

2016 No.

EXCISE

The Raw Tobacco (Approval Scheme) Regulations 2016

Made - - - - ***

Laid before Parliament ***

Coming into force - - ***

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 8M, 8N and 8U of the Tobacco Products Duty Act 1979 (a) [and section 133 of the Finance Act 1999(b)], and now exercisable by them(c).

PART 1

PRELIMINARY

Citation and commencement

1.—(1) These Regulations may be cited as the Raw Tobacco (Approval Scheme) Regulations 2016.

(2) Parts 1 to 4 come into force on [...].

(3) Part 5 comes into force on 1 April 2017.

Interpretation

2. In these Regulations—

“CEMA 1979” means the Customs and Excise Management Act 1979(d);

“notice” means a notice in writing;

“prescribed” means prescribed by the Commissioners in a published notice, as revised or replaced from time to time and “prescribe” is construed accordingly;

(a) 1979 c.7. Sections 8N, 8M and 8U were inserted by section [176] of the Finance Act 2016 (c.) and came into force on [...] under [Appointed Day Regulations].

(b) [1999 c. 16]

(c) The power to make regulations under section 8M, 8N and 8U of TPDA 1979 is conferred on “the Commissioners” and by virtue of section 10(3) of the TPDA 1979, “the Commissioners” has the same meaning as provided in the Customs and Excise Management Act 1979 (c. 2). Section 1(1) of the Customs and Excise Management Act 1979 (as amended by the Commissioners for Revenue and Customs Act 2005 (c. 11) (“CRCA 2005”), Schedule 4, paragraphs 20 and 22(b)) defines “the Commissioners” as “the Commissioners for Her Majesty’s Revenue and Customs”. [The reference to “the Commissioners of Customs and Excise” in section 133 of the Finance Act 1999 is to be taken as a reference to “the Commissioners for Her Majesty’s Revenue and Customs” by virtue of section 50(1) of CRCA 2005.]

(d) 1979 c. 2.

“review and appeal provisions” means the provisions in respect of the review of, or an appeal against, a decision set out in sections 15C (review by HMRC) and 16 (appeals to a tribunal) of the Finance Act 1994^(a) and “review” and “appeal” in regulation 8(2) are to be construed as though those provisions have been engaged;

“TPDA 1979” means the Tobacco Products Duty Act 1979.

PART 2

APPROVAL SCHEME

Application for approval

3.—(1) Where a person intends to carry out a controlled activity^(b), that person must make an application to the Commissioners for approval in the prescribed form and manner and include the information prescribed.

(2) But an approval is not required where an exemption applies under Part 4.

Applications for approval

4.—(1) An application for approval must be made in writing.

(2) The Commissioners must prescribe—

- (a) subject to paragraph (1), the form and manner of an application; and
- (b) the information which must be provided with an application,

but may make different provision for different types of applicant or controlled activity.

(3) The Commissioners may prescribe that an application must be made electronically.

Additional information and inspection notices

5.—(1) In order to determine an application, the Commissioners may by notice (“an additional information notice”) request an applicant to provide additional information to that prescribed.

(2) An additional information notice must specify—

- (a) the additional information;
- (b) the form and manner by which it must be provided, which may be electronically; and
- (c) the date by which it must be provided to the Commissioners.

(3) In order to determine an application, the Commissioners may by notice (“an inspection notice”) request an applicant to allow the Commissioners to inspect any premises owned or occupied by the applicant which are premises at or from which the applicant intends to carry on a controlled activity.

(4) An inspection notice must specify—

- (a) the premises to be inspected; and
- (b) the date by which the Commissioners intend to carry out the inspection.

(5) No inspection may be carried out other than with the applicant’s permission and at a time agreed with the applicant.

(6) The Commissioners may by notice given to the applicant extend the date—

- (a) to comply with an additional information notice; or
- (b) to inspect premises further to an inspection notice.

(a) 1994 c. 9. Section 15C added by S.I 2009/56.

(b) Controlled activity is defined by section 8K(3) of the TPDA 1979.

