

*Draft Regulations laid before Parliament under paragraphs 1(1) and 12(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2018 No. 0000**

**EXITING THE EUROPEAN UNION  
CONSUMER PROTECTION  
PUBLIC HEALTH**

**The Tobacco Products and Nicotine Inhaling Products  
(Amendment etc.) (EU Exit) Regulations 2018**

*Made* - - - - *\*\*\**

*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018<sup>(1)</sup>.

In accordance with paragraphs 1(1) and 12(1) of Schedule 7 to that Act, a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

In accordance with paragraph 3(1) of Schedule 4 to that Act, the Treasury has consented to the making of regulation 6(33).

**PART 1**

**Introduction**

**Citation and commencement**

**1.** These Regulations may be cited as the Tobacco Products and Nicotine Inhaling Products (Amendment etc.) (EU Exit) Regulations 2018 and come into force on exit day.

## PART 2

### Amendment of primary legislation

#### Amendment of the Tobacco Advertising and Promotion Act 2002

- 2.—(1) The Tobacco Advertising and Promotion Act 2002(2) is amended as follows.
- (2) Omit section 2(4) (prohibition of tobacco advertising in the EEA)(3).
- (3) In section 3A(1) (advertising: information society services)(4)—
- (a) in paragraph (a), omit “or”;
  - (b) omit paragraph (b).
- (4) In section 4(1) (advertising: exclusions)(5)—
- (a) in paragraph (c)—
    - (i) for “in a country which is not an EEA State”, substitute “outside the United Kingdom”;
    - (ii) for “one or more of the EEA States (or any part of them)”, substitute “the United Kingdom (or any part of the United Kingdom)”;
  - (b) in paragraph (d)—
    - (i) for “an EEA State”, substitute “the United Kingdom”;
    - (ii) for “one or more EEA States (or any part of them)”, substitute “the United Kingdom (or any part of the United Kingdom)”.
- (5) In section 5 (advertising: defences)(6)—
- (a) in subsection (1), after “section 3A(1)(a)”, omit “or (b)”;
  - (b) omit subsection (3A);
  - (c) in subsection (5)(c), for “an EEA State”, substitute “the United Kingdom”;
  - (d) omit subsection (5A).
- (6) Omit section 7D(3) (displays on a website)(7).
- (7) Omit section 8(1A) (displays: Scotland)(8).
- (8) Omit section 9(1A) (prohibition of free distributions)(9).
- (9) Omit section 11(5) (brandsharing)(10).
- (10) In section 21(1) (interpretation), omit the definition of “EEA State”(11).

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(2) 2002 c. 36.

(3) Section 2(4) was substituted by [S.I. 2006/2369](#).

(4) Section 3A was inserted by [S.I. 2006/2369](#).

(5) Section 4(1) was amended by [S.I. 2006/2369](#).

(6) Section 5 was amended by [S.I. 2006/2369](#).

(7) Section 7D was inserted by section 21 of the Health Act 2009 ([c.21](#)).

(8) Subsection (1A) was inserted by paragraph 4(3) of Schedule 4 to the Health Act 2009.

(9) Subsection (1A) was inserted by paragraph 5(2) of Schedule 4 to the Health Act 2009.

(10) Subsection (5) was substituted by paragraph 6(3) of Schedule 4 to the Health Act 2009.

(11) The definition of “EEA State” was inserted by [S.I. 2006/2369](#).

## PART 3

### Amendment of subordinate legislation

#### **Amendment of the Tobacco Advertising and Promotion (Brandsharing) Regulations 2004**

**3.—**(1) The Tobacco Advertising and Promotion (Brandsharing) Regulations 2004<sup>(12)</sup> are amended as follows.

(2) In regulation 4, in both paragraph (3)(b) and (7)(b)—

- (a) omit “or has subsequently become”;
- (b) after “European Economic Area”, insert “or which became part of the European Economic Area after that date but before exit day”.

#### **Amendment of the Standardised Packaging of Tobacco Products Regulations 2015**

**4.—**(1) The Standardised Packaging of Tobacco Products Regulations 2015<sup>(13)</sup> are amended as follows.

(2) In regulation 2—

- (a) in paragraph (1), for the definition of “cross-border distance sale”, substitute—

““cross-border distance sale”, in relation to a tobacco product, means a distance sale to a consumer where, at the time the consumer orders the product from a retailer, the consumer is located in the United Kingdom and the retailer is established in another country;”;
- (b) in paragraph (7), omit “where the consumer is located in the United Kingdom”.

#### **Amendment of the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015**

**5.—**(1) The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015<sup>(14)</sup> are amended as follows.

(2) In regulation 5(2)—

- (a) in sub-paragraph (a), omit the words “or Article 11” to the end;
- (b) omit sub-paragraph (b).

