

**2023 No. 606**

**EXCISE**

**The Tobacco Products (Traceability and Security Features)  
(Amendment) Regulations 2023**

<i>Made</i> - - - -	<i>9th June 2023</i>
<i>Laid before the House of Commons</i>	<i>12th June 2023</i>
<i>Coming into force</i> - -	<i>20th July 2023</i>

The Commissioners for His Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 8JA, 8JB and 9 of the Tobacco Products Duty Act 1979(a).

In accordance with section 8JA(6) of the Tobacco Products Duty Act 1979, the Commissioners consider that these Regulations will facilitate the administration, collection and enforcement of the duty charged under section 2 of that Act.

**Citation and commencement**

1. These Regulations may be cited as the Tobacco Products (Traceability and Security Features) (Amendment) Regulations 2023 and come into force on 20th July 2023.

**Amendment of the Tobacco Products (Traceability and Security Features) Regulations 2019**

2. The Tobacco Products (Traceability and Security Features) Regulations 2019(b) are amended in accordance with the following provisions of these Regulations.

**Amendment of regulation 2**

3. In regulation 2 (interpretation), at the appropriate places insert—

- ““Category A, B, C or D contravention” have the meanings given in regulation 20A;
- “economic operator identifier code” or “EOID” means a code issued in accordance with Article 15 of the Commission Implementing Regulation;
- “facility” has the meaning given in Article 2(6) of the Commission Implementing Regulation;

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(a) 1979 c. 7; sections 8JA to 8JC were inserted by section 93(2) of the Finance Act 2022 (c. 3). The power to make regulations under section 8JA of the Tobacco Products Duty Act 1979 is conferred on “the Commissioners” and by virtue of section 10(3) of that Act, “the Commissioners” has the same meaning as provided in the Customs and Excise Management Act 1979 (c. 2). Section 1(1) of the Customs and Excise Management Act 1979 (as amended by paragraphs 20 and 22(b) of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11)) defines “the Commissioners”. Section 9 was amended by section 2(2) of the Finance Act 2006 (c. 25), section 179(2) of the Finance Act 2016 (c. 24), section 47(2) of the Finance (No. 2) Act 2017 (c. 32) and section 93(3) of the Finance Act 2022.

(b) S.I. 2019/594, amended by S.I. 2020/1496.

“facility identifier code” or “FID” means a code issued in accordance with Article 17 of the Commission Implementing Regulation;

“second, third or subsequent contravention” have the meanings given in regulation 20A;”.

### **Amendment of regulation 3**

**4.**—(1) Regulation 3(1) (meaning of tobacco products supplied in any part of the United Kingdom)(a) is amended as follows.

(2) In paragraph (1)—

(a) omit “, in the course of a business,”;

(b) after sub-paragraph (b) omit “or”;

(c) after sub-paragraph (c) insert—

“, or

(d) causes or allows the supply of tobacco products at a facility, ”.

(3) After paragraph (1) insert—

“(1A) For the purposes of paragraph (1)(d) a person who causes or allows the supply of tobacco products at a facility includes—

(a) the holder of the EOID, if there is an EOID linked to the facility; and

(b) the person who is responsible for the facility where the supply occurred, and for this purpose the person responsible for the facility is the person who—

(i) is entitled to control its use,

(ii) is entrusted with its management, or

(iii) is otherwise in charge of it.”.

### **Amendment of regulation 18**

**5.**—(1) Regulation 18 (circumstances in which economic operator identifier codes may be deactivated) is amended as follows.

(2) In paragraph (2), for sub-paragraph (a) substitute—

“(a) has failed to comply with regulation 6(1) and this is a second, third or subsequent contravention,”.

(3) In paragraph (3), in sub-paragraph (b)(i) omit “and the occasions on which tobacco products were seized as a result of those failures”.

(4) In paragraph (4)(b), after paragraph (i) insert—

“(ia) in cases where paragraph (2)(a) applies—

(aa) a period of six months in the case of a Category A, B, or C contravention which is a second contravention; or

(bb) a period of five years in any other case; or”.

