

Subsidiary Legislation made under s.11C.

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

**LN.2020/217**

*Commencement*      **30.6.2020**

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

**PART 1  
INTRODUCTORY**

**Title.**

1. These Regulations may be cited as the Tobacco Products (Manufacturing Machinery) 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.

**Interpretation.**

3.(1) In these Regulations-

“Collector of Customs” has the same meaning as in the Imports and Exports Act, 1986;

“competent authority” means the meaning given in regulation 4;

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

“licence” means a licence issued under regulation 5;

“manufacturing equipment” means machinery which is designed, or adapted, to be used solely for the manufacture of tobacco products and is integral to the manufacturing process and includes any identifiable part which is unique to manufacturing equipment used in the manufacture of tobacco products;

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

“regulated activity” has the meaning given in regulation 5(2);

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“tobacco products” means products entirely or partly made of the leaf tobacco as raw material, which are manufactured to be used for smoking, sucking, chewing or snuffing.

(2) Any term used that is not defined in these Regulations and which is defined in the Protocol has the meaning given in the Protocol.

## **PART 2 COMPETENT AUTHORITY**

### **Appointment of competent authority.**

4.(1) The Collector of Customs is the competent authority for the purposes of these Regulations.

(2) The Collector of Customs and his officers may, for the purposes of these Regulations, exercise any of the powers under the Imports and Exports Act, 1986.

(3) The Chief Minister may, by Notice in the Gazette, appoint a competent authority in place of the Collector of Customs.

## **PART 3 LICENSING**

### **Requirement for a licence.**

5.(1) A person must not carry out a regulated activity otherwise than in accordance with a licence granted by the competent authority under these Regulations.

(2) A regulated activity means the-

- (a) manufacture of manufacturing equipment;
- (b) sale (whether by retail or wholesale) of manufacturing equipment;
- (c) import or export of manufacturing equipment.

(3) Subregulation (1) does not apply to a person carrying out a regulated activity in respect of an item of manufacturing equipment which-

- (a) requires tobacco and paper to be loaded manually into the item;

- (b) makes cigarettes or cigars only by manual operation; and
- (c) makes only one cigarette or cigar before it requires further loading as described in subparagraph (a).

(4) A person who knowingly conducts a regulated activity in contravention of this regulation commits an offence and is liable on summary conviction to a fine up to level 5 on the standard scale.

#### **Granting of a licence.**

6.(1) The competent authority may grant a licence to a person carrying out a regulated activity if the competent authority is satisfied that the person-

- (a) is a fit and proper person to carry out the regulated activity; and
- (b) will conduct the regulated activity so as to comply with these Regulations or the conditions which may be included in the licence.

(2) A licence granted under subregulation (1) is, unless the licence otherwise states, valid for a period of 12 months from the date of issue.

#### **Conditions and restrictions.**

7.(1) The competent authority may impose conditions and restrictions in a licence and different conditions and restrictions may be imposed in different cases.

(2) The competent authority may add, amend or remove a condition or restriction in a licence at any time.

(3) Where subregulation (2) applies, the competent authority must give written notice of the addition, amendment or removal to the licensee and state in that notice-

- (a) details of the addition, amendment or removal;
- (b) the date the addition, amendment or removal has effect;
- (c) the reasons for the addition, amendment or removal.

(4) A person who knowingly conducts a regulated activity in breach of a condition or restriction in a licence granted under regulation 6 commits an offence and is liable on summary conviction to a fine up to level 5 on the standard scale

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**Variation, suspension or revocation of a licence.**

8.(1) The competent authority may at any time for reasonable cause vary, suspend or revoke a licence.

(2) Where subregulation (1) applies, the competent authority must give written notice of the variation, suspension or revocation to the licensee and state in that notice-

- (a) details of the variation, suspension or revocation;
- (b) the date the variation, suspension or revocation has effect, and in the case of a suspension the date the suspension ends;
- (c) the reasons for the variation, suspension or revocation.

