
DRAFT STATUTORY INSTRUMENTS

2015 No.

The Standardised Packaging of
Tobacco Products Regulations 2015

PART 5

Miscellaneous provisions

Trade marks and registered designs

Regulations not to affect registration of trade marks etc

- 13.**—(1) For the avoidance of doubt, nothing in, or done in accordance with, these Regulations—
- (a) forms an obstacle to the registration of a trade mark under the Trade Marks Act 1994⁽¹⁾, or
 - (b) gives rise to a ground for the declaration of invalidity of a registered trade mark under section 47(1) of that Act (grounds for invalidity of registration).
- (2) Without limiting paragraph (1), nothing in, or done in accordance with, these Regulations—
- (a) causes any trade mark to be contrary to public policy or to accepted principles of morality for the purposes of section 3(3)(a) of that Act (absolute grounds for refusal of registration),
 - (b) amounts to an enactment or rule of law which prohibits the use of a trade mark for the purposes of section 3(4) of that Act⁽²⁾,
 - (c) amounts to a rule of law by which the use in the United Kingdom of any trade mark is liable to be prevented for the purposes of section 5(4) of that Act (relative grounds for refusal of registration),
 - (d) causes an application for the registration of a trade mark under that Act to be one which is made in bad faith, or
 - (e) prevents an applicant for the registration of a trade mark under that Act from having such a *bona fide* intention as is mentioned in section 32(3) of that Act (application for registration of trade mark).
- (3) Paragraph (4) applies for the purposes of section 6(3) of the Trade Marks Act 1994 (meaning of “earlier trade mark”) if the trade mark there mentioned is a registered trade mark and its use is affected by these Regulations.
- (4) A *bona fide* use of the trade mark is to be regarded as having taken place during the two years there mentioned if there would have been such use of the trade mark during that period were these Regulations not in force.
- (5) Paragraph (6) applies for the purposes of—

(1) 1994 c. 26.

(2) Section 3(4) was amended by S.I. 2011/1043.

- (a) section 6A(3) of the Trade Marks Act 1994 (raising of relative grounds in opposition proceedings in case of non-use)(3), or
- (b) section 47(2B) of that Act (grounds for invalidity of registration)(4),

if the earlier trade mark there mentioned is a registered trade mark and its use is affected by these Regulations.

(6) If any provision of these Regulations causes any non-use of the trade mark within the period of five years there mentioned, such provision is to be regarded as a proper reason for that non-use, provided that the trade mark would have been put to such genuine use as is there mentioned were these Regulations not in force.

(7) Paragraph (8) applies for the purposes of section 46(1)(a) or (b) of the Trade Marks Act 1994 (revocation of registration) if the use of the registered trade mark there mentioned is affected by these Regulations.

(8) If any provision of these Regulations causes any non-use of the registered trade mark within the period of five years there mentioned, such provision is to be regarded as a proper reason for that non-use, provided that the registered trade mark would have been put to such genuine use as is there mentioned were these Regulations not in force.

(9) To the extent that any provision of the Trade Marks Act 1994 mentioned in this regulation (a “relevant provision”) applies to international trade marks (UK) (whether by virtue of that Act, the Trade Marks (International Registration) Order 2008(5) or otherwise, and whether with or without modifications), then provision made by this regulation in relation to that relevant provision shall also apply (with any necessary modifications) to international trade marks (UK).

Regulations not to affect registration of designs etc

14.—(1) For the avoidance of doubt, nothing in, or done in accordance with, these Regulations has the effect that a design may or must be refused registration or declared invalid under the Registered Designs Act 1949(6).

(2) Without limiting paragraph (1), nothing in, or done in accordance with, these Regulations causes any design to be contrary to public policy or to accepted principles of morality for the purposes of section 1D of that Act (designs contrary to public policy or morality)(7).

(3) Paragraph (4) applies for the purposes of section 11ZA(1A)(a) of that Act (grounds for invalidity of registration)(8) if the design to which the later design there mentioned is compared is one whose use is affected by these Regulations.

