

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4724 GIBRALTAR Friday 12th June 2020

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LEGAL NOTICE NO. 214 OF 2020

## EUROPEAN UNION WITHDRAWAL ACT 2019

### TOBACCO ACT, 1997 (AMENDMENT) REGULATIONS 2020

In exercise of the powers conferred upon him by section 11C of the European Union (Withdrawal) Act 2019 the Chief Minister has made these Regulations-

#### **Title.**

1. These Regulations may be cited as the Tobacco Act, 1997 (Amendment) Regulations 2020.

#### **Commencement.**

2. These Regulations come into operation on the day appointed by the Chief Minister by notice in the Gazette, and different days may be appointed for different provisions and for different purposes.

#### **Amendment of Tobacco Act, 1997.**

3.(1) The Tobacco Act, 1997 (“the Act”) is amended in accordance with the provisions of this regulation.

(2) In section 2 of the Act-

(a) after the definition of “airport” insert-

““cigarette” means a tobacco product that can be consumed by means of a combustion process and which is-

- (a) a roll of tobacco (or of tobacco and another substance) capable of being smoked as it is, but which is not a cigar or a cigarillo; or
- (b) a roll of tobacco (or of tobacco and another substance) which is designed to be, by simple non-industrial handling-
  - (i) wrapped in cigarette paper, or
  - (ii) inserted into a cigarette-paper tube;

“cigar” means a tobacco product that can be consumed by means of a combustion process and, given its properties and normal consumer expectations, is exclusively intended to be smoked as it is, and which is-

- (a) a roll of tobacco (or of tobacco and another substance) which has an outer wrapper of natural tobacco; or
- (b) a roll of tobacco (or of tobacco and another substance) which-
  - (i) has an outer wrapper-
    - (aa) of the normal colour of a cigar,
    - (bb) made of reconstituted tobacco, and
    - (cc) covering the product in full (including the filter but not, in the case of a cigar with a mouthpiece, the mouthpiece),
  - (ii) is filled with a threshed blend of tobacco (or of tobacco and another substance),
  - (iii) has a unit weight, not including any filter or mouthpiece, of not less than 2.3 grams and not more than 10 grams, and
  - (iv) has a circumference, over at least one third of its length, of not less than 34 millimetres;

“cigarillo” means a cigar with a unit weight of not more than 3 grams;”;

(b) after the definition of “commercial premises” insert-

““Convention” means the World Health Organisation Framework Convention on Tobacco Control adopted on 21 May 2003;”;

(c) after the definition “goods vehicle” insert-

““hand-rolling tobacco” means a tobacco product-

- (a) in relation to which more than 25% by weight of the tobacco particles have a cut width of less than 1.5 millimetres;
- (b) which is sold or intended to be sold for making into cigarettes by hand, including making into cigarettes by hand with the aid of a mechanical device; or
- (c) which is of a kind used for making into cigarettes by hand, including making into cigarettes by hand with the aid of a mechanical device;”;

(d) after the definition of “premises” insert-

““Protocol” means the Protocol to Eliminate Illicit Trade in Tobacco Products adopted on 12 November 2012;”;

(e) after the definition of “sale by way of wholesale dealing” insert-

““supply chain” means an activity undertaken pursuant to-

- (a) a permit under Part III (Importation and Exportation of Tobacco);
- (b) a licence issued under Part IVA (Manufacturing of Tobacco Products); or
- (c) any other activity that requires a licence or permit under this Act and which the Minister specifies by Notice in the Gazette;”;

(f) in the definition of “tobacco” after “or not” insert “, and unless the context requires otherwise, includes any product that is made with or contains tobacco”.

(3) After section 6(3)(a) of the Act insert-

“(aa) it shall not be issued to a person under the age of 18 years,

(ab) the licensee must not require or permit an employee under the age of 18 years to sell tobacco,

(ac) the licensee must disclose such information about the contents and emissions of tobacco products as the Collector of Customs requires.”.

(4) After section 6B insert-

*“Cross-border distance selling*

**Prohibition on cross-border distance selling.**

6C.(1) A person, whether or not that person is in possession of a valid retail licence under section 6, who undertakes the cross-border distance sale of tobacco commits an offence.

(2) In this section-

“cross-border distance sale” means the sale from Gibraltar, whether through the medium of the internet, telecommunication or other technology, to a consumer where, at the time the consumer orders tobacco from the seller, the consumer is located outside Gibraltar.”.

(5) After section 11F insert-

*“Record keeping*

**Record-keeping: importers and exporters.**

11G.(1) Every person engaged in the importation of tobacco under the authority of a permit issued under section 9(1) or the exportation of tobacco under the authority of a permit under section 11(1) must maintain complete and accurate records of all relevant transactions.

- (2) The following must be made available to the Collector of Customs upon request-
  - (a) general information on market volumes, trends, forecasts and other relevant information; and
  - (b) the quantities of tobacco products in the licensee’s possession, custody or control kept in stock, in tax and customs warehouses under the regime of transit or transshipment or duty suspension as of the date of the request.
- (3) In the case of tobacco sold for export, or subject to duty suspended movement in transit or transshipment under the authority of a permit under section 11(1) and if the Collector of Customs requests, the permit holder must at the time of export and by electronic means provide the Collector of Customs with the following information-
  - (a) the date of shipment from the last point of physical control of the products;
  - (b) the details concerning the products shipped (including brand, amount, warehouse);
  - (c) the intended shipping routes and destination;
  - (d) the identity of the natural or legal person to whom the products are being shipped;
  - (e) the mode of transportation, including the identity of the transporter;
  - (f) the expected date of arrival of the shipment at the intended shipping destination; and
  - (g) intended market of retail sale or use.
- (4) The records referred to in subsection (1) must be-
  - (a) maintained for at least four years;
  - (b) made available to the Collector of Customs; and
  - (c) maintained in a format that may be specified by the Collector of Customs.