**Prohibition on transfer of licence.**

9. A licence issued under these Regulations is not transferable.

**PART 4  
APPLICATIONS**

**Applications.**

10.(1) An application for a licence under regulation 6 must be made in the form and manner prescribed by the competent authority, and must be accompanied by the prescribed fee.

(2) The competent authority must prescribe the information to be included in an application, including at least-

- (a) any information the competent authority considers necessary to identify the applicant, including but not limited to-
  - (i) where the applicant is a natural person, the person's full name, trade name, business registration number, applicable tax registration number; and
  - (ii) where the applicant is a legal person or entity, that person or entity's full legal name, trade name, business registration number, date and place of incorporation, address of corporate headquarters and principal place of business, applicable tax registration numbers, articles of incorporation or

equivalent documents, identity of corporate affiliates and names of the applicants directors and designated legal representatives;

- (b) address of any manufacturing units and warehouses;
- (c) production capacity of the applicant's relevant business;
- (d) details of the tobacco products and manufacturing equipment covered by the application, such as product description, name, registered trademarks, design, brand, model or make and serial number of the manufacturing equipment;
- (e) address and description of where manufacturing equipment will be installed and used;
- (f) documentation regarding criminal records held by the applicant, and in the case of a legal person, held by persons with management or control of the applicant;
- (g) details of bank accounts intended to be used in the relevant transactions and other relevant payment details; and
- (h) a description of the intended use and market of sale of the tobacco products, with particular attention to evidencing that tobacco product production or supply is commensurate with reasonably anticipated demand.

(3) In this Part, "application for a licence" includes an application-

- (a) to vary a licence; or
- (b) to renew a licence.

(4) A person who knowingly gives false information to the competent authority in connection with an application for a licence is guilty of an offence and is liable on summary conviction to a fine up to level 5 on the standard scale.

(5) The competent authority will determine the prescribed fee and make that information publicly available.

### **Review of applications.**

11.(1) The competent authority must, as soon as reasonably practicable after receiving the application-

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- (a) grant, vary, or renew a licence, or agree to the transfer or assignment of the licence, as the case may be;
  - (b) refuse the application for a licence in writing, giving reasons for the refusal; or
  - (c) request additional information in accordance with regulation 12.
- (2) Where the competent authority has requested additional information, the competent authority must, as soon as reasonably practicable after receiving the additional information-
- (a) grant, vary or renew a licence, or agree to the transfer or assignment of the licence, as the case may be;
  - (b) refuse the application for a licence in writing, giving reasons for the refusal.

**Additional information.**

12.(1) In order to determine an application for a licence, the competent authority may, by notice, request an applicant to provide additional information.

- (2) Any such notice must specify-
- (a) the additional information required; and
  - (b) the date by which the information must be provided to the competent authority.
- (3) The competent authority may, by notice given to the applicant, extend the date to comply with the request for additional information.
- (4) Where the applicant does not provide the additional information requested by the date given by the competent authority, the application is treated as being withdrawn on that date.
- (5) Where subregulation (4) applies, the competent authority must give notice to the applicant stating that the application has been treated as withdrawn.

**PART 5  
OBLIGATIONS ON THE LICENSEE**

*Conduct of business*

**Due Diligence.**

13.(1) A licensee must-

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

(2) For the purposes of subregulation (1)(a), due diligence includes requirements for customer identification, such as obtaining and updating information relating to the following-

- (a) establishing that a customer holds any requisite licence under these Regulations or the Tobacco Act 1997;
- (b) information regarding the customer's identity, including-
  - (i) where the customer is a natural person, his or her full name, trade name, business registration number, applicable tax registration numbers and verification of his or her official identification;
  - (ii) where the customer is a legal person, its full name, trade name, business registration number, date and place of incorporation, registered office and principal place of business, applicable tax registration numbers, articles of incorporation or equivalent documents, identify of corporate affiliates and names of the customer's directors and designated legal representatives, including the representative's names and verification of their official identification;
- (c) a description of the intended use and intended market of sale of manufacturing equipment; and
- (d) address of the location where manufacturing equipment will be installed and used.

