



**Isle of Man**

*Ellan Vannin*

**AT 39 of 1986**

**TOBACCO PRODUCTS DUTY ACT 1986**





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### Index

Section	Page
1 Tobacco products.....	5
2 Charge and remission or repayment of tobacco products duty .....	6
3 Calculation of duty in case of cigarettes more than 8 cm long.....	6
4 Retail price of cigarettes.....	6
5 Alteration of rates of duty .....	8
5A Anti-forestalling notices in connection with anticipated alteration of rate of duty .....	8
5B Anti-forestalling notices: sanctions .....	10
6 Regulations for management of duty .....	11
6A Duty not to facilitate smuggling.....	12
6B Penalty for facilitating smuggling: initial notice .....	13
6C Penalty for facilitating evasion: penalty notice .....	14
6D Sections 6A to 6C: supplemental .....	15
6E Regulations .....	16
7 Charge in cases of default.....	16
7A Fiscal marks: introductory .....	17
7B Fiscal mark regulations.....	17
7C Fiscal marks: public notices.....	17
7D Failure to comply with fiscal mark regulations and public notices .....	18
7E Sale of marked tobacco when not permitted: penalties .....	18
7F Offences: possession and sale etc of unmarked tobacco .....	19
7G Offences: use of premises for sale of unmarked tobacco .....	20
7H Interfering with fiscal marks: penalties .....	20
7I Raw tobacco: definitions.....	21
7J Raw tobacco: requirement for approval.....	21
7K Regulations about approval etc .....	21
7L Exemptions from requirement for approval.....	22
7M Raw tobacco: penalties.....	22
7N Penalties under section 7M: special reduction .....	22
7O Penalties under section 7M: assessment of penalty .....	23
7P Penalties under section 7M: reasonable excuse.....	23
7Q Penalties under section 7M: double jeopardy.....	24

7R	Forfeiture of raw tobacco .....	24
7S	Raw tobacco: application of Customs and Excise Management Act 1986 .....	24
8	Public documents .....	24
9	Interpretation .....	24
	<i>Customs and Excise Management Act 1986</i> .....	25
10	Citation and commencement .....	25
<b>SCHEDULE</b> .....		<b>27</b>
<b>TABLE OF RATES OF TOBACCO PRODUCTS DUTY</b> .....		<b>27</b>
<b>ENDNOTES</b> .....		<b>29</b>
TABLE OF LEGISLATION HISTORY .....		29
TABLE OF RENUMBERED PROVISIONS .....		29
TABLE OF ENDNOTE REFERENCES .....		29

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## TOBACCO PRODUCTS DUTY ACT 1986

*Received Royal Assent:* 24 July 1986

*Passed:* 21 October 1986

*Commenced:* 1 April 1987

**AN ACT** to provide for the imposition of excise duty on tobacco products and for connected purposes.

### 1 Tobacco products

[P1979/7/1]

- (1) In this Act “**tobacco products**” means any of the following products, namely –
- (a) cigarettes;
  - (b) cigars;
  - (c) hand-rolling tobacco;
  - (d) other smoking tobacco; and
  - (e) chewing tobacco,
- which are manufactured wholly or partly from tobacco or any substance used as a substitute for tobacco.<sup>1</sup>
- (1A) But a product is not a tobacco product for the purposes of this Act if –
- (a) the product does not contain any tobacco; and
  - (b) the Treasury is satisfied that –
    - (i) the product is of a description that is used for medical purposes; and
    - (ii) the product is intended to be used exclusively for such purposes.<sup>2</sup>
- (2) and (2A)[Repealed]<sup>3</sup>
- (3) The Treasury may provide by order that in this Act references to cigarettes, cigars, hand-rolling tobacco, other smoking tobacco and chewing tobacco shall or shall not include references to any product

manufactured as mentioned in subsection (1); and any such order may amend or repeal subsection (2) or (2A).<sup>4</sup>

(4) [Repealed]<sup>5</sup>

## 2 Charge and remission or repayment of tobacco products duty

[P1979/7/2]

(1) There shall be charged on tobacco products —

- (a) imported; or
- (b) manufactured in the Island,

a duty of excise at the rates shown in the Table in the Schedule.

