and importers of tobacco products must ensure that each unit packet that they manufacture or import for supply in [^{F36}any part of] the United Kingdom carries a tamper-proof security feature that meets the requirements in paragraphs (2) to (5).

(2) The security feature must comply with [^{F37}any] notice (that has not been replaced or revoked) given by HMRC to manufacturers and importers, [^{F38}in relation to the application of a security feature to GB tobacco product or NI tobacco product] , as to—

- (a) the combination or combinations of authentication elements from which the security feature must be composed, ^{F39}...
- (b) the number of authentication elements to be provided by an authentication elements provider^{F40}, and
- (c) the replacement or modification of an authentication element where the Commissioners for Her Majesty's Revenue and Customs have reason to believe that the integrity of that element has been compromised]

(3) The security feature must be—

- (a) irremovably applied to a unit packet of tobacco product by—
 - (i) printing or affixing, or
 - (ii) a combination of printing and affixing, and
- (b) indelible.

(4) The security feature must not be partially or totally hidden or interrupted by any other item, including through tax stamps, price marks, or other marking which is required under or by virtue of any enactment or the Commission Implementing Regulation.

(5) The security feature must be applied in a manner that—

- (a) allows for the identification and verification of the authenticity of a unit packet of tobacco product for the entire time that pack is supplied, and
- (b) protects the security feature from being replaced, reused or modified in any way.

[^{F41}(6) In paragraph (4), “Commission Implementing Regulation” means—

- (a) in relation to GB tobacco product, the Commission Implementing Regulation; or
- (b) in relation to NI tobacco product, the Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.]

Textual Amendments

- F36** Words in [reg. 13\(1\)](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 11\(a\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F37** Word in [reg. 13\(2\)](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 11\(b\)\(i\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F38** Words in [reg. 13\(2\)](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 11\(b\)\(ii\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F39** Word in [reg. 13\(2\)](#) omitted (31.12.2020) by virtue of [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 11\(b\)\(iii\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F40** [Reg. 13\(2\)\(c\)](#) and word inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 11\(b\)\(iv\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))
- F41** [Reg. 13\(6\)](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 11\(c\)](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))

Commencement Information

- I9** [Reg. 13](#) in force at 20.5.2019, see [reg. 1\(2\)](#)

Verification of authenticity of tobacco products **U.K.**

[^{F42}**14.**—(1) HMRC may give written notice to a manufacturer or importer requiring samples of tobacco products currently supplied in any part of the United Kingdom to be provided.

(2) Where notice has been given under paragraph (1), the manufacturer or importer must provide the samples to HMRC in unit packet format (including the applied security feature) within a period of 30 days beginning on the day on which notice is given.]

Textual Amendments

- F42** [Reg. 14](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 12](#) (with [regs. 8, 9, 10\(2\)-\(5\), 11, 12](#))

PART 5 U.K.

Independence of service providers

Authentication elements provider U.K.

15.—(1) An authentication elements provider is an independent third party provider of authentication elements who meets the criteria in Article 8(1) of the [F43relevant Security Features Decision].

(2) Where an authentication elements provider subcontracts the provision of authentication elements, the provider must ensure that the subcontractor meets the criteria in Article 8(1) of the [F43relevant Security Features Decision] .

(3) An authentication elements provider must without delay notify HMRC [F44and, in cases where the provider is providing authentication elements for NI tobacco product, the Commission] about any change in circumstances relating to the criteria referred to in Article 8(1) of the [F43relevant Security Features Decision] that—

- (a) is capable of affecting the independence of the authentication elements provider or the provider's subcontractors, and
- (b) subsists for 2 consecutive calendar years.

(4) An authentication elements provider must without delay notify HMRC [F45and, in cases where the provider is providing authentication elements for NI tobacco product, the Commission] about any occurrence of threats, or other attempts at exercising undue influence, that may actually or potentially undermine the independence of the provider or the provider's subcontractors.

(5) A notification under this regulation must be given to—

- (a) HMRC in a prescribed manner, and
- (b) [F46where relevant,] the Commission in accordance with any procedure set out by the Commission.

