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STATUTORY INSTRUMENTS

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**2019 No. 594**

**The Tobacco Products (Traceability and  
Security Features) Regulations 2019**

**PART 6**

**Deactivation of identifier codes**

**Discretion to deactivate identifier codes**

**17.** For the purposes of Articles 15(4), 17(4) and 19(4) of the Commission Implementing Regulation, the Commissioners for Her Majesty's Revenue and Customs may exercise the discretion set out in those Articles.

**Circumstances in which economic operator identifier codes may be deactivated**

**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—
- (a) has failed to comply with a requirement of these Regulations or the Commission Implementing Regulation on three or more occasions within any 24-month period and, as a result of each of those failures, non-compliant tobacco products have been seized,
  - (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 and the occasions on which tobacco products were seized as a result of those failures,

- (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<sup>(1)</sup>, 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
    - (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<sup>(2)</sup>.

#### **Application to cancel a deactivation notice**

- 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

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(1) 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.

(2) 1979 c. 2.

- (b) refuse the application in writing, giving reasons for the refusal.

**Restriction on re-application**

**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.

(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.