(5) A person commits an offence if that person -

- (a) fails to comply with the provisions of this section regarding the making and keeping of records; or
- (b) does not provide information or records when required to do so by this section or when required by the Collector of Customs to do so.

and, on summary conviction, is liable to a fine not exceeding level 5 on the standard scale.”.

(6) In section 12(1) and (2), after “section 6 above”, insert “or a manufacturing licence issued under section 14A”.

(7) In section 13(2), after “section 6 above”, insert “or a manufacturing licence issued under section 14A”.

(8) In section 14(1), after paragraph (b), insert-

“(ba) the holder of a valid manufacturing licence, in manner and circumstances permitted by that licence;”.

(9) After section 14 of the Act insert the following Part-

**“PART IVA  
MANUFACTURING OF TOBACCO PRODUCTS**

**Regulation of the manufacturing of tobacco products.**

14A.(1) No person may undertake the manufacture of tobacco products unless authorised to do so under a licence issued by the Collector of Customs and a licence may be issued subject to such terms, conditions and restrictions as he considers necessary or expedient.

(2) A licence issued under this section may be suspended, amended, revoked and renewed.

(3) Conditions may be included, amended or removed from any licence and at any time by the Collector.

(4) A licence issued under subsection (1) is, unless the licence states otherwise, valid for a maximum period of 12 months from the date of issue.

**Application for licence: information requirements.**

14B.(1) An applicant for a licence under section 14A must provide such information as the Collector of Customs requires, including-

- (a) where the applicant is a natural person, information regarding that person's identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and any other information to allow identification to take place;
  - (b) when the applicant is a legal person, information regarding its identity, including full legal name, trade name, business registration number, date and place of incorporation, location of corporate headquarters and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its directors and of any designated legal representatives, including any other information to allow identification to take place;
  - (c) precise business location of the manufacturing unit(s), warehouse location and production capacity of the business run by the applicant;
  - (d) details of the tobacco products covered by the application, such as product description, name, registered trade mark if any, design, brand;
  - (e) documentation or a declaration regarding any criminal records;
  - (f) complete identification of the bank accounts intended to be used in the relevant transactions and other relevant payment details; and
  - (g) a description of the intended use and intended market of sale of the tobacco products, with particular attention to ensuring that tobacco product production or supply is commensurate with reasonably anticipated demand.
- (2) In any application for a renewal or variation of a licence, the applicant must provide the information set out in subsection (1) where there has been any change to the information supplied to the Collector of Customs at the time of the original application.

**Consent to changes.**

14C. The prior written consent of the Collector of Customs is required-

- (a) before any change of location of the business; and
- (b) before any significant change in information relevant to the activities as licensed.

**Conditions of a licence.**

14D. A licence issued under this Part must be subject to the following conditions-

- (a) it is not transferable; and

- (b) the licensee must disclose such information about the contents and emissions of tobacco products as the Collector of Customs requires.

**Inspections etc.**

14E. The Collector of Customs must undertake such periodic review, renewal, inspection or audit of licences issued under section 14A as the Collector of Customs deems appropriate.

**Unlicensed activity.**

14F. A person who undertakes an activity set out in section 14A without a licence commits an offence and is liable on summary conviction to a fine up to level 5 on the standard scale.

**Breach of condition in licence.**

14G. A person who breaches a condition of a licence issued under section 14A and 14D commits an offence and is liable on summary conviction to a fine up to level 5 on the standard scale.

**Forfeiture.**

14H.(1) Where a court is satisfied that an offence has been committed contrary to any provision in this Part, that court may, in addition to any penalty that it may have imposed, and upon giving notice to show cause why a forfeiture order should not be made, order the forfeiture of the tobacco products used in or for the commission of the offence.

- (2) Tobacco products forfeited under this section must be destroyed.

*Record keeping*

**Record-keeping: manufacturer.**

14I.(1) Every person engaged in the manufacturing of tobacco products must maintain complete and accurate records of all relevant transactions and such records must allow for the full accountability of materials used in the production of the tobacco products.

- (2) The following must be made available to the Collector of Customs upon request-
  - (a) general information on market volumes, trends, forecasts and other relevant information; and

- (b) the quantities of tobacco products in the licensee's possession, custody or control kept in stock, in tax and customs warehouses under the regime of transit or transshipment or duty suspension as of the date of the request.
- (3) The records referred to in subsection (1) must be-
- (a) maintained for at least four years;
  - (b) made available to the Collector of Customs; and
  - (c) maintained in a format that may be specified by the Collector of Customs.
- (4) A person who fails to comply with the provisions of this section or with a request by the Collector of Customs is guilty of an offence and, on summary conviction, is liable to a fine not exceeding level 5 on the standard scale.

*Restrictions on unlicensed tobacco products*

**Restrictions on unlicensed tobacco products.**

14J. A person who sells, whether by wholesale or retail or exports a tobacco product that is manufactured in Gibraltar other than in accordance with a licence issued under section 14A commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**PART IVB  
TRACEABILITY AND SECURITY FEATURES**

**Scope of Part.**

14K.(1) Subject to subsection (2), section 14O has effect in relation to-

- (a) cigarettes or hand-rolling tobacco supplied in Gibraltar on or after 31 December 2021, and
  - (b) tobacco products (other than cigarettes or hand-rolling tobacco) supplied in Gibraltar on or after 20 May 2024.
- (2) Section 14O does not have effect in relation to-
- (a) cigarettes or hand-rolling tobacco manufactured, or imported into Gibraltar, before 31 December 2021 unless the product in question is supplied in Gibraltar on or after 31 December 2022; and
  - (b) tobacco products (other than cigarettes or hand-rolling tobacco) which are manufactured, or imported into Gibraltar, before 20 May 2024 unless the product in question is supplied in Gibraltar on or after 20 May 2026.



