

**EXPLANATORY MEMORANDUM TO**  
**THE TOBACCO PRODUCTS (TRACEABILITY AND SECURITY FEATURES)**  
**REGULATIONS 2019**

**2019 No. [XXXX]**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 These regulations implement Articles 15 and 16 of the Tobacco Products Directive (2014/40/EU) to provide for (1) a track and trace system for the supply chain of tobacco products and (2) a system of security features to identify authentic tobacco products. This means that each pack of tobacco will carry a unique code to track it from production to retailer, and markings that can be used to check the product is genuine. Together with the Commission Implementing Regulation (EU 2018/574), the regulations provide the detail for both systems. The regulations set out sanctions for non-compliance and make consequential amendments to existing legislation to allow packs of tobacco products to carry traceability codes and security features.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.  
4.2 The territorial application of this instrument is the United Kingdom.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 These regulations transpose Articles 15 and 16 of the Tobacco Products Directive 2014. Article 15 has been partially implemented by the Commission Implementing Regulation (EU 2018/574), which separately sets out the technical standards for the establishment and operation of a traceability system for tobacco products. That Regulation came into force on 6 May 2018.

- 6.2 These regulations also implement the Commission Implementing Decision (EU 2018/576), which sets out the detail of the system for security features.
- 6.3 This instrument also implements Article 23 of the Tobacco Products Directive and ensures that tobacco products that do not comply with these regulations and the EU Implementing Regulation are not supplied in the UK.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Track and trace is a requirement of the World Health Organization Framework Convention on Tobacco Control Illicit Trade Protocol, which the UK has ratified. Track and trace and security features are introduced by the Tobacco Products Directive (2014/40/EU), which aims to improve the functioning of the internal market for tobacco and related products which will protect excise duties payable, while ensuring a high level of health protection for European citizens.
- 7.2 The traceability system aims to: contribute to reducing the circulation of non-compliant tobacco products (products which do not meet all legal requirements in terms of content, packaging and duty payable), reduce artificially cheap supplies of illegal tobacco products, protect public health, state budgets, and legitimate businesses.
- 7.3 Under the traceability system: all individual packets of tobacco products will be required to be marked with a unique identifier. Relevant economic operators (such as manufacturers, importers and wholesalers) involved in the tobacco trade will be required to record the movements of these packets throughout the supply chain and transmit the related information to an independent company who will record and store this data. The data will then be made accessible to the authorities of European Union (EU) countries and to the Commission for enforcement purposes.
- 7.4 In this way, it will be possible to track and trace the movement of legal tobacco products to allow public authorities to determine when a product was diverted into the illicit market.
- 7.5 Under the security features system, all individual packets of tobacco products placed on the EU market will be required to carry a tamper-proof security feature composed of visible and invisible elements, enabling authorities and consumers to verify their authenticity.
- 7.6 The systems of traceability and security features must be in place by 20 May 2019 for cigarettes and hand-rolling tobacco and 20 May 2024 for all other tobacco products.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 This instrument is not a consolidation measure. It makes minor amendments to existing legislation which are not consolidated at this time.

## **10. Consultation outcome**

- 10.1 The Directive and the EU Implementing Regulations were subject to extensive consultation during their preparation, to which the UK government and UK businesses responded. This can be viewed at [https://ec.europa.eu/health/tobacco/consultations/2015\\_tpd\\_consultation\\_en](https://ec.europa.eu/health/tobacco/consultations/2015_tpd_consultation_en). These regulations are now being published for consultation ahead of their introduction.

## **11. Guidance**

- 11.1 Guidance on the implementation of these measures for businesses affected is being prepared by HMRC and will be published in advance of the start of the system on 20 May 2019.

## **12. Impact**

- 12.1 An Impact Assessment has not been prepared for this instrument because an Impact Assessment covering the EU 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](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.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken by the EU legislation is that retailers trading in tobacco products (the vast majority of the small businesses affected by these measures) may have an identification number obtained on their behalf by a supplier.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the action described above will make implementation straightforward for small retailers. Any small businesses involved in the import, manufacture or wholesale of tobacco products must comply fully with the requirements, as it would seriously undermine the policy objectives if they were excluded.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is that HMRC will regularly assess the operation of the system and consider changes if and when appropriate.
- 14.2 The regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 under section 28(3)(a) a review clause is not required as the regulations make or amend provisions relating to a duty.

## **15. Contact**

- 15.1 Mark Palmer at HMRC Telephone: 03000 587928 or email: [mark.t.palmer@hmrc.gov.uk](mailto:mark.t.palmer@hmrc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Judith Kelly, Deputy Director for Environmental and Excise Tax Design, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Jenrick, the Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.

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