Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Tobacco Products and Herbal Products for Smoking (Fees) Regulations 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2017 No. 409

CONSUMER PROTECTION
FEES AND CHARGES

The Tobacco Products and Herbal Products for Smoking (Fees) Regulations 2017

Made - - - -	*15th March 2017*
Laid before Parliament	*16th March 2017*
Coming into force - -	*6th April 2017*

The Secretary of State for Health makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [F1] and section 56(1) and (2) of the Finance Act 1973 [F2].

The Secretary of State has been designated for the purpose of section 2(2) of the European Communities Act 1972 in relation to tobacco, tobacco products and herbal products for smoking [F3].

The Treasury has consented to the making of these Regulations as required by section 56(1) of the Finance Act 1973.

F1 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

F2 1973 c.51. Section 56(1) was amended by Article 6(1)(e) of the Treaty of Lisbon (Changes of Terminology) Order 2011 (S.I. 2011/1043).

F3 S.I. 2014/2705.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Tobacco Products and Herbal Products for Smoking (Fees) Regulations 2017, and shall come into force on 6th April 2017.

(2) In these Regulations—

"the 2016 Regulations" means the Tobacco and Related Products Regulations 2016 [F4];

"cigarette", "hand rolling tobacco", "novel tobacco product", and "producer" have the same meaning as in the 2016 Regulations.

F4 S.I. 2016/507, amended by S.I. 2016/1127.

Measurement and verification of emission levels from cigarettes: annual fee

2.—(1) An annual fee is payable in respect of each variant of a brand of cigarettes in relation to which the Secretary of State requires a sample, under regulation 14(4) of the 2016 Regulations, in the fee period.

(2) The amount of the annual fee payable is £1,000, save where the number of samples of the variant which the Secretary of State has required in the fee period is 5 or less, in which case the amount of the annual fee payable is £167 multiplied by the number of such samples which the Secretary of State has required in the fee period.

(3) The annual fee is first payable on 1st March 2018 and thereafter is payable each year on1st March.

(4) The annual fee is payable by the manufacturer of the variant of the brand of cigarettes and is payable to the Secretary of State.

(5) In this regulation—

"brand", in relation to cigarettes, means cigarettes produced by a particular producer and known by a particular name;

"emission", "ingredient", "nicotine" and "tar" have the same meaning as in the 2016 Regulations;

"fee period" means the 12 month period preceding 1st March in each year, save where the annual fee is first payable, under paragraph (3), on 1st March 2018 in which case the fee period is 6th April 2017 to 28th February 2018;

"variant", in relation to cigarettes, means a cigarette of one brand which is distinguishable from other cigarettes of the same brand by—

(a) name;

(b) ingredients in the cigarette;

(c) the quantity of each ingredient in the cigarette; or

(d) the tar, nicotine and carbon monoxide emission levels of the cigarette.

Tobacco products: reporting fee

3.—(1) A fee is payable in respect of—

(a) each submission made to the Secretary of State under regulation 18(1) of the 2016 Regulations (submission of ingredients and emissions information relating to a tobacco product); and

(b) each notification submitted to the Secretary of State under regulation 22 of the 2016 Regulations (notification of a novel tobacco product).

(2) Where a producer submits a notification in accordance with regulation 22 of the 2016 Regulations, and at the same time submits information in accordance with regulation 18(1) of those Regulations in relation to the same product, only one fee is payable.

(3) Where the information is submitted in relation to cigarettes, hand rolling tobacco, or a novel tobacco product, the amount of the fee payable is £200, except where the submission under regulation 18(1) is made pursuant to regulation 18(3) of the 2016 Regulations (submission of information relating to a modified product), in which case the amount is £100.

(4) Where the information is submitted in relation to a product other than those referred to in paragraph (3), the amount of the fee payable is £100, except where the submission under regulation 18(1) is made pursuant to regulation 18(3) the 2016 Regulations (submission of information relating to a modified product), in which case the amount is £50.

(5) The fee is payable on invoice and by the date specified therein.

(6) The fee is payable by the person who submitted the information and is payable to the Secretary of State.

Tobacco products: annual reporting fee

4.—(1) An annual fee is payable in respect of each product for which a submission has been made under regulation 18(1), or a notification has been submitted under regulation 22, of the 2016 Regulations ("the submission").

