STATUTORY INSTRUMENTS

2016 No. 1172

EXCISE

The Raw Tobacco (Approval Scheme) Regulations 2016

Made - - - - 7th December 2016
Laid before the House of Commons - - - - 8th December 2016
Coming into force in accordance with regulation 1

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 8M, 8N and 8U of the Tobacco Products Duty Act 1979(**1**), and now exercisable by them(**2**).

PART 1

PRELIMINARY

Citation and commencement

1.—(1) These Regulations may be cited as the Raw Tobacco (Approval Scheme) Regulations 2016.

(2) Parts 1 to 4 come into force on 1st January 2017.

(3) Part 5 comes into force on 1st April 2017.

Interpretation

2. In these Regulations—

"approved person" means a person to whom written approval is provided in accordance with regulation 6(4);

"CEMA 1979" means the Customs and Excise Management Act 1979(**3**);

(**1**) 1979 c. 7. Sections 8M, 8N and 8U were inserted by section 179(1) of the Finance Act 2016 (c. 24) and came into force on 6th December 2016 under S.I. 2016/1171.

(**2**) The power to make regulations under sections 8M, 8N and 8U of the Tobacco Products Duty Act 1979 ("TPDA 1979") is conferred on "the Commissioners" and by virtue of section 10(3) of TPDA 1979, "the Commissioners" has the same meaning as provided in the Customs and Excise Management Act 1979 (c. 2). Section 1(1) of the Customs and Excise Management Act 1979 (as amended by the Commissioners for Revenue and Customs Act 2005 (c. 11) ("CRCA 2005"), Schedule 4, paragraphs 20 and 22(b)) defines "the Commissioners" as "the Commissioners for Her Majesty's Revenue and Customs".

(**3**) 1979 c. 2.

"notice" means a notice in writing;

"prescribed" means prescribed by the Commissioners in a published notice, as revised or replaced from time to time and "prescribe" is construed accordingly;

"review and appeal provisions" means the provisions in respect of the review of, or an appeal against, a decision set out in sections 15C (review by HMRC) and 16 (appeals to a tribunal) of the Finance Act 1994(**4**) and "review" and "appeal" in regulation 8(2) are to be construed as though those provisions have been engaged;

"TPDA 1979" means the Tobacco Products Duty Act 1979.

PART 2

APPROVAL SCHEME

Applications for approval

3.—(1) Where a person intends to carry out a controlled activity(**5**), that person must make an application to the Commissioners for approval in the prescribed form and manner and include the information prescribed.

(2) But an approval is not required where an exemption applies under Part 4.

Form and manner of applications

4.—(1) An application for approval must be made in writing.

(2) The Commissioners must prescribe—

(a) subject to paragraph (1), the form and manner of an application; and

(b) the information which must be provided with an application,

but may make different provision for different types of applicant or controlled activity.

(3) The Commissioners may prescribe that an application must be made electronically.

Additional information and inspection notices

5.—(1) In order to determine an application, the Commissioners may by notice ("an additional information notice") request an applicant to provide additional information to that prescribed.

(2) An additional information notice must specify—

(a) the additional information;

(b) the form and manner by which it must be provided, which may be electronically; and

(c) the date by which it must be provided to the Commissioners.

(3) In order to determine an application, the Commissioners may by notice ("an inspection notice") request an applicant to allow the Commissioners to inspect any premises owned or occupied by the applicant which are premises at or from which the applicant intends to carry on a controlled activity.

(4) An inspection notice must specify—

(a) the premises to be inspected; and

(b) the date by which the Commissioners intend to carry out the inspection.

(**4**) 1994 c. 9. Section 15C was added by S.I 2009/56.
(**5**) Controlled activity is defined by section 8K(3) of the TPDA 1979.

(5) No inspection may be carried out other than with the applicant's permission and at a time agreed with the applicant.

(6) The Commissioners may by notice given to the applicant extend the date—

(a) to comply with an additional information notice; or

(b) to inspect premises further to an inspection notice.

(7) Where an applicant—

(a) fails to comply with an additional information notice by the date for compliance; or

(b) fails unreasonably to agree to an inspection by the date set out in an inspection notice,

the application is deemed to be withdrawn on that date.

Determination of applications

6.—(1) Where an application is deemed to be withdrawn by virtue of regulation 5(7), the Commissioners must give a notice to the applicant stating that the application has been treated as withdrawn.

(2) A notice under paragraph (1) must be given as soon as reasonably practicable after the date of deemed withdrawal.

