

## SCHEDULE 3

Regulation 10

### Amendment of the Tobacco Products (Traceability and Security Features) Regulations 2019

#### 1. The 2019 Regulations are amended as follows.

#### Part 1 (preliminary)

##### 2. In regulation 1—

- (a) in paragraphs (3)(b) and 4(b), after “supplied in” insert “any part of”,
- (b) for paragraph (5)(b)(ii), substitute —
  - “(ii) imported into the United Kingdom on or after that date for supply in any part of the United Kingdom.”,
- (c) in paragraph (6)(b), after “supply in” insert “any part of”.

##### 3. In regulation 2—

- (a) in the definition of “authentication elements” for “Commission Implementing Decision” substitute “relevant Security Features Decision”,
- (b) omit the definition of “the Commission Implementing Decision”,
- (c) for the definition of “the Commission Implementing Regulation” substitute—
  - ““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(1);”,
- (d) omit the definition of “cross-border distance sale”,
- (e) omit the definition of “external auditor”,
- (f) omit the definition of “primary repository”,
- (g) for the definitions “supplied in the United Kingdom” and “supplied in another member State” substitute—
  - ““supplied in any part of the United Kingdom” has the meaning given in regulation 3;”,
- (h) for the definition of “travel retail sector” substitute—
  - ““travel retail sector” means—
  - (a) the GB travel retail sector, or
  - (b) the NI travel retail sector;”,
- (i) at the appropriate place insert the following definitions—
  - ““customs suspensive procedure or arrangement” has the meaning given in regulation 3(1) of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010(2) as those Regulations apply in respect of tobacco products entering the United Kingdom;

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(1) EUR 2018/574, as applied to the United Kingdom and amended by regulation 3(1) of, and Schedule 1 to, these Regulations.

(2) S.I. 2010/593, relevantly amended by S.I. 2019/474 (which substituted a new definition of “customs suspensive procedure or arrangement”, in turn replacing the substitution of that definition contained in S.I. 2019/13). That amending instrument has not yet been commenced. Further instruments amending or modifying S.I. 2010/593 are planned before the end of the transition period. It is intended that these will establish where the definition of “customs suspensive procedure or arrangement” as it was originally enacted in S.I. 2010/593 will continue to apply to the entry of tobacco products into the United Kingdom, or where the definition as substituted by S.I. 2019/474 will apply.

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“the data repository” means the data storage facility established under Article 26(1) of the Commission Implementing Regulation;

“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 virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement<sup>(3)</sup>;

“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<sup>(4)</sup>;

“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;

“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;

“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;

“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;”.

4. In the heading to regulation 3, after “supplied in” insert “any part of”.

5. In regulation 3—

(a) in paragraph (1)—

(i) in the opening words, after “supplied in” insert “any part of”,

(ii) in sub-paragraphs (a)(i) and (ii)—

(aa) after “consumption in” insert “any part of”,

(bb) for “travel retail sector of the United Kingdom” substitute “travel retail sector”,

(iii) in the full-out words, after “supply in” insert “any part of”,

(b) for paragraph (2) substitute—

“(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.

<sup>(3)</sup> OJ No. L 96, 16.04.2018, p. 57.

<sup>(4)</sup> EUR 2018/576, as amended by Schedule 2 to these Regulations.

- (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.”.

6. Omit regulations 4 and 5.

## **Part 2 (prohibition from supply of non-compliant tobacco products)**

7. In regulation 6—
- (a) in paragraph (1) after “tobacco products in” insert “any part of”,
  - (b) in paragraph (2)(a), after the words “has been issued by” insert “, or has been paired(5) with a unique identifier that has been issued by”,
  - (c) in paragraph (2)(b)(ii), for “in another member State, Article 15(1) of the Tobacco Products Directive” substitute “outside the United Kingdom, regulation 7(2) as if it applied to that person”,
  - (d) omit paragraph (5).

## **Part 3 (traceability system)**

8. Omit regulation 9.
9. Omit regulation 11.
10. In regulation 12(5), for “primary repository established by the applicant” substitute “data repository”.

## **Part 4 (security feature system)**

11. In regulation 13—
- (a) in paragraph (1), after “supply in” insert “any part of”,
  - (b) in paragraph (2)—
    - (i) for “a” substitute “any”,
    - (ii) for “in accordance with Articles 3(3) and 6(2) of the Commission Implementing Decision” substitute “in relation to the application of a security feature to GB tobacco product or NI tobacco product”,
    - (iii) after subparagraph (a) omit “and”,
    - (iv) after subparagraph (b) insert—
      - “, 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”.

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(5) Article 6(1)(b) of the applied Commission Implementing Regulation, as amended by Schedule 1 to these Regulations, allows for the pairing of a unique identifier with an associated unit level code for the purposes of marking tobacco products. “Associated unit level code” is defined at Article 1(1A), and the process for pairing is set out in Article 9A, of the applied Commission Implementing Regulation.

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(c) after paragraph (5) insert—

“(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.”.

12. For regulation 14, substitute—

“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.”.

#### **Part 5 (independence of service providers)**

13. In regulation 15—

- (a) for “Commission Implementing Decision”, in each place it occurs, substitute “relevant Security Features Decision”,
- (b) in paragraphs (3) and (4), for “and the Commission” substitute “and, in cases where the provider is providing authentication elements for NI tobacco product, the Commission”,
- (c) in paragraph (5)(b), before “the Commission” insert “where relevant”.

14. In regulation 16—

- (a) in paragraphs (1)(b) and (2)(b) for “Commission Implementing Decision” substitute “relevant Security Features Decision”,
- (b) in paragraph (3)(b) for “a provider of a primary repository” substitute “the provider of the data repository”,
- (c) in paragraph 4(a) for “primary repositories” substitute “the data repository”.

#### **Part 6 (deactivation of identifier codes)**

15. Omit regulation 17.

#### **Part 9 (administrative matters)**

16. Omit regulation 24(3)(b).