(2) The amount of the annual fee payable is—

(a) £100, where the product is cigarettes, hand rolling tobacco or a novel tobacco product;

(b) £50, in any other case.

(3) The annual fee is first payable—

(a) in respect of a product for which the submission was made before the day that these Regulations come into force, on 1st March 2018; or

(b) in respect of a product for which the submission is made on or after the day that these Regulations come into force, on the first occurring 1st March after the day that the submission is made,

and thereafter is payable each year on 1st March.

(4) The annual fee is payable by the person who made the submission and is payable to the Secretary of State.

(5) If the Secretary of State is notified under regulation 18(5) of the 2016 Regulations that the product has been withdrawn from the market, no fee is payable on the 1st March following that notification and thereafter; but any annual fee payable prior to or on the date of notification remains payable.

Herbal products for smoking: reporting fee

5.—(1) A fee is payable in respect of each submission made to the Secretary of State under regulation 29(1) of the 2016 Regulations (submission of ingredients information relating to a herbal product for smoking).

(2) The amount of the fee payable is £60, except where the submission under regulation 29(1) is made pursuant to regulation 29(3) of the 2016 Regulations (submission of information relating to a modified product), in which case the amount is £30.

(3) The fee is payable on invoice and by the date specified therein.

(4) The fee is payable by the person who made the submission and is payable to the Secretary of State.

Herbal products for smoking: annual reporting fee

6.—(1) An annual fee is payable in respect of each product for which a submission has been made under regulation 29(1) the 2016 Regulations ("the submission").

(2) The amount of the annual fee payable is £30.

(3) The annual fee is first payable—

(a) in respect of a product for which the submission was made before the day that these Regulations come into force, on 1st March 2018; or

(b) in respect of a product for which the submission is made on or after the day that these Regulations come into force, on the first occurring 1st March after the day that the submission is made,

and thereafter is payable each year on 1st March.

(4) The annual fee is payable by the person who made the submission and is payable to the Secretary of State.

(5) If the Secretary of State is notified that the product has been withdrawn from the market, no fee is payable on the 1st March following that notification and thereafter; but any annual fee payable prior to or on the date of notification remains payable.

Civil proceedings to recover unpaid fees

7. All unpaid sums due by way of any fees payable under these Regulations are recoverable as debts due to the Crown.

Amendments to the 2016 Regulations: consequences of non-payment of reporting fees

8.—(1) The 2016 Regulations are amended as follows.

(2) After paragraph (2) of regulation 18 insert—

"(2A) If a fee which is payable under regulation 3 of the Tobacco Products and Herbal Products for Smoking (Fees) Regulations 2017 in respect of a submission under paragraph (1) of this regulation is not paid by the date specified in the invoice for that fee, for the purposes of regulation 48(b) (offences), the submission is to be regarded as not having been made in accordance with paragraph (2)(b) until the fee has been paid.".

(3) After paragraph (4) of regulation 23 insert—

"(5) If a fee which is payable under regulation 3 of the Tobacco Products and Herbal Products for Smoking (Fees) Regulations 2017 in respect of a notification under regulation 22 of these Regulations is not paid by the date specified in the invoice for that fee, for the purposes of regulation 48(b) (offences), the notification is to be regarded as not having been given in accordance with paragraph (1) until the fee has been paid.".

(4) For regulation 27 substitute—

"**No supply of tobacco product where reporting obligation not complied with**

27. A producer who fails to submit information in accordance with any provision of this Part in respect of any tobacco product, must not supply the tobacco product concerned until–

(a) the producer has submitted the required information in accordance with regulation 25; and

(b) any fee payable in respect of the submission of that information under regulation 3 of the Tobacco Products and Herbal Products for Smoking (Fees) Regulations 2017 has been paid.".

(5) After paragraph (2) of regulation 29 insert—

"(2A) If a fee which is payable under regulation 5 of the Tobacco Products and Herbal Products for Smoking (Fees) Regulations 2017 in respect of a submission under paragraph (1) of this regulation is not paid by the date specified in the invoice for that fee, for the purposes of regulation 48(b) (offences), the submission is to be regarded as not having been made in accordance with paragraph (2)(b) until the fee has been paid.".