Textual Amendments

- F43** Words in [reg. 15](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 13\(a\)](#) (with [regs. 8, 9, 10\(2\)-\(5\)](#), 11, 12)
- F44** Words in [reg. 15\(3\)](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 13\(b\)](#) (with [regs. 8, 9, 10\(2\)-\(5\)](#), 11, 12)
- F45** Words in [reg. 15\(4\)](#) substituted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 13\(b\)](#) (with [regs. 8, 9, 10\(2\)-\(5\)](#), 11, 12)
- F46** Words in [reg. 15\(5\)\(b\)](#) inserted (31.12.2020) by [The Tobacco Products \(Traceability System and Security Features\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1496\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 13\(c\)](#) (with [regs. 8, 9, 10\(2\)-\(5\)](#), 11, 12)

Commencement Information

- I10** [Reg. 15](#) in force at 20.5.2019, see [reg. 1\(2\)](#)

Declaration of independence from the tobacco industry **U.K.**

16.—(1) Specified providers and authentication elements providers must provide HMRC with an annual declaration that they have conformed with the independence criteria set out in—

- (a) in the case of specified providers, Article 35(2) of the Commission Implementing Regulation, and
- (b) in the case of authentication elements providers, Article 8(1) of the [^{F47}relevant Security Features Decision] .

(2) The annual declaration referred to in paragraph (1) must include—

- (a) a full list of services provided to the tobacco industry during the last calendar year,
- (b) a statement of the amount of annual worldwide turnover and the amount of that turnover generated from goods and services supplied to the tobacco industry, referred to in, and determined in accordance with, Article 35(2)(a) of the Commission Implementing Regulation or Article 8(1)(a) of the [^{F48}relevant Security Features Decision] , as the case may be, and
- (c) individual declarations of financial independence from the tobacco industry provided by all management members of the specified provider or authentication elements provider.

(3) For the purposes of this regulation, a “specified provider” is—

- (a) the UK ID issuer,
- (b) [^{F49}the provider of the data repository] , or
- (c) a provider of an anti-tampering device.

(4) Where—

- (a) a specified provider subcontracts the provision of unique identifiers, [^{F50}primary repositories] or anti-tampering devices, or
- (b) an authentication elements provider subcontracts the provision of authentication elements,

the subcontractor must also provide a declaration in accordance with paragraph (1).

(5) The declaration referred to in paragraph (1) must be made in a prescribed manner.

(6) In this regulation, “management member” means any person responsible for the management of the undertaking or the group of undertakings, including any member of the board of directors or of any form of governing body.

Textual Amendments

F47 Words in reg. 16(1)(b) substituted (31.12.2020) by The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 14(a)** (with regs. 8, 9, 10(2)-(5), 11, 12)

F48 Words in reg. 16(2)(b) substituted (31.12.2020) by The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 14(a)** (with regs. 8, 9, 10(2)-(5), 11, 12)

F49 Words in reg. 16(3)(b) substituted (31.12.2020) by The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 14(b)** (with regs. 8, 9, 10(2)-(5), 11, 12)

F50 Words in reg. 16(4)(a) substituted (31.12.2020) by The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 14(c)** (with regs. 8, 9, 10(2)-(5), 11, 12)

Commencement Information

111 Reg. 16 in force at 20.5.2019, see **reg. 1(2)**

PART 6 U.K.

Deactivation of identifier codes

Discretion to deactivate identifier codes U.K.

^{F51}17.

Textual Amendments

F51 Reg. 17 omitted (31.12.2020) by virtue of The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), **Sch. 3 para. 15** (with regs. 8, 9, 10(2)-(5), 11, 12)

Circumstances in which economic operator identifier codes may be deactivated U.K.

18.—(1) Subject to regulation 20, the Commissioners for Her Majesty's Revenue and Customs may exercise the discretion set out in Article 15(4) of the Commission Implementing Regulation where Conditions A to C are met.