- (7) Where an applicant—
- (a) fails to comply with an additional information notice by the date for compliance; or
 - (b) fails unreasonably to agree to an inspection further to an inspection notice by the date set out in the notice,

the application is deemed to be withdrawn on that date.

Determination of applications

6.—(1) Where an application is deemed to be withdrawn by virtue of regulation 5(7), the Commissioners must give a notice to the applicant stating that the application has been treated as withdrawn.

(2) A notice under paragraph (1) must be given as soon as reasonably practicable after the date of deemed withdrawal.

(3) Except where paragraph (1) applies, the Commissioners must determine an application as soon as reasonably practicable after it has been received.

(4) Where an application is approved, the Commissioners must provide a written approval to the applicant (“the approved person”).

(5) The approval must include—

- (a) a unique approval number;
- (b) the approved person’s name and address and, in the case of a company, company registration number; and
- (c) details of each controlled activity which is approved and details of each premises at or from which the activity may be carried out.

(6) Where an approval is made subject to conditions or restrictions—

- (a) the approval must contain or refer to those conditions or restrictions; and
- (b) the Commissioners must give notice to the approved person which states that the review and appeal provisions apply in respect of the decision to impose conditions or restrictions.

(7) Where an application is refused, the Commissioners must give notice to the applicant which—

- (a) states that the application is refused;
- (b) provides reasons for the refusal; and
- (c) states that the review and appeal provisions apply in respect of the decision to refuse approval.

Approval: conditions and restrictions

7. The Commissioners may prescribe conditions or restrictions to which an approval is subject.

PART 3

REVOCATION, VARIATION, TRANSFER AND SURRENDER OF APPROVALS

Applications to vary, transfer or surrender approval

8.—(1) An approved person may in respect of an approval issued to that person, apply to the Commissioners in writing to—

- (a) vary the terms of the approval;
- (b) transfer the approval; or
- (c) surrender the approval.

(2) But no application may be made to vary an approval if the variation is in respect of a matter which—

- (a) is subject to a review or appeal; or
- (b) was subject to review or appeal and the matter was refused.

(3) The Commissioners may prescribe—

- (a) the form and manner of an application under paragraph (1); and
- (b) that an application must be made electronically.

(4) The Commissioners must determine an application as soon as reasonably practicable after it has been received.

Reasonable cause to revoke or vary an approval

9.—(1) The Commissioners may have reasonable cause to revoke or vary an approval where there is a failure to comply with the conditions or restrictions of the approval.

(2) The Commissioners may give a notice (“investigation notice”) to an approved person which—

- (a) identifies the conditions or restrictions with which the Commissioners believe the approved person has failed to comply;
- (b) identifies how the approved person has failed to comply with those conditions or restrictions;
- (c) states that the approved person may make representations in writing to the Commissioners in respect of those conditions or restrictions; 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.

(3) The Commissioners may by notice given to the approved person extend the date to comply with an investigation notice.

(4) The Commissioners may have reasonable cause to revoke or vary an approval in respect of which an investigation notice has been given where the approved person fails to make representations by the date required.

Consideration of section 8L(2)

10.—(1) The Commissioners must not agree to the variation, transfer or surrender of an approval unless by doing so they are satisfied that section 8L(2)(a) or (b) of TPDA 1979 is met in respect of the approval.

(2) The Commissioners must revoke or vary an approval as soon as practicable where, unless the revocation or variation is made, the Commissioners cannot be satisfied that section 8L(2)(a) or (b) of TPDA 1979 is met in respect of the approval.

Variation of approval

11. Where the Commissioners vary, or agree to an application to vary, an approval, they must provide notice to the approved person which—

- (a) identifies how the approval is varied;
- (b) specifies the date on which the variation has effect; and
- (c) states that the review and appeal provisions apply in respect of the decision to vary the terms of the approval.