- (3) Sections 14P to 14S have effect in relation to-
- (a) cigarettes or hand-rolling tobacco-
    - (i) manufactured in Gibraltar on or after 31 December 2021, or
    - (ii) manufactured outside Gibraltar that are imported into Gibraltar on or after that date for supply in Gibraltar; and
  - (b) tobacco products (other than cigarettes or hand-rolling tobacco)-
    - (i) manufactured in the Gibraltar on or after 20 May 2024, or
    - (ii) manufactured outside Gibraltar that are imported into Gibraltar on or after that date for supply in Gibraltar.
- (4) Section 14V has effect in relation to-
- (a) cigarettes or hand-rolling tobacco-
    - (i) manufactured in Gibraltar on or after 31 December 2021, or
    - (ii) imported into Gibraltar on or after that date, for supply in Gibraltar; and
  - (b) tobacco products (other than cigarettes or hand-rolling tobacco)-
    - (i) manufactured in the Gibraltar on or after 20 May 2024, or
    - (ii) imported into Gibraltar on or after that date, for supply in Gibraltar.

**Interpretation of Part.**

14L. In this Part-

“anti-tampering device” has the meaning given in Article 2(7) of the Commission Implementing Regulation;

“authentication elements” are the authentication elements set out in the Annex to the Commission Implementing Decision;

“authentication elements provider” means a person meeting the description in section 14W(1);

“the Commission Implementing Decision” means the Commission Implementing Decision (EU) 2018/576 of 15 December 2017 on technical standards for security features applied to tobacco products as applied by the Tobacco Products (Traceability and Security Features) Regulations 2020;

“the Commission Implementing Regulation” means the Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products as applied by the Tobacco Products (Traceability and Security Features) Regulations 2020;

“consumer” means a person who is acting for purposes which are outside that person’s trade, business, craft or profession;

“deactivation notice” means a notice given under section 14ZF(4);

“economic operator” has the meaning given in Article 2(2) of the Commission Implementing Regulation;

“external auditor” means a person appointed in accordance with section 14R(1)(b);

“manufacturer” means a person who-

- (a) manufactures tobacco products; or
- (b) puts a name, trademark, or other distinguishing mark, on tobacco products by which the person is held out to be the manufacturer or originator,

and “manufacture” is to be construed accordingly;

“primary repository” means a data storage facility required under Article 26(1) of the Commission Implementing Regulation to be established by manufacturers and importers of tobacco products;

“retailer” means a person who sells, or offers or agrees to sell, a tobacco product to a consumer;

“security feature” means the security feature required to be carried by unit packets of tobacco products by section 14V;

“tobacco product” means a product that can be consumed and consists, in whole or in part, of tobacco;

“the Gibraltar ID Issuer” means the entity appointed for Gibraltar in accordance with Article 3(1) of the Commission Implementing Regulation;

“unique identifier” has the meaning given in Article 2(1) of the Commission Implementing Regulation;

“unit packet” in relation to a tobacco product, means the smallest individual packaging in which that product is, or is intended to be, presented for sale by retail, but does not include any transparent wrapper.

**Meaning of tobacco products supplied in Gibraltar.**

14M.(1) For the purposes of this Part, tobacco products are supplied in Gibraltar if, in the course of a business, a person-

- (a) supplies the product-
  - (i) for consumption in Gibraltar or through the travel retail sector of Gibraltar, or
  - (ii) with a view to it being supplied for consumption in Gibraltar or through the travel retail sector of Gibraltar;
- (b) offers or agrees to supply it in those circumstances; or
- (c) exposes or possesses it for supply in those circumstances,

and “supply in Gibraltar” is to be construed accordingly.

(2) In this section “travel retail sector” means retail outlets at which tobacco products may be purchased only by people travelling on journeys to destinations outside Gibraltar.

14N. *Not used.*

*Prohibition from supply of non-compliant tobacco products*

**Prohibition from supply of non-compliant tobacco products.**

14O.(1) A person must not supply tobacco products in Gibraltar unless those products meet the requirements in subsections (2) to (4).

- (2) The unit packet of a tobacco product must be marked with a unique identifier that-
  - (a) has been issued by the Gibraltar ID Issuer and meets the technical specifications set out in Chapters II and IV of the Commission Implementing Regulation, and
  - (b) meets the requirements in-
    - (i) section 14P(2), or
    - (ii) in cases where the unique identifier has been applied by a person in the UK or a member State, Article 15(1) of the Tobacco Products Directive.
- (3) All movements of, and all transactions relating to, the unit packet of a tobacco product must have been recorded and transmitted in accordance with Chapter VI of the Commission Implementing Regulation.

- (4) The unit packet of a tobacco product must carry a security feature.
- (5) In this section, the “Tobacco Products Directive” means Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of 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.

*Traceability system*

**Integrity requirements of a unique identifier.**

14P.(1) Where a manufacturer or importer of tobacco products is required to mark each unit packet with a unique identifier under Article 6 of the Commission Implementing Regulation, the manufacturer or importer must ensure that, in addition to meeting the requirements in Section 2 of Chapter II and Chapter IV of that Regulation, the requirements in subsection (2) are also met.

