



# TOBACCO PRODUCTS MANUFACTURING MACHINERY (LICENSING SCHEME) REGULATIONS 2018

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Statutory Document No. 2018/0071



*Tobacco Products Duty Act 1986*

# TOBACCO PRODUCTS MANUFACTURING MACHINERY (LICENSING SCHEME) REGULATIONS 2018

*Laid before Tynwald: 20<sup>th</sup> March 2018*

*Coming into operation: in accordance with regulation 2*

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The Treasury makes the following Regulations under section 7T<sup>1</sup> of the Tobacco Products Duty Act 1986.

## PART 1 - PRELIMINARY

### 1 Title

These Regulations are the Tobacco Products Manufacturing Machinery (Licensing Scheme) Regulations 2018.

### 2 Commencement

- (1) These Regulations come into operation as follows.
- (2) Parts 1, 3, 4 and 7 of these Regulations come into operation on 1 April 2018.
- (3) Parts 2, 5 and 6 of these Regulations come into operation on 1 August 2018.

### 3 Interpretation

In these Regulations —

“**licensee**” means a person to whom a licence is granted under the Regulations;

“**prescribed**” means prescribed by the Treasury in a published notice and  
“**prescribe**” is construed accordingly;

“**regulated activity**” has the meaning given in regulation 4(4).

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<sup>1</sup> Section 7T was inserted by SD 2017/0356.

## PART 2 – REQUIREMENT FOR A LICENCE

### 4 Requirement for a licence

- (1) A person may not carry out a regulated activity otherwise than in accordance with a licence granted by the Treasury under these Regulations.
- (2) Paragraph (1) does not apply to a person carrying out a regulated activity in respect of an item of tobacco products manufacturing machinery which –
  - (a) requires tobacco and paper to be loaded manually into the item;
  - (b) makes cigarettes only by manual operation; and
  - (c) makes only one cigarette before it requires further loading as described in sub-paragraph (a).
- (3) Paragraph (1) does not apply to a person if the only regulated activity carried out by that person is being in possession of an item of tobacco products manufacturing machinery for the purpose of transporting the item on behalf of a licensee, where the transport is made in accordance with the conditions and restrictions of the licence of the licensee.
- (4) A regulated activity is to manufacture, purchase, acquire, own or be in possession of an item of tobacco products manufacturing machinery<sup>2</sup>.

## PART 3 – LICENCE CONDITIONS AND ELIGIBILITY

### 5 Eligibility

The Treasury may grant a licence to a person to carry out a regulated activity only if the Treasury is satisfied that the person –

- (a) is a fit and proper person to carry out the regulated activity; and
- (b) will not use an item of tobacco products manufacturing machinery for the purpose of, or with a view to, the fraudulent evasion of the duty of excise charged on tobacco products under section 2(1) of the Tobacco Products Duty Act 1986.

### 6 Conditions and restrictions

- (1) The Treasury may prescribe conditions and restrictions which may be imposed in a licence and different conditions and restrictions may be prescribed for different cases.

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<sup>2</sup> Tobacco products manufacturing machinery has the meaning given in section 7T(1) of the Tobacco Products Duty Act 1986.

- (2) The Treasury may specify in a licence that restrictions and conditions are imposed in addition to those prescribed.

## **7 Variation or revocation of a licence by the Treasury**

- (1) The Treasury may at any time for reasonable cause vary or revoke a licence.
- (2) Where paragraph (1) applies, the Treasury must give written notice of the variation or revocation to the licensee and state in that notice —
  - (a) the date the variation or revocation has effect;
  - (b) in the case of a variation, the variation made; and
  - (c) the reasons for the variation or revocation.

## **PART 4 - APPLICATIONS**

### **8 Communications**

- (1) The Treasury must prescribe the form and manner for an application and the information to be included in an application.
- (2) The Treasury may prescribe that an application, and any communication relating to it, is to be made electronically.
- (3) The Treasury may prescribe different provisions for different cases.
- (4) In this section, “**application**” means an application —
  - (a) for a licence;
  - (b) to vary a licence; or
  - (c) to renew a licence.