(2) Condition A is that the person whose identifier code is being considered for deactivation—

[^{F52}(a) has failed to comply with regulation 6(1) and this is a second, third or subsequent contravention,]

(b) has failed to comply with a notice under regulation 22 by the deadline for compliance set out in that notice,

(c) has deliberately provided false information in an application to the UK ID Issuer for an identifier code that is required or permitted to be made by that person under Chapter III of the Commission Implementing Regulation,

(d) has a conviction, other than a conviction treated as spent for the purposes of the Rehabilitation of Offenders Act 1974, for an offence under the customs and excise Acts,

(e) has, within the last 12-months, become liable to a penalty or penalties under the customs and excise Acts exceeding £10,000, or

(f) has not used the identifier code in the last 12-months.

(3) Condition B is that the Commissioners have given written notice to the person which—

(a) confirms that the Commissioners are considering exercising the discretion in Article 15(4) of the Commission Implementing Regulation to require the UK ID Issuer to deactivate the economic operator identifier code allocated to that person,

(b) identifies—

(i) in cases where paragraph (2)(a) applies, the requirements with which the person has failed to comply ^{F53}....,

(ii) in cases where paragraph (2)(b) applies, the notice under regulation 22 with which the person has failed to comply,

- (iii) in cases where paragraph (2)(c) applies, the false information provided in an application,
 - (iv) in cases where paragraph (2)(d) applies, the offence committed under the customs and excise Acts for which the person has been convicted,
 - (v) in cases where paragraph (2)(e) applies, the contravention of those Acts in relation to which the person has become liable for a penalty, or
 - (vi) in cases where paragraph (2)(f) applies, the date on which the identifier code was last used,
- (c) states that the recipient may make representations in writing to the Commissioners, and
- (d) states the date by which any representations must be received by the Commissioners, being a date no earlier than 14 days after the date on which notice is given.
- (4) Condition C is that the Commissioners, on being satisfied that deactivation would be duly justified^{M5}, must give written notice to the person of their decision to exercise the discretion stating—
- (a) the date from which the deactivation will have effect, and
 - (b) the period for which the deactivation is to remain in force, being a period no longer than—
 - (i) is reasonable to protect the traceability system for tobacco products, or
 - [^{F54}(ia) in cases where paragraph (2)(a) applies—
 - (aa) a period of six months in the case of a Category A, B, or C contravention which is a second contravention; or
 - (bb) a period of five years in any other case; or]
 - (ii) in cases where paragraph (2)(d) applies, the period before the conviction becomes spent.
- (5) For the purposes of paragraph (2)(e), a person does not become liable to a penalty until the latest of—
- (a) the date on which the penalty becomes payable under the customs and excise Acts,
 - (b) the determination of a review of that penalty,
 - (c) the final determination of an appeal against that penalty, or
 - (d) the withdrawal of any review or appeal referred to in sub-paragraphs (b) and (c).
- (6) In this regulation, “the customs and excise Acts” has the meaning given in section 1 of the Customs and Excise Management Act 1979^{M6}.
- [^{F55}(7) Where paragraph (2)(a) applies, if an appeal is made against the decision to give a deactivation notice, or the period of deactivation, the deactivation must be suspended until the final determination of the appeal, but only in a case to which paragraph (8) applies.
- (8) This paragraph applies where the person who is the subject of the deactivation notice satisfies the Commissioners that the primary function of the facility linked to the identifier code in respect of which the deactivation is made is the supply of tobacco products.
- (9) For the purposes of paragraph (8), the primary function includes (but is not limited to) a case where more than fifty per cent of the gross income of the facility over the six months immediately preceding the date of the deactivation notice issued under paragraph (4) is derived from the sale of, or services related to, tobacco products.]

Textual Amendments

- F52** Reg. 18(2)(a) substituted (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), regs. 1, **5(2)**
- F53** Words in reg. 18(3)(b)(i) omitted (20.7.2023) by virtue of [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), regs. 1, **5(3)**
- F54** Reg. 18(4)(b)(ia) inserted (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), regs. 1, **5(4)**
- F55** Reg. 18(7)-(9) inserted (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), regs. 1, **5(5)**

Commencement Information

- I12** Reg. 18 in force at 20.5.2019, see [reg. 1\(2\)](#)

Marginal Citations

- M5** [Article 15\(4\)](#) of the Commission Implementing Regulation provides that Member States may require the ID Issuer to deactivate an economic code in duly justified cases. That discretion may only be exercised in accordance with national laws which this Part, together with Parts 7 and 8 of these Regulations, introduces.
- M6** 1979 c. 2.

