

EXPLANATORY MEMORANDUM TO
THE TOBACCO PRODUCTS MANUFACTURING MACHINERY (LICENSING
SCHEME) REGULATIONS [XXXX]

[Year] No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations set out the framework for a licensing scheme for tobacco products manufacturing machinery. They provide that a person may not manufacture, purchase, acquire, own or be in possession of an item of tobacco products manufacturing machinery otherwise than in accordance with a licence. The Regulations also make provision for exemptions from the licensing scheme, who is eligible to have a licence, conditions and restrictions to apply to licences, the administration of licences, penalties, forfeiture, enforcement and reviews and appeals.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This is the first exercise of the powers to make regulations under section 8V (Tobacco products manufacturing machinery: licensing scheme) of the Tobacco Products Duty Act 1979.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The licensing of tobacco products manufacturing machinery is a requirement of the World Health Organisation Framework Convention on Tobacco Control Illicit Trade Protocol. The UK is a signatory to the Protocol, and the Government intends to seek Parliamentary approval of ratification of the Protocol shortly.
- 4.2 The Tobacco Products Duty Act 1979 (TPDA) contains provisions concerned with the duty liability of tobacco products and the prevention of duty evasion. However tobacco products manufacturing machinery was not subject to any controls beyond the requirement for tobacco products to be manufactured in a registered factory.

4.3 [Section XX of the Finance Act (No 2) 2017] inserts new section 8V into the TPDA to assist in the prevention of illegal manufacture of tobacco products through the licensing of tobacco products manufacturing machinery. Section 8V allows the Commissioners to make Regulations to provide for a licensing scheme for tobacco products manufacturing machinery.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The tobacco products manufacturing machinery licensing scheme is a measure aimed at preventing the illegal manufacture of tobacco products. The UK illicit cigarette market share was 13 per cent in 2015-16. This corresponds to a revenue loss of £1.6 billion (including VAT). The long term trend is downwards from 22 per cent in 2000-01 when the government launched its first illicit tobacco strategy. This measure will form another aspect of this successful multi-faceted approach.

7.2 Tobacco products manufacturing machinery can only be legally used to manufacture tobacco products in registered tobacco products factories. Prior to this new licensing scheme, there were no other controls which meant that machines could be freely sold, moved and stored. Machines could only be seized if there was evidence of them actually being used to manufacture illicit tobacco products.

7.3 The new scheme requires a person who carries out certain activities in respect of a machine to be licensed. Any person who carries out an activity without a licence will be liable to a penalty and the item of machinery in respect of which they carry out that activity will be liable to forfeiture. This means that any machine not specified in a licence may be seized (without the need for evidence of that it is being used to manufacture illicit tobacco products). This will help to prevent evasion of tobacco products duty.

7.4 The scheme will be implemented from 1 April 2018 so that applications can be made and determined in time for when the general prohibition will come into force on 1 August 2018 along with the enforcement powers.

Consolidation

7.5 Consolidation does not arise in this case.

8. Consultation outcome

8.1 HMRC has conducted a formal consultation which took place from 25 February 2016 to 20 May 2016 on licensing of tobacco products manufacturing machinery and possible licensing of the tobacco supply chain.

- 8.2 84 responses were received from public health bodies or groups, local government (including Trading Standards), other enforcement agencies, individual businesses, charities and a member of the public.
- 8.3 Some respondents raised burdens on business while questioning the impact of licensing on the illicit trade. Based on consultation responses and research, HMRC believe that the number of businesses affected will be very small – there are very few tobacco manufacturers in the UK and as far as we are aware, there are no manufacturers of machinery.. HMRC will work to ensure that any additional burdens placed on legitimate business by the new scheme will be kept to a minimum.

9. Guidance

- 9.1 HMRC will publish guidance on this order in a Public Notice on **XXXX** 2018. The notice will be available on HMRC’s website at www.hmrc.gov.uk.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 The impact on the public sector is negligible.
- 10.3 A Tax Information and Impact note (TIIN) covering this instrument is published at <https://www.gov.uk/government/publications/tobacco-duty-illicit-trade-protocol-licensing-of-tobacco-manufacturing-machinery/tobacco-duty-illicit-trade-protocol-licensing-of-tobacco-manufacturing-machinery>

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to ensure that there are negligible administrative burdens and costs involved for businesses implementing this provision.
- 11.3 HMRC will work with small businesses with registered tobacco factories to minimise the burdens of obtaining licences for their machines before the scheme takes effect.

12. Monitoring & review

- 12.1 The measure will be monitored through information collected from results of enforcement and compliance activity and the outcome will be subject to internal review after 12 months.

13. Contact

- 13.1 Mark Palmer at HM Revenue and Customs. Telephone: 03000 587928 or email: mark.t.palmer@hmrc.gsi.gov.uk can answer any queries regarding the instrument.