### **9 Applications for a licence and to vary or renew a licence**

- (1) A person must make an application as prescribed.
- (2) The Treasury must, as soon as reasonably practicable after receiving the application —
  - (a) grant a licence or agree to vary or renew a licence, as the case may be;
  - (b) refuse the application in writing, giving reasons for the refusal; or
  - (c) request additional information in accordance with regulation 10.
- (3) Where the Treasury has requested additional information, it must as soon as reasonably practicable after receiving the additional information —
  - (a) grant a licence or agree to vary or renew a licence, as the case may be;

- (b) refuse the application in writing, giving reasons for the refusal.

## 10 Additional information

- (1) In order to determine an application, the Treasury may, by notice, request an applicant to provide additional information to that prescribed.
- (2) Any such notice must specify —
  - (a) the additional information required; and
  - (b) the date by which the information must be provided to the Treasury.
- (3) The Treasury 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 Treasury, the application is treated as being withdrawn on that date.
- (5) Where paragraph (4) applies, the Treasury must give written notice to the applicant stating that the application has been treated as withdrawn.

## 11 Licences

- (1) Where the Treasury grants a licence, it must provide a licence to the applicant which specifies —
  - (a) a unique licence number;
  - (b) the name and address of the applicant and, in the case of a company, the company registration number;
  - (c) each regulated activity permitted;
  - (d) a description of each item of tobacco products manufacturing machinery in respect of which the licence is granted;
  - (e) the address at which each item of tobacco products manufacturing machinery must be kept;
  - (f) the date on which the licence will expire, which must be a date within 2 years of the date on which the licence is issued; and
  - (g) any conditions or restrictions to which the licence is subject.
- (2) Where the Treasury agrees to vary or renew a licence, it must, as the case may be, give written notice to the applicant of —
  - (a) the variations which are made to the licence and the date from which the variations have effect; or
  - (b) the date on which the licence will expire, which must be a date within 2 years of the date on which the licence is renewed.

## PART 5 – PENALTIES AND FORFEITURE

### 12 Penalties

A person who does not comply with regulation 4(1) is liable to a penalty of the amount specified in section 9(2)(b) of the Finance Act 1994 (penalties for contravention of statutory requirements), as it has effect in the Island<sup>3</sup>.

### 13 Assessment of penalties

- (1) Where a person becomes liable for a penalty under regulation 12, the Treasury may assess the penalty, and if it does so, it must notify the person liable.
- (2) A notice under paragraph (1) must state the contravention in respect of which the penalty is assessed.
- (3) Two or more contraventions may be treated by the Treasury as a single contravention for the purposes of assessing a penalty.
- (4) A penalty assessed under paragraph (1) must be paid before the end of the period of 30 days beginning with the day on which the notification of the penalty is issued.
- (5) An assessment is to be treated as an amount of duty due from the person liable and may be recovered accordingly.
- (6) An assessment may not be made later than one year after the evidence of facts sufficient in the opinion of the Treasury to indicate the contravention comes to its knowledge.

### 14 Exceptions from liability to a penalty

- (1) A person is not liable to a penalty under regulation 12, in respect of a contravention if —
  - (a) the contravention is not deliberate; and
  - (b) the person satisfies the Treasury that there is a reasonable excuse for the contravention.
- (2) For the purposes of paragraph (1)(b) —
  - (a) where the person relies on another person to do anything, that is not reasonable excuse unless the first person took reasonable care to avoid the contravention;
  - (b) where the person had a reasonable excuse for the relevant act or failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the contravention is remedied without unreasonable delay after the excuse has ceased.

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<sup>3</sup> Section 9(2)(b) of the Finance Act 1994 (of Parliament) was applied in the Island by SD 369/94 and amended by SD 22/01.

**15 Double jeopardy**

A person is not liable to a penalty under regulation 12 in respect of a contravention in respect of which the person has been convicted of an offence.