- (2) The unique identifier-
  - (a) must be-
    - (i) irremovably printed or affixed, and
    - (ii) indelible,
  - (b) must remain intact when the packet is opened; and
  - (c) must not be partially or totally hidden or interrupted by any other item, including through tax stamps or price marks.

**Provision of equipment for recording and transmitting information.**

14Q. Manufacturers of tobacco products must provide all economic operators with the equipment necessary for those operators to comply with the recording and electronic transmission of information requirements in Articles 32 and 33 of the Commission Implementing Regulation.

**Primary repository requirements.**

14R.(1) Where a manufacturer or importer of tobacco products is required under Article 26 of the Commission Implementing Regulation to establish a primary repository for the purpose of hosting data relating to tobacco products, the manufacturer or importer must-

- (a) ensure that the repository is physically located in Gibraltar; and

- (b) appoint an external auditor approved by the Collector of Customs to carry out the audits referred to in Article 15 of the Commission Delegated Regulation in relation to that repository.
- (2) Where the provider of a primary repository has issued to a manufacturer or importer of tobacco products a written declaration as to that provider's technical expertise or financial independence, the manufacturer or importer must-
- (a) keep and preserve the declaration for a period of 6 years beginning on the date the declaration is received by the manufacturer or importer; and
  - (b) make the declaration available for inspection by a Customs Officer when required.

**Access to anti-tampering device records.**

14S. Where the Collector of Customs has made a request in writing under Article 7(5) of the Commission Implementing Regulation to a manufacturer or importer of tobacco products for full access to the record of the verification process created by an anti-tampering device, the manufacturer or importer must provide the Collector of Customs with such access within a period of 30 days beginning on the day on which the request is made.

**External auditor: annual report on primary repository.**

14T.(1) An external auditor must submit an annual report to the Collector of Customs.

- (2) The report must-
- (a) assess any irregularities in relation to access; and
  - (b) include any other information specified by the Collector for the purpose of the report.
- (3) The annual report must be submitted to the Collector of Customs in such manner as the Collector of Customs may require.
- (4) An external auditor must as soon as reasonably practicable after carrying out, or attempting to carry out, an audit notify the Collector of Customs of-
- (a) any irregularities in relation to physical and virtual access to a primary repository; or
  - (b) any non-compliance with the relevant legislative requirements.
- (5) A notification under subsection (4) must be provided to the Collector of Customs in such manner as the Collector of Customs may require.

- (6) In this section, “relevant legislative requirements” means the requirements in Articles 25 and 26 of the Commission Implementing Regulation.

**Access to stored data in duly justified cases.**

14U.(1) The Collector of Customs may grant manufacturers and importers of tobacco products access to stored data in cases where the Collector of Customs is satisfied that-

- (a) access is duly justified; and
  - (b) commercially sensitive information remains adequately protected.
- (2) An application for access must be made to the Collector of Customs in such manner as the Collector of Customs may require.
- (3) The Collector of Customs must, as soon as reasonably practicable after receiving the application, give notice to the applicant-
- (a) granting access; or
  - (b) rejecting the application.
- (4) Where access is granted, the notice under subsection (3)(a) must specify the rights of access granted to the applicant, including the duration and purpose of those rights.
- (5) In this section, “stored data” means information stored in the primary repository established by the applicant.

*Security feature system*

**Unit packets must carry a security feature.**

14V.(1) Manufacturers and importers of tobacco products must ensure that each unit packet that they manufacture or import for supply in Gibraltar carries a tamper-proof security feature that meets the requirements in subsections (2) to (5).

- (2) The security feature must comply with a notice (that has not been replaced or revoked) given by the Collector of Customs to manufacturers and importers, in accordance with Articles 3(3) and 6(2) of the Commission Implementing Decision, as to-
- (a) the combination or combinations of authentication elements from which the security feature must be composed; and
  - (b) the number of authentication elements to be provided by an authentication elements provider.

- (3) The security feature must be-
  - (a) irremovably applied to a unit packet of tobacco product by-
    - (i) printing or affixing, or
    - (ii) a combination of printing and affixing, and
  - (b) indelible.
- (4) The security feature must not be partially or totally hidden or interrupted by any other item, including through tax stamps, price marks, or other marking which is required under or by virtue of any enactment or the Commission Implementing Regulation.
- (5) The security feature must be applied in a manner that-
  - (a) allows for the identification and verification of the authenticity of a unit packet of tobacco product for the entire time that pack is supplied; and
  - (b) protects the security feature from being replaced, reused or modified in any way.

**Verification of authenticity of tobacco products.**

14W. Where the Collector of Customs has made a request in writing under Article 7(2) of the Commission Implementing Decision to a manufacturer or importer to provide samples of tobacco products currently supplied in Gibraltar, the manufacturer or importer must provide the samples to the Collector of Customs in unit packet format (including the applied security feature) within a period of 30 days beginning on the day on which the request is made.

*Independence of service providers*

**Authentication elements provider.**

- 14X.(1) An authentication elements provider is an independent third party provider of authentication elements who meets the criteria in Article 8(1) of the Commission Implementing Decision.
- (2) Where an authentication elements provider subcontracts the provision of authentication elements, the provider must ensure that the subcontractor meets the criteria in Article 8(1) of the Commission Implementing Decision.
  - (3) An authentication elements provider must without delay notify the Collector of Customs about any change in circumstances relating to the criteria referred to in Article 8(1) of the Commission Implementing Decision that-

- (a) is capable of affecting the independence of the authentication elements provider or the provider's subcontractors; and
  - (b) subsists for 2 consecutive calendar years.
- (4) An authentication elements provider must without delay notify the Collector of Customs about any occurrence of threats, or other attempts at exercising undue influence, that may actually or potentially undermine the independence of the provider or the provider's subcontractors.
- (5) A notification under this section must be given to the Collector of Customs in such manner as the Collector of Customs may require.