(2) Subject to such conditions as it sees fit to impose, the Treasury shall remit or repay the duty charged under this section where it is shown to its satisfaction that —

- (a) the products in question have been —
  - (i) exported or shipped as stores, or
  - (ii) used solely for the purposes of research or experiment; and<sup>6</sup>

(b) any fiscal marks carried by the products have been obliterated;<sup>7</sup>

and the Treasury may by regulations provide for the remission or repayment of the duty in such other cases as may be specified in the regulations and subject to such conditions as it sees fit to impose.<sup>8</sup>

## 3 Calculation of duty in case of cigarettes more than 8 cm long<sup>9</sup>

[P1979/7/4]

For the purposes of the references to a thousand cigarettes in paragraph 1 in the Table in the Schedule, any cigarette more than 8 cm. long (excluding any filter or mouthpiece) shall be treated as if the first 8 cm. of it, each 3 cm. portion of the remainder of it (if any) and the remaining portion of it (if any) were a separate cigarette.<sup>10</sup>

## 4 Retail price of cigarettes

[P1979/7/5]

(1) For the purposes of the duty chargeable at any time under section 2 in respect of cigarettes of any description, the retail price of the cigarettes shall be taken to be —

- (a) the higher of —
  - (i) the recommended price for the sale by retail at that time in the Island of cigarettes of that description; and

- (ii) any (or, if more than one, the highest) retail price shown at that time on the packaging of the cigarettes in question, or<sup>11</sup>
  - (b) if there is no such price recommended or shown, the highest price at which cigarettes of that description are normally sold by retail at that time in the Island.<sup>12</sup>
- (1A) In subsection (1) “recommended price” —
  - (a) in relation to a case in which cigarettes of the applicable description are manufactured by a manufacturer in a member State or in the Isle of Man, means any price recommended by that manufacturer; and
  - (b) in relation to a case which does not fall within paragraph (a), means any price recommended by an importer of cigarettes of the applicable description.<sup>13</sup>
- (2) The duty in respect of any number of cigarettes shall be charged by reference to the price which, in accordance with subsection (1), is applicable to cigarettes sold in packets of 20 or more or of such other number as the Treasury may determine in relation to cigarettes of the description in question; and the whole of the price of a packet shall be regarded as referable to the cigarettes it contains notwithstanding that it also contains a coupon, token, card or other additional item.
- (3) In any case in which duty is chargeable in accordance with subsection (1)(b) —
  - (a) the question as to what price is applicable under that paragraph shall, subject to subsection (4), be determined by the Treasury; and
  - (b) the Treasury may require security (by deposit of money or otherwise to its satisfaction) for the payment of duty to be given pending its determination.<sup>14</sup>
- (4) Any person who has paid duty in accordance with a determination of the Treasury under subsection (3)(a) and is dissatisfied with its determination may require the question of what price was applicable under subsection (1)(b) to be referred to the arbitration of a referee appointed by the Clerk of the Rolls, not being an employee of the Public Services Commission.<sup>15</sup>
- (5) If, on a reference to him under subsection (4), the referee determines that the price was lower than that determined by the Treasury, it shall repay the duty overpaid together with interest on the overpaid duty from the date of the overpayment at such rate as the referee may determine.
- (6) The procedure on any reference to a referee under subsection (4) shall be such as may be determined by the referee; and the referee’s decision on any such references shall be final and conclusive.

## 5 Alteration of rates of duty

[P1979/7/6]

- (1) Without prejudice to section 8, the Treasury may by order amend the rate of any duty chargeable under this Act.
- (2) For the purposes of subsection (1) the percentage and each amount per thousand cigarettes in paragraph 1 in the Table in the Schedule shall be treated as separate rates of duty.<sup>16</sup>

## 5A Anti-forestalling notices in connection with anticipated alteration of rate of duty

- (1) If the Treasury considers that an alteration to a rate of duty charged under section 2 on tobacco products may be made (whether under section 5 or otherwise), it may publish a notice under this section (an “**anti-forestalling notice**”).
- (2) An anti-forestalling notice —
  - (a) must specify a period of up to 3 months (“**the controlled period**”);
  - (b) may impose such restrictions (“**anti-forestalling restrictions**”), as to the quantities of the tobacco products that may, during the controlled period, be removed for home use, as the Treasury considers to be reasonable for the purpose of protecting the public revenue;
  - (c) may make provision for, and in connection with, the controlled period coming to an end early (including provision modifying an anti-forestalling restriction in such circumstances);
  - (d) may make provision for the removal of tobacco products for home use to be disregarded for the purposes of one or more anti-forestalling restrictions in certain circumstances; and
  - (e) may make different provision for different cases.
- (3) The anti-forestalling restrictions that may be imposed include, in particular —
  - (a) restrictions as to the total quantity of the tobacco products, or of the tobacco products of a particular description, that may, during the controlled period, be removed for home use; and
  - (b) restrictions as to the quantity of the tobacco products, or the tobacco products of a particular description, that may be removed for home use during any month, or any period of 2 weeks, in the controlled period.