Transfer of approval

12. Where the Commissioners agree to the transfer of an approval, they must provide notice to the transferor and transferee which—

- (a) specifies the date on which the transfer has effect; and
- (b) where—
 - (i) the conditions or restrictions of the approval are varied; or
 - (ii) new conditions or restrictions are imposed,states that the review and appeal provisions apply in respect of the decision to impose conditions or restrictions on, or vary the terms of, the approval.

Surrender of approval

13.—(1) Where the Commissioners agree to the surrender of an approval, they must provide notice to the approved person which specifies the date on which the surrender has effect.

- (2) The Commissioners may vary an approval for the period until the surrender has effect.

Revocation of approval

14. Where the Commissioners revoke an approval, they must provide notice to the approved person which—

- (a) specifies the date on which the revocation has effect; and
- (b) states that the review and appeal provisions apply in respect of the decision to revoke approval.

Refusal of an application

15. Where an application to vary, transfer or surrender an approval is refused, the Commissioners must provide a notice to the approved person which—

- (a) states that the application is refused;
- (b) provides reasons for the refusal; and
- (c) in the case of a refusal to vary an approval, states that the review and appeal provisions apply in respect of the decision to refuse approval.

PART 4

EXEMPTIONS FROM APPROVAL

Application of this Part

16. This Part applies in respect of a controlled activity carried on on or after 1 April 2017.

Waste and compost

17.—(1) Section 8L(1) of the TPDA 1979 does not apply to a person (“W”) who holds waste raw tobacco solely in order to dispose of it permanently as waste or as compost, provided that W complies with conditions 1 and 2.

- (2) Condition 1 is that W must not be an approved person in relation to any controlled activity
- (3) Condition 2 is that W must not manufacture tobacco products.
- (4) In this regulation—

“tobacco plants” means plants of the *Nicotiana* genus;

“waste raw tobacco” means raw tobacco which—

- (a) derives from the cultivation of tobacco plants solely for horticultural purposes; and
- (b) is irretrievably mixed with other waste material.

Raw tobacco stalks and stems

18.—(1) Section 8L(1) of the TPDA 1979 does not apply to a person (“S”) who carries on any controlled activities in respect of raw tobacco stalks or stems, to which no leaves are attached, provided that S complies with conditions 1 and 2.

(2) Condition 1 is that S must not receive in single delivery an amount of raw tobacco stalks and stems which exceeds 2.5kg.

(3) Condition 2 is that S must not hold during any period of 12 months an amount of raw tobacco stalks and stems which exceeds 20kg.

Transporters

19.—(1) Section 8L(1) of the TPDA 1979 does not apply to a person (“T”) who transports raw tobacco provided that T complies with conditions 1, 2 and 3.

(2) Condition 1 is that T must not transport an amount of raw tobacco which exceeds 500kg in a single load.

(3) Condition 2 is that T must only deliver the raw tobacco to—

- (a) an approved person; and
- (b) to premises where that approved person is approved to hold raw tobacco

(4) Condition 3 is that T must—

- (a) keep a record to demonstrate that conditions 1 and 2 are met;
- (b) ensure that a copy of that record is held by the person undertaking the transport throughout the period of transport; and
- (c) ensure that copy is produced to an officer on request.

(5) It is a requirement that T must preserve those records for a period of six years commencing with the date of the transport.

Snuff products

20.—(1) Section 8L(1) of the TPDA 1979 does not apply to a person (“P”) who carries on any limited controlled activity involving a snuff product provided P complies with condition 1.

(2) Condition 1 is that where P carries on a limited controlled activity involving an amount of snuff product which exceeds 50g, P must ensure that the product is contained in packaging which meets the requirements under—

- (a) regulation 10 of the Standardised Packaging of Tobacco Products Regulations 2015(a);
- (b) regulation 10 of the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002(b); and
- (c) regulations 10 to 12 of the Tobacco and Related Products Regulations 2016(c).

(3) In this regulation—

“limited controlled activity involving a snuff product” means any controlled activity except the manufacture or production of a snuff product;

“snuff product” means any pulverized tobacco in a finished state which is to be inhaled through the nostrils.