**Declaration of independence from the tobacco industry.**

14Y.(1) Specified providers and authentication elements providers must provide the Collector of Customs with an annual declaration that they have conformed with the independence criteria set out in-

- (a) in the case of specified providers, Article 35(2) of the Commission Implementing Regulation; and
  - (b) in the case of authentication elements providers, Article 8(1) of the Commission Implementing Decision.
- (2) The annual declaration referred to in subsection (1) must include-
- (a) a full list of services provided to the tobacco industry during the last calendar year
  - (b) a statement of the amount of annual worldwide turnover and the amount of that turnover generated from goods and services supplied to the tobacco industry, referred to in, and determined in accordance with, Article 35(2)(a) of the Commission Implementing Regulation or Article 8(1)(a) of the Commission Implementing Decision, as the case may be; and
  - (c) individual declarations of financial independence from the tobacco industry provided by all management members of the specified provider or authentication elements provider.
- (3) For the purposes of this section, a "specified provider" is-
- (a) the Gibraltar ID Issuer;
  - (b) a provider of a primary repository; or
  - (c) a provider of an anti-tampering device.



(4) Where-

- (a) a specified provider subcontracts the provision of unique identifiers, primary repositories or anti-tampering devices; or
  - (b) an authentication elements provider subcontracts the provision of authentication elements, the subcontractor must also provide a declaration in accordance with subsection (1).
- (5) The declaration referred to in subsection (1) must be made in such form as the Collector of Customs may require.
- (6) In this section “management member” means any person responsible for the management of the undertaking or the group of undertakings, including any member of the board of directors or of any form of governing body.

*Deactivation of identifier codes*

**Discretion to deactivate identifier codes.**

14Z. For the purposes of Articles 15(4), 17(4) and 19(4) of the Commission Implementing Regulation, the Collector of Customs may exercise the discretion set out in those Articles.

**Circumstances in which economic operator identifier codes may be deactivated.**

14ZA.(1) Subject to section 14ZC, the Collector of Customs may exercise the discretion set out in Article 15(4) of the Commission Implementing Regulation where Conditions A to C are met.

- (2) Condition A is that the person whose identifier code is being considered for deactivation-
- (a) has failed to comply with a requirement of this Part or the Commission Implementing Regulation on three or more occasions within any 24-month period and, as a result of each of those failures, non-compliant tobacco products have been seized;
  - (b) has failed to comply with a notice under section 14ZE by the deadline for compliance set out in that notice;
  - (c) has deliberately provided false information in an application to the Gibraltar ID Issuer for an identifier code that is required or permitted to be made by that person under Chapter III of the Commission Implementing Regulation;

- (d) has a conviction for an offence, other than a conviction that is treated as spent for the purposes of the Criminal Procedure and Evidence Act 2011, under this Act or the Imports and Exports Act;
  - (e) has, within the last 12 months, become liable to a penalty or penalties under the under this Act or the Imports and Exports Act exceeding £10,000; or
  - (f) has not used the identifier code in the last 12 months.
- (3) Condition B is that the Collector of Customs has given written notice to the person which-
- (a) confirms that the Collector of Customs is considering exercising the discretion in Article 15(4) of the Commission Implementing Regulation to require the Gibraltar ID Issuer to deactivate the economic operator identifier code allocated to that person;
  - (b) identifies-
    - (i) in cases where subsection (2)(a) applies, the requirements with which the person has failed to comply and the occasions on which tobacco products were seized as a result of those failures,
    - (ii) in cases where subsection (2)(b) applies, the notice under section 14ZE with which the person has failed to comply,
    - (iii) in cases where subsection (2)(c) applies, the false information provided in an application,
    - (iv) in cases where subsection (2)(d) applies, the offence committed under this Act or the Imports and Exports Act for which the person has been convicted,
    - (v) in cases where subsection (2)(e) applies, the contravention of those Acts in relation to which the person has become liable for a penalty, or
    - (vi) in cases where subsection (2)(f) applies, the date on which the identifier code was last used;
  - (c) states that the recipient may make representations in writing to the Collector of Customs; and
  - (d) states the date by which any representations must be received by the Collector of Customs, being a date no earlier than 14 days after the date on which notice is given.

- (4) Condition C is that the Collector of Customs, on being satisfied that deactivation would be duly justified, must give written notice to the person of the decision to exercise the discretion stating-
- (a) the date from which the deactivation will have effect; and
  - (b) the period for which the deactivation is to remain in force, being a period no longer than-
    - (i) is reasonable to protect the traceability system for tobacco products, or
    - (ii) in cases where subsection (2)(d) applies, the period before the conviction becomes spent.
- (5) For the purposes of subsection (2)(e), a person does not become liable to a penalty until the latest of-
- (a) the date on which the penalty becomes payable under the Act under which the penalty is imposed;
  - (b) the final determination of an appeal against that penalty; or
  - (c) the withdrawal of any appeal referred to in paragraph (b).

**Application to cancel a deactivation notice.**

- 14ZB.(1) A person may apply to the Collector of Customs for a deactivation notice given to that person to be cancelled.
- (2) The Collector of Customs must, as soon as reasonably practicable after receiving the application-
- (a) agree to the application;
  - (b) refuse the application in writing, giving reasons for the refusal; or
  - (c) request additional information.
- (3) Where the Collector of Customs has requested additional information, the Collector of Customs must, as soon as reasonably practicable after receiving the additional information-
- (a) agree to the application; or
  - (b) refuse the application in writing, giving reasons for the refusal.

