

**2016 No. 1172**

**EXCISE**

**The Raw Tobacco (Approval Scheme) Regulations 2016**

*Made* - - - - *7th December 2016*

*Laid before the House of Commons* *8th December 2016*

*Coming into force in accordance with regulation 1*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 8M, 8N and 8U of the Tobacco Products Duty Act 1979(a), and now exercisable by them(b).

**PART 1**

**PRELIMINARY**

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Raw Tobacco (Approval Scheme) Regulations 2016.

(2) Parts 1 to 4 come into force on 1st January 2017.

(3) Part 5 comes into force on 1st April 2017.

**Interpretation**

**2.** In these Regulations—

“approved person” means a person to whom written approval is provided in accordance with regulation 6(4);

“CEMA 1979” means the Customs and Excise Management Act 1979(c);

“notice” means a notice in writing;

“prescribed” means prescribed by the Commissioners in a published notice, as revised or replaced from time to time and “prescribe” is construed accordingly;

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(a) 1979 c. 7. Sections 8M, 8N and 8U were inserted by section 179(1) of the Finance Act 2016 (c. 24) and came into force on 6th December 2016 under S.I. 2016/1171.

(b) The power to make regulations under sections 8M, 8N and 8U of the Tobacco Products Duty Act 1979 (“TPDA 1979”) is conferred on “the Commissioners” and by virtue of section 10(3) of TPDA 1979, “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 the Commissioners for Revenue and Customs Act 2005 (c. 11) (“CRCA 2005”), Schedule 4, paragraphs 20 and 22(b)) defines “the Commissioners” as “the Commissioners for Her Majesty’s Revenue and Customs”.

(c) 1979 c. 2.

“review and appeal provisions” means the provisions in respect of the review of, or an appeal against, a decision set out in sections 15C (review by HMRC) and 16 (appeals to a tribunal) of the Finance Act 1994<sup>(a)</sup> and “review” and “appeal” in regulation 8(2) are to be construed as though those provisions have been engaged;

“TPDA 1979” means the Tobacco Products Duty Act 1979.

## PART 2

### APPROVAL SCHEME

#### **Applications for approval**

**3.**—(1) Where a person intends to carry out a controlled activity<sup>(b)</sup>, that person must make an application to the Commissioners for approval in the prescribed form and manner and include the information prescribed.

(2) But an approval is not required where an exemption applies under Part 4.

#### **Form and manner of applications**

**4.**—(1) An application for approval must be made in writing.

(2) The Commissioners must prescribe—

- (a) subject to paragraph (1), the form and manner of an application; and
- (b) the information which must be provided with an application,

but may make different provision for different types of applicant or controlled activity.

(3) The Commissioners may prescribe that an application must be made electronically.

#### **Additional information and inspection notices**

**5.**—(1) In order to determine an application, the Commissioners may by notice (“an additional information notice”) request an applicant to provide additional information to that prescribed.

(2) An additional information notice must specify—

- (a) the additional information;
- (b) the form and manner by which it must be provided, which may be electronically; and
- (c) the date by which it must be provided to the Commissioners.

(3) In order to determine an application, the Commissioners may by notice (“an inspection notice”) request an applicant to allow the Commissioners to inspect any premises owned or occupied by the applicant which are premises at or from which the applicant intends to carry on a controlled activity.

(4) An inspection notice must specify—

- (a) the premises to be inspected; and
- (b) the date by which the Commissioners intend to carry out the inspection.

(5) No inspection may be carried out other than with the applicant’s permission and at a time agreed with the applicant.

(6) The Commissioners may by notice given to the applicant extend the date—

- (a) to comply with an additional information notice; or
- (b) to inspect premises further to an inspection notice.

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(a) 1994 c. 9. Section 15C was added by S.I.2009/56.

(b) Controlled activity is defined by section 8K(3) of the TPDA 1979.

- (7) Where an applicant—
- (a) fails to comply with an additional information notice by the date for compliance; or
  - (b) fails unreasonably to agree to an inspection by the date set out in an inspection notice,
- the application is deemed to be withdrawn on that date.

### **Determination of applications**

**6.**—(1) Where an application is deemed to be withdrawn by virtue of regulation 5(7), the Commissioners must give a notice to the applicant stating that the application has been treated as withdrawn.

(2) A notice under paragraph (1) must be given as soon as reasonably practicable after the date of deemed withdrawal.