(5) After paragraph (6) insert—

“(7) Where paragraph (2)(a) applies, if an appeal is made against the decision to give a deactivation notice, or the period of deactivation, the deactivation must be suspended until the final determination of the appeal, but only in a case to which paragraph (8) applies.

(8) This paragraph applies where the person who is the subject of the deactivation notice satisfies the Commissioners that the primary function of the facility linked to the identifier code in respect of which the deactivation is made is the supply of tobacco products.

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(a) Regulation 3 was amended by S.I. 2020/1496.

(9) For the purposes of paragraph (8), the primary function includes (but is not limited to) a case where more than fifty per cent of the gross income of the facility over the six months immediately preceding the date of the deactivation notice issued under paragraph (4) is derived from the sale of, or services related to, tobacco products.”.

#### **Insertion of regulation 18A**

6. After regulation 18 insert—

##### **“Circumstances in which facility identifier codes may be deactivated**

**18A.**—(1) The Commissioners may exercise the discretion set out in Article 17(4) of the Commission implementing regulation in cases to which this regulation applies.

(2) This regulation applies in a case where—

- (a) the condition in regulation 18(2)(a) is met;
- (b) the economic operator identifier code which is liable to deactivation in accordance with regulation 18 is linked to more than one facility; and
- (c) the Commissioners consider it appropriate to deactivate the FID of the facility in which the contravention occurred instead of deactivating the economic operator identifier code.

(3) Where a FID is to be deactivated in accordance with this regulation, regulation 18 applies to that deactivation as if it were the deactivation of an economic operator identifier code, and for this purpose paragraphs (1) and (3) of that regulation are to be read as if for “Article 15(4)” there were substituted “Article 17(4)”.

(4) Where a FID is deactivated in accordance with this regulation, the economic operator identifier code must not be deactivated in respect of the same contravention.”.

#### **Amendment of regulation 20**

7.—(1) Regulation 20 (restriction on re-application) is amended as follows.

(2) After paragraph (1) insert—

“(1A) Subject to paragraph (1C), where an economic operator identifier code has been deactivated in accordance with regulation 18(2)(a), an application for a facility identifier code in respect of any facility that was linked to that economic operator identifier code must not be made by any person during the period of deactivation.

(1B) Subject to paragraph (1C), where a FID has been deactivated in accordance with regulation 18A, an application for a FID in respect of the same facility must not be made by any person during the period of deactivation.

(1C) Paragraphs (1A) and (1B) do not apply in a case where—

- (a) the ownership of the facility has changed since the deactivation occurred; and
- (b) the person who is the owner at the time of the application is not the person who is the subject of the deactivation notice .”.

(3) After paragraph (2) insert—

“(3) In cases where a person has acted contrary to the restrictions imposed by paragraphs (1A) or (1B) and obtained a facility identifier code, the Commissioners may exercise the discretion set out in Article 17(4) of the Commission Implementing Regulation without the conditions referred to in regulation 18 or, as the case may be, 18A, being met.”.

#### **Insertion of new regulations 20A to 20C**

8. In Part 7 (enforcement), before regulation 21 insert—

## **“Sanctions**

**20A.**—(1) A person who contravenes regulation 6(1) is liable to sanctions in accordance with regulations 20B and 21(2).

(2) For the purposes of these Regulations—

- (a) a Category A contravention means supplying 99 or fewer units of tobacco products in contravention of paragraph (1);
- (b) a Category B contravention means supplying 100 or more such units of tobacco products but fewer than 300;
- (c) a Category C contravention means supplying 300 or more such units of tobacco products but fewer than 500;
- (d) a Category D contravention means supplying 500 or more such units of tobacco products;
- (e) a second contravention is one that occurs before the end of 24 months beginning with the date of the first contravention;
- (f) a third contravention is one that occurs before the end of 24 months beginning with the date of the second contravention;
- (g) a subsequent contravention is any contravention that occurs after the third contravention and before the end of 24 months beginning with the date of a previous contravention.