[^{F56}Circumstances in which facility identifier codes may be deactivated **U.K.**

18A.—(1) The Commissioners may exercise the discretion set out in Article 17(4) of the Commission implementing regulation in cases to which this regulation applies.

(2) This regulation applies in a case where—

- (a) the condition in regulation 18(2)(a) is met;
- (b) the economic operator identifier code which is liable to deactivation in accordance with regulation 18 is linked to more than one facility; and
- (c) the Commissioners consider it appropriate to deactivate the FID of the facility in which the contravention occurred instead of deactivating the economic operator identifier code.

(3) Where a FID is to be deactivated in accordance with this regulation, regulation 18 applies to that deactivation as if it were the deactivation of an economic operator identifier code, and for this purpose paragraphs (1) and (3) of that regulation are to be read as if for “Article 15(4)” there were substituted “Article 17(4)”.

(4) Where a FID is deactivated in accordance with this regulation, the economic operator identifier code must not be deactivated in respect of the same contravention.]

Textual Amendments

- F56** Reg. 18A inserted (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), regs. 1, **6**

Application to cancel a deactivation notice **U.K.**

19.—(1) A person may apply to the Commissioners for Her Majesty's Revenue and Customs for a deactivation notice given to that person to be cancelled.

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

- (a) agree to the application,
 - (b) refuse the application in writing, giving reasons for the refusal, or
 - (c) request additional information.
- (3) Where the Commissioners have requested additional information, they must, as soon as reasonably practicable after receiving the additional information—
- (a) agree to the application, or
 - (b) refuse the application in writing, giving reasons for the refusal.

Commencement Information

I13 Reg. 19 in force at 20.5.2019, see [reg. 1\(2\)](#)

Restriction on re-application **U.K.**

20.—(1) A person that is the subject of a deactivation notice must not apply for an economic operator identifier code under Article 14 of the Commission Implementation Regulation during the period of deactivation set out in that notice.

[^{F57}(1A) Subject to paragraph (1C), where an economic operator identifier code has been deactivated in accordance with regulation 18(2)(a), an application for a facility identifier code in respect of any facility that was linked to that economic operator identifier code must not be made by any person during the period of deactivation.

(1B) Subject to paragraph (1C), where a FID has been deactivated in accordance with regulation 18A, an application for a FID in respect of the same facility must not be made by any person during the period of deactivation.

(1C) Paragraphs (1A) and (1B) do not apply in a case where—

- (a) the ownership of the facility has changed since the deactivation occurred; and
- (b) the person who is the owner at the time of the application is not the person who is the subject of the deactivation notice.]

(2) In cases where a person has acted contrary to the restriction imposed by paragraph (1) and obtained an economic operator identifier code, the Commissioners for Her Majesty's Revenue and Customs may exercise the discretion set out in Article 15(4) of the Commission Implementing Regulation without the conditions referred to in regulation 18 being met.

[^{F58}(3) In cases where a person has acted contrary to the restrictions imposed by paragraphs (1A) or (1B) and obtained a facility identifier code, the Commissioners may exercise the discretion set out in Article 17(4) of the Commission Implementing Regulation without the conditions referred to in regulation 18 or, as the case may be, 18A, being met.]

Textual Amendments

F57 Reg. 20(1A)-(1C) inserted (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), regs. 1, [7\(2\)](#)

F58 Reg. 20(3) inserted (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), regs. 1, [7\(3\)](#)

Commencement Information

I14 Reg. 20 in force at 20.5.2019, see [reg. 1\(2\)](#)

PART 7 U.K.

Enforcement

[^{F59}Sanctions U.K.]

20A.—(1) A person who contravenes regulation 6(1) is liable to sanctions in accordance with regulations 20B and 21(2).