(3) Except where paragraph (1) applies, the Commissioners must determine an application as soon as reasonably practicable after it has been received.

(4) Where an application is approved, the Commissioners must provide a written approval to the applicant.

(5) The approval must include—

- (a) a unique approval number;
- (b) the approved person's name and address and, in the case of a company, company registration number; and
- (c) details of each controlled activity which is approved and details of each premises at or from which the activity may be carried out.

(6) Where an approval is made subject to conditions or restrictions—

- (a) the approval must contain or refer to those conditions or restrictions; and
- (b) the Commissioners must give notice to the approved person which states that the review and appeal provisions apply in respect of the decision to impose conditions or restrictions.

(7) Where an application is refused, the Commissioners must give notice to the applicant which—

- (a) states that the application is refused;
- (b) provides reasons for the refusal; and
- (c) states that the review and appeal provisions apply in respect of the decision to refuse approval.

### **Approval: conditions and restrictions**

**7.** The Commissioners may prescribe conditions or restrictions to which an approval is subject.

## **PART 3**

### **REVOCATION, VARIATION, TRANSFER AND SURRENDER OF APPROVALS**

#### **Applications to vary, transfer or surrender approval**

**8.**—(1) An approved person may in respect of an approval provided to that person, apply to the Commissioners in writing to—

- (a) vary the terms of the approval;
- (b) transfer the approval; or
- (c) surrender the approval.

(2) But no application may be made to vary an approval if the variation is in respect of a matter which—

- (a) is subject to a review or appeal; or
- (b) was refused on review or appeal.

(3) The Commissioners may prescribe—

- (a) the form and manner of an application under paragraph (1); and
- (b) that an application must be made electronically.

(4) The Commissioners must determine an application as soon as reasonably practicable after it has been received.

### **Reasonable cause to revoke or vary an approval**

**9.**—(1) The Commissioners may have reasonable cause to revoke or vary an approval where there is a failure to comply with the conditions or restrictions of the approval.

(2) The Commissioners may give a notice (“an investigation notice”) to an approved person which—

- (a) identifies the conditions or restrictions with which the Commissioners believe the approved person has failed to comply;
- (b) identifies how the approved person has failed to comply with those conditions or restrictions;
- (c) states that the approved person may make representations in writing to the Commissioners in respect of those conditions or restrictions; and
- (d) states the date by which any representations must be received by the Commissioners, being a date no earlier than 14 days after the date on which notice is given.

(3) The Commissioners may by notice given to the approved person extend the date to comply with an investigation notice.

(4) The Commissioners may have reasonable cause to revoke or vary an approval in respect of which an investigation notice has been given where the approved person fails to make representations by the date required.

### **Consideration of section 8L(2)**

**10.**—(1) The Commissioners must not agree to the variation or transfer of an approval unless by doing so they are satisfied that section 8L(2)(a) or (b) of TPDA 1979 is met in respect of the approval.

(2) The Commissioners must vary an approval as soon as practicable where, unless the variation is made, the Commissioners cannot be satisfied that section 8L(2)(a) or (b) of TPDA 1979 is met in respect of the approval.

### **Variation of approval**

**11.** Where the Commissioners vary, or agree to an application to vary, an approval, they must provide a notice to the approved person which—

- (a) identifies how the approval is varied;
- (b) specifies the date on and from which the variation has effect; and
- (c) states that the review and appeal provisions apply in respect of the decision to vary the terms of the approval.

### **Transfer of approval**

**12.** Where the Commissioners agree to the transfer of an approval, they must provide a notice to the transferor and transferee which—

- (a) specifies the date on and from which the transfer has effect; and
- (b) where—
  - (i) the conditions or restrictions of the approval are varied; or
  - (ii) new conditions or restrictions are imposed,states that the review and appeal provisions apply in respect of the decision to impose conditions or restrictions on, or vary the terms of, the approval.

### **Surrender of approval**

**13.**—(1) Where the Commissioners agree to the surrender of an approval, they must provide a notice to the approved person which specifies the date on and from which the surrender has effect.

(2) The Commissioners may vary an approval for the period until the surrender has effect.

### **Revocation of approval**

**14.** Where the Commissioners revoke an approval, they must provide a notice to the approved person which—

- (a) specifies the date on and from which the revocation has effect; and
- (b) states that the review and appeal provisions apply in respect of the decision to revoke approval.

