



Tobacco Products Duty Act 1979

1979 CHAPTER 7

5 Retail price of cigarettes.

- (1) For the purposes of the duty chargeable at any time under section 2 above in respect of cigarettes of any description, the retail price of the cigarettes [^{F1}shall be taken to be—
- (a) the higher of—
 - (i) the recommended price for the sale by retail at that time in the United Kingdom of cigarettes of that description, and
 - (ii) any (or, if more than one, the highest) retail price shown at that time on the packaging of the cigarettes in question,
 - or
 - (b) if there is no such price recommended or shown, the highest price at which cigarettes of that description are normally sold by retail at that time in the United Kingdom.]

[^{F2}(1A) In subsection (1) above “ recommended price ”—

- (a) in relation to a case in which cigarettes of the applicable description are manufactured by a manufacturer in [^{F3}the United Kingdom], means any price recommended by that manufacturer; and
 - (b) in relation to a case which does not fall within paragraph (a) above, means any price recommended by an importer of cigarettes of the applicable description.]
- (2) The duty in respect of any number of cigarettes shall be charged by reference to the price which, in accordance with subsection (1) above, is applicable to cigarettes sold in packets of 20 or of such other number as the Commissioners may determine in relation to cigarettes of the description in question; and the whole of the price of a packet shall be regarded as referable to the cigarettes it contains notwithstanding that it also contains a coupon, token, card or other additional item.
- (3) In any case in which duty is chargeable in accordance with [^{F4}paragraph (b) of subsection (1)] above—
- (a) the question as to what price is applicable under that paragraph shall, subject to subsection (4) below, be determined by the Commissioners; and

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- (b) the Commissioners may require security (by deposit of money or otherwise to their satisfaction) for the payment of duty to be given pending their determination.
- (4) Any person who has paid duty in accordance with a determination of the Commissioners under subsection (3)(a) above and is dissatisfied with their determination may require the question of what price was applicable under [^{F5}subsection (1)(b)] above to be referred to the arbitration of a referee appointed [^{F6}in accordance with subsections (7) to (9).]
- (5) If, on a reference to him under subsection (4) above, the referee determines that the price was lower than that determined by the Commissioners, they shall repay the duty overpaid together with interest on the overpaid duty from the date of the overpayment at such rate as the referee may determine.
- (6) The procedure on any reference to a referee under subsection (4) above shall be such as may be determined by the referee; and the referee's decision on any such reference shall be final and conclusive.
- [^{F7}(7) The Lord Chancellor is to appoint the referee.
- (8) The appointment is to be made only with the concurrence of—
- (a) the Lord Chief Justice of England and Wales, if the determination of the Commissioners was made in relation to England and Wales;
 - (b) the Lord President of the Court of Session, if the determination was made in relation to Scotland; or
 - (c) the Lord Chief Justice of Northern Ireland, if the determination was made in relation to Northern Ireland.
- (9) None of the following may be appointed—
- (a) an official of any government department;
 - (b) an office holder in, or a member of the staff of, the Scottish Administration.
- (10) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.
- (11) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under this section.
- (12) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this section—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
 - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

Textual Amendments

- F1** Words and paras. (a) and (b) in s. 5(1) substituted (28.7.2000) by [2000 c. 17, s. 13\(2\)](#)
- F2** S. 5(1A) inserted (16.7.1992) by [Finance \(No.2\) Act 1992 \(c.48\), s. 8 \(b\)](#).
- F3** Words in s. 5(1A)(a) substituted (31.12.2020) by [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\), s. 57\(3\), Sch. 9 para. 7](#) (with savings and transitional provisions in [2020 c. 26, Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642, reg. 4\(c\)](#)

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- F4** Words in s. 5(3) substituted (28.7.2000) by 2000 c. 17, s. **13(3)**
- F5** Words in s. 5(4) substituted (28.7.2000) by 2000 c. 17, s. **13(4)**
- F6** Words in s. 5(4) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 98(2)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)
- F7** S. 5(7)-(12) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 98(3)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)

Changes to legislation:

There are currently no known outstanding effects for the Tobacco Products Duty Act 1979, Section 5.