
STATUTORY INSTRUMENTS

2016 No. 507

The Tobacco and Related Products Regulations 2016

PART 9

Penalties and enforcement

Offences

- 48.** A person is guilty of an offence if that person—
- (a) breaches a provision of
 - (i) Part 2 (labelling),
 - (ii) Part 3 (emissions, additives etc.) except regulation 14(3) (approved laboratories), or
 - (iii) regulation 27 (no supply of products where reporting obligations not complied with);
 - (b) fails to submit information to the Secretary of State in accordance with a provision of Part 4 (reporting about tobacco products) or regulation 29 (ingredients information for herbal products for smoking);
 - (c) breaches regulation 28 (labelling and presentation of herbal products for smoking) or regulation 30(2) (no supply where reporting obligation not complied with);
 - (d) breaches any provision of Part 6 (electronic cigarettes) except regulations 32(5) (annual reporting requirement) and 34 (Secretary of State duty to publish notifications);
 - (e) breaches any provision of regulations 42, 43 or 44 (advertising and sponsorship); or
 - (f) supplies a product in breach of regulation 47 (cross border distance sales of tobacco products and electronic cigarettes etc.).

False or misleading information

- 49.** A producer or retailer is guilty of an offence if that producer or retailer provides information to a person pursuant to any obligation in these Regulations if—
- (a) the information is false or misleading in a material particular; and
 - (b) the producer or retailer who provides the information either knows it to be false or misleading in a material particular, or is reckless as to whether it is false or misleading in a material particular.

Defences

50.—(1) In any proceedings for an offence under these Regulations brought against a person who supplies any tobacco product or related product in breach of these Regulations, it is a defence that the supplier exercised all due diligence to avoid committing the offence.

(2) In any proceedings for an offence against a person under regulations 42, 43 or 44 (advertising and sponsorship) it is a defence that the person exercised all due diligence to avoid committing the offence.

(3) In any proceedings for an offence against a person under regulations 42(1) or 43 it is a defence that the person did not know and had no reason to suspect that the advertisement was an electronic cigarette advertisement.

(4) In proceedings for an offence against a person under regulation 42(2), it is a defence that the person did not know and had no reason to suspect that the newspaper, periodical or magazine contained an electronic cigarette advertisement.

(5) A defendant may not, without permission of the court, rely on the defence provided by paragraph (1) or (2) on the basis that the commission of the offence was due to the act or default of another person or the defendant's reliance on information given by another person, unless the defendant has served on the prosecutor the notice mentioned in paragraph (6).

(6) That notice is notice in writing, giving such information identifying or assisting in the identification of that other person as is in the defendant's possession and which is served not less than seven clear days before the date of the hearing.

(7) A defendant may not rely on the defence provided by paragraph (1) or (2) by reason that the defendant relied on information given by another person, unless the defendant shows that it was reasonable in all the circumstances to have relied on that information.

Penalties

51. A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction—
 - (i) in England and Wales to imprisonment for a term not exceeding three months, or a fine or both, or
 - (ii) in Scotland, to imprisonment for a term not exceeding twelve months, or a fine not exceeding level 5 on the standard scale, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both.

Offences by bodies corporate and Scottish partnerships

52.—(1) If an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the officer's part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In paragraph (1) "officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if that person were a director of the body corporate.

(4) If an offence under these Regulations committed by a partnership in Scotland is proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the partner's part,

the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

- (5) In paragraph (4) “partner” includes a person purporting to act as a partner.

Enforcement

53.—(1) It is the duty of each weights and measures authority in Great Britain and each district council in Northern Ireland to enforce these Regulations within their area.

- (2) Paragraph (1) is subject to paragraphs (6) and (7).

(3) For the purposes of paragraph (1) and (6) to (8), the provisions of parts 2, 4 and 5 (enforcement) of the Consumer Protection Act 1987(1) (“the 1987 Act”), except for sections 12, 13 and 27, are to apply to these Regulations as if—

- (a) these Regulations were safety regulations(2) within the meaning of that Act; and
(b) the persons on whom functions are conferred by this regulation were enforcement authorities within the meaning of that Act.

(4) The reference to six months in section 14(6) of the 1987 Act (imprisonment on summary conviction not to exceed six months), as that section has effect by virtue of paragraph (1), is to be read in its application to England and Wales and Northern Ireland as a reference to three months.

(5) In determining how to comply with paragraph (1) in relation to regulations 42 and 43 (electronic cigarette advertising), every enforcement authority must have regard to the desirability of encouraging control of advertising by such established means as it considers appropriate, having regard to all the circumstances of the particular case.

(6) The duty under paragraph (1) in relation to the following provisions is transferred to the Secretary of State, and each weights and measures authority in Great Britain and each district council in Northern Ireland is relieved of that duty—

- (a) regulation 14(4) (measurements and verifications of emission levels);
(b) Part 4 (Reporting), except for regulation 27;
(c) regulation 29 (ingredients information for herbal products for smoking);
(d) regulation 31 (notification provisions for electronic cigarettes); and
(e) regulation 32 (annual reporting for electronic cigarettes).

(7) The duty under paragraph (1) in relation to the following provisions is transferred to the Secretary of State, but each weights and measures authority in Great Britain and district council in Northern Ireland is not relieved of that duty—

- (a) regulation 27 (supply of tobacco products);
(b) regulation 30(2) (supply of herbal products for smoking);
(c) regulation 35 (supply of electronic cigarettes etc.); and
(d) regulation 40(5) (action to protect public health).

(8) Where paragraph (6) or (7) does not apply, the Secretary of State may direct, in relation to cases of a particular description or a particular case, that the enforcement duty is to be discharged by the Secretary of State or by the appropriate minister.

- (9) In this regulation—

“appropriate minister” means—

- (a) in relation to England, means the Secretary of State,
(b) in relation to Wales, means the Welsh Ministers,

(1) 1987 c.43. Relevant amendments are made by the Consumer Rights Act 2015 c. 15.

(2) The expression “safety regulations” is defined by section 45 of the Consumer Protection Act 1987.

- (c) in relation to Northern Ireland, means the Department of Health, Social Services and Public Safety, and
- (d) in relation to Scotland, means the Scottish Ministers.