#### **Security and protective measures.**

14.(1) Licensees must ensure that any transaction carried out during the course of a regulated activity is-

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- (a) carried out through a financial institution located on the territory of the intended market;
- (b) evidenced by an invoice setting out the amount and currency of the transaction; and
- (c) not carried out through an illegal or unregulated remittance system.

(2) Failure by a licensee to comply with this regulation would constitute grounds for the suspension or revocation of a licence by the competent authority in accordance with regulation 8.

**Reporting of suspicious transactions.**

15.(1) Where a licensee 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”) the licensee must report the suspicious transaction to the competent authority, before the transaction takes place or as soon as is reasonably practicable after the transaction has been concluded.

(2) Where requested by the competent authority, the licensee must provide such further information regarding the suspicious transaction as the competent authority requires.

(3) Nothing in this regulation requires a person to provide any information which a court may not compel that person to provide in any criminal proceedings.

(4) Failure by a licensee to comply with this regulation would constitute grounds for the suspension or revocation of a licence by the competent authority in accordance with regulation 8.

**Records.**

16.(1) Licensees must maintain complete and accurate records of all transactions performed during the course of conducting a regulated activity.

(2) Records under subregulation (1) must be-

- (a) maintained for at least 4 years;
- (b) made available to the competent authority as soon as possible on request;
- (c) maintained in a format that may be specified by the competent authority.

*Provision of information*

**Statistical information.**

17. A licensee must, as soon as possible after receiving a request from the competent authority, provide the following-

- (a) information on market volumes, trends, forecasts, and other relevant information available;
- (b) the quantities of manufacturing equipment 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.

**Export information.**

18. If the competent authority requests, at the time of export from Gibraltar, the following information must be given, by electronic means in respect of manufacturing equipment sold or manufactured in Gibraltar for export, or subject to duty suspended movement in transit or transshipment in Gibraltar-

- (a) date of shipment from the last point of physical control of the manufacturing equipment;
- (b) details concerning the manufacturing equipment shipped (including brand, amount, warehouse);
- (c) intended shipping routes and destination;
- (d) identity of the natural or legal person to whom the manufacturing equipment is being shipped;
- (e) mode of transportation, including the identity of the transporter;
- (f) expected date of arrival of the shipment at the intended shipping destination; and
- (g) intended market of retail sale or use.

**Duty to inform competent authority.**

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19.(1) A licensee must ensure that, as soon as reasonably practicable, the competent authority is informed of any change of circumstances relevant to the conduct of a regulated activity, and in particular that the competent authority is informed of-

- (a) changes to information provided to the competent authority under regulation 10;
- (b) full details of any acquisition or disposal of manufacturing equipment;
- (c) any plan or intention of the licensee to-
  - (i) destroy manufacturing equipment, or
  - (ii) change business location;
  - (iii) make any other significant change relevant to the regulated activity.

(2) Where a licensee informs the competent authority of an intention to change business location, that notification must be accompanied by details of any change of address.

**Consequential powers.**

20.(1) In consequence of information provided to the competent authority under this Part, the competent authority may-

- (a) add, amend or remove a condition or restriction on a licence in accordance with regulation 7; or
- (b) vary or revoke a licence in accordance with regulation 8.

(2) On receiving information under regulation 19(1)(c) the competent authority must, as soon as reasonably practicable, give written notice-

- (a) accepting or denying the planned or intended action or change;
- (b) setting out any conditions of the acceptance, where appropriate; and
- (c) setting out reasons for the decision.

(3) Where the competent authority permits the destruction of manufacturing equipment, it is a condition of any approval given by the competent authority that the authority is present at the destruction.

(4) A person who destroys manufacturing equipment except in accordance with a notice under subregulation (2) commits an offence and is liable on summary conviction to a fine up to level 5 on the standard scale.

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

20A.(1) A person (A) who is licensed under these Regulations commits an offence if A purchases manufacturing machinery from another person (B) and A knows or ought reasonably to know that B does not have a licence to sell that manufacturing machinery 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 manufacturing machinery to A.