**16 Forfeiture**

Where a person carries out a regulated activity contrary to regulation 4(1), the item of tobacco manufacturing machinery in respect of which the person carried out the activity is liable to forfeiture.

**PART 6 - ENFORCEMENT****17 Application of the revenue trader provisions of the Customs and Excise Management Act 1986**

- (1) The following provisions of the Customs and Excise Management Act 1986<sup>4</sup> have effect in relation to licensees as they have effect in relation to revenue traders –
  - (a) section 117 (power of entry upon premises, etc. of revenue traders);
  - (b) section 117A (section 117: supplementary powers)<sup>5</sup>;
  - (c) section 124 (liability of ostensible owner or principal manager);
  - (d) section 124BD (inspection powers: supplementary provision)<sup>6</sup>;
  - (e) section 165 (power to require provision of facilities).
- (2) Section 124B of the Customs and Excise Management Act 1986 (duty of revenue traders and others to furnish information and produce documents) has effect in relation to licensees as it has effect in relation to revenue traders as modified by paragraph (3).
- (3) In subsection (3)(b) for “virtue of section 124A” substitute “by or under regulations made under section 7T of the Tobacco Products Duty Act 1986”.

**PART 7 – REVIEWS AND APPEALS****18 Reviews and appeals**

- (1) Any decision by the Treasury that a person is liable to a penalty under regulation 12, or as to the amount of the person’s liability, is to be treated

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<sup>4</sup> 1986 c.34.

<sup>5</sup> Section 117 inserted by Article 3 of SD 185/11.

<sup>6</sup> Section 124BD was inserted by Article 3 of SD 185/11 and amended by Article 4 of SD 0668/12.

as if it were listed in section 13A(2) of the Finance Act 1994 (of Parliament) (customs and excise reviews and appeals: meaning of “relevant decisions”), as it has effect in the Island<sup>7</sup>, and accordingly, as if it were a relevant decision for the purposes mentioned in section 13A(1).

- (2) Each of the decisions of the Treasury listed in paragraph (3) is to be treated as if it were listed in Schedule 5 to the Finance Act 1994 (decisions subject to appeal and review), as it has effect in the Island<sup>8</sup>.
- (3) The decisions referred to are —
  - (a) the refusal of an application to grant, vary or renew a licence;
  - (b) the imposition of conditions or restrictions on a licence;
  - (c) any other variation of a licence; and
  - (d) the revocation of a licence.

**MADE 21<sup>ST</sup> FEBRUARY 2018**

**A L CANNAN**  
*Minister for the Treasury*

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<sup>7</sup> Section 13A of the Finance Act 1994 (of Parliament) was applied in the Island by SD 217/09 and amended by SD 2015/0191 and SD 2017/0046.

<sup>8</sup> Schedule 5 to the Finance Act 1994 was applied in the Island by SD 369/94, and amended by SD 507/99, SD 0579/12, SD 0665/12, SD 0301/13, SD 2015/0191 and 2017/0046.

*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations set out the framework for a licensing scheme for tobacco products manufacturing machinery, which is machinery designed primarily for the purpose of manufacturing tobacco products. These Regulations correspond to legislation introduced in the United Kingdom, which the Island is obliged to follow under the terms of the Customs and Excise Agreement 1979.

The Regulations provide that a person may not manufacture, purchase, acquire, own or be in possession of an item of tobacco products manufacturing machinery otherwise than in accordance with a licence. They also make provision for exemptions from the licensing scheme, who is eligible to have a licence, conditions and restrictions to apply to licences, the administration of licences, penalties, forfeiture, enforcement and reviews and appeals.

The licensing of tobacco products manufacturing machinery is part of a global Protocol on combating illicit tobacco trade, the World Health Organisation Framework Convention on Tobacco Control Illicit Trade Protocol. These Regulations will support the combating of the illicit tobacco trade, although it is not expected that there are any tobacco products manufacturers on the Island at present.

The Regulations will have effect from 1 April 2018 for the purposes of accepting licence applications. The requirement to have a licence, as well as the penalty, forfeiture and enforcement regulations will have effect from 1 August 2018.