This is subject to subsections (4) and (5).

- (4) An anti-forestalling notice may not restrict a person, during the controlled period, to removing for home use a total quantity of the



tobacco products, or of the tobacco products of a particular description, that is less than 80% of —

$$\frac{\text{TPY} \times \text{DCP}}{365}$$

where —

TPY is the total quantity of tobacco products, or (as the case may be) of the tobacco products of a particular description, removed for home use by the person in the period of 12 months ending with the third month before the month in which the controlled period begins; and

DCP is the number of days in the controlled period.

- (5) An anti-forestalling notice may not restrict a person, in any month of the controlled period, to removing for home use less than 30% of the total quantity of tobacco products, or of the tobacco products of a particular description, that could, under the anti-forestalling restrictions imposed by the notice, be removed for home use during the whole controlled period.
- (6) If, before the end of the controlled period, it appears to the Treasury that the rates of duty —
  - (a) will not be altered during the controlled period; but
  - (b) may be altered within a month of the end of the controlled period, the Treasury may publish an extension notice.
- (7) An extension notice may —
  - (a) extend the controlled period by up to one month; and
  - (b) in accordance with subsections (2) to (5), make such other modifications of the anti-forestalling notice as the Treasury thinks appropriate in consequence of the extension.
- (8) The Treasury may vary or revoke an anti-forestalling notice —
  - (a) as it applies generally; or
  - (b) if the Treasury considers that exceptional circumstances justify doing so, in relation to a particular person.
- (9) This section does not affect the powers of the Treasury —
  - (a) under section 135 of the *Customs and Excise Management Act 1986* (restriction of delivery of goods); or
  - (b) to make regulations under section 6 of this Act in relation to periods specified under that section of the Act.<sup>17</sup>

**5B Anti-forestalling notices: sanctions**

- (1) This section applies if a person fails to comply with an anti-forestalling notice published under section 5A by, on one or more occasions, removing tobacco products for home use during the controlled period in contravention of an anti-forestalling restriction.
- (2) The failure to comply attracts a penalty under section 9 of the Finance Act 1994 (civil penalties) (an Act of Parliament)<sup>1</sup>, as it has effect in the Island, of an amount determined in accordance with subsection (3) (rather than that section).
- (3) The person is liable to a penalty of —
  - (a) if the person has given an admission notice, 150% of the lost duty; and
  - (b) otherwise, 200% of the lost duty.
- (4) An “**admission notice**” is a notice —
  - (a) in which a person admits that the person —
    - (i) has failed to comply with the anti-forestalling notice; and
    - (ii) is liable to a penalty determined in accordance with subsection (3); and
  - (b) that is in such form, and that provides such information, as the Treasury may specify.
- (5) An admission notice cannot be given if, at any time in the period of 3 years ending with the day before the controlled period, the person has given an admission notice in relation to a failure to comply with another anti-forestalling notice.
- (6) An admission notice cannot be given —
  - (a) at a time when the person has reason to believe that the Treasury has discovered, or is about to discover, that the person has failed to comply with the anti-forestalling notice; or
  - (b) after the end of the controlled period.
- (7) The “**lost duty**” is the amount (if any) by which the duty that would have been charged under section 2 on the excess tobacco products if they had, immediately after the end of the controlled period, been removed for home use exceeds the duty that was charged under that section on those tobacco products.
- (8) The “**excess tobacco products**” are the tobacco products mentioned in subsection (1) that the person removed, for home use, in contravention of an anti-forestalling restriction.

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<sup>1</sup> 1994 c.9 (of Parliament), applied in the Island by SD 369/94.

- (9) See section 5A for the meaning of “anti-forestalling notice”, “anti-forestalling restriction” and “controlled period”.<sup>18</sup>

## 6 Regulations for management of duty

[P1979/7/7]

- (1) The Treasury may with a view to managing the duty charged under section 2(1) make regulations —
- (a) prescribing the method of charging the duty and for securing and collecting the duty;
  - (aa) for charging the duty, in such circumstances as may be specified in the regulations, by reference to the weight of the tobacco products at a time specified in the regulations or by the Treasury (whether the time at which the products become chargeable or that at which the duty becomes payable or any other time);<sup>19</sup>
  - (b) for the registration of premises for the safe storage of tobacco products and for requiring the deposit of tobacco products in, and regulating their storage and treatment in and removal from, premises so registered;<sup>20</sup>
  - (ba) for the registration of premises for the manufacture of tobacco products, for restricting or prohibiting the manufacture of tobacco products otherwise than in premises so registered and for regulating their storage and treatment in, and removal from, such premises;<sup>21</sup>
  - (c) for the registration of premises where —
    - (i) [Repealed]<sup>22</sup>
    - (ii) materials for the manufacture of tobacco products are grown, produced, stored or treated; or
    - (iii) refuse from the manufacturer of tobacco products is stored or treated,and for regulating the storage and treatment in, and removal from, premises so registered of such materials and refuse;
  - (d) for requiring the keeping and preservation of such records, the notification of such information, and the making of such returns, as may be specified in the regulations or required by the Treasury; and<sup>23</sup>
  - (e) for the inspection of goods, documents and premises.
- (1A) Regulations under subsection (1) may, in particular, include provision —
- (a) imposing, or providing for the imposition under the regulations of, conditions and restrictions relating to any of the matters mentioned in that subsection;