(a) S.I. 2015/829.

(b) S.I. 2002/3041 (“the 2002 Regulations”). [The 2002 Regulations have been revoked by regulation 54 of SI 2016/507 (“the 2016 Regulations”). However, under regulation 55 of the 2016 Regulations, regulation 10 (product identification markings) of the 2002 Regulations continues to have effect in relation to the code marking of tobacco products (which are not cigarettes or hand rolling tobacco), until 20 May 2024 despite the revocation of this provision.]

(c) S.I. 2016/507.

Record keeping and production

21. It is a requirement that where an exempt person carries on a controlled activity under regulation 18 (stalks and stems) or 20 (snuff products), that person must—

- (a) keep the records relating to the controlled activity as set out in Schedule 1;
- (b) preserve those records for a period of six years commencing on the date that the relevant record is first held by that person; and
- (c) produce a copy of those records to an officer when required to do so.

PART 5 ENFORCEMENT

Application of CEMA 1979

22.—(1) The provisions of CEMA 1979, specified in Parts 1 and 2 of Schedule 2, apply—

- (a) in relation to persons who carry on controlled activities as they apply in relation to revenue traders whose trade or business relates to tobacco products, and
- (b) in relation to raw tobacco as they apply in relation to tobacco products.

(2) The provisions in—

- (a) Part 1 apply without modification
- (b) Part 2 apply with the modifications set out in that Part.

Date

Name
Name
Two of the Commissioners for Her Majesty's Revenue and Customs

SCHEDULE 1

Regulation 21

1.—(1) The following are the records referred to in regulation 21, namely all—

- (a) records relating to the import or export of exempt tobacco;
- (b) records relating to the ordering or delivery of exempt tobacco;
- (c) invoices and receipts relating to exempt tobacco.

(2) In this paragraph, “exempt tobacco” means any raw tobacco in relation to which a person in an exempt person by virtue of regulation 18 (stalks and stems) or 20 (snuff products).

SCHEDULE 2

Regulation 22

Part 1

Application of CEMA 1979 without modification

1. The provisions of CEMA 1979 applied without modification are—

- (a) section 112 (power of entry upon premises etc, of revenue traders)(a);
- (b) section 112A (section 112: supplementary powers)(b);
- (c) section 118 (liability of ostensible owner of principal manager)(c);
- (d) section 118BB (inspection powers: goods-based duties)(d);
- (e) section 118BD (inspection powers: supplementary provision)(e);
- (f) section 118G (offences)(f);
- (g) section 158 (power to require provision of facilities)(g);

Part 2

Application of CEMA 1979 with modifications

Section 27 of CEMA 1979

2.—(1) Section 27 of CEMA 1979 (officers’ powers of boarding)(h) is applied with the following modification.

(2) In subsection (1), for “the prevention of smuggling” substitute “ensuring compliance with section 8L of the Tobacco Products Duty Act 1979”.

Section 118BA of CEMA 1979

3.—(1) Section 118B of CEMA 1979 (duty of revenue traders and others to furnish information and produce documents)(i) is applied with the following modification.

(2) In subsection (3)(b), for “section 118A above” substitute “regulations made under section 8M or 8N of the Tobacco Products Duty Act 1979”.

Section 118BA of CEMA 1979

4.—(1) Section 118BA of CEMA 1979 (further duty to provide information and documents) is applied with the following modification.

(2) In subsection (1)(a), for “protecting, securing, collecting or managing revenues derived from duties of excise” substitute “ensuring compliance with the terms of an approval under section 8L or, or an exemption under section 8N, of the Tobacco Products Duty Act 1979”.

Section 163A of CEMA 1979

5.—(1) Section 163A of CEMA 1979 (power to search articles)(j) is applied with the following modification.

(2) Subsection (2)(a) is omitted.

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- (a)
 - (b)
 - (c)
 - (d)
 - (e)
 - (f)
 - (g)
 - (h)
 - (i)
 - (j)

EXPLANATORY NOTE

(This note is not part of the Regulations)