### **Refusal of an application**

**15.** Where an application to vary, transfer or surrender an approval is refused, the Commissioners must provide a notice to the approved person which—

- (a) states that the application is refused;
- (b) provides reasons for the refusal; and
- (c) in the case of a refusal to vary an approval, states that the review and appeal provisions apply in respect of the decision to refuse approval.

## **PART 4**

### **EXEMPTIONS FROM APPROVAL**

#### **Application of this Part**

**16.** This Part applies in respect of a controlled activity carried on on or after 1st April 2017.

#### **Waste**

**17.**—(1) Section 8L(1) of the TPDA 1979 does not apply to a person (“W”) who holds or transports waste raw tobacco solely in order to dispose of it permanently as waste, provided that W complies with conditions 1, 2 and 3.

(2) Condition 1 is that W must not carry on another controlled activity.

(3) Condition 2 is that W must not manufacture tobacco products.

(4) Condition 3 is that W must not hold or transport an amount of waste raw tobacco which exceeds 2kg.

(5) “Waste raw tobacco” means raw tobacco which derives from the cultivation of tobacco plants solely for horticultural purposes in the United Kingdom of plants of the *Nicotiana* genus.

### **Raw tobacco stalks and stems**

**18.**—(1) Section 8L(1) of the TPDA 1979 does not apply to a person (“S”) who carries on any controlled activities in respect of raw tobacco stalks or stems, to which no leaves are attached, provided that S complies with conditions 1 and 2.

(2) Condition 1 is that S must not receive in single delivery an amount of raw tobacco stalks and stems which exceeds 2.5kg.

(3) Condition 2 is that S must not hold during any period of 12 months an amount of raw tobacco stalks and stems which exceeds 20kg.

### **Transporters**

**19.**—(1) Section 8L(1) of the TPDA 1979 does not apply to a person (“T”) who transports raw tobacco provided that T complies with conditions 1, 2 and 3.

(2) Condition 1 is that T must not transport an amount of raw tobacco which exceeds an amount prescribed by the Commissioners in a single load.

(3) Condition 2 is that T must only deliver the raw tobacco to—

- (a) an approved person; and
- (b) to premises where that approved person is approved to hold raw tobacco.

(4) Condition 3 is that T must—

- (a) keep a record to demonstrate that conditions 1 and 2 are met;
- (b) ensure that a copy of that record is held by the person undertaking the transport throughout the period of transport; and
- (c) ensure that copy is produced to an officer on request.

(5) It is a requirement that T must preserve those records for a period of six years commencing with the date of the transport.

### **Snuff products**

**20.**—(1) Section 8L(1) of the TPDA 1979 does not apply to a person (“P”) who carries on any limited controlled activity involving a snuff product provided P complies with condition 1.

(2) Condition 1 is that where P carries on a limited controlled activity involving an amount of snuff product which exceeds 50g, P must ensure that the product is contained in packaging which meets the requirements under—

- (a) regulation 10 of the Standardised Packaging of Tobacco Products Regulations 2015(a);
- (b) regulation 10 of the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002(b); and
- (c) regulations 10 to 12 of the Tobacco and Related Products Regulations 2016(c).

(3) In this regulation—

“limited controlled activity involving a snuff product” means any controlled activity except the manufacture or production of a snuff product;

“snuff product” means any pulverized tobacco in a finished state which is to be inhaled through the nostrils.

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(a) S.I. 2015/829.

(b) S.I. 2002/3041 (“the 2002 Regulations”). The 2002 Regulations have been revoked by regulation 54 of S.I. 2016/507 (“the 2016 Regulations”). However, under regulation 55 of the 2016 Regulations, regulation 10 (product identification markings) of the 2002 Regulations continues to have effect in relation to the code marking of tobacco products (which are not cigarettes or hand rolling tobacco), until 20 May 2024 despite the revocation of this provision.

(c) S.I. 2016/507.

## **Record keeping and production**

**21.** It is a requirement that where an exempt person carries on a controlled activity under regulation 18 (stalks and stems) or 20 (snuff products), that person must—

- (a) keep the records relating to the controlled activity as set out in Schedule 1;
- (b) preserve those records for a period of six years commencing on the date that the relevant record is first held by that person; and
- (c) produce a copy of those records to an officer when required to do so.