(2) For the purposes of these Regulations—

- (a) a Category A contravention means supplying 99 or fewer units of tobacco products in contravention of paragraph (1);
- (b) a Category B contravention means supplying 100 or more such units of tobacco products but fewer than 300;
- (c) a Category C contravention means supplying 300 or more such units of tobacco products but fewer than 500;
- (d) a Category D contravention means supplying 500 or more such units of tobacco products;
- (e) a second contravention is one that occurs before the end of 24 months beginning with the date of the first contravention;
- (f) a third contravention is one that occurs before the end of 24 months beginning with the date of the second contravention;
- (g) a subsequent contravention is any contravention that occurs after the third contravention and before the end of 24 months beginning with the date of a previous contravention.

(3) For the purposes of this regulation—

- (a) the date of a contravention is the date on which the supply of products in contravention of regulation 6(1) is discovered by—
 - (i) the Commissioners; or
 - (ii) a person investigating compliance in accordance with regulation 24A;
- (b) where a person contravenes regulation 6(1) and that contravention occurs more than 24 months after any previous contravention, that contravention is a first contravention for the purposes of this regulation;
- (c) in determining whether a contravention is a second, third or subsequent contravention, no account is to be taken of a previous contravention in respect of which a penalty under regulation 20B was not imposed.

(4) In this regulation “unit of tobacco products” means—

- (a) 20 cigarettes (whether or not they are packaged in packs of 20); or
- (b) 30 grams of hand-rolling tobacco.

Textual Amendments

F59 Regs. 20A-20C inserted (20.7.2023) by The Tobacco Products (Traceability and Security Features) (Amendment) Regulations 2023 (S.I. 2023/606), regs. 1, 8

Penalties U.K.

20B.—(1) A penalty may be imposed by the Commissioners for a contravention of regulation 6(1) as follows.

- (2) For a first contravention the penalty is—
- (a) Category A: £2,500;
 - (b) Category B: £5,000;
 - (c) Category C: £7,500;
 - (d) Category D: £10,000.
- (3) For a second contravention the penalty is—
- (a) Category A: £5,000;
 - (b) Category B: £7,500;
 - (c) Categories C and D: £10,000.
- (4) For a third and any subsequent contravention the penalty is—
- (a) Category A: £7,500;
 - (b) Categories B, C and D: £10,000.
- (5) The penalty must be paid—
- (a) in accordance with the requirements of a notice issued under regulation 20C; and
 - (b) no later than 30 days beginning with the date of issue of the notice.
- (6) A penalty under this regulation is to be treated as an amount of duty due from the person liable for the penalty under the Tobacco Products Duty Act 1979, and may be recovered accordingly.
- (7) Where more than one person is liable to a penalty for a contravention of regulation 6(1), the penalty may be imposed on any one of them.
- (8) A person is not liable to a penalty under this regulation in respect of any failure or action in respect of which the person has been convicted of an offence under any provision of the customs and excise Acts.

Textual Amendments

F59 Regs. 20A-20C inserted (20.7.2023) by The Tobacco Products (Traceability and Security Features) (Amendment) Regulations 2023 (S.I. 2023/606), regs. 1, 8

Penalty notices **U.K.**

20C.—(1) When a penalty is imposed under regulation 20B, the Commissioners must issue a penalty notice to the person on whom the penalty is imposed.

(2) The penalty notice must be issued within 12 months beginning with the date on which evidence of facts, sufficient in the opinion of the Commissioners to indicate the contravention, comes to the knowledge of the Commissioners, and must specify—

- (a) the date and particulars of the contravention;
- (b) the amount of the penalty and details of how, by when, and to whom the penalty must be paid; and
- (c) a warning about potential sanctions for further contraventions, including deactivation of the economic operator identifier code, where applicable, and the possibility of the forfeiture of compliant products.]

Textual Amendments

F59 Regs. 20A-20C inserted (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), regs. 1, **8**

Forfeiture **U.K.**

21.—^[F60](1) Where a person fails to comply with any requirement in these Regulations or the Commission Implementing Regulation in relation to tobacco products or an item of aggregate packaging, those products or items of packaging are liable to forfeiture.

