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STATUTORY INSTRUMENTS

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**2016 No. 507**

**The Tobacco and Related Products Regulations 2016**

**PART 7**

Electronic cigarette advertising

**Interpretation of Part 7**

**41.**—(1) In this Part “electronic cigarette advertisement” means an advertisement with—

- (a) the aim of promoting an electronic cigarette or refill container; or
- (b) the direct or indirect effect of promoting one.

(2) In this Part—

“the E-Commerce Directive” means Directive [2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) <sup>M1</sup>;

“information society services”—

- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive [98/34/EC](#) of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations <sup>M2</sup>); and
- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“recipient” means a person who (whether for professional purposes or otherwise) uses an information society service, in particular for seeking information or making it accessible;

“service provider” means a person providing an information society service;

[<sup>F1</sup>“ the Union market ” means the market of —

- (a) one or more member States,
- (b) Northern Ireland, or
- (c) Northern Ireland and one or more member States;]

[<sup>F2</sup>“ third country ” means a country other than—

- (a) Northern Ireland, or
- (b) a member State.]

(3) For the purposes of this Part, a service provider is established in a particular EEA State, if the service provider—

- (a) effectively pursues an economic activity in that EEA State using a fixed establishment for an indefinite period; and

(b) is a national of an EEA State, or a company or firm as mentioned in Article 54 of the Treaty on the Functioning of the European Union <sup>M3</sup>.

(4) The presence or use in a particular place of equipment or other technical means of providing an information society service is not itself sufficient to constitute the establishment of a service provider.

(5) Where it cannot be decided from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.

- F1** Words in reg. 41(2) substituted (31.12.2020) by S.I. 2019/41, **reg. 6(26)(a)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1316\)](#), regs. 1(3), **3(31)** (with reg. 5))
- F2** Words in reg. 41(2) substituted (31.12.2020) by S.I. 2019/41, **reg. 6(26)(b)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1316\)](#), regs. 1(3), **3(31)** (with reg. 5))

#### Marginal Citations

- M1** OJ L 178, 17.7.2000, p.1.
- M2** OJ L 204, 21.7.1998, p.37, as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p.18).
- M3** Cm 7310.

#### No advertising of electronic cigarettes in the press etc.

**42.**—(1) No person may in the course of a business publish, or procure the publication of, an electronic cigarette advertisement in a newspaper, periodical or magazine.

(2) No person may in the course of a business sell, offer for sale or otherwise make available to the public a newspaper, periodical or magazine containing an electronic cigarette advertisement.

(3) Paragraphs (1) and (2) do not apply—

- (a) to a newspaper, periodical or magazine which is intended exclusively for professionals in the trade of electronic cigarettes or refill containers; or
- (b) to a newspaper, periodical or magazine which is printed and published in a third country and is not principally intended for [<sup>F3</sup>the relevant market].

[<sup>F4</sup>(4) In this regulation “the relevant market”—

- (a) in relation to Great Britain, means the market in Great Britain;
- (b) in relation to Northern Ireland, means the Union Market.]

- F3** Words in reg. 42(3)(b) substituted (31.12.2020) by S.I. 2019/41, **reg. 6(27)(a)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1316\)](#), regs. 1(3), **3(32)** (with reg. 5))
- F4** Reg. 42(4) inserted (31.12.2020) by S.I. 2019/41, **reg. 6(27)(b)** (as substituted) by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1316\)](#), regs. 1(3), **3(32)** (with reg. 5))

#### No advertising of electronic cigarettes in information society services

**43.**—(1) No person may in the course of a business include, or procure the inclusion of, an electronic cigarette advertisement in an information society service provided to a recipient in the United Kingdom.

(2) No service provider established in [<sup>F5</sup>Northern Ireland] may in the course of a business include an electronic cigarette advertisement in an information society service provided to a recipient in an EEA State <sup>F6</sup>...

(3) No proceedings for an offence for breach of paragraph (1) <sup>M4</sup> may be instituted [<sup>F7</sup>in Northern Ireland] against a service provider who is established in [<sup>F8</sup>an EEA State], unless the derogation condition mentioned in paragraph 4 is satisfied.

(4) The derogation condition is satisfied where the institution of proceedings—

- (a) is necessary for the purposes of public policy, the protection of public health or the protection of consumers (“the objective”);
- (b) relates to an information society service that prejudices the objective or presents a serious and grave risk of prejudice to the objective; and
- (c) is proportionate to the objective.

(5) [<sup>F9</sup>Paragraph (1) does or, as the case may be, paragraphs (1) and (2)] do not apply—

- (a) to an information society service which is intended exclusively for professionals in the trade of electronic cigarettes or refill containers; or
- (b) to an electronic cigarette advertisement which is not principally intended [<sup>F10</sup>—
  - (i) where the recipient of the service is in Great Britain, for the market in Great Britain;
  - (ii) where the recipient of the service is in Northern Ireland, for the Union market.]

(6) Schedule 1 (liability of intermediary information society service providers) has effect.

- F5** Words in reg. 43(2) substituted (31.12.2020) by S.I. 2019/41, **reg. 6(28)(a)(i)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1316), regs. 1(3), **3(33)** (with reg. 5))
- F6** Words in reg. 43(2) omitted (31.12.2020) by virtue of S.I. 2019/41, **reg. 6(28)(a)(ii)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1316), regs. 1(3), **3(33)** (with reg. 5))
- F7** Words in reg. 43(3) inserted (31.12.2020) by S.I. 2019/41, **reg. 6(28)(b)(i)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1316), regs. 1(3), **3(33)** (with reg. 5))
- F8** Words in reg. 43(3) substituted (31.12.2020) by S.I. 2019/41, **reg. 6(28)(b)(ii)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1316), regs. 1(3), **3(33)** (with reg. 5))
- F9** Words in reg. 43(5) substituted (31.12.2020) by S.I. 2019/41, **reg. 6(28)(c)(i)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1316), regs. 1(3), **3(33)** (with reg. 5))
- F10** Words in reg. 43(5)(b) substituted (31.12.2020) by S.I. 2019/41, **reg. 6(28)(c)(ii)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1316), regs. 1(3), **3(33)** (with reg. 5))

#### Marginal Citations

**M4** See regulation 48(e).

#### Sponsorship of events etc. [<sup>F11</sup>: Northern Ireland].

44.—(1) No person [<sup>F12</sup>in Northern Ireland] may in the course of a business provide electronic cigarette sponsorship to—

- [<sup>F13</sup>(a) a cross-border event or activity;]

(b) an individual taking part in a cross-border event or activity.

[<sup>F14</sup>(1A) In this regulation “cross-border event or activity” means an event or activity which takes place in or has an effect in—

- (a) Northern Ireland and one or more member States, or
- (b) two or more member States.]

(2) In this regulation “electronic cigarette sponsorship” means any form of public or private contribution to any event, activity or individual, with the aim or direct or indirect effect of promoting an electronic cigarette or refill container.

- F11** Words in reg. 44 heading inserted (31.12.2020) by S.I. 2019/41, **reg. 6(29)(a)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1316), regs. 1(3), **3(34)** (with reg. 5))
- F12** Words in reg. 44(1) inserted (31.12.2020) by S.I. 2019/41, **reg. 6(29)(b)(i)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1316), regs. 1(3), **3(34)** (with reg. 5))
- F13** Reg. 44(1)(a) substituted (31.12.2020) by S.I. 2019/41, **reg. 6(29)(b)(ii)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1316), regs. 1(3), **3(34)** (with reg. 5))
- F14** Reg. 44(1A) inserted by S.I. 2019/41, **reg. 6(29)(c)** (as substituted by [The Tobacco Products and Nicotine Inhaling Products \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1316), regs. 1(3), **3(34)** (with reg. 5))

#### **Amendment of section 319 of and Schedule 11A to the Communications Act 2003 (product placement of electronic cigarettes on television)**

**45.**—(1) Section 319 of the Communications Act 2003<sup>M5</sup> (OFCOM's standards code) is amended as follows—

- (a) at the beginning of subsection (9) insert “ Subject to subsection (10), ”;
- (b) after subsection (9) insert—

“(10) So far as relating to product placement falling within paragraph 4(ba) of Schedule 11A (electronic cigarettes and electronic cigarette refill containers), subsection (2)(fa) applies only in relation to programmes the production of which begins after 19th May 2016.”.

(2) In Schedule 11A (Restrictions on Product Placement)—

- (a) at the end of paragraph 4(b) omit “or”;
- (b) after paragraph 4(b) insert—
  - (i) “(ba) of electronic cigarettes or electronic cigarette refill containers; or”;
- (c) in paragraph 6(2)(a) omit “electronic or smokeless cigarettes, ”;
- (d) in paragraph 9 after the definition of “connected” insert—
  - ““electronic cigarette” has the meaning given in section 368R;
  - “electronic cigarette refill container” has the meaning given in section 368R;”.

#### **Marginal Citations**

**M5** 2003 c.21. Relevant amendments were made by [S.I. 2010/831](#).

### **Amendment of Part 4A of the Communications Act 2003 (on-demand programme services)**

**46.**—(1) Part 4A of the Communications Act 2003 <sup>M6</sup> (on-demand programme services) is amended as follows.

(2) In section 368F (advertising) after subsection (1)(a) insert—

“(aa) electronic cigarettes or electronic cigarette refill containers;”.

(3) In section 368G (sponsorship) after subsection (1) insert—

“(1A) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored for the purpose of promoting electronic cigarettes or electronic cigarette refill containers.”.

(4) In section 368H (product placement)—

(a) at the end of subsection (4)(b) omit “or”;

(b) after subsection (4)(b) insert—

“(ba) it is of electronic cigarettes or electronic cigarette refill containers, or”;

(c) at the beginning of subsection (15) insert “ Subject to subsection (15A), ”;

(d) after subsection (15) insert—

“(15A) Subsection (4)(ba) applies only in relation to programmes the production of which begins after 19th May 2016.”.

(5) In section 368R (interpretation of Part 4A) in subsection (1) after the definition of “children's programme” insert—

““electronic cigarette” means a product that—

(a) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether the product is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), and

(b) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 (S.I. 2012/1916) or a medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002 (S.I. 2002/618);

“electronic cigarette refill container” means a receptacle that—

(a) contains a nicotine-containing liquid, which can be used to refill an electronic cigarette, and

(b) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or a medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002;”.

#### **Marginal Citations**

**M6** Part 4A was inserted by S.I. 2009/2979. There have been subsequent amendments, but none is relevant.

**Changes to legislation:**

There are currently no known outstanding effects for the The Tobacco and Related Products Regulations 2016, PART 7.