## **PART 5**

### **ENFORCEMENT**

#### **Application of CEMA 1979**

**22.**—(1) The provisions of CEMA 1979, specified in Parts 1 and 2 of Schedule 2, apply—

- (a) in relation to persons who carry on controlled activities as they apply in relation to revenue traders whose trade or business relates to tobacco products, and
- (b) in relation to raw tobacco as they apply in relation to tobacco products.

(2) The provisions in—

- (a) Part 1 apply without modification
- (b) Part 2 apply with the modifications set out in that Part.

*Jim Harra*  
*Edward Troup*

7th December 2016

Two of the Commissioners for Her Majesty's Revenue and Customs

## **SCHEDULE 1**

Regulation 21

**1.**—(1) The following are the records referred to in regulation 21, namely all—

- (a) records relating to the import or export of exempt tobacco;
- (b) records relating to the ordering or delivery of exempt tobacco;
- (c) invoices and receipts relating to exempt tobacco.

(2) In this paragraph, “exempt tobacco” means any raw tobacco in relation to which a person is an exempt person by virtue of regulation 18 (stalks and stems) or 20 (snuff products).

## **SCHEDULE 2**

Regulation 22

## **PART 1**

### **Application of CEMA 1979 without modification**

**1.** The provisions of CEMA 1979 applied without modification are—

- (a) section 112 (power of entry upon premises etc, of revenue traders)(a);
- (b) section 112A (section 112: supplementary powers)(b);
- (c) section 118 (liability of ostensible owner of principal manager);
- (d) section 118BB (inspection powers: goods-based duties)(c);
- (e) section 118BD (inspection powers: supplementary provision)(d);
- (f) section 118G (offences)(e);
- (g) section 158 (power to require provision of facilities)(f).

## PART 2

### Application of CEMA 1979 with modifications

#### **Section 27 of CEMA 1979**

2.—(1) Section 27 of CEMA 1979 (officers’ powers of boarding)(g) is applied with the following modification.

(2) In subsection (1), for “the prevention of smuggling” substitute “ensuring compliance with section 8L of the Tobacco Products Duty Act 1979”.

#### **Section 118B of CEMA 1979**

3.—(1) Section 118B of CEMA 1979 (duty of revenue traders and others to furnish information and produce documents)(h) is applied with the following modification.

(2) In subsection (3)(b), for “section 118A above” substitute “regulations made under section 8M or 8N of the Tobacco Products Duty Act 1979”.

#### **Section 118BA of CEMA 1979**

4.—(1) Section 118BA of CEMA 1979 (further duty to provide information and documents)(i) is applied with the following modification.

(2) In subsection (1)(a), for “protecting, securing, collecting or managing revenues derived from duties of excise” substitute “ensuring compliance with the terms of an approval under section 8L, or an exemption under section 8N, of the Tobacco Products Duty Act 1979”.

#### **Section 163A of CEMA 1979**

5.—(1) Section 163A of CEMA 1979 (power to search articles)(j) is applied with the following modification.

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- (a) Section 112 was amended by paragraph 6 of Schedule 8 to the Finance Act 1981 (c. 35), paragraph 1(a) of Schedule 2 to the Finance Act 1991 (c. 31) and paragraphs 9 and 10 of Schedule 13 to the Finance (No. 3) Act 2010 (c. 33).
  - (b) Section 112A was added by paragraphs 9 and 11 of Schedule 13 to the Finance (No. 3) Act 2010.
  - (c) Section 118BB was added by paragraphs 9 and 12 of Schedule 13 to the Finance (No. 3) Act 2010.
  - (d) Section 118BD was added by paragraphs 9 and 12 of Schedule 13 to the Finance (No. 3) Act 2010.
  - (e) Section 118G was added by paragraph 1 of Schedule 5 to the Finance Act 1991 (c. 31) and amended by paragraph 12 of Schedule 4 to the Finance Act 1994 (c. 9) and paragraphs 9 and 15 of Schedule 13 to the Finance (No. 3) Act 2010.
  - (f) Section 158 was amended by sections 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 114(1) of the Police and Criminal Evidence Act 1984 (c. 60) and S.I. 2015/664.
  - (g) Section 27 was amended by 289G of the Criminal Procedure (Scotland) Act 1975, section 46 of the Criminal Justice Act 1982, section 7(1) of the Finance Act 1987 (c. 16), section 10(2) of the Finance (No. 2) Act 1992 (c. 48), S.I. 1991/2725 and S.I. 1993/3014.
  - (h) Section 118B was added by paragraph 1 of Schedule 5 to the Finance Act 1991 and amended by paragraph 3 of Schedule 2 to the Finance Act 1997 (c. 16).
  - (i) Section 118BA was added by paragraphs 9 and 12 of Schedule 13 to the Finance (No. 3) Act 2010.
  - (j) Section 163A was added by section 26 of the Finance Act 2000 (c.17).



(2) Subsection (2)(a) is omitted.

## **EXPLANATORY NOTE**

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

Section 8L(1) of the Tobacco Products Duty Act 1979 (c. 7) (“TPDA 1979”) provides that a person may not carry on a controlled activity otherwise than in accordance with an approval given by the Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) under that section. A “controlled activity” is defined by section 8K(3) of TPDA 1979 as any activity involving raw tobacco.

Part 2 of the Regulations makes provision about the administrative procedure for the approval scheme, including:

- making an application for approval to carry on a controlled activity (regulations 3 and 4);
- requests for additional information and site visits made by the Commissioners before determining an application (regulation 5);
- issue of approval notices by the Commissioners including details of each controlled activity the approved person is approved to carry on and details of each premises at or from which the controlled activity may be carried out (regulation 6);
- the imposition of conditions and restrictions on an approval (regulations 6 and 7); and
- refusal by Commissioners of an application for approval (regulation 6).

Part 3 of the Regulations deals with the administrative procedure for revocation, variation, transfer and surrender of an approval, including:

- making an application to Commissioners to vary, transfer or surrender an approval (regulation 8);
- the circumstances in which Commissioners may have reasonable cause to revoke or vary an approval, including:
  - where there is a failure by the approved person to comply with conditions and restrictions of an approval (regulation 9); and
  - where the Commissioners are not satisfied that the approved person is a fit and proper person to carry on the controlled activity or that the activity will not be carried on for the purpose of, or with a view to, the fraudulent evasion of the duty of excise charged on tobacco products under TPDA 1979 (regulation 10);
- issue of notices by the Commissioners approving applications to vary, transfer or surrender an approval (regulations 11 to 13);
- issue of notices by the Commissioners revoking an approval (regulation 14); and
- refusal by the Commissioners of an application to vary, transfer or surrender an approval (regulation 15).

Part 4 of the Regulations provides for exemptions from the general prohibition imposed by section 8L of TPDA 1979 being met. Where a person (“an exempt person”) carries on certain controlled activities, they are exempt from the need to be approved by the Commissioners, subject to certain conditions. The exemptions are limited to:

- holding and transporting raw tobacco that meets the definition of waste raw tobacco (regulation 17). The exempt person must not: (1) carry on another controlled activity, (2) manufacture tobacco products and (3) hold or transport more than 2kg of waste raw tobacco;
- any controlled activity in respect of raw tobacco stalks and stems to which no leaves are attached (regulation 18). The exempt person must not: (1) receive more than 2.5kg of stalks and stems in a single delivery and (2) hold more than 20kg of stalks and stems in a rolling 12 month period;

- transporting raw tobacco (regulation 19). The exempt person must: (1) not transport, in a single load, an amount which exceeds an amount to be set by the Commissioners under the Regulations, (2) only deliver raw tobacco to an approved person to an address where the approved person is approved to hold raw tobacco, and (3) keep a record that the conditions are met which is available during transportation and able to be produced to an officer on request. That record must also be kept for six years.
- any controlled activity meeting the definition of a limited controlled activity involving a snuff product (regulation 20). The exempt person must if carrying on a limited controlled activity involving more than 50g of snuff product, ensure the product is contained in approved packaging.

Regulation 21 imposes a record keeping and production of records requirement on exempt persons who carry on a controlled activity covered by regulation 18 (raw tobacco stalks and stems) and regulation 20 (snuff products). The records relevant to that activity are set out in Schedule 1 to the Regulations. The records must be kept for six years and produced on request.

Part 5 of the Regulations make provision for certain enforcement powers in the Customs and Excise Management Act 1979 (c. 2) to be extended so that they apply to persons who carry on a controlled activity as they apply in relation to revenue traders; and also apply to raw tobacco as they apply in relation to tobacco products (regulation 22). Where modification is required to ensure the enforcement powers work effectively in relation to the approval scheme, Schedule 2 sets out the detail of the required modification.

A Tax Information and Impact note (TIIN) 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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