#### **Amendment of the Tobacco and Related Products Regulations 2016**

**6.—**(1) Subject to regulation 9, the Tobacco and Related Products Regulations 2016<sup>(15)</sup> are amended as follows.

(2) In regulation 2(1), for the definition of “retailer”, substitute—

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

(3) In regulation 3—

- (a) in paragraph (3), omit “to a consumer located in the United Kingdom”;
- (b) for paragraph (4), substitute—

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<sup>(12)</sup> S.I. 2004/1824.

<sup>(13)</sup> S.I. 2015/829.

<sup>(14)</sup> S.I. 2015/895.

<sup>(15)</sup> S.I. 2016/507.

“(4) In these Regulations, “cross-border distance sale” means a distance sale to a consumer where, at the time the consumer orders a product from a retailer, the consumer is located in the United Kingdom and the retailer is established in another country.”.

(4) In regulation 5, for paragraph (3)(a), substitute—

“(a) one of the text warnings with the corresponding colour photograph, as listed in the picture library in Schedule A1; and”.

(5) After regulation 5, insert—

**“Revision of text warnings, photographs and technical specifications**

**5A.** Regulations may—

(a) amend the text warnings or photographs listed in the picture library in Schedule A1, taking into account scientific and market developments;

(b) modify for the purposes of these Regulations the layout, design and proportions specified in the Combined Health Warnings Decision referred to in regulation 5, taking into account different packet shapes.”.

(6) In regulation 6—

(a) omit paragraph (1)(a);

(b) in paragraph (1)(b)—

(i) for “14”, substitute “13”;

(ii) omit “in a specified set”;

(c) in paragraph (2)—

(i) for “obligations”, substitute “obligation”;

(ii) for “are”, substitute “is”;

(d) in paragraph (3), omit sub-paragraphs (a) to (c).

(7) In regulation 7, after paragraph (4), insert—

“(5) Regulations may amend the wording of the information message in paragraph (2) (b), taking into account scientific and market developments.”.

(8) In regulation 8, after paragraph (9), insert—

“(10) Regulations may amend paragraphs (5) to (8) as regards the precise position of the general warning and the information message on hand rolling tobacco marketed in pouches, taking into account the different shapes of pouches.”.

(9) In regulation 9, after paragraph (11), insert—

“(12) Regulations may amend paragraph (1) by omitting reference to one or more of the products listed in that paragraph if there is a substantial change of circumstances for the product concerned.”.

(10) In regulation 10, after paragraph (4), insert—

“(5) Regulations may amend the wording of the health warning in paragraph (2), taking into account scientific developments.”.

(11) In regulation 13, after paragraph (2), insert—

“(3) Regulations may decrease the maximum emission levels specified in paragraph (1), where this is necessary, based on internationally agreed standards.”.

(12) In regulation 14, after paragraph (4), insert—

“(5) Regulations may modify the methods of measurement of tar, nicotine and carbon monoxide emissions from cigarettes, where this is necessary, based on scientific and technical developments or internationally agreed standards.

(6) Any regulations made under paragraph (5) must integrate standards agreed by the parties to the WHO Framework Convention on Tobacco Control(16) or by the World Health Organization for measurement methods.”.

(13) In regulation 15, after paragraph (2), insert—

“(3) Regulations may—

- (a) specify whether a tobacco product has a characterising flavour;
- (b) set maximum content levels for additives or a combination of additives that result in a characterising flavour.”.

(14) In regulation 16, after paragraph (3), insert—

“(4) Regulations may—

- (a) specify whether a tobacco product contains additives in quantities that increase the toxic or addictive effect, or the CMR properties of that tobacco product at the stage of consumption to a significant or measureable degree;
- (b) where an additive or a certain quantity thereof has been shown to increase the toxic or addictive effect of a tobacco product, set maximum content levels for that additive.”.

(15) After regulation 16, insert—

**“Regulations: procedures for determining characterising flavour**

**16A.**—(1) Regulations may establish procedures for determining whether a tobacco product—

- (a) has a characterising flavour; or
- (b) contains additives in quantities that increase the toxic or addictive effect, or the CMR properties, of that tobacco product at the stage of consumption to a significant or measureable degree.

(2) Regulations made under paragraph (1) may—

- (a) provide for any determination to be made by—
  - (i) the Secretary of State; or
  - (ii) a person authorised by the Secretary of State for that purpose;
- (b) establish, and provide for the operating procedures of, an independent advisory panel;
- (c) be varied from time to time, including to take account of scientific and market developments in relation to tobacco products;
- (d) make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas;
- (e) be revoked.

(3) Before making regulations under this regulation the Secretary of State must consult such persons (or representatives of such persons) as appear to the Secretary of State to be likely to be substantially affected by them.”.