- (b) enabling the Treasury to dispense with compliance with any provision contained in the regulations in such circumstances and subject to such conditions (if any) as it may determine.<sup>24</sup>
- (2) If any person contravenes any regulation made under subsection (1) his contravention shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any article in respect of which any person contravenes any such regulation, or which is found on premises in respect of which any person has contravened any such regulation, shall be liable to forfeiture.<sup>25</sup>

### **6A Duty not to facilitate smuggling**

- (1) A manufacturer of cigarettes or hand-rolling tobacco shall so far as is reasonably practicable avoid —
  - (a) supplying cigarettes or hand-rolling tobacco to persons who are likely to smuggle them into the Island,
  - (b) supplying cigarettes or hand-rolling tobacco where the nature or circumstances of the supply makes it likely that they will be resupplied to persons who are likely to smuggle them into the Island, or
  - (c) otherwise facilitating the smuggling into the Island of cigarettes or hand-rolling tobacco.
- (2) In particular, a manufacturer —
  - (a) in supplying cigarettes or hand-rolling tobacco to persons carrying on business in or in relation to a country other than the Island, shall consider whether the size or nature of the supply suggests that the products may be required for smuggling into the Island,
  - (b) shall maintain a written policy about steps to be taken for the purpose of complying with the duty under subsection (1), and
  - (c) shall provide a copy of the policy to the Treasury on request.
- (3) In this section a reference to smuggling products into the Island is a reference to importing them into the Island without payment of duty which is —
  - (a) chargeable under section 2, and
  - (b) payable by virtue of section 143A(1) of the Management Act (power to fix excise duty point).
- (4) The Treasury may notify a manufacturer in writing that it thinks the risk of smuggling into the Island is particularly great in relation to —
  - (a) products marketed under a specified brand name;
  - (b) products supplied to persons carrying on business in or in relation to a specified country or place.

- (5) The Treasury may by notice in writing require a manufacturer of cigarettes or hand-rolling tobacco to provide, within a specified period of time, specified information about —
  - (a) supply of products marked under a brand name specified under subsection (4)(a);
  - (b) supply to persons carrying on business in or in relation to a country or place specified under subsection (4)(b);
  - (c) demand for cigarettes or hand-rolling tobacco in a country or place specified under subsection (4)(b).
- (6) The Treasury may issue guidance about the content of policies under subsection (2)(b).
- (7) The Treasury may make regulations —
  - (a) under which it is required to notify manufacturers of cigarettes or hand-rolling tobacco where products of a kind specified in the regulations are seized under section 146 of the Management Act in circumstances specified in the regulations,
  - (b) specifying the procedure for notification,
  - (c) including provision about access to seized products for the purpose of determining who manufactured them, and
  - (d) requiring manufacturers to provide the Treasury with information or documents, of a kind specified in the regulations or determined by the Treasury, in relation to notified seizures.<sup>26</sup>

## **6B Penalty for facilitating smuggling: initial notice**

- (1) Where the Treasury thinks that a manufacturer has without reasonable excuse failed to comply with the duty under section 6A(1) it may give them written notice that it is considering requiring them to pay a penalty.
- (2) In determining whether to give notice under subsection (1) the Treasury shall have regard to —
  - (a) the content of the manufacturer's policy under section 6A(2)(b),
  - (b) compliance with that policy,
  - (c) action taken pursuant to any notice under section 6A(4),
  - (d) compliance by the manufacturer with any notice under section 6A(5),
  - (e) the number, size and nature of seizures of which the manufacturer has been given notice by virtue of section 6A(7)(a),
  - (f) compliance by the manufacturer with any requirement by virtue of section 6A(7)(d),
  - (g) evidence about the level of demand for the manufacturer's products for consumption outside the Island and the United Kingdom, and