**Restriction on re-application.**

14ZC.(1) A person that is the subject of a deactivation notice must not apply for an economic operator identifier code under Article 14 of the Commission Implementation Regulation during the period of deactivation set out in that notice.

(2) In cases where a person has acted contrary to the restriction imposed by subsection (1) and obtained an economic operator identifier code, the Collector of Customs may exercise the discretion set out in Article 15(4) of the Commission Implementing Regulation without the conditions referred to in section 14ZA being met.

*Enforcement*

**Forfeiture.**

14ZD.(1) Where a person fails to comply with any requirement in this Part or the Commission Implementing Regulation in relation to tobacco products or an item of aggregate packaging, those products or items of packaging are liable to forfeiture.

(2) Tobacco products forfeited under this section must be destroyed.

**Compliance notices.**

14ZE.(1) If a customs officer is satisfied that a person is not complying with one or more of the requirements in this Part or the Commission Implementing Regulation, the officer may give the person a notice requiring the person to remedy the non-compliance.

(2) A notice under subsection (1) must-

- (a) state that the officer is satisfied that there is or has been a contravention of the requirements in this Part or the Commission Implementing Regulation;
- (b) specify the requirements that are or have been contravened;
- (c) give reasons in support of the statement referred to in paragraph (a); and
- (d) specify the period within which the person is required to remedy the non-compliance.

*Reviews and appeals*

**Reviews and appeals.**

14ZF.(1) An appeal in respect of a decisions listed in subsection (2) may be made to the magistrates' court.

(2) The decisions are-

- (a) a rejection of an application under section 14U to access stored data;
- (b) a decision under section 14ZA to give, or as to the period of deactivation set out in, a deactivation notice;
- (c) a refusal of an application under section 14ZB to cancel a deactivation notice;
- (d) an issue of a notice under section 14ZE;
- (e) a decision to require the Gibraltar ID Issuer to deactivate a facility identifier code under Article 17(4) of the Commission Implementing Regulation; and
- (f) a decision to require the Gibraltar ID Issuer to deactivate a machine identifier code under Article 19(4) of the Commission Implementing Regulation.

*Administrative matters*

**Administration of communications and providing samples.**

14ZG.(1) The Collector of Customs may give directions as to matters of administration in relation to-

- (a) a submission, declaration or notification (“a communication”); or
- (b) a sample of tobacco products,

required to be made, given or provided to the Collector of Customs under this Part or the provisions of any of the Commission Implementing Regulation listed in subsection (3).

(2) A direction under subsection (1) may prescribe-

- (a) the form and method of delivery of a communication or a sample;
- (b) the information which must be provided with a communication or a sample;
- (c) when a communication or a sample must be made, given or provided; and
- (d) that a communication is to be made electronically.

(3) The provisions of the Commission Implementing Regulation are-

- (a) Article 7(2) (declaration by the provider of an anti-tampering device);
- (b) Article 8(4) (notification by the ID Issuer of algorithms);

- (c) Article 35(5) (notification by third-party providers of change in circumstances related to independence); and
- (d) Article 35(7) (notification by third-party providers of threats or attempts to undermine independence).

*Provision of information*

**Information contained in Repositories.**

14ZH.(1) Subject to subsection (3), the Collector of Customs must, upon request and with the consent of the Chief Minister, provide a relevant authority with information accessible by him under Article 25(1)(f), (k) and (l) and Article 27 of the Commission Implementing Regulation.

(2) A request under subsection (1) must-

- (a) specify the information that is to be provided; and
- (b) demonstrate that the information will be used in accordance with Article 25(2) of the Commission Implementing Regulation.

(3) Where the Collector of Customs is content that a request meets the requirements of subsection (2), he must provide that information in a timely manner and without restriction.

(4) In this section “relevant authority” means an authority of a member State of the European Union that provides an undertaking to reciprocate information equivalent to that obtained under the Commission Implementing Regulation.

**PART IVC  
MISCELLANEOUS**

**Licensed person not to acquire tobacco from unlicensed person.**

14ZI.(1) A person (A) who is licensed under this Act commits an offence if A purchases tobacco from another person (B) and A knows or ought reasonably to know that B does not have a licence to sell that tobacco to A.

(2) It is a defence to the commission of an offence under subsection (1) if A proves that A took all reasonable steps to ascertain that B was licensed for the purposes of selling tobacco to A.

**Offences on Gibraltar registered ships.**

14ZJ. Conduct which would constitute an offence under this Act if done on land in Gibraltar constitutes that offence if done on a ship registered in Gibraltar.

*False signs, markings etc.*

**False signs, markings etc.**

14ZK. A person who, in relation to any tobacco product-

- (a) manufactures;
- (b) sells, whether by wholesale or retail;
- (c) imports; or
- (d) exports,

any packaging or labelling which consists of or includes any sign, marking or label which that person knows or ought reasonably to know is false, that person commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

(10) In section 15(2) for “sections 5(4), 6(11) or 13(5) of this Act” substitute “sections 5(4), 6(11), 6C, 13(5), 14C, 14ZI(1) or 24F of this Act”.

(11) In section 16(1) after the words “forfeited to the Crown” insert “and destroyed”.

(12) For section 16A substitute-

**“Disposal of unclaimed tobacco.**

16A. The Government must destroy tobacco that comes into the possession of the police or customs if that tobacco is not subject to any claim.”.

