

Subsidiary Legislation made under s.24.

Tobacco Products Directive Regulations 2016

LN.2016/111

Commencement

20.5.2016

Transposing:

Directive 2014/40/EU

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred upon him by section 24 of the Tobacco Act 1997 and section 23(g)(i) of the Interpretation and General Clauses Act, and all other enabling powers, and for the purposes of transposing, in part, into the law of Gibraltar Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the 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, the Chief Minister has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Tobacco Products Directive Regulations 2016 and come into operation on the day of publication

Interpretation.

2. In these Regulations-

“consumer” means a natural person who is acting for purposes which are outside his business, craft or profession;

“cross-border distance sales” means distance sales from persons established in Gibraltar to consumers outside Gibraltar and “established in Gibraltar” means—

- (a) in the case of a natural person: that he has his place of business in Gibraltar; or
- (b) in the case of a legal person: if the statutory seat, central administration or place of business, including a branch, agency or any other establishment is in Gibraltar;

“Directive” means Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the 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, as the same may be amended from time to time;

“electronic cigarette” means a product that-

- (a) can be used for 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);
- (b) is not a medical product or medical device;

“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 medical product or medical device;

“tobacco product” means a product that can be consumed and consists, even partly, of tobacco, whether genetically modified or not, and includes electronic cigarettes and refill containers.

Competent Authority.

3. The Collector of Customs is designated as the competent authority for the purposes of these Regulations.

Cross-border distance sales.

4. A person who proposes to undertake cross-border distance sales of tobacco products to a consumer in a Member State must-

- (a) be registered in the register maintained by the competent authority under regulation 6;
- (b) be registered with the competent authority responsible for cross-border distance sales of tobacco products in the Member State where the actual or potential consumer is located;
- (c) not start placing tobacco products on the market via cross-border distance sales until they have received confirmation of their registration with the competent authority in the Member State where the consumer is located.

Sales from outside the European Union.

5. A person established outside the European Union may not sell tobacco products by distance selling to a consumer in Gibraltar.

Register.

6.(1) Subject to subregulation (3), the competent authority shall maintain a register of all persons who are licensed under section 4 of the Tobacco Act 1997 (*Retail licences*) and who engage in cross-border distance sales of tobacco products to a consumer in a Member State.

(2) The competent authority shall not register any person until it has received the following information—

- (a) the name or corporate name and permanent address of the place of activity from where the tobacco products will be supplied;
- (b) the starting date of the activity of offering tobacco products for cross-border distance sales to consumers by means of information society services, as defined in point 2 of Article 1 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 and of rules on Information Society services;
- (c) the address of the website or websites used for that purpose and all relevant information necessary to identify the website.

(3) The requirement in subregulation (1), that a person hold a licence under section 4 of the Tobacco Act 1997 does not apply in the case of the cross-border sale of electronic cigarettes and refill containers.

Access to list.

7.(1) The competent authority shall ensure that consumers have access to the list of all persons registered under regulation 6.

(2) When making that list available the competent authority shall ensure that the rules and safeguards laid down in the Data Protection Act 2004 are complied with.

Age-verification.

8. Persons engaged in cross-border distance sales shall operate an age verification system, which verifies, at the time of sale, that the purchasing consumer complies with minimum age requirements provided for under the national law of the Member State of destination of the tobacco product.

Data protection.

9.(1) A person who is registered in accordance with the provisions of these Regulations shall only process personal data of the consumer in accordance with the Data Protection Act 2004 and those data shall not be disclosed to the manufacturer of tobacco products or companies forming part of the same group of companies or to other third parties.

(2) Personal data shall not be used or transferred for purposes other than the actual purchase and applies where the registered person forms part of a manufacturer of tobacco products.

Penalty.

10. A person who contrary to the provisions of regulation 4–

- (a) fails to register in accordance with paragraphs (a) and (b); or
- (b) places tobacco products on the market in breach of paragraph (c),

commits an offence and is liable on summary conviction to a fine not exceeding £10,000.

Cooperation.

11.(1) The competent authority shall cooperate with Member States to prevent the cross-border distance sale of tobacco products where the relevant Member State has prohibited that activity.

(2) The competent authority may by written notice require a person who is registered under these Regulations to provide it with such information as it requires in order for it to fulfil any obligations under the Directive.

Promotion etc.

12.(1) The following types of promotions of electronic cigarettes and refill containers shall be prohibited–

- (a) commercial communications in information society services, in the press and other printed publications, with the aim or direct or indirect effect of promoting such products, except for publications that are intended exclusively for professionals in the trade of such products and for publications which are printed and published in third countries, where those publications are not principally intended for the Gibraltar market;
- (b) commercial communications on the radio, with the aim or direct or indirect effect of promoting such products;
- (c) any form of public or private contribution to radio programmes with the aim or direct or indirect effect of promoting such products;
- (d) any form of public or private contribution to any event, activity or individual person with the aim or direct or indirect effect of promoting such products and

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involving or taking place in Gibraltar and in Member States or otherwise having cross-border effects;

(e) audiovisual commercial communications to which the Broadcasting Act 2012 applies.

(2) A person who contravenes subregulation (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.