
82 Raw tobacco registration scheme

- (1) After section 8J of TPDA 1979 insert –

“8K Raw tobacco: definitions

- (1) The following definitions apply for the purposes of sections 8L to 8W.
- (2) “Raw tobacco” means the leaves or any other part of a plant of the genus *Nicotiana* but does not include –
 - (a) any part of a living plant,
 - (b) a tobacco product, or
 - (c) anything incorporated in a tobacco product.
- (3) “Controlled activity” means –
 - (a) buying, selling or otherwise dealing in raw tobacco,
 - (b) importing or exporting raw tobacco,
 - (c) storing or transporting raw tobacco,
 - (d) applying a manufacturing process to raw tobacco, or
 - (e) using raw tobacco for any other purpose.
- (4) The Commissioners may by regulations amend subsection (3) so as to add, modify or remove an activity.

8L Raw tobacco: requirement for approval

- (1) A person may not carry on a controlled activity otherwise than in accordance with an approval given by the Commissioners under this section.
- (2) Subsection (1) is subject to the exception in section 8N.
- (3) The Commissioners may approve a person for the purposes of subsection (1) only if satisfied that –
 - (a) the person is a fit and proper person to carry on a controlled activity, and
 - (b) the activity will not be carried on for the purpose of, or with a view to, the fraudulent evasion of the duty of excise charged on tobacco products under section 2(1).
- (4) Provision about the form and content of an application for approval may be made by or under regulations made by the Commissioners.
- (5) In sections 8M to 8W, “approved person” means a person approved under this section to carry on a controlled activity.

8M Supplementary provision about approval

- (1) An approval may –
 - (a) specify the period of approval, and
 - (b) be subject to conditions or restrictions that the Commissioners think fit, or as they may specify by or under regulations.
- (2) The conditions or restrictions may, in particular, require a controlled activity to be carried on only at or from –
 - (a) premises specified in the approval (“notified premises”), or
 - (b) at premises registered in accordance with regulations made under section 7(1)(b), (ba) or (c) (“registered premises”).

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- (3) The criteria for determining whether or not particular premises may be specified in an approval may be prescribed by or under regulations made by the Commissioners.
 - (4) The Commissioners may at any time for reasonable cause revoke or vary the terms of an approval.
 - (5) The Commissioners may in particular revoke an approval on the ground that the approved person has not carried on a controlled activity for a period of time specified in regulations made by the Commissioners.

8N Exception to the requirement for approval

- (1) Section 8L(1) does not apply to a person who is in possession of raw tobacco for the sole purpose of transporting it to notified or registered premises for delivery to an approved person.
- (2) The Commissioners may by regulations make provision about the manner in which they will determine whether the exception in subsection (1) applies.

8O The register of approved persons

- (1) The Commissioners must maintain a register of approved persons.
- (2) The register is to contain such information relating to approved persons as the Commissioners think fit.

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

- (1) A penalty is payable by a person who contravenes section 8L(1).
- (2) If the contravention is deliberate and concealed, the amount of the penalty is 100% of the potential lost revenue.
- (3) If the contravention is deliberate but not concealed, the amount of the penalty is 70% of the potential lost revenue.
- (4) In any other case, the amount of the penalty is 30% of the potential lost revenue.
- (5) The contravention is –
 - (a) “deliberate and concealed” if the contravention is deliberate and the person makes arrangements to conceal the contravention, and
 - (b) “deliberate but not concealed” if the contravention is deliberate but the person does not make arrangements to conceal the contravention.

8Q Potential lost revenue

- (1) The “potential lost revenue” in respect of a contravention of section 8L(1) is the amount of duty that would be charged on the relevant quantity of smoking tobacco.
- (2) The relevant quantity of smoking tobacco is equal to the quantity by weight of the raw tobacco in respect of which the controlled activity contravening section 8L(1) has been carried on.

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- (3) In this section a reference to “smoking tobacco” is a reference to tobacco products within section 1(1)(d) (“other smoking tobacco”).