(13) In section 22(1)(a) for “the Schedule” substitute “Schedule 1”.

(14) In section 23(1) for “and shall retain them for not less than one year” substitute “in such format as the Collector of Customs may require and shall retain them for not less than four years”.

(15) After section 24C of the Tobacco Act, 1997 insert -

*Due diligence*

**Requirement to conduct due diligence.**

24D.(1) This section applies to any person who is engaged in the supply chain of tobacco.

(2) A person falling within subsection (1) must-

- (a) conduct due diligence before the commencement of and during the course of, a business relationship;
- (b) monitor the sales to their customers to ensure that the quantities are commensurate with the demand for such products within the intended market of sale or use; and
- (c) report to the Collector of Customs any evidence that the customer is engaged in activities in contravention of its obligations arising from this Part.

(3) For the purposes of subsection (2)(a) due diligence includes requirements for customer identification, such as obtaining and updating information relating to the following-

- (a) establishing that the natural or legal person holds all relevant licences;
- (b) when the customer is a natural person, information regarding his or her identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and verification of his or her official identification;
- (c) when the customer is a legal person, information regarding its identity, including full name, trade name, business registration number, date and place of incorporation, registered office and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its directors and any designated legal representatives, including the representatives' names and verification of their official identification.

**Compliance with requirements.**

24E.(1) The Collector of Customs may, on the basis of the information reported to it under section 24D(2)(c) take all necessary measures to ensure compliance with the obligations arising under this Act and may designate a customer as a blocked customer.

(2) Where a person has been designated as a blocked customer by the Collector of Customs-



- (a) any existing business relationship shall be terminated by the parties to that business relationship; and
- (b) no person may enter into a business relationship with the blocked customer whilst any such designation remains in force.

#### **Reporting of suspicious transactions.**

- 24F.(1) Where the holder of a licence or permit issued under this Act knows or has reasonable cause for believing that a transaction is or may be concerned with the diversion of manufacturing machinery or the funds realised in connection with the sale of that machinery (a “suspicious transaction”) that person must, report the suspicious transaction to the Collector of Customs, before the transaction takes place or as soon as is reasonably practicable after the transaction has been concluded.
- (2) Where requested by the Collector of Customs, the holder of the licence or permit must provide such further information regarding the suspicious transaction as the Collector of Customs requires.
  - (3) Nothing in this section requires a person to provide any information which a court may not compel that person to provide in any criminal proceedings.
  - (4) A person who without reasonable excuse fails to comply with the provisions of this section commits an offence.

### **PART VB MUTUAL ADMINISTRATIVE ASSISTANCE**

#### **Mutual Administrative Assistance.**

- 24G.(1) The Collector of Customs may, whether in response to receipt of a request or on his own initiative provide information of a kind described and to the authorities set out in Article 15(4)(a) of the Convention or Article 28 of the Protocol.
- (2) Where information has been provided to the Collector of Customs pursuant to Article 15(4)(a) of the Convention or Article 28 of the Protocol that information may not, without the consent of the sender, be used for any purpose other than for the purposes for which it was sent.

### **PART VC MUTUAL LEGAL ASSISTANCE**

#### **Mutual legal assistance.**

- 24H.(1) A request for mutual legal assistance under Convention or the Protocol may be made or received if-
- (a) the criminal conduct relates to a relevant offence; and

- (b) assistance falls within the scope of-
  - (i) this Act, or
  - (ii) an enactment that for, the purposes of seeking or providing that assistance, is to be treated as having been modified by this Part.

(2) Nothing in subsection (1) affects the ability to make or receive requests for mutual legal assistance under any enactment.

(3) In this section “relevant offence” means an offence that is included in the Schedule.

**Oral request for assistance in urgent cases.**

24I. A requirement for a request to be made in writing under an enactment specified in section 24L or 24M may-

- (a) if urgent; and
- (b) subject to the prior agreement of the authority to whom requests for assistance are made under that enactment,

be made orally, and if made orally must be confirmed in writing forthwith.

**Disclosure to accused person.**

24J.(1) Where as a result of a request for mutual legal assistance, information or evidence is received or, as the case may be, provided which is exculpatory to an accused person, any restriction on the disclosure to that person does not apply.

(2) In any case where subsection (1) applies the requesting Party shall notify the requested Party prior to the disclosure and, if so requested, consult with the requested Party save that in an exceptional case, if advance notice is not possible, the requesting Party must inform the requested Party of the disclosure without delay.

**Modification of Mutual Legal Assistance (International) Act.**

24K.(1) The Mutual Legal Assistance (International) Act 2005 is deemed to be modified in accordance with the provisions of this section.

(2) In section 3-

- (a) after section (2)(b) insert-
  - “(c) where the request involves a criminal offence where the maximum penalty in Gibraltar is less than 2 years imprisonment;

- (d) if, in the opinion of the Central Authority, the provision of the assistance would impose a burden on resources that is disproportionate to the seriousness of the crime; and
- (e) if the authorities in Gibraltar would be prohibited by Gibraltar law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings in Gibraltar,

and where the Central Authority or the court refuses any request for assistance, reasons shall be provided.

- (3) Without prejudice to paragraph 4(3) of Schedule 1, the Central Authority or a court may postpone acting on a request for assistance where acting on it may interfere with an ongoing investigation, prosecution or judicial proceeding.
- (4) If it is likely that a request for assistance is to be refused or postponed the Central Authority or the court must consult with the requesting State to consider whether assistance may be granted subject to such terms and conditions as it deems necessary and if the requesting State accepts assistance subject to those conditions the request may be acted on subject those terms and conditions.”.

