

2019 No.

EXCISE

**The Tobacco Products (Traceability and Security Features)
Regulations 2019**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - 20th May 2019

The Commissioners for Her Majesty's Revenue and Customs have been designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to traceability of, and security features for, tobacco and tobacco products(b).

The Commissioners for Her Majesty's Revenue and Customs make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

PART 1

Preliminary

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Tobacco Products (Traceability and Security Features) Regulations 2019.

(2) These Regulations come into force on 20th May 2019.

(3) Subject to paragraph (4), regulation 6 has effect in relation to—

- (a) cigarettes or hand-rolling tobacco supplied in the United Kingdom on or after 20th May 2019, and
- (b) tobacco products (other than cigarettes or hand-rolling tobacco) supplied in the United Kingdom on or after 20th May 2024.

(4) Regulation 6 does not have effect in relation to—

- (a) cigarettes or hand-rolling tobacco manufactured, or imported into the United Kingdom, before 20th May 2019 unless the product in question is supplied in the United Kingdom on or after 20th May 2020, or

(a) 1972 c. 8. Section 2(2) was amended by section 27(1)(a) of the Legislative Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
(b) S.I. 2014/2705.

- (b) tobacco products (other than cigarettes or hand-rolling tobacco) which are manufactured, or imported into the United Kingdom, before 20th May 2024 unless the product in question is supplied in the United Kingdom on or after 20th May 2026.
- (5) Regulations 7 to 10 and 12 have effect in relation to—
- (a) cigarettes or hand-rolling tobacco—
 - (i) manufactured in the United Kingdom on or after 20th May 2019, or
 - (ii) manufactured in a country which is not a member State that are imported into the United Kingdom on or after that date for supply in the United Kingdom or another member State, and
 - (b) tobacco products (other than cigarettes or hand-rolling tobacco)—
 - (i) manufactured in the United Kingdom on or after 20th May 2024, or
 - (ii) manufactured in a country which is not a member State that are imported into the United Kingdom on or after that date for supply in the United Kingdom or another member State.
- (6) Regulation 13 has effect in relation to—
- (a) cigarettes or hand-rolling tobacco—
 - (i) manufactured in the United Kingdom on or after 20th May 2019, or
 - (ii) imported into the United Kingdom on or after that date, for supply in the United Kingdom, and
 - (b) tobacco products (other than cigarettes or hand-rolling tobacco)—
 - (i) manufactured in the United Kingdom on or after 20th May 2024, or
 - (ii) imported into the United Kingdom on or after that date, for supply in the United Kingdom.

Interpretation

2. In these Regulations—

“anti-tampering device” has the meaning given in Article 7(2) of the Commission Implementing Regulation;

“authentication elements” are the authentication elements set out in the Annex to the Commission Implementing Decision;

“authentication elements provider” means a person meeting the description in regulation 15(1);

“cigarette” means a tobacco product that can be consumed by means of a combustion process and which is—

- (a) a roll of tobacco (or of tobacco and another substance) capable of being smoked as it is, but which is not a cigar or a cigarillo, or
- (b) a roll of tobacco (or of tobacco and another substance) which is designed to be, by simple non-industrial handling—
 - (i) wrapped in cigarette paper, or
 - (ii) inserted into a cigarette-paper tube;

“cigar” means a tobacco product that can be consumed by means of a combustion process and, given its properties and normal consumer expectations, is exclusively intended to be smoked as it is, and which is—

- (a) a roll of tobacco (or of tobacco and another substance) which has an outer wrapper of natural tobacco; or
- (b) a roll of tobacco (or of tobacco and another substance) which—
 - (i) has an outer wrapper—

- (aa) of the normal colour of a cigar,
- (bb) made of reconstituted tobacco, and
- (cc) covering the product in full (including the filter but not, in the case of a cigar with a mouthpiece, the mouthpiece),
- (ii) is filled with a threshed blend of tobacco (or of tobacco and another substance),
- (iii) has a unit weight, not including any filter or mouthpiece, of not less than 2.3 grams and not more than 10 grams, and
- (iv) has a circumference, over at least one third of its length, of not less than 34 millimetres;

