
STATUTORY INSTRUMENTS

2020 No. 1496

The Tobacco Products (Traceability System and Security Features) (Amendments) (EU Exit) Regulations 2020

PART 3

Saving and amendment of subordinate legislation

Saving of the Tobacco Products (Traceability and Security Features) Regulations 2019: the Protocol on Ireland/Northern Ireland

8. Subject to regulation 9, the 2019 Regulations as they had effect immediately before IP completion day—

- (a) continue to have effect in relation to Northern Ireland for the purposes of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, and
- (b) apply for those purposes as if—
 - (i) references to “the United Kingdom” were to “Northern Ireland”,
 - (ii) references to “another member State” were to “a member State”,
 - (iii) references to “the territory of the European Union” were to “Northern Ireland or the territory of the European Union”,
 - (iv) the definitions of “cross-border distance sale” and “travel retail sector” were treated as omitted,
 - (v) regulations 3 (meaning of tobacco product supplied in the United Kingdom) and 4 (meaning of tobacco product supplied in another member State) were treated as substituted for—

“Meaning of tobacco products supplied in Northern Ireland

3.—(1) For the purposes of these Regulations, tobacco products are supplied in Northern Ireland if, in the course of a business, a person—

- (a) supplies the product—
 - (i) for consumption in Northern Ireland or through the travel retail sector, or
 - (ii) with a view to it being supplied for consumption in Northern Ireland or through the travel retail sector,
 - (b) offers or agrees to supply it in those circumstances, or
 - (c) exposes or possesses it for supply in those circumstances,
- and “supply in Northern Ireland” is to be construed accordingly.

(2) In the case of a cross-border distance sale of a product to a consumer located in Northern Ireland, the product is to be treated for the purposes of these Regulations as supplied in Northern Ireland.

(3) In this regulation—

“cross-border distance sale” means 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 in a member State or another country outside of Northern Ireland, and, for these purposes, a retailer is deemed to be established in a member State—

- (a) in the case of a retailer who is a natural person, if that person’s place of business is in that member State, and
- (b) in any other case, if the retailer has its statutory seat, central administration or place of business, including a branch, agency or any other establishment, in that member State;

“travel retail sector” means retail outlets in Northern Ireland at which tobacco products may be purchased only by people travelling on journeys to destinations outside Northern Ireland.

Meaning of tobacco products supplied in a member State

4.—(1) For the purposes of these Regulations, tobacco products are supplied in a member State if, in the course of a business, a person—

- (a) supplies the product—
 - (i) for consumption in a member State or through the travel retail sector of a member State,
 - (ii) with a view to it being supplied for consumption in a member State or through the travel retail sector of a member State,
- (b) offers or agrees to supply it in those circumstances, or
- (c) exposes or possesses it for supply in those circumstances,

and “supply in a member State” is to be construed accordingly.

(2) In the case of a cross-border distance sale of a product to a consumer located in a member State, the product is to be treated for the purposes of these Regulations as supplied in a member State.

(3) In this regulation—

“cross-border distance sale” means a distance sale to a consumer (“C”) where, at the time C orders a product from a retailer, C is located in a member State, and the retailer is established in Northern Ireland, in a different member State or in a country other than a member State, and, for these purposes, a retailer is deemed to be established in a member State—

- (a) in the case of a retailer who is a natural person, if that person’s place of business is in that member State, and
- (b) in any other case, if the retailer has its statutory seat, central administration or place of business, including a branch, agency or any other establishment, in that member State;

“travel retail sector of a member State” means retail outlets in a member State at which tobacco products may be purchased only by people travelling on journeys to destinations outside of that member State.”,

(vi) regulation 6(4) (security feature requirement) were treated as omitted.

Exception to regulation 8

9. Regulation 8 does not apply in relation to the following Parts of the 2019 Regulations—

- (a) Part 4 (security feature system), and
- (b) Part 5 (independence of service providers) but only to the extent that that Part makes provision relating to authentication elements providers.

Amendments to the Tobacco Products (Traceability and Security Features) Regulations 2019

10.—(1) The 2019 Regulations are amended in accordance with Schedule 3.

(2) The 2019 Regulations as amended by Schedule 3 apply for the purposes of—

- (a) establishing and operating a traceability system for tobacco products in the United Kingdom, and
- (b) applying security features to tobacco products supplied in any part of the United Kingdom.

(3) Subject to regulation 11, the amendments made by paragraph 7 of Schedule 3 have effect in relation to cigarettes and hand-rolling tobacco supplied in any part of the United Kingdom on or after IP completion day.

(4) The amendment made by paragraph 8 of Schedule 3 has effect in relation to cigarettes and hand-rolling tobacco—

- (a) manufactured in the United Kingdom on or after IP completion day, or
- (b) imported into the United Kingdom on or after that day for supply in any part of the United Kingdom.

(5) The amendments made by paragraph 11 of Schedule 3 have effect in relation to cigarettes and hand-rolling tobacco—

- (a) manufactured in the United Kingdom on or after IP completion day, or
- (b) imported into the United Kingdom on or after that day,

for supply in any part of the United Kingdom.

Transitional provision: products marked before IP completion day

11. In cases where regulation 4 applies, unit packets of cigarettes and hand-rolling tobacco that were marked in compliance with the EU Commission Implementing Regulation before IP completion day and are supplied in any part of the United Kingdom on or after that day, will be treated, for the purposes of regulation 6(2)(a) of the 2019 Regulations, as meeting the marking requirements of the applied Commission Implementing Regulation referred to in that regulation.

Saving of authentication elements notice

12.—(1) Any notice given before IP completion day by HMRC to manufacturers and importers in accordance with Article 3(3) of the EU Commission Implementing Decision that has not been replaced or revoked before IP completion day, is treated as notice given under regulation 13(2) of the 2019 Regulations.

(2) In this regulation—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“EU Commission Implementing Decision” means the Commission Implementing Decision (EU) 2018/576 of 15 December 2017 on technical standards for security features applied to tobacco products⁽¹⁾;

“HMRC” has the meaning given in regulation 2 of the 2019 Regulations.

⁽¹⁾ OJ No. L 96, 16.04.2018, p. 57.