^[F61](2) Subject to the following provisions of this regulation, where a person has contravened regulation 6(1), any tobacco product that is held by that person at the time the contravention is discovered by the Commissioners or anyone acting on their behalf, (whether or not the product meets the requirements of regulation 6(2) to (4)) is liable to forfeiture.

(3) For the purposes of paragraph (2) a tobacco product that meets the requirements of regulation 6(2) to (4) (a “compliant product”) is liable to forfeiture where—

- (a) the contravention of regulation 6(1) is a second, third or subsequent contravention;
- (b) the penalty notice for the previous contravention contained a warning about the forfeiture of compliant products;
- (c) the compliant product is at the facility where the contravention occurred; and
- (d) the compliant product is a business asset.

(4) In this regulation—

- (a) “business asset” means an asset that the Commissioners have reason to believe is owned or used in connection with the carrying on of a business by any person;
- (b) “tobacco product” means any tobacco product in respect of which regulation 6 has effect at the time of the forfeiture (see regulation 1(4)).]

Textual Amendments

F60 Reg. 21 renumbered as reg. 21(1) (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), regs. 1, **9(1)**

F61 Reg. 21(2)-(4) inserted (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), regs. 1, **9(2)**

Commencement Information

I15 [Reg. 21](#) in force at 20.5.2019, see [reg. 1\(2\)](#)

Compliance notices **U.K.**

22.—(1) If an officer is satisfied that a person is not complying with one or more of the requirements in these Regulations or the Commission Implementing Regulation, the officer may give the person a notice requiring the person to remedy the non-compliance.

(2) A notice under paragraph (1) must—

- (a) state that the officer is satisfied that there is or has been a contravention of the requirements in these Regulations or the Commission Implementing Regulation,
- (b) specify the requirements that are or have been contravened,

- (c) give reasons in support of the statement referred to in sub-paragraph (a), and
- (d) specify the period within which the person is required to remedy the non-compliance.

Commencement Information

I16 Reg. 22 in force at 20.5.2019, see [reg. 1\(2\)](#)

[^{F62}Reasonable excuse U.K.]

22A.—(1) Liability to a sanction does not arise under regulation 20B or 21(2) if the person satisfies the Commissioners or (on an appeal made to the appeal tribunal) the tribunal that there is a reasonable excuse for the contravention.

(2) For the purposes of this regulation a reasonable excuse includes that the person did not know, and had no reasonable grounds to suspect, that the tobacco products did not meet the requirements of regulation 6(2) to (4).]

Textual Amendments

F62 Reg. 22A inserted (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), regs. 1, **10**

PART 8 U.K.

Reviews and appeals

Reviews and appeals U.K.

23.—(1) Each of the decisions listed in paragraph (2) is to be treated as if it were listed in Schedule 5 to the Finance Act 1994 ^{M7}.

(2) The decisions are—

- (a) a rejection of an application under regulation 12 to access stored data,
- (b) a decision under regulation 18 to give, or as to the period of deactivation set out in, a deactivation notice,
- (c) a refusal of an application under regulation 19 to cancel a deactivation notice,
- (d) an issue of a notice under regulation 22,
- (e) a decision to require the UK ID Issuer to deactivate a facility identifier code under Article 17(4) of the Commission Implementing Regulation, and
- (f) a decision to require the UK ID Issuer to deactivate a machine identifier code under Article 19(4) of the Commission Implementing Regulation.

[^{F63}(3) A decision under regulation 20B that a person is liable to a penalty, or 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 (customs and excise reviews and appeals: meaning of “relevant decision”) and accordingly, as if it were a relevant decision for the purposes mentioned in section 13A(1).]

Textual Amendments

F63 Reg. 23(3) inserted (20.7.2023) by The Tobacco Products (Traceability and Security Features) (Amendment) Regulations 2023 (S.I. 2023/606), regs. 1, 11

Commencement Information

I17 Reg. 23 in force at 20.5.2019, see reg. 1(2)

Marginal Citations

M7 1994 c. 9. There are other amendments to this provision but none are relevant.

PART 9 U.K.

Administrative matters

Administration of communications and providing samples U.K.

24.—(1) The Commissioners for Her Majesty's Revenue and Customs may give directions as to matters of administration in relation to—

- (a) a submission, declaration or notification (“a communication”), or
- (b) a sample of tobacco products,

required to be made, given or provided to HMRC under these Regulations or the provisions of any of the Commission Implementing Regulation listed in paragraph (3).

(2) A direction under paragraph (1) may prescribe—

- (a) the form and method of delivery of a communication or a sample,
- (b) the information which must be provided with a communication or a sample,
- (c) when a communication or a sample must be made, given or provided, and
- (d) that a communication is to be made electronically.

(3) The provisions of the Commission Implementing Regulation are—

- (a) Article 7(2) (declaration by the provider of an anti-tampering device),
- ^{F64}(b)
- (c) Article 35(5) (notification by third-party providers of change in circumstances related to independence), and
- (d) Article 35(7) (notification by third-party providers of threats or attempts to undermine independence).

Textual Amendments

F64 Reg. 24(3)(b) omitted (31.12.2020) by virtue of The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1496), reg. 1(2), Sch. 3 para. 16 (with regs. 8, 9, 10(2)-(5), 11, 12)

Commencement Information

I18 Reg. 24 in force at 20.5.2019, see reg. 1(2)

[^{F65}Investigations and information U.K.]

24A.—(1) A local enforcement authority may investigate compliance with regulation 6(1), and for this purpose it may carry out inspections of tobacco products.

(2) Where a local enforcement authority considers there is evidence of contravention of regulation 6(1), it may pass that evidence to the Commissioners.

(3) In this regulation “local enforcement authority” means—

- (a) in Great Britain, a local weights and measures authority within the meaning of section 69 of the Weights and Measures Act 1985;
- (b) in Northern Ireland, a district council.]

Textual Amendments

F65 Reg. 24A inserted (20.7.2023) by [The Tobacco Products \(Traceability and Security Features\) \(Amendment\) Regulations 2023 \(S.I. 2023/606\)](#), regs. 1, 12

PART 10 U.K.

Consequential amendments

Amendment of the Standardised Packaging of Tobacco Products Regulations 2015 U.K.

25.—(1) The Standardised Packaging of Tobacco Products Regulations 2015 ^{M8} are amended as follows.

(2) In regulation 2 (interpretation), in the appropriate place insert—

““Commission Implementing Regulation” means the Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products;”.

(3) In regulations 3(4) and 7(4), after “other than these Regulations” insert “ or required by the Commission Implementing Regulation ”.

(4) In regulation 12, after paragraph (2) insert—

“(3) Nothing in this regulation prohibits a feature which is required by any provision of any enactment (whenever passed or made) other than these Regulations.”.

(5) In Schedule 2, after paragraph 2(2) insert—

“(3) Sub-paragraph (1) is subject to—

- (a) any provision to the contrary made by any enactment (whenever passed or made) other than these Regulations, or
- (b) anything required by the Commission Implementing Regulation.”.

(6) In Schedule 4—

(a) after paragraph 2(3) insert—

“(4) Sub-paragraph (1) is subject to—

- (a) any provision to the contrary made by any enactment (whenever passed or made) other than these Regulations, or
- (b) anything required by the Commission Implementing Regulation.”.

(b) after paragraph 3(3) insert—

“(4) Sub-paragraph (1) does not prohibit a feature that is required to be carried by a unit packet by any provision of any enactment (whenever passed or made) other than these Regulations from being in the form of a tab.”.

Commencement Information

I19 [Reg. 25](#) in force at 20.5.2019, see [reg. 1\(2\)](#)

Marginal Citations

M8 [S.I. 2015/829](#), to which there are amendments not relevant to these Regulations.

Angela MacDonald
Jim Harra
Two of the Commissioners for Her Majesty's
Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Article 15 (Traceability) and Article 16 (Security feature) of the Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products. They also implement Article 23 (Cooperation and enforcement) of that Directive in relation to tobacco products that do not comply with the traceability and security features systems.

These Regulations also implement the Commission Implementing Decision (EU) 2018/576 of 15 December 2017 on technical standards for security features applied to tobacco products.

Part 1 deals with preliminary issues. Regulation 1 provides that the Regulations take effect in two stages. They will apply to cigarettes and hand-rolling tobacco from 20 May 2019, and to tobacco products other than cigarettes and hand rolling tobacco from 20 May 2024.

Part 2 deals with tobacco products that do not comply with the traceability system or the security features system. Regulation 6 prohibits the supply of such products in the UK. Non-compliant products are subject to forfeiture (see regulation 21).

Part 3 deals with the traceability system. Regulation 7 sets the integrity requirements for the unique identifier that is required to be applied to each unit packet of tobacco product by manufacturers and importers. Manufacturers and importers are also required: to provide equipment to other operators involved in the supply of tobacco products to facilitate tracking and tracing of tobacco products (regulation 8); to establish a primary repository for holding track and trace data in the European Union and appoint an external auditor approved by the Commission to monitor that data repository (regulation 9); and to allow HMRC access to records monitoring the application of unique identifiers within 30 days of request (regulation 10). Regulation 11 requires an external auditor to submit an annual report on the data repository to HMRC and the Commission. Regulation 12 sets out the procedure for granting manufacturers and importers access to data in the repository.

Part 4 deals with the security features system. Regulation 13 requires manufacturers and importers to ensure that tobacco products carry a tamper-proof security feature which is: composed with the requisite number and combination of authentication elements (paragraph (2)); irremovably printed or affixed and indelible (paragraph (3)); not hidden and not interrupted by other marks, warnings or labels required to be applied to tobacco products under existing tobacco products legislation (paragraph (4)); and securely applied (paragraph (5)).

Part 5 deals with the independence of service providers from the tobacco industry when contracted to provide services relating to the traceability and security feature systems. Regulation 15 requires any third party provider of security feature elements, and their subcontractors, to be independent. In addition, the provider must notify HMRC and the Commission about changes in circumstances used to assess independence (paragraph (3)) or threats or attempts at exercising undue influence (paragraph (4)). Regulation 16 requires service providers to submit an annual declaration to HMRC and the Commission as to their compliance with the independence criteria.

Part 6 deals with the deactivation of economic operator identifier codes, which is a central feature of the traceability system (and is required under the Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products (“CIR”). Regulation 17 establishes who can exercise the deactivation discretion provided for by Articles 15(4), 17(4) and 19(4) of the CIR. Regulations 18 and 20 deal with the circumstances in which the discretion under Article 15(4) may be exercised and the conditions that must be met before deactivation.

Part 7 deals with enforcement. Regulation 21 provides that non-compliant tobacco products or items of aggregate packaging are liable to forfeiture. Regulation 22 provides that where an officer of HMRC is satisfied that the requirements of these Regulations or the CIR are not met they may issue a notice requiring compliance.

Part 8 deals with reviews and appeals of HMRC decisions concerning access to data repositories, deactivation and compliance notices.

Part 9 deals with administrative matters and communications with HMRC. Regulation 24 allows the Commissioners for HMRC to give directions about such matters. When a direction is made, it will be available on <https://www.gov.uk/government/collections/rules-for-tobacco-products> and a hard copy available for inspection on request from HMRC, Excise & Environmental Taxes Policy, 3rd Floor West, Ralli Quays, 3 Stanley Street, Salford, M60 9LA.

Part 10 deals with consequential amendments to the Standardised Packaging of Tobacco Products Regulations 2015 to facilitate the inclusion of track and trace marks and security features on packets of tobacco product.

A Transposition Note explaining how Directive 2014/40/EU and Commission Implementing Decision (EU) 2018/576 have been transposed into UK law is annexed to the Explanatory Memorandum which is available alongside these Regulations on the www.legislation.gov.uk website.

An Impact Assessment has not been prepared for this instrument because an Impact Assessment covering the EC implementing legislation was published on 15 December 2017 and is available at https://ec.europa.eu/health/sites/health/files/tobacco/docs/tt_ia_en.pdf. It remains an accurate summary of the impacts that apply to this instrument.

Changes to legislation:

There are currently no known outstanding effects for the The Tobacco Products (Traceability and Security Features) Regulations 2019.