“cigarillo” means a cigar with a unit weight of not more than 3 grams;

“Commission” means the Commission of the European Union;

“Commission Implementing Decision” means the Commission Implementing Decision (EU) 2018/576 of 15 December 2017 on technical standards for security features applied to tobacco products^(a);

“Commission Implementing Regulation” means 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^(b);

“consumer” means a person who is acting for purposes which are outside that person’s trade, business, craft or profession;

“cross-border distance sale” means a distance sale to a consumer where, at the time the consumer orders a tobacco product from a retailer, the consumer is located in a member State other than the member State or third country where the retailer is established, and, for these purposes, a retailer is deemed to be established in a member State—

- (i) in the case of a retailer who is a natural person, if that person’s place of business is in that member State, and
- (ii) in any other case, if the retailer has its statutory seat, central administration or place of business, including a branch, agency or any other establishment, in that member State;

“deactivation notice” means a notice given under regulation 18(4);

“economic operator” has the meaning given in Article 2(2) of the Commission Implementing Regulation;

“external auditor” means a person appointed in accordance with regulation 9(1)(b);

“hand-rolling tobacco” means a tobacco product—

- (a) in relation to which more than 25% by weight of the tobacco particles have a cut width of less than 1.5 millimetres,
- (b) which is sold or intended to be sold for making into cigarettes by hand, including making into cigarettes by hand with the aid of a mechanical device, or
- (c) which is of a kind used for making into cigarettes by hand, including making into cigarettes by hand with the aid of a mechanical device;

“HMRC” means Her Majesty’s Revenue and Customs;

“manufacturer” means a person who—

- (a) manufactures tobacco products, or
- (b) puts a name, trademark, or other distinguishing mark, on tobacco products by which the person is held out to be the manufacturer or originator,

and “manufacture” is to be construed accordingly;

(a) OJ L 96, 16.04.2018, p. 57.

(b) OJ L 96, 16.04.2018, p. 7.

“officer” means a person appointed under section 2(1) of the Commissioners for Revenue and Customs Act 2005(a);

“prescribed” means prescribed in a direction of the Commissioners for Her Majesty’s Revenue and Customs made under regulation 24;

“primary repository” means a data storage facility required under Article 26(1) of the Commission Implementing Regulation to be established by manufacturers and importers of tobacco products;

“retail sale” means sale to a consumer;

“retailer” means a person who sells, or offers or agrees to sell, a tobacco product to a consumer;

“security feature” means the mark required to be carried by unit packets of tobacco products by regulation 13;

“supplied in the United Kingdom” and “supplied in another member State” have the meanings given in regulations 3 and 4 respectively;

“tobacco product” means a product that can be consumed and consists, in whole or in part, of tobacco;

“travel retail sector” means retail outlets in a member State at which tobacco products may be purchased only by people travelling on journeys to destinations outside that member State, and the terms “travel retail sector of the United Kingdom” and “travel retail sector of a member State other than the United Kingdom” are to be construed accordingly;

“UK ID Issuer” means the entity appointed for the United Kingdom in accordance with Article 3(1) of the Commission Implementing Regulation(b);

“unique identifier” has the meaning given in Article 2(1) of the Commission Implementing Regulation;

“unit packet” in relation to a tobacco product, means the smallest individual packaging in which that product is, or is intended to be, presented for retail sale, but does not include any transparent wrapper.

Meaning of tobacco products supplied in the United Kingdom

3.—(1) For the purposes of these Regulations, tobacco products are supplied in the United Kingdom if, in the course of a business, a person—

- (a) supplies the product—
 - (i) for consumption in the United Kingdom or through the travel retail sector of the United Kingdom, or
 - (ii) with a view to the product being supplied for consumption in the United Kingdom or through the travel retail sector of the United Kingdom,
- (b) offers or agrees to supply it in those circumstances, or
- (c) exposes or possesses it for supply in those circumstances,

and “supplied in the United Kingdom” is to be construed accordingly.

