

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

2019 No. 594

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 authenticate tobacco products. This means that each pack of tobacco will carry a unique code to track it from the producer to the retailer, and a label incorporating security features 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, and technical standards for, 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 European Union (EU) Implementing Regulation are not supplied in the United Kingdom (UK).

7. **Policy background**

- 7.1 The introduction of a track and trace system is a requirement of the World Health Organization Framework Convention on Tobacco Control Illicit Trade Protocol, which the UK has ratified. The track and trace system along with new 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. The UK is bound to implement the Protocol regardless of EU membership.
- 7.2 The track and trace 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, and protect public health, state budgets, and legitimate businesses.
- 7.3 Under this system, manufacturers, importers, wholesalers and other businesses involved in the tobacco trade will be required to obtain an economic operator identification number. All individual packs of tobacco products will be required to be marked with a unique identifier code by the manufacturer or importer.
- 7.4 Economic operators will be required to record the movement of tobacco packs through 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 EU member states, and to the Commission for enforcement purposes. No business will be able to trade in tobacco products without an economic operator identification number issued under the scheme to facilitate the tracking of products.
- 7.5 The system will enable public authorities to trace the point in the supply chain where tobacco product was diverted into the illicit market.
- 7.6 Under the security features system, manufacturers and importers of tobacco products to be supplied to the UK will be required to ensure all individual packets carry a tamper-proof security feature composed of visible and invisible elements, enabling authorities and consumers to verify their authenticity.
- 7.7 Non-compliance with the track and trace system or the security features system can lead to tobacco products being liable to forfeiture (in accordance with existing provision under the Customs and Excise Management Act 1979). In cases of significant non-compliance with the track and trace system, economic operators may have their identification number deactivated. This could prevent them from trading in

tobacco products in the future. The regulations provide review and appeal rights for any decision to deactivate.

7.8 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.

10.2 On 11 February 2019, these regulations were published for technical consultation ahead of their introduction. HMRC received 21 responses from the tobacco industry. Most respondents supported the need for robust sanctions and as a result, minor changes have been made to the circumstances in which a non-compliant business could be prevented from trading in tobacco products.

11. **Guidance**

11.1 HMRC is preparing guidance on the implementation of these measures for businesses and is publishing on gov.uk/government/collections/rules-for-tobacco-products in advance of the start of the system on 20 May 2019.

12. **Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 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. It remains an accurate summary of the impacts that apply to this instrument.

12.4 There is no, or no significant, impact because the instrument does not impose any new requirements beyond those introduced by virtue of the Tobacco Products Directive 2014 (see 6.1 - 6.3).

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 more 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 Emma Thompson at HMRC Telephone: 03000 588130 or email: emma.thompson1@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 MP, the Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.