8R Assessment of penalty

- (1) Where a person becomes liable for a penalty under section 8P –
- (a) the Commissioners may assess the penalty, and
 - (b) if they do so, they must notify the person liable.
- (2) A notice under subsection (1)(b) must state the contravention in respect of which the penalty is assessed.
- (3) A penalty payable under section 8P must be paid before the end of the period of 30 days beginning with the day on which the notification of the penalty is issued.
- (4) An assessment is to be treated as an amount of duty due from the person liable for the penalty and may be recovered accordingly.
- (5) An assessment may not be made later than one year after evidence of facts sufficient in the opinion of the Commissioners to indicate the contravention comes to their knowledge.
- (6) Two or more contraventions may be treated by the Commissioners as a single contravention for the purposes of assessing a penalty payable under section 8P.

8S Penalties: reasonable excuse

- (1) A person is not liable to a penalty under section 8P in respect of a contravention if –
- (a) the contravention is not deliberate, and
 - (b) the person satisfies the Commissioners that there is a reasonable excuse for the contravention.
- (2) For the purposes of subsection (1)(b), where the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the contravention.

8T Penalties: double jeopardy

A person is not liable to a penalty under section 8P in respect of a contravention in respect of which the person has been convicted of an offence.

8U Forfeiture

Where a person contravenes section 8L(1) by carrying on a controlled activity in relation to raw tobacco otherwise than in accordance with an approval, the raw tobacco is liable to forfeiture.

8V Regulations about approval, registration etc.

- (1) The Commissioners may by regulations make provision –
- (a) regulating the approval and registration of persons under sections 8L to 8O,
 - (b) regulating the variation or revocation of an approval or registration, or of any condition or restriction to which an approval or registration is subject,

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- (c) about the register maintained under section 8O,
 - (d) imposing obligations on approved persons, and
 - (e) for the failure of an approved person to comply with an obligation imposed by the regulations to attract a penalty under section 9 of the Finance Act 1994 (civil penalties).
- (2) The regulations may, in particular –
- (a) require applications and other communications with the Commissioners to be made electronically,
 - (b) make provision as to the procedure for the approval and registration of bodies corporate which are members of the same group (as defined in the regulations), and
 - (c) make provision for members of a group to be jointly and severally liable for any penalties imposed under section 8P or in accordance with regulations under subsection (1)(e).

8W Modification of Customs and Excise Management Act 1979

For the purposes of sections 8K to 8V –

- (a) the Customs and Excise Management Act 1979 has effect in relation to approved persons as it has effect in relation to revenue traders, and
 - (b) section 163A(1) of that Act (power to search articles) has effect as if the reference to goods to which the section applies included a reference to raw tobacco which is liable to forfeiture under the customs and excise Acts.”
- (2) In section 9 of TPDA 1979 (regulations) –
- (a) after “statutory instrument and” insert “, subject to subsections (1A) and (1B),”, and
 - (b) after subsection (1) insert –
- “(1A) Regulations under section 8K(4) may not be made unless a draft of the instrument containing them has been laid before, and approved by resolution of, the House of Commons.
- (1B) A statutory instrument containing regulations under any of sections 8L(4), 8M(1)(b), (3) or (5), 8N(2) or 8V is subject to annulment in pursuance of a resolution of the House of Commons.”
- (3) In section 13A(2) of FA 1994 (customs and excise reviews and appeals: “relevant decisions”), after paragraph (g) insert –
- “(gb) any decision by HMRC that a person is liable to a penalty, or as to the amount of the penalty, under section 8P of the Tobacco Products Duty Act 1979;”.
- (4) In Schedule 5 to FA 1994 (decisions subject to review and appeal) after paragraph 5 insert –
- “5A Any decision –
- (a) to refuse an approval under section 8L of the Tobacco Products Duty Act 1979 (raw tobacco registration scheme: approval to carry on a controlled activity),
 - (b) under section 8M of that Act to impose a condition or restriction on, or to revoke or vary the terms of, an approval.”

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- (5) The amendments made by this section come into force on such day as the Commissioners for Her Majesty's Revenue and Customs may by regulations made by statutory instrument appoint.
 - (6) Regulations under subsection (5) may appoint different days for different purposes.