(2) In the case of a cross-border distance sale of a product to a consumer located in the United Kingdom, the product is to be treated for the purposes of these Regulations as supplied in the United Kingdom.

(a) 2005 c. 11.

(b) [Official Journal of the EU (supplementary S series) reference numbers for the procurement of these services are: 2018/S 100-228548, 2 May 2018; 2018/S 169-384915, 4 September 2018 and 2018/S 171-389241, 6 September 2018. The deadline for participation in the procurement exercise was 1 October 2018. An appointment is required to be made by 6 May 2019 under Article 3 of the Commission Implementing Regulation.]

Meaning of tobacco products supplied in another member State

4.—(1) For the purposes of these Regulations, tobacco products are supplied in another member State if, in the course of a business, a person—

- (a) supplies the product—
 - (i) for consumption in a member State other than the United Kingdom or through the travel retail sector of a member State other than the United Kingdom,
 - (ii) with a view to the product being supplied for consumption in a member State other than the United Kingdom or through the travel retail sector of a member State other than the United Kingdom,
- (b) offers or agrees to supply it in those circumstances, or
- (c) exposes or possesses it for supply in those circumstances,

and “supply in another member State” is to be construed accordingly.

(2) In the case of a cross-border distance sale of a product to a consumer located in a member State other than the United Kingdom, the product is to be treated for the purposes of these Regulations as supplied in another member State.

Competent ID issuer for the purposes of Article 4(1) of the Commission Implementing Regulation

5. For the purposes of Article 4(1) of the Commission Implementing Regulation, the competent ID issuer in relation to tobacco products manufactured in another member State for supply in the United Kingdom is required to be the UK ID issuer.

PART 2

Prohibition from supply of non-compliant tobacco products

Prohibition from supply of non-compliant tobacco products

6.—(1) A person must not supply tobacco products in the United Kingdom unless those products meet the requirements in paragraphs (2) to (4).

- (2) The unit packet of a tobacco product must be marked with a unique identifier that—
 - (a) has been issued by the UK ID Issuer and meets the technical specifications set out in Chapters II and IV of the Commission Implementing Regulation, and
 - (b) meets the requirements in—
 - (i) regulation 7(2), or
 - (ii) in cases where the unique identifier has been applied by a person in another member State, Article 15(1) of the Tobacco Products Directive.

(3) All movements of, and all transactions relating to, the unit packet of a tobacco product must have been recorded and transmitted in accordance with Chapter VI of the Commission Implementing Regulation.

(4) The unit packet of a tobacco product must carry a security feature that meets the requirements in regulation 13.

(5) In this regulation, the “Tobacco Products Directive” means Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC(a).

(a) OJ L 127, 9.4.2014, p.1 as amended by Commission Delegated Directive 2014/109/EU, OJ L 360, 17.12.2014, p. 22.

PART 3

Traceability system

Integrity requirements of a unique identifier

7.—(1) Where a manufacturer or importer of tobacco products is required to mark each unit packet with a unique identifier under Article 6 of the Commission Implementing Regulation, the manufacturer or importer must ensure that, in addition to meeting the requirements in Section 2 of Chapter II and Chapter V of that Regulation, the requirements in paragraph (2) are also met.

(2) The unique identifier—

- (a) must be—
 - (i) irremovably printed or affixed, and
 - (ii) indelible,
- (b) must remain intact when the packet is opened, and
- (c) must not be partially or totally hidden or interrupted by any other item, including through tax stamps or price marks.

Provision of equipment for recording and transmitting information

8. Manufacturers of tobacco products must provide all economic operators with the equipment necessary for those operators to comply with the recording and electronic transmission of information requirements in Articles 32 and 33 of the Commission Implementing Regulation.