(3) After section 12 insert-

**“Confidentiality of requests.**

12A.(1) The fact and substance of a request received by the Central Authority must not be disclosed to any person except to the extent necessary to execute the request.

- (2) Where in any case it is not possible to comply with the requirement of confidentiality set out in subsection (1) the Central Authority must promptly inform the requesting State.”.

(4) After section 20 insert-

**“Hearing by videoconference or other audiovisual transmission.**

20A.(1) This section applies where a request is made to the Central Authority for the hearing of a witness or expert witness by videoconference or other audiovisual transmission at the attendance of that witness or expert witness in person in the requesting State is not possible or desirable the Central authority may agree the practical arrangements with the requesting State.

- (2) Before acceding to a request under subsection (1) the Central Authority must be satisfied that that the person named in the request has made a written

statement consenting to hearing by videoconference or other audiovisual transmission.

- (3) The Central Authority must ensure that the witness or expert witness is informed of the time, the date and the venue at which the person is to appear for the hearing by videoconference or other audiovisual transmission.
- (4) The following apply where a hearing is held by videoconference or other audiovisual transmission-
  - (a) the Gibraltar executing authority shall be present during the hearing, where necessary assisted by an interpreter, and shall be responsible for ensuring the identity of the person to be heard and that the fundamental principles of law are respected;
  - (b) where the Gibraltar executing authority is of the view that during the hearing the fundamental principles of Gibraltar law are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;
  - (c) measures for the protection of the witness or expert witness person shall be agreed, where necessary, between the Competent Authority and the competent authority of the issuing State;
  - (d) in advance of the hearing, the witness or expert witness may claim a right not to testify if that right would accrue under the law of the issuing State or under Gibraltar law.
- (5) Unless the Competent Authority and the competent authority in the requesting State agree to dispense with the provisions of this subsection, and without prejudice to any measures which may have been introduced under subregulation (4)(c), on the conclusion of the hearing the Competent Authority shall draw up minutes indicating-
  - (a) the date and place of the hearing;
  - (b) the identity of any person heard;
  - (c) the identities and functions of all other persons in Gibraltar participating in the hearing;
  - (d) any oaths taken; and
  - (e) the technical conditions under which the hearing took place,

and the Competent Authority shall forward the minutes referred to the competent authority in the issuing State.”.

(5) For section 22 substitute-

“22.(1) The ordinary costs of executing a request in Gibraltar, unless otherwise agreed with the requesting State, are to be borne by the Government of Gibraltar.

(2) If expenses of a substantial or extraordinary nature are or will be required to fulfil the request for assistance, the Central Authority may shall consult the requesting State to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.”.

#### **Modification of UN Transnational Organised Crimes Act.**

24L. The United Nations Transnational Organised Crime Act 2006 is deemed to be modified in section 2 by substituting the definition ““relevant offence” means an offence that is punishable in Gibraltar by imprisonment for a term of four years of more;” with ““relevant offence” means an offence that is so defined under the Tobacco Act 1997;”.

#### **Relevant offences to be treated as indictable offences.**

24M. The-

- (a) Mutual Legal Assistance (International) Act 2015;
- (b) Criminal Procedure and Evidence Act 2011;
- (c) Proceeds of Crime Act 2015,

and any subsidiary legislation made under an enactment in paragraphs (a) to (c), are modified to the extent in any such enactment a reference to an indictable offence includes a relevant offence.

### **PART VD EXTRADITION**

#### **Application and modification of Extradition Act.**

24N.(1) Where a request for extradition is made pursuant to Article 30 of the Protocol the Extradition Act 2018 applies to that request subject to subsection (2).

(2) For the purposes of subsection (1) conduct that is or falls within conduct that is a relevant offence constitutes an extradition offence for the purposes of that Act and in particular as regards the conduct in sections 72(2)(b), (3)(b) and (4)(b) and 73(2)(b), (3)(b) and (4)(b).

(3) In this section “relevant offence” means an offence that is included in Schedule 2.

**Additional rights.**

24O. Where a person has been detained in custody under section 7 or 9 of the Extradition Act 2018 in relation to a relevant offence, in addition to any other rights that may accrue under that Act, the detained person is be entitled to-

- (a) communicate without delay with the nearest appropriate representative of the State of which that person is a national or, if that person is a stateless person, the State in the territory of which that person habitually resides; and
- (b) be visited by a representative of that State.”.

(16) The Schedule is renumbered Schedule 1

(17) After the renumbered Schedule 1 insert-

**“SCHEDULE 2**

**Relevant Offences**

The following sections are “relevant offences”.

**Tobacco Act, 1997-**

- Section 6C Prohibition on cross-border distance selling
- Section 9 Importation of cigarettes
- Section 11 Exportation of cigarettes
- Section 14F Unlicensed activity.
- Section 14O Prohibition from supply of non-compliant tobacco products.

**Tobacco Products (Manufacturing Machinery) Regulations 2020-**

- Regulation 5 Requirement for a licence.
- Regulation 7 Conditions and restrictions.
- Regulation 24 Obstructing officers etc.”.

Dated: 12<sup>th</sup> June 2020.

F R PICARDO,  
Chief Minister.

**EXPLANATORY MEMORANDUM**

These Regulations provide for the amendment of the Tobacco Act, 1997 for the purposes of implementing, in part, the World Health Organisation Framework Convention on Tobacco Control and the Protocol to Eliminate Illicit Trade in Tobacco Products in accordance with the obligations under the Gibraltar Protocol to the European Union Withdrawal Agreement