(3) Except where paragraph (1) applies, the Commissioners must determine an application as soon as reasonably practicable after it has been received.

(4) Where an application is approved, the Commissioners must provide a written approval to the applicant.

(5) The approval must include—

(a) a unique approval number;

(b) the approved person's name and address and, in the case of a company, company registration number; and

(c) details of each controlled activity which is approved and details of each premises at or from which the activity may be carried out.

(6) Where an approval is made subject to conditions or restrictions—

(a) the approval must contain or refer to those conditions or restrictions; and

(b) the Commissioners must give notice to the approved person which states that the review and appeal provisions apply in respect of the decision to impose conditions or restrictions.

(7) Where an application is refused, the Commissioners must give notice to the applicant which—

(a) states that the application is refused;

(b) provides reasons for the refusal; and

(c) states that the review and appeal provisions apply in respect of the decision to refuse approval.

Approval: conditions and restrictions

7. The Commissioners may prescribe conditions or restrictions to which an approval is subject.

PART 3

REVOCATION, VARIATION, TRANSFER AND SURRENDER OF APPROVALS

Applications to vary, transfer or surrender approval

8.—(1) An approved person may in respect of an approval provided to that person, apply to the Commissioners in writing to—

(a) vary the terms of the approval;

(b) transfer the approval; or

(c) surrender the approval.

(2) But no application may be made to vary an approval if the variation is in respect of a matter which—

(a) is subject to a review or appeal; or

(b) was refused on review or appeal.

(3) The Commissioners may prescribe—

(a) the form and manner of an application under paragraph (1); and

(b) that an application must be made electronically.

(4) The Commissioners must determine an application as soon as reasonably practicable after it has been received.

Reasonable cause to revoke or vary an approval

9.—(1) The Commissioners may have reasonable cause to revoke or vary an approval where there is a failure to comply with the conditions or restrictions of the approval.

(2) The Commissioners may give a notice ("an investigation notice") to an approved person which—

(a) identifies the conditions or restrictions with which the Commissioners believe the approved person has failed to comply;

(b) identifies how the approved person has failed to comply with those conditions or restrictions;

(c) states that the approved person may make representations in writing to the Commissioners in respect of those conditions or restrictions; and

(d) states the date by which any representations must be received by the Commissioners, being a date no earlier than 14 days after the date on which notice is given.

(3) The Commissioners may by notice given to the approved person extend the date to comply with an investigation notice.

(4) The Commissioners may have reasonable cause to revoke or vary an approval in respect of which an investigation notice has been given where the approved person fails to make representations by the date required.

Consideration of section 8L(2)

10.—(1) The Commissioners must not agree to the variation or transfer of an approval unless by doing so they are satisfied that section 8L(2)(a) or (b) of TPDA 1979 is met in respect of the approval.

(2) The Commissioners must vary an approval as soon as practicable where, unless the variation is made, the Commissioners cannot be satisfied that section 8L(2)(a) or (b) of TPDA 1979 is met in respect of the approval.

Variation of approval

11. Where the Commissioners vary, or agree to an application to vary, an approval, they must provide a notice to the approved person which—

(a) identifies how the approval is varied;

(b) specifies the date on and from which the variation has effect; and

(c) states that the review and appeal provisions apply in respect of the decision to vary the terms of the approval.

Transfer of approval

12. Where the Commissioners agree to the transfer of an approval, they must provide a notice to the transferor and transferee which—

(a) specifies the date on and from which the transfer has effect; and

(b) where—

(i) the conditions or restrictions of the approval are varied; or

(ii) new conditions or restrictions are imposed,

states that the review and appeal provisions apply in respect of the decision to impose conditions or restrictions on, or vary the terms of, the approval.

Surrender of approval

13.—(1) Where the Commissioners agree to the surrender of an approval, they must provide a notice to the approved person which specifies the date on and from which the surrender has effect.

(2) The Commissioners may vary an approval for the period until the surrender has effect.

Revocation of approval

14. Where the Commissioners revoke an approval, they must provide a notice to the approved person which—

(a) specifies the date on and from which the revocation has effect; and

(b) states that the review and appeal provisions apply in respect of the decision to revoke approval.

Refusal of an application

15. Where an application to vary, transfer or surrender an approval is refused, the Commissioners must provide a notice to the approved person which—

(a) states that the application is refused;

(b) provides reasons for the refusal; and

(c) in the case of a refusal to vary an approval, states that the review and appeal provisions apply in respect of the decision to refuse approval.