Primary repository requirements

9.—(1) Where a manufacturer or importer of tobacco products is required under Article 26 of the Commission Implementing Regulation to establish a primary repository for the purpose of hosting data relating to tobacco products, the manufacturer or importer must—

- (a) ensure that the repository is physically located [in the territory of the European Union], and
- (b) appoint an external auditor approved by the Commission to carry out the audits referred to in Article 15 of the Commission Delegated Regulation in relation to that repository.

(2) Where the provider of a primary repository has issued to a manufacturer or importer of tobacco products a written declaration as to that provider's technical expertise or financial independence^(a), the manufacturer or importer must—

- (a) keep and preserve the declaration for a period of six years beginning on the date the declaration is received by the manufacturer or importer, and
- (b) make the declaration available for inspection by an officer when required.

Access to anti-tampering device records

10. Where HMRC have made a request in writing under Article 7(5) of the Commission Implementing Regulation to a manufacturer or importer of tobacco products for full access to the record of the verification process created by an anti-tampering device, the manufacturer or

(a) Under Articles 4 and 8 of the Commission Delegated Regulation (EU) 2018/573 of 15 December 2017 on key elements of data storage contracts to be concluded as part of a traceability system for tobacco products (OJ L 96, p.1), the contract between a manufacturer or importer of tobacco products and a data storage provider must require the provider to issue the manufacturer or importer with written declarations on technical expertise (Article 4) and legal and financial independence (Article 8).

importer must provide HMRC with such access within a period of 30 days beginning on the day on which the request is made.

External auditor: annual report on primary repository

- 11.**—(1) An external auditor must submit an annual report to HMRC and the Commission.
- (2) The report must—
- (a) assess any irregularities in relation to access, and
 - (b) include any other information specified by the Commission for the purpose of the report.
- (3) The annual report must be submitted to—
- (a) HMRC in a prescribed manner, and
 - (b) the Commission in accordance with any procedure set out by the Commission.
- (4) [An external auditor must as soon as reasonably practicable after carrying out, or attempting to carry out, an audit notify HMRC of—
- (a) any irregularities in relation to physical and virtual access to a primary repository, or
 - (b) any non-compliance with the relevant legislative requirements.
- (5) A notification under paragraph (4) must be provided to HMRC in a prescribed manner.
- (6) In this regulation, “relevant legislative requirements” means the requirements in Articles 25 and 26 of the Commission Implementing Regulation.]

Access to stored data in duly justified cases

- 12.**—(1) The Commissioners for Her Majesty’s Revenue and Customs may grant manufactures and importers of tobacco products access to stored data in cases where they are satisfied that—
- (a) access is duly justified, and
 - (b) commercially sensitive information remains adequately protected.
- (2) An application for access must be made to HMRC in a prescribed manner.
- (3) The Commissioners for Her Majesty’s Revenue and Customs must, as soon as reasonably practicable after receiving the application, give notice to the applicant—
- (a) granting access, or
 - (b) rejecting the application.
- (4) Where access is granted, the notice under paragraph (3)(a) must specify the rights of access granted to the applicant, including the duration and purpose of those rights.
- (5) In this regulation, “stored data” means information stored in the primary repository required to be established under Article 26 of the Commission Implementing Regulation.

PART 4

Security feature system

Unit packets must carry a security feature

13.—(1) Manufacturers and importers of tobacco products must ensure that each unit packet that they manufacture or import for supply in the United Kingdom carries a tamper-proof security feature that meets the requirements in paragraphs (2) to (5).

(2) The security feature must comply with a notice (that has not been replaced or revoked) given by HMRC to manufacturers and importers, in accordance with Articles 3(3) and 6(2) of the Commission Implementing Decision, as to—

- (a) the combination or combinations of authentication elements from which the security feature must be composed, and
- (b) the number of authentication elements to be provided by an authentication elements provider.

