

**EXPLANATORY MEMORANDUM TO**  
**THE TOBACCO PRODUCTS MANUFACTURING MACHINERY (LICENSING**  
**SCHEME) REGULATIONS 2018**

**2018 No. 75**

**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, which is machinery designed primarily for the purpose of manufacturing tobacco products. 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<sup>1</sup>. The UK is a signatory to the Protocol, and the Government intends to seek Parliamentary approval of ratification of the Protocol.
- 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. Prior to these regulations, tobacco products manufacturing machinery was not subject to any controls beyond the requirement for tobacco products to be manufactured in a registered factory.

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<sup>1</sup> [http://www.who.int/fctc/protocol/illicit\\_trade/protocol-publication/en/](http://www.who.int/fctc/protocol/illicit_trade/protocol-publication/en/)

- 4.3 Section 47 of the Finance (No. 2) Act 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 15 per cent in 2016/17. This corresponds to a revenue loss of £1.8 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 make it more difficult for these machines to be used in the manufacture of illicit tobacco products and will strengthen the Government's multi-faceted strategic approach to tobacco duty evasion.
- 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 would only be liable to forfeiture when there was evidence of them actually being used to manufacture illicit tobacco products or if there was a clear intent to do so.
- 7.3 The new scheme requires a person to be licensed before manufacturing, purchasing, acquiring, owning or being in possession of tobacco products manufacturing machinery. These are referred to as regulated activities. Everyone who is currently carrying out a regulated activity such as tobacco manufacturers or importers/exporters of tobacco machinery will need to obtain a licence, and will need to show that they are both a fit and proper person and that they have a genuine business need for the machinery prior to issue of a licence.
- 7.4 The scheme will impose conditions on those licensed, including the need to retain and produce records. These conditions will be set out in a public notice and have been designed so they can be easily satisfied by persons manufacturing tobacco products in registered tobacco products factories, minimising the burdens on business.
- 7.5 The scheme only applies to machinery that is designed primarily for the purpose of manufacturing tobacco products. So, for example, there is no requirement to have a licence in respect of a machine that is designed only for the purpose of labelling and packaging tobacco products.

- 7.6 The scheme provides for two exemptions from the licensing requirements where a person is carrying on low risk regulated activities relating to: manual cigarette and cigar rolling machinery and the possession of machinery for the purpose of transporting on behalf of a licensee.
- 7.7 Where a person carries out a regulated activity otherwise than in accordance with a licence, the machinery is liable to forfeiture and penalties apply. The amount of the penalty is £250.
- 7.8 The regulations will have effect from 1 April 2018 for the purposes of accepting licence applications. The requirement to have a licence, as well as the penalty, forfeiture and enforcement parts of the regulations come into force on 1 August 2018.

### *Consolidation*

- 7.9 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 concerns about the 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 are kept to a minimum.
- 8.4 A technical consultation on draft regulations ran between the 7 November 2017 and 5 December 2017. HMRC received no responses that required changes to the published draft regulations to be made. However, a couple of minor amendments have been made to extend the exemption for manual cigarette rolling machines to include similar machines that produce cigars, and to clarify when transporters will be exempt.

## **9. Guidance**

- 9.1 HMRC will publish guidance on this order in a Public Notice on 25th January 2018. The notice will be available on HMRC's website at [www.hmrc.gov.uk/](http://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 was published on 5 December 2016 alongside a Summary of Responses document entitled – licensing (or equivalent) of tobacco machinery. This has been updated as a result of changes to the impacts as a result of this instrument and is available on the website at <https://www.gov.uk/government/publications/tobacco-duty-illicit-trade-protocol->

**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 Neil Pedersen at HM Revenue and Customs. Telephone: 03000 540830 or email: [neil.pedersen@hmrc.gsi.gov.uk](mailto:neil.pedersen@hmrc.gsi.gov.uk).