



Finance Act 2016

2016 CHAPTER 24

PART 11

ADMINISTRATION, ENFORCEMENT AND SUPPLEMENTARY POWERS

Raw tobacco

179 Raw tobacco approval scheme

(1) After section 8J of TPDA 1979 insert—

“8K Raw tobacco: definitions

- (1) The following definitions apply for the purposes of sections 8L to 8U.
- (2) “Raw tobacco” means the leaves or any other part of a plant of the genus *Nicotiana* but does not include—
 - (a) any part of a living plant, or
 - (b) a tobacco product.
- (3) “Controlled activity” means any activity involving raw tobacco.

8L Raw tobacco: requirement for approval

- (1) A person may not carry on a controlled activity otherwise than in accordance with an approval given by the Commissioners under this section.
- (2) The Commissioners may approve a person to carry on a controlled activity only if satisfied that—
 - (a) the person is a fit and proper person to carry on the activity, and
 - (b) 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 section 2(1).

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- (3) An approval may—
 - (a) specify the period of approval, and
 - (b) be subject to conditions or restrictions.
- (4) The Commissioners may at any time for reasonable cause revoke or vary the terms of an approval.

8M Regulations about approval etc.

The Commissioners may, by or under regulations, make provision—

- (a) regulating the approval of persons under section 8L,
- (b) about the form, manner and content of an application for approval,
- (c) specifying conditions or restrictions to which an approval is subject,
- (d) regulating the variation or revocation of an approval, or of any condition or restriction to which an approval is subject, and
- (e) about the surrender or transfer of an approval.

8N Exemptions from requirement for approval

- (1) The Commissioners may by regulations provide that section 8L(1) does not apply in relation to a person (an “exempt person”) who—
 - (a) carries on any controlled activity, or a controlled activity of a specified description, and
 - (b) meets the conditions (if any) specified by or under the regulations.
- (2) The regulations may require an exempt person to comply with specified requirements or restrictions relating to the carrying on of a controlled activity.
- (3) The regulations may, in particular—
 - (a) specify the maximum quantity of raw tobacco that may be involved in a controlled activity carried on by an exempt person;
 - (b) require an exempt person to keep records relating to the activity.

8O Raw tobacco: penalties

- (1) A person who contravenes section 8L(1) is liable to a penalty of an amount equal to the amount of duty that would be charged on the relevant quantity of smoking tobacco.
- (2) A person who contravenes a requirement or restriction imposed by regulations under section 8N is liable to a penalty of—
 - (a) £250, or
 - (b) if less, an amount equal to the amount of duty that would be charged on the relevant quantity of smoking tobacco.
- (3) The relevant quantity of smoking tobacco is equal to the quantity by weight of the raw tobacco in respect of which the controlled activity contravening section 8L(1) or (as the case may be) regulations under section 8N has been carried on.

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- (4) In this section a reference to “smoking tobacco” is a reference to tobacco products within section 1(1)(d) (“other smoking tobacco”).

8P Penalties under section 8O: special reduction

- (1) If the Commissioners think it right because of special circumstances, they may reduce a penalty under section 8O.
- (2) In subsection (1) “special circumstances” does not include ability to pay.
- (3) In subsection (1) the reference to reducing a penalty includes a reference to—
- (a) staying a penalty, and
 - (b) agreeing a compromise in relation to proceedings for a penalty.

8Q Penalties under section 8O: assessment of penalty

- (1) Where a person becomes liable for a penalty under section 8O—
- (a) the Commissioners may assess the penalty, and
 - (b) if they do so, they must notify the person liable.
- (2) A notice under subsection (1)(b) must state the contravention in respect of which the penalty is assessed.
- (3) A penalty payable under section 8O must be paid before the end of the period of 30 days beginning with the day on which the notification of the penalty is issued.
- (4) An assessment is to be treated as an amount of duty due from the person liable for the penalty and may be recovered accordingly.
- (5) An assessment may not be made later than one year after evidence of facts sufficient in the opinion of the Commissioners to indicate the contravention comes to their knowledge.
- (6) Two or more contraventions may be treated by the Commissioners as a single contravention for the purposes of assessing a penalty payable under section 8O.

8R Penalties under section 8O: reasonable excuse

- (1) A person is not liable to a penalty under section 8O in respect of a contravention if—
- (a) the contravention is not deliberate, and
 - (b) the person satisfies the Commissioners that there is a reasonable excuse for the contravention.
- (2) For the purposes of subsection (1)(b)—
- (a) where the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the contravention;
 - (b) where the person had a reasonable excuse for the relevant act or failure but the excuse has ceased, the person is to be treated as having

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continued to have the excuse if the contravention is remedied without unreasonable delay after the excuse has ceased.

8S Penalties under section 8O: double jeopardy

A person is not liable to a penalty under section 8O in respect of a contravention in respect of which the person has been convicted of an offence.

8T Forfeiture of raw tobacco

Where a person carries on a controlled activity in relation to raw tobacco in contravention of section 8L(1) or a requirement or restriction imposed by regulations under section 8N, the raw tobacco is liable to forfeiture.

8U Raw tobacco: application of Customs and Excise Management Act 1979

The Commissioners may by regulations provide that specified provisions of the Customs and Excise Management Act 1979 apply (with or without modification)—

- (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) In section 9 of TPDA 1979 (regulations)—

- (a) in subsection (1), after “statutory instrument and” insert “, subject to subsection (1A), ”, and
- (b) after subsection (1) insert—

“(1A) A statutory instrument containing regulations under section 8M, 8N or 8U is subject to annulment in pursuance of a resolution of the House of Commons.”

(3) In section 13A(2) of FA 1994 (customs and excise reviews and appeals: “relevant decisions”), after paragraph (g) insert—

- “(gb) any decision by HMRC that a person is liable to a penalty, or as to the amount of the person's liability, under section 8O of the Tobacco Products Duty Act 1979;”.

(4) In Schedule 5 to FA 1994 (decisions subject to review and appeal) after paragraph 5 insert—

“5A Any decision—

- (a) to refuse an approval under section 8L of the Tobacco Products Duty Act 1979 (raw tobacco: approval to carry on a controlled activity);
- (b) to impose a condition or restriction on, or to revoke or vary the terms of, an approval under that section.”

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- (5) The amendments made by this section come into force on such day as the Commissioners for Her Majesty's Revenue and Customs may by regulations made by statutory instrument appoint.
- (6) Regulations under subsection (5) may appoint different days for different purposes.

Commencement Information

- I1** [S. 179\(1\)](#) in force at 6.12.2016 for the purposes of the amendment made by that subsection for specified purposes by [S.I. 2016/1171](#), [reg. 2\(1\)](#)
- I2** [S. 179\(1\)](#) in force at 1.4.2017 for the purposes of the amendment made by that subsection in so far as not already in force by [S.I. 2016/1171](#), [reg. 2\(2\)](#)
- I3** [S. 179\(2\)-\(4\)](#) in force at 6.12.2016 for the purposes of the amendments made by those subsections by [S.I. 2016/1171](#), [reg. 2\(1\)](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)