(3) The security feature must be—

- (a) irremovably applied to a unit packet of tobacco product by—
 - (i) printing or affixing, or
 - (ii) a combination of printing and affixing, and
- (b) indelible.

(4) The security feature must not be partially or totally hidden or interrupted by any other item, including through tax stamps, price marks, or other marking which is required under or by virtue of any enactment or the Commission Implementing Regulation.

(5) The security feature must be applied in a manner that—

- (a) allows for the identification and verification of the authenticity of a unit packet of tobacco product for the entire time that pack is supplied, and
- (b) protects the security feature from being replaced, reused or modified in any way.

Verification of authenticity of tobacco products

14. Where HMRC have made a request in writing under Article 7(2) of the Commission Implementing Decision to a manufacturer or importer to provide samples of tobacco products currently supplied in the United Kingdom, 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 the request is made.

PART 5

Independence of service providers

Authentication elements provider

15.—(1) An authentication elements provider is an independent third party provider of authentication elements who meets the criteria in Article 8(1) of the Commission Implementing Decision.

(2) Where an authentication elements provider subcontracts the provision of authentication elements, the provider must ensure that the subcontractor meets the criteria in Article 8(1) of the Commission Implementing Decision.

(3) An authentication elements provider must without delay notify HMRC and the Commission about any change in circumstances relating to the criteria referred to in Article 8(1) of the Commission Implementing Decision that—

- (a) is capable of affecting the independence of the authentication elements provider or the provider's subcontractors, and
- (b) subsists for 2 consecutive calendar years.

(4) An authentication elements provider must without delay notify HMRC and the Commission about any occurrence of threats, or other attempts at exercising undue influence, that may actually or potentially undermine the independence of the provider or the provider's subcontractors.

(5) A notification under this regulation must be given to—

- (a) HMRC in a prescribed manner, and
- (b) the Commission in accordance with any procedure set out by the Commission.

Declaration of independence from the tobacco industry

16.—(1) Specified providers and authentication elements providers must provide HMRC with an annual declaration that they have conformed with the independence criteria set out in—

- (a) in the case of specified providers, Article 35(2) of the Commission Implementing Regulation, and
- (b) in the case of authentication elements providers, Article 8(1) of the Commission Implementing Decision.

(2) The annual declaration referred to in paragraph (1) must include—

- (a) a full list of services provided to the tobacco industry during the last calendar year,
- (b) a statement of the amount of annual worldwide turnover and the amount of that turnover generated from goods and services supplied to the tobacco industry, referred to in, and determined in accordance with, Article 35(2)(a) of the Commission Implementing Regulation or Article 8(1)(a) of the Commission Implementing Decision, as the case may be,
- (c) individual declarations of financial independence from the tobacco industry provided by all management members of the specified provider or authentication elements provider.

(3) For the purposes of this regulation, a “specified provider” is—

- (a) the UK ID issuer,
- (b) a provider of a primary repository, or
- (c) a provider of an anti-tampering device.

(4) Where—

- (a) a specified provider subcontracts the provision of unique identifiers, primary repositories or anti-tampering devices, or
- (b) an authentication elements provider subcontracts the provision of authentication elements,

the subcontractor must also provide a declaration in accordance with paragraph (1).

(5) The declaration referred to in paragraph (1) must be made in a prescribed manner.

(6) In this regulation, “management member” means any person responsible for the management of the undertaking or the group of undertakings, including any member of the board of directors or of any form of governing body.

PART 6

Deactivation of identifier codes

Discretion to deactivate identifier codes

17. For the purposes of Articles 15(4), 17(4) and 19(4) of the Commission Implementing Regulation, the Commissioners for Her Majesty's Revenue and Customs may exercise the discretion set out in those Articles.

Circumstances in which economic operator identifier codes may be deactivated

18.—(1) Subject to regulation 20, the Commissioners for Her Majesty's Revenue and Customs may exercise the discretion set out in Article 15(4) of the Commission Implementing Regulation where Conditions A to C are met.