**PART 6  
POWERS OF THE COMPETENT AUTHORITY**

**Review.**

21.(1) The competent authority must undertake a periodic review, renewal, inspection or audit of licences as the competent authority deems appropriate.

(2) An officer of the competent authority may enter any premises owned or used by a licensee for the purpose of a regulated activity and may inspect the premises and search for, examine and take account of any manufacturing equipment or vehicles or equipment used in the transportation of manufactured equipment.

(3) The competent authority may, by written notice, request a licensee to provide further documentation or information reasonably required in the course of a review, renewal, inspection or audit conducted under subregulation (1).

(4) Where a licensee, without reasonable excuse, fails or refuses to provide information requested under subregulation (3), the competent authority may-

- (a) add, amend or remove a condition or restriction on a licence in accordance with regulation 7; or
- (b) vary or revoke a licence in accordance with regulation 8.

**Compliance with regulations.**

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22.(1) The competent authority may, on the basis of the information reported under regulation 13(1)(c) take all necessary measures to ensure compliance with the obligations arising from the Protocol, including designating a customer in Gibraltar as a blocked customer.

- (2) Where a person has been designated as a blocked customer by the competent authority-
- (a) any existing business relationship with that customer must be terminated by all licensees; and
  - (b) no licensee may enter into a business relationship with the blocked customer whilst such a designation remains in force.
- (3) Where the competent authority designates a person as a blocked customer, the competent authority must give written notice of the designation to all licensees.
- (4) For the purposes of this regulation, the term “customer” and “business relationship” only apply in relation to the purchase and sale of manufacturing equipment.

**Forfeiture.**

23.(1) Where a court is satisfied that an offence has been committed contrary to any provision in these Regulations that court may, in addition to any penalty that it may have imposed, and upon giving notice to show cause by a forfeiture should be made, order the forfeiture of manufacturing equipment used in or for the commission of the offence.

- (2) Where manufacturing equipment has been forfeited, that equipment must be destroyed.

**Obstructing officers etc.**

24. A person who—

- (a) obstructs, hinders, molests or assaults any person engaged in the performance of any duty or the exercise of any power imposed or conferred on him by or under these Regulations; or
- (b) does anything which impedes or is calculated to impede the carrying out of any search for anything liable to forfeiture under these Regulations, or the detention, seizure or removal of any such thing; or

- (c) rescues, damages or destroys anything so liable to forfeiture or does anything calculated to prevent the procuring or giving of evidence as to whether or not anything is so liable to forfeiture; or
- (d) prevents the arrest of any person by a person engaged or acting as aforesaid or rescues any person so arrested,

is guilty of an offence and is liable, on summary conviction to a fine at level 5 on the standard scale.

**Giving false information.**

25.(1) A person who knowingly or with the intent to deceive-

- (a) makes or signs, or causes to be made or signed, or delivers, or causes to be delivered, to a police or customs officer any declaration, notice, certificate or other document; or
- (b) makes any statement in answer to any question put to him by a police or customs officer,

being a document or statement produced or made in respect of any matter that relates to these Regulations, is guilty of an offence and is liable on summary conviction to imprisonment for 6 months and to a fine at level 5 on the standard scale.

**Assault or resisting officers.**

26. A person who, by force or violence, assaults, opposes, resists, molests, hinders or obstructs any police or customs officer in the execution of his office or duty is guilty of an offence and is liable-

- (a) on summary conviction to imprisonment for 9 months; and
- (b) on conviction on indictment to imprisonment for 7 years.

**General penalty.**

27.(1) This regulation applies where no specific penalty is provided for in any regulation.

(2) A person who fails to comply with the provisions of these Regulations or fails to produce information when requested by the competent authority is guilty of an offence and, on summary conviction, is liable to a fine not exceeding level 5 on the standard scale.

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**Offences by corporations.**

28. Where any offence against these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, that person as well as the body corporate shall be deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly.