

1 Tobacco products: tracing and security

- (1) After section 8J of the Tobacco Products Duty Act 1979 insert –

“8JA Tracing and security: regulations

- (1) The Commissioners may by regulations –
- (a) establish, and make provision about the operation of, a traceability system for tobacco products;
 - (b) require security features to be applied to tobacco products.
- (2) For the purposes of subsection (1) –
- (a) a traceability system for tobacco products means a system under which the movements of tobacco products are recorded;
 - (b) the reference to security features is a reference to features that a unit pack, or the packaging containing more than one unit pack, of tobacco products must carry for the purpose of enabling the identification of the products and the verification of their authenticity.
- (3) Tracing and security regulations may (among other things) –
- (a) require a unit pack, or the packaging containing more than one unit pack, of tobacco products to be marked with a unique code;
 - (b) confer functions on the Commissioners or other persons (including functions involving the exercise of a discretion);
 - (c) make provision by reference to things set out (whether by the Commissioners or other persons) in a notice given in accordance with the regulations;
 - (d) specify technical standards (including by making provision under paragraph (c));
 - (e) make provision about the processing of data (including provision about the recording, transmission, storing and accessing of data);
 - (f) impose, or enable the imposition of, restrictions or requirements on persons of a specified description;
 - (g) provide for the imposition of sanctions for failure to comply with such restrictions or requirements (see section 8JB);
 - (h) provide for appeals from, and reviews of, decisions taken under the regulations.
- (4) Requirements imposed under subsection (3)(f) may, in particular –
- (a) specify, or provide for the specification of, equipment or other material for use in connection with a restriction or requirement imposed by or under the regulations;
 - (b) require persons of a specified description to provide such equipment or material to other persons of a specified description for purposes specified by or under the regulations;
 - (c) make provision about the way in which such equipment or material is to be provided, including how any costs are to be met by persons providing or receiving it.
- (5) Tracing and security regulations may –
- (a) make provision generally in relation to tobacco products or only in relation to specified descriptions of tobacco products;
 - (b) make different provision for different areas;

- (c) make provision by supplementing or otherwise amending relevant existing law;
 - (d) revoke relevant existing law.
- (6) The power to make regulations under this section is exercisable only where the Commissioners consider that doing so would facilitate the administration, collection or enforcement of the duty charged under section 2.
- (7) In this section and section 8JB –
- “relevant existing law” means –
 - (a) Chapter 2 of Part 1 of the Finance Act 1994 (customs and excise: appeals and penalties);
 - (b) the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (S.I. 2009/273 (L. 1));
 - (c) the Standardised Packaging of Tobacco Products Regulations 2015 (S.I. 2015/829);
 - (d) 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;
 - (e) 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;
 - (f) Commission Implementing Decision (EU) 2018/576 of 15 December 2017 on technical standards for security features applied to tobacco products;
 - (g) the Tobacco Products (Traceability and Security Features) Regulations 2019 (S.I. 2019/594);
 - “specified” means specified in regulations or in relevant existing law;
 - “traceability system for tobacco products” has the meaning given in subsection (2)(a);
 - “tracing and security regulations” means regulations under subsection (1);
 - “unit pack” means the smallest individual packaging in which a tobacco product is, or is intended to be, presented for sale to a consumer (but not including any transparent wrapper).

8JB Tracing and security: sanctions

- (1) This section applies to tracing and security regulations that make provision for sanctions under section 8JA(3)(g).
- (2) The regulations may provide for the following kinds of sanction –
 - (a) the imposition of monetary penalties of such amounts, not exceeding £10,000, as are determined in accordance with the regulations;
 - (b) for tobacco products involved in a contravention of applicable law to be liable to forfeiture under the customs and excise Acts;
 - (c) the application by the Commissioners of measures to restrict or prohibit a person’s participation, or continued participation, in any part of a traceability system for tobacco products (including

measures to deactivate, or require the deactivation of, any code issued to the person for the purposes of such a system or to prevent such a code from being issued or reissued).

- (3) Provision under subsection (2)(a) may (among other things)—
 - (a) provide for a penalty to be payable on the giving of a notice (“a penalty notice”) by such persons as are authorised by or under the regulations;
 - (b) specify matters to which such persons may or must have regard when determining whether to give a penalty notice;
 - (c) provide for the action to be taken if a monetary penalty is not paid in accordance with a penalty notice.
- (4) The regulations must provide for a person not to be liable to a monetary penalty in respect of anything in respect of which the person has been convicted of an offence.
- (5) For the purposes of subsection (2)(b), tobacco products are “involved in a contravention of applicable law” if—
 - (a) the products do not comply with a requirement imposed under tracing and security regulations or under relevant existing law, or
 - (b) the products are found together with other products falling within paragraph (a).”
- (2) In section 9 of the Tobacco Products Duty Act 1979, in subsection (1A) after “section” insert “8JA,”.
- (3) In Schedule 41 to FA 2008 (penalties for certain VAT and excise wrongdoing etc), in paragraph 15 (interaction with other penalties and late payment surcharges), after sub-paragraph (2) insert—
 - “(2A) If P has incurred a penalty under regulations under section 8JA(1) of the Tobacco Products Duty Act 1979 (tracing and security regulations) in respect of conduct for which P is liable to a penalty under paragraph 4(1), the amount of the penalty under paragraph 4(1) is to be reduced by the amount of the penalty under those regulations.”