(2) Condition A is that the person whose identifier code is being considered for deactivation—

- (a) has failed to comply with a requirement of these Regulations or the Commission Implementing Regulation on three or more occasions within any 12-month period and, as a result of each of those failures, non-compliant tobacco products have been seized,
- (b) has failed to comply with a notice under regulation 22 by the deadline for compliance set out in that notice,
- (c) has a conviction, other than a conviction treated as spent for the purposes of the Rehabilitation of Offenders Act 1974, for an offence under the customs and excise Acts,
- (d) has, within the last 12-months, become liable to a penalty or penalties under the customs and excise Acts exceeding £10,000, or
- (e) has not used the identifier code in the last 12-months.

(3) Condition B is that the Commissioners have given written notice to the person which—

- (a) confirms that the Commissioners are considering exercising the discretion in Article 15(4) of the Commission Implementing Regulation to require the UK ID Issuer to deactivate the economic operator identifier code allocated to that person,
- (b) identifies—
 - (i) in cases where paragraph (2)(a) applies, the requirements with which the person has failed to comply and the occasions on which tobacco products were seized as a result of those failures,
 - (ii) in cases where paragraph (2)(b) applies, the notice under regulation 22 with which the person has failed to comply,
 - (iii) in cases where paragraph (2)(c) applies, the offence committed under the customs and excise Acts for which the person has been convicted,
 - (iv) in cases where paragraph (2)(d) applies, the contravention of those Acts in relation to which the person has become liable for a penalty, or
 - (v) in cases where paragraph (2)(e) applies, the date on which the identifier code was last used,
- (c) states that the recipient may make representations in writing to the Commissioners, 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.

(4) Condition C is that the Commissioners, on being satisfied that deactivation would be duly justified^(a), must give written notice to the person of their decision to exercise the discretion stating—

- (a) the date from which the deactivation will have effect, and
- (b) the period for which the deactivation is to remain in force, being a period no longer than—
 - (i) is reasonable to protect the traceability system for tobacco products, or
 - (ii) in cases where paragraph (2)(c) applies, the period before the conviction becomes spent.

(5) For the purposes of paragraph (2)(d), a person does not become liable to a penalty until the latest of—

- (a) the date on which the penalty becomes payable under the customs and excise Acts,
- (b) the determination of a review of that penalty,
- (c) the final determination of an appeal against that penalty, or
- (d) the withdrawal of any review or appeal referred to in sub-paragraphs (b) and (c).

(6) In this regulation, “the customs and excise Acts” has the meaning given in section 1 in the Customs and Excise Management Act 1979^(b).

Application to cancel a deactivation notice

19.—(1) A person may apply to the Commissioners for Her Majesty’s Revenue and Customs for a deactivation notice given to that person to be cancelled.

(2) The Commissioners must, as soon as reasonably practicable after receiving the application—

- (a) agree to the application,
- (b) refuse the application in writing, giving reasons for the refusal, or
- (c) request additional information.

(3) Where the Commissioners have requested additional information, they must, as soon as reasonably practicable after receiving the additional information—

- (a) agree to the application, or
- (b) refuse the application in writing, giving reasons for the refusal.

Restriction on re-application

20.—(1) A person that is the subject of a deactivation notice must not apply for an economic operator identifier code under Article 14 of the Commission Implementation Regulation during the period of deactivation set out in that notice.

(2) In cases where a person has acted contrary to the restriction imposed by paragraph (1) and obtained an economic operator identifier code, the Commissioners for Her Majesty’s Revenue and Customs may exercise the discretion set out in Article 15(4) of the Commission Implementing Regulation without the conditions referred to in regulation 18 being met.

(a) Article 15(4) of the Commission Implementing Regulation provides that Member States may require the ID Issuer to deactivate an economic code in duly justified cases. That discretion may only be exercised in accordance with national laws which this Part, together with Parts 7 and 8, introduces.

(b) 1979 c. 2.

PART 7

Enforcement

Forfeiture

21. Where a person fails to comply with any requirement in these Regulations or the Commission Implementing Regulation in relation to tobacco products or an item of aggregate packaging, those products or items of packaging are liable to forfeiture.

Compliance notices

22.—(1) If an officer is satisfied that a person is not complying with one or more of the requirements in these Regulations or the Commission Implementing Regulation, the officer may give the person a notice requiring the person to remedy the non-compliance.

(2) A notice under paragraph (1) must—

- (a) state that the officer is satisfied that there is or has been a contravention of the requirements in these Regulations or the Commission Implementing Regulation,
- (b) specify the requirements that are or have been contravened,
- (c) give reasons in support of the statement referred to in sub-paragraph (a), and
- (d) specify the period within which the person is required to remedy the non-compliance.

PART 8

Reviews and appeals

Reviews and appeals

23.—(1) Each of the decisions listed in paragraph (2) is to be treated as if it were listed in Schedule 5 to the Finance Act 1994.

(2) The decisions are—

- (a) a rejection of an application under regulation 12 to access stored data,
- (b) a decision under regulation 18 to give, or as to the period of deactivation set out in, a deactivation notice,
- (c) a refusal of an application under regulation 19 to cancel a deactivation notice,
- (d) an issue of a notice under regulation 22,
- (e) a decision to require the UK ID Issuer to deactivate a facility identifier code under Article 17(4) of the Commission Implementing Regulation, and
- (f) a decision to require the UK ID Issuer to deactivate a machine identifier code under Article 19(4) of the Commission Implementing Regulation.

PART 9

Administrative matters

Administration of communications and providing samples

24.—(1) The Commissioners for Her Majesty's Revenue and Customs may give directions as to matters of administration in relation to—

- (a) a submission, declaration or notification (“a communication”), or
- (b) a sample of tobacco products.

required to be made, given or provided to HMRC under these Regulations or the provisions of any of the Commission Implementing Regulation listed in paragraph (3).

- (2) A direction under paragraph (1) may prescribe—
- (a) the form and method of delivery of a communication or a sample,
 - (b) the information which must be provided with a communication or a sample,
 - (c) when a communication or a sample must be made, given or provided, and
 - (d) that a communication is to be made electronically.
- (3) The provisions of the Commission Implementing Regulation are—
- (a) Article 7(2) (declaration by the provider of an anti-tampering device),
 - (b) [Article 8(4) (notification by the ID Issuer of algorithms)],
 - (c) Article 35(5) (notification by third-party providers of change in circumstances related to independence), and
 - (d) Article 35(7) (notification by third-party providers of threats or attempts to undermine independence).

PART 10

Consequential amendments

Amendment of the Standardised Packaging of Tobacco Products Regulations 2015

25.—(1) The Standardised Packaging of Tobacco Products Regulations 2015(a) are amended as follows.

- (2) In regulation 2 (interpretation), in the appropriate place insert—
- ““Commission Implementing Regulation” means 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;”.
- (3) In regulations 3(4) and 7(4), after “other than these Regulations” insert “or required by the Commission Implementing Regulation”.
- (4) In regulation 12, after paragraph (2) insert—
- “(3) Nothing in this regulation prohibits a feature which is required by any provision of any enactment (whenever passed or made) other than these Regulations.”.
- (5) In Schedule 2, after paragraph 2(2) insert—
- “(3) Sub-paragraph (1) is subject to—
- (a) to any provision to the contrary made by any enactment (whenever passed or made) other than these Regulations, or
 - (b) anything required by the Commission Implementing Regulation.”.
- (6) In Schedule 4—
- (a) after paragraph 2(3) insert—
- “(4) Sub-paragraph (1) is subject to—
- (a) any provision to the contrary made by any enactment (whenever passed or made) other than these Regulations, or
 - (b) anything required by the Commission Implementing Regulation.”.
- (b) after paragraph 3(3) insert—

(a) S.I. 2015/829, to which there are amendments not relevant to these Regulations.