(3) For the purposes of this regulation—

- (a) the date of a contravention is the date on which the supply of products in contravention of regulation 6(1) is discovered by—
  - (i) the Commissioners; or
  - (ii) a person investigating compliance in accordance with regulation 24A;
- (b) where a person contravenes regulation 6(1) and that contravention occurs more than 24 months after any previous contravention, that contravention is a first contravention for the purposes of this regulation;
- (c) in determining whether a contravention is a second, third or subsequent contravention, no account is to be taken of a previous contravention in respect of which a penalty under regulation 20B was not imposed.

(4) In this regulation “unit of tobacco products” means—

- (a) 20 cigarettes (whether or not they are packaged in packs of 20); or
- (b) 30 grams of hand-rolling tobacco.

## **Penalties**

**20B.**—(1) A penalty may be imposed by the Commissioners for a contravention of regulation 6(1) as follows.

(2) For a first contravention the penalty is—

- (a) Category A: £2,500;
- (b) Category B: £5,000;
- (c) Category C: £7,500;
- (d) Category D: £10,000.

(3) For a second contravention the penalty is—

- (a) Category A: £5,000;
- (b) Category B: £7,500;
- (c) Categories C and D: £10,000.

(4) For a third and any subsequent contravention the penalty is—

- (a) Category A: £7,500;
  - (b) Categories B, C and D: £10,000.
- (5) The penalty must be paid—
- (a) in accordance with the requirements of a notice issued under regulation 20C; and
  - (b) no later than 30 days beginning with the date of issue of the notice.
- (6) A penalty under this regulation is to be treated as an amount of duty due from the person liable for the penalty under the Tobacco Products Duty Act 1979, and may be recovered accordingly.
- (7) Where more than one person is liable to a penalty for a contravention of regulation 6(1), the penalty may be imposed on any one of them.
- (8) A person is not liable to a penalty under this regulation in respect of any failure or action in respect of which the person has been convicted of an offence under any provision of the customs and excise Acts.

### **Penalty notices**

**20C.**—(1) When a penalty is imposed under regulation 20B, the Commissioners must issue a penalty notice to the person on whom the penalty is imposed.

(2) The penalty notice must be issued within 12 months beginning with the date on which evidence of facts, sufficient in the opinion of the Commissioners to indicate the contravention, comes to the knowledge of the Commissioners, and must specify—

- (a) the date and particulars of the contravention;
- (b) the amount of the penalty and details of how, by when, and to whom the penalty must be paid; and
- (c) a warning about potential sanctions for further contraventions, including deactivation of the economic operator identifier code, where applicable, and the possibility of the forfeiture of compliant products.”.

### **Amendment of regulation 21**

**9.**—(1) Regulation 21 (forfeiture) is renumbered as paragraph (1) of that regulation.

(2) After paragraph (1) insert—

“(2) Subject to the following provisions of this regulation, where a person has contravened regulation 6(1), any tobacco product that is held by that person at the time the contravention is discovered by the Commissioners or anyone acting on their behalf, (whether or not the product meets the requirements of regulation 6(2) to (4)) is liable to forfeiture.

(3) For the purposes of paragraph (2) a tobacco product that meets the requirements of regulation 6(2) to (4) (a “compliant product”) is liable to forfeiture where—

- (a) the contravention of regulation 6(1) is a second, third or subsequent contravention;
- (b) the penalty notice for the previous contravention contained a warning about the forfeiture of compliant products;
- (c) the compliant product is at the facility where the contravention occurred; and
- (d) the compliant product is a business asset.

(4) In this regulation—

- (a) “business asset” means an asset that the Commissioners have reason to believe is owned or used in connection with the carrying on of a business by any person;
- (b) “tobacco product” means any tobacco product in respect of which regulation 6 has effect at the time of the forfeiture (see regulation 1(4)).”.

