

Explanatory Note

Clause 82: Raw Tobacco Registration Scheme

Summary

1. This clause amends Parts 8 and 9 of Tobacco Products Duty Act (TPDA) 1979 to introduce new legislation requiring users and dealers of raw tobacco, to be registered by HM Revenue & Customs (HMRC). The scheme is due to have effect on or after 1 October 2016.

Details of the clause

Section 8K: Raw Tobacco: Definitions

2. Section 8K contains the definitions of raw tobacco and controlled activities.

Section 8L: Raw Tobacco: Requirement for approval

3. Subsection (1) states that raw tobacco can only be used by an approved person for a specified controlled activity.
4. Subsection (3) specifies that approval will only be given subject to the raw tobacco not being used for the purpose of or with a view to the fraudulent evasion on tobacco duty, activity and that the applicant also passes a fit and proper test.

Section 8M: Supplementary provision about approval

5. Subsection (1) provides a power to specify that an approval may be extant over a given time period and contain conditions or restrictions.
6. Subsection (2) provides a power to specify that a controlled activity can only take place upon notified premises and/or registered premises.
7. Subsection (5) provides a power to allow for revocation of an approval if a controlled activity is not undertaken over a specified time period.

Section 8N: Exception to the requirement for approval

8. This section provides an exception to the prohibition to those who solely transport raw tobacco to either a notified or registered premises.

Section 8P: Penalty for contravention of section 8L(1)

9. This section states that a penalty will be payable by a liable person if there is a contravention of section 8L(1). The amount of the penalty will be determined by the nature of the contravention and the value of the potential lost revenue. .

Section 8Q: Potential Lost Revenue

10. Subsection (1) states that the potential lost revenue is calculated by reference to the 'other smoking tobacco' duty rate as provided in Schedule 1 of Tobacco Products Duty Act (TPDA) 1979.

Section 8R: Assessment of penalty

11. Subsection (1) allows for a discretion in the assessment of a penalty.
12. Subsection (3) provides that a penalty must be paid before a period of 30 days following the notification of the penalty has lapsed.
13. Subsection (4) provides that the assessment is to be treated as an amount of duty to be due from the person liable for the contravention.
14. Subsection (5) provides that an assessment of a penalty may not be made more than one year after the contravention has been detected.
15. Subsection (6) details that if more than one contravention is breached then they will be treated as a single contravention for assessing a penalty.

Section 8S: Penalties: Reasonable Excuse

16. This section states that a person is not liable to a penalty if the person satisfies the Commissioners that there is a reasonable excuse for the contravention.

Section 8U: Forfeiture

17. This section states raw tobacco may be liable to forfeiture in respect of a contravention of section 8L(1).

Section 8V: Regulations about approval, registration etc.

18. This section provides the power to make regulations in order to facilitate the functionality of the raw tobacco registration scheme specifically for sections 8L to 8O Tobacco Products Duty Act (TPDA) 1979.

Section 8W: Modification of Customs and Excise Management Act 1979.

19. Subsection (1) provides that for the purposes of the registration scheme, approved persons are deemed to be 'revenue traders' for the purposes of using the power in the Customs and Excise Management Act 1979.
20. Subsection (2) states that any changes made to section 8K regarding the definitions of raw tobacco or a controlled activity can only be made by draft regulation being approved by the House of Commons. Other powers within this scheme are exercisable subject to annulment by the House of Commons.
21. Subsection (3) provides an amendment to be made to section 13A(2) FA 1994 to include any decision made by HMRC to the liability and the amount of a penalty under section 8P TPDA 1979.

22. Subsection (4) amends section Schedule 5 of FA 1994 to include the refusal of an approval request to be subject to review and appeal.

Background note

23. This clause has been introduced to prohibit the use of raw tobacco by an unregistered person, to prevent the illegal manufacture of tobacco products, by introducing effective controls and deterrence.
24. Raw tobacco which is not yet in a smokeable form is not subject to excise duty or any possession controls. This is presenting an increasing risk of evasion of tobacco products duty through raw tobacco being freely and legally imported and either processed into smoking products in unregistered premises or sold in small quantities to consumers for home processing.
25. At March Budget 2015, following consultation, the Government announced its intention to introduce a registration scheme to tighten controls on the use of raw tobacco in order to reduce the risk of evasion of tobacco products duty. The registration scheme was considered to be the least restrictive way to target the fraudulent evasion of tobacco duty through the importation of raw tobacco. HMRC intends to accept applications for registration from 1 October 2016, and the scheme is due to take effect from 1 January 2017.
26. If you have any questions about this change, or comments on the legislation, please contact Wendy Longworth on 03000 587927 (email: wendy.longworth@hmrc.gsi.gov.uk).