“(4) Sub-paragraph (1) does not prohibit a feature that is required to be carried by a unit packet by any provision of any enactment (whenever passed or made) other than these Regulations from being in the form of a tab.”.

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Article 15 (Traceability) and Article 16 (Security feature) of the Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products. They also implement Article 23 (Cooperation and enforcement) of that Directive in relation to tobacco products that do not comply with the traceability and security features systems.

These Regulations also implement the Commission Implementing Decision (EU) 2018/576 of 15 December 2017 on technical standards for security features applied to tobacco products.

Part 1 deals with preliminary issues. Regulation 1 provides that the Regulations take effect in two stages. They will apply to cigarettes and hand-rolling tobacco from 20 May 2019, and to tobacco products other than cigarettes and hand rolling tobacco from 20 May 2024.

Part 2 deals with tobacco products that do not comply with the traceability system or the security features system. Regulation 6 prohibits the supply of such products in the UK. Non-compliant products are subject to forfeiture (see regulation 21).

Part 3 deals with the traceability system. Regulation 7 sets the integrity requirements for the unique identifier that is required to be applied to each unit packet of tobacco product by manufacturers and importers. Manufacturers and importers are also required: to provide equipment to other operators involved in the supply of tobacco products to facilitate tracking and tracing of tobacco products (regulation 8); to establish a primary repository for holding track and trace data [in the European Union] and appoint an external auditor approved by the Commission to monitor that data repository (regulation 9); and to allow HMRC access to records monitoring the application of unique identifiers within 30 days of request (regulation 10). Regulation 11 requires an external auditor to submit an annual report on the data repository to HMRC and the Commission. Regulation 12 sets out the procedure for granting manufacturers and importers access to data in the repository.

Part 4 deals with the security features system. Regulation 13 requires manufacturers and importers to ensure that tobacco products carry a tamper-proof security feature which is: composed with the requisite number and combination of authentication elements (paragraph (2)); irremovably printed or affixed and indelible (paragraph (3)); not hidden and not interrupted by other marks, warnings or labels required to be applied to tobacco products under existing tobacco products legislation (paragraph (4)); and securely applied (paragraph (5)).

Part 5 deals with the independence of service providers from the tobacco industry when contracted to provide services relating to the traceability and security feature systems. Regulation 15 requires any third party provider of security feature elements, and their subcontractors, to be independent. In addition, the provider must notify HMRC and the Commission about changes in circumstances used to assess independence (paragraph (3)) or threats or attempts at exercising undue influence (paragraph (4)). Regulation 16 requires service providers to submit an annual declaration to HMRC and the Commission as to their compliance with the independence criteria.

Part 6 deals with the deactivation of economic operator identifier codes, which is a central feature of the traceability system (and is required under 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 (“CIR”). Regulation 17 establishes who can exercise the deactivation discretion provided for by Article 15(4) of the CIR. Regulations 18 and 20 deal with the circumstances in which the discretion may be exercised and the conditions that must be met before deactivation.

Part 7 deals with enforcement. Regulation 21 provides that non-compliant tobacco products or items of aggregate packaging are liable to forfeiture. Regulation 22 provides that where an officer of HMRC is satisfied that the requirements of these Regulations or the CIR are not met they may issue a notice requiring compliance.

Part 8 deals with reviews and appeals of HMRC decisions concerning access to data repositories, deactivation and compliance notices.

Part 9 deals with administrative matters and communications with HMRC. Part 10 deals with consequential amendments to the Standardised Packaging of Tobacco Products Regulations 2015.

An Impact Assessment has not been prepared for this instrument because an Impact Assessment covering the EC implementing legislation was published on 15 December 2017 and is available at https://ec.europa.eu/health/sites/health/files/tobacco/docs/tt_ia_en.pdf. It remains an accurate summary of the impacts that apply to this instrument.