## Insertion of new regulation 22A

10. After regulation 22 (compliance notices) insert—

### “Reasonable excuse

**22A.**—(1) Liability to a sanction does not arise under regulation 20B or 21(2) if the person satisfies the Commissioners or (on an appeal made to the appeal tribunal) the tribunal that there is a reasonable excuse for the contravention.

(2) For the purposes of this regulation a reasonable excuse includes that the person did not know, and had no reasonable grounds to suspect, that the tobacco products did not meet the requirements of regulation 6(2) to (4).”

## Amendment of regulation 23

11. In regulation 23 (reviews and appeals) after paragraph (2) insert—

“(3) A decision under regulation 20B that a person is liable to a penalty, or the amount of the person’s liability, is to be treated as if it were listed in section 13A(2) of the Finance Act 1994(a) (customs and excise reviews and appeals: meaning of “relevant decision”) and accordingly, as if it were a relevant decision for the purposes mentioned in section 13A(1).”

## Insertion of new regulation 24A

12. After regulation 24 (administration of communications and providing samples) insert—

### “Investigations and information

**24A.**—(1) A local enforcement authority may investigate compliance with regulation 6(1), and for this purpose it may carry out inspections of tobacco products.

(2) Where a local enforcement authority considers there is evidence of contravention of regulation 6(1), it may pass that evidence to the Commissioners.

(3) In this regulation “local enforcement authority” means—

- (a) in Great Britain, a local weights and measures authority within the meaning of section 69 of the Weights and Measures Act 1985(b);
- (b) in Northern Ireland, a district council.”

*Jonathan Athow  
Penny Ciniewicz*

9th June 2023

Two of the Commissioners for His Majesty’s Revenue and Customs

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Tobacco Products (Traceability and Security Features) Regulations 2019 (the Traceability Regulations) to provide sanctions for failure to comply with specified elements of those Regulations.

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(a) 1994 c. 9; section 13A was inserted by paragraph 198 of Schedule 1 to S.I. 2009/56 and amended by S.I. 2011/1043, paragraph 10 of Schedule 25 to the Finance Act 2012 (c. 14), paragraph 17 of Schedule 28 to the Finance Act 2014 (c. 26), section 54(6) of the Finance Act 2015 (c. 11), section 179(3) of the Finance Act 2016 (c. 24) and section 56(2) of the Finance (No. 2) Act 2017 (c. 32).

(b) 1985 c. 72; section 69 was amended by Part 4 of Schedule 1 to the Statute Law Repeals Act 1989 (c. 43), paragraph 75 of Schedule 16 to the Local Government (Wales) Act 1994 (c. 19) and paragraph 144 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c. 39).

Regulations 1 and 2 are introductory provisions. Regulation 3 amends the definitions provision in the Traceability Regulations. Regulation 4 amends regulation 3 of the Traceability Regulations to provide that the supply of tobacco products extends to cases where the supply does not occur in the course of a business, and to cases where the owner or manager of the business causes or allows the supply.

Regulation 5 extends the circumstances in which economic operator identifier codes (EOIDs) can be deactivated, and provides for the suspension of deactivation pending appeal in specified cases. Regulation 6 provides for the deactivation of facility identifier codes (FIDs). Regulation 7 extends the circumstances in which applications for reactivation of an EOID (following a deactivation) are not permitted, and makes provision for restricting reapplications for FIDs.

Regulation 8 inserts new provisions for financial penalties. Regulation 9 provides for the forfeiture of compliant tobacco products in specified cases where non-compliant products are also forfeited. Regulation 10 provides for circumstances in which liability to a sanction does not arise. Regulation 11 provides for appeals against decisions on financial penalties.

Regulation 12 provides that a local enforcement authority (trading standards) may implement specified aspects of these Regulations.

A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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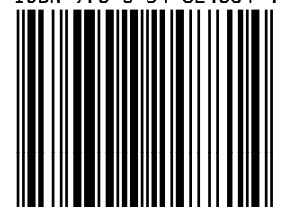
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