(4) The design is to be regarded as having been made available to the public on or after the relevant date there mentioned if it would have been so made available on or after that date were these Regulations not in force.

(5) For the avoidance of doubt, nothing in, or done in accordance with, these Regulations amounts to, or permits, any Crown use of a registered design.

(6) In this regulation—

“Crown use” has the same meaning as in paragraph 2A of Schedule 1 to the Registered Designs Act 1949 (compensation for loss of profit)(9);

(3) Section 6A was inserted by S.I. 2004/946.

(4) Section 47(2B) was inserted by S.I. 2004/946.

(5) S. I. 2008/2206.

(6) 1949 c. 88.

(7) Section 1D was inserted by S.I. 2001/3949.

(8) Section 11ZA was inserted by S.I. 2001/3949 and amended by S.I. 2006/1974 and S.I. 2007/3378.

(9) Paragraph 2A of Schedule 1 was inserted by section 271(1) of the Copyright, Designs and Patents Act 1988 (c. 48) and amended by S.I. 2001/3949.

“design” and “registered design” have the same meaning as in that Act.

Offences and enforcement

Offences

15.—(1) A person who produces or supplies a tobacco product in breach of any provision of these Regulations is guilty of an offence.

(2) A person guilty of an offence under this regulation—

- (a) is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine, 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

16.—(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 liable to be proceeded against and punished accordingly.

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

Defence

17. In any proceedings for an offence under these Regulations against a person who supplies any tobacco product in breach of any provision of these Regulations, it is a defence that the person neither knew nor had reasonable grounds for suspecting that the tobacco product was supplied in breach of that provision.

Enforcement

18.—(1) For the purpose of enforcement, the provisions of the Consumer Protection Act 1987⁽¹⁰⁾ (apart from sections 12 and 13) are to apply to these Regulations as if these Regulations were safety regulations within the meaning of that Act.

(10) 1987 c. 43.

(2) The reference to six months in section 14(6) of the Consumer Protection Act 1987 (imprisonment on summary conviction not to exceed six months), as that section has effect by virtue of paragraph (1), is to be read as a reference to three months.

(3) The appropriate minister may direct, in relation to cases of a particular description or a particular case, that any duty imposed on—

- (a) a local weights and measures authority in Great Britain, or
- (b) a district council in Northern Ireland,

under section 27 of the Consumer Protection Act 1987(11) (as that section has effect by virtue of paragraph (1)) is to be discharged instead by the appropriate minister.

Consequential amendments

Consequential amendments

19.—(1) In section 3(1) of the Children and Young Persons (Protection from Tobacco) Act 1991 (sale of un-packaged cigarettes)(12), omit “pre-packed quantities of 10 or more cigarettes in”.

(2) In article 4(1) of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (sale of un-packaged cigarettes)(13), omit “pre-packed quantities of 10 or more cigarettes in”.

(3) Regulation 4 of the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002 (statements of yields on packets of cigarettes) is revoked(14).

Transitional provision

Transitional provision

20.—(1) These Regulations do not apply to the supply before 21st May 2017 of a tobacco product produced before 20th May 2016 if the product complies with the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002 at the date of supply.

(2) For the purposes of paragraph (1), those Regulations are to continue to apply notwithstanding the revocation of any those Regulations by any enactment (whenever passed or made), including regulation 19(3) of these Regulations.

Review

Review

21.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations, in consultation with the appropriate ministers in Wales, Scotland and Northern Ireland,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review, the Secretary of State must, so far as is reasonable, have regard to how Articles 13 and 14 of Directive 2014/40/EU of the European Parliament and of the Council of

(11) Section 27 was amended by S.I. 2008/1277.

(12) 1991 c. 23.

(13) S.I. 1991/2872 (N.I. 25).

(14) S.I. 2002/3041.

3rd April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing [Directive 2001/37/EC\(15\)](#) (which are implemented by means of regulations 4, 8 and 10 of these Regulations) is implemented in other member States.

- (3) The report must in particular—
 - (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,
 - (b) assess the extent to which those objectives are achieved, and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.