- (h) any other matter that it thinks relevant.
- (3) A notice must specify the matters to which the Treasury has had regard in determining to give it.
- (4) After the end of the period of 6 months beginning with the date on which a notice is given to a manufacturer, the Treasury shall give them notice in writing either —
  - (a) that it requires payment of a penalty, or
  - (b) that it does not require payment of a penalty.
- (5) The Treasury shall comply with subsection (4) during the period of 45 days beginning with the end of the period specified in that subsection; and for that purpose it shall consider —
  - (a) any representations made by the manufacturer during that period in such form and manner as the Treasury may direct, and
  - (b) action taken by the manufacturer during that period.<sup>27</sup>

### **6C Penalty for facilitating evasion: penalty notice**

- (1) A notice under section 6B(4)(a) (a “penalty notice”) must —
  - (a) specify the amount of the penalty which the manufacturer is required to pay, and
  - (b) state the grounds on which the Treasury thinks that the manufacturer has failed to comply with the duty under section 6A(1).
- (2) The amount specified under subsection (1)(a) must not exceed £5 million; and in determining the amount to specify the Treasury shall have regard to —
  - (a) the nature or extent of the manufacturer’s failure to comply with the duty under section 6A(1),
  - (b) action taken by the manufacturer to secure compliance with that duty,
  - (c) the content of the manufacturer’s policy under section 6A(2)(b),
  - (d) compliance with that policy,
  - (e) action taken pursuant to any notice under section 6A(4),
  - (f) compliance by the manufacturer with any notice under section 6A(5),
  - (g) the number, size and nature of seizures of which the manufacturer has been given notice by virtue of section 6A(7)(a),
  - (h) the loss of revenue by way of duty under section 2, or VAT, in respect of the products seized, and
  - (i) any other matter that it thinks relevant.

- (3) Sections 13A to 16 of the Finance Act 1994 (of Parliament) apply to a decision to issue a penalty notice as they apply to the decisions mentioned in section 13A(2)(a) to (h) of that Act.<sup>28</sup>
- (4) and (5) [Repealed]<sup>29</sup>

#### **6D Sections 6A to 6C: supplemental**

- (1) Payment of a penalty imposed under section 6B(4)(a) shall not be allowed as a deduction in computing income, profits or losses for purposes of income tax.
- (2) A penalty may be enforced as a debt due to the Treasury.
- (3) In sections 6A to 6C and this section a reference to a manufacturer of cigarettes or hand-rolling tobacco includes a reference to a person who, in the opinion of the Treasury —
  - (a) arranges to have cigarettes or hand-rolling tobacco manufactured, and
  - (b) is wholly or partly responsible for the initial supply of the products after manufacture.
- (4) Where a manufacturer is a holding company or a subsidiary company (within the meaning of section 1 of the *Companies Act 1974*) the Treasury may —
  - (a) treat the holding company and its subsidiaries as a single undertaking for the purpose of sections 6A to 6C and this section, and
  - (b) in particular, enforce a penalty imposed on the single undertaking as a debt owed by —
    - (i) the single undertaking,
    - (ii) the holding company, or
    - (iii) any of the subsidiaries.
- (5) A notice or guidance under section 6A(4) to (6) —
  - (a) may be issued to manufacturers generally or to one or more manufacturers or classes of manufacturer,
  - (b) may be expressed to apply to or in respect of one or more specified manufacturers or classes of manufacturer,
  - (c) may make provision generally or only in relation to specified cases or circumstances,
  - (d) may make different provision in relation to different cases or circumstances, and
  - (e) may be varied, replaced or revoked.
- (6) The Treasury may by order —

- (a) amend the list in section 6B(2) or 6C(2) so as to —
    - (i) add an entry,
    - (ii) remove an entry, or
    - (iii) amend an entry;
  - (b) amend sections 6A to 6C and this section so as to alter the class of tobacco products in relation to which they apply.
- (7) Notice or guarantee under section 6A(4) to (6) shall not be construed as a public document within the meaning of section 3 of the *Interpretation Act 1976*.<sup>30</sup>

## 6E Regulations

Regulations under this Act —

- (a) may enable the Treasury to dispense with compliance with a provision of the regulations (whether absolutely or conditionally),
- (b) may include transitional, consequential or incidental provision.<sup>31</sup>

## 7 Charge in cases of default

[P1979/7/8]

- (1) Where the records or returns kept or made by any person in pursuance of regulations under section 2 or 6 show that any tobacco products or materials for their manufacture are or have been in his possession or under his control, the Treasury may from time to time require him to account for those products or materials.
- (2) Unless a person required under subsection (1) to account for any products or materials proves —
  - (a) that duty has been paid or secured under section 6 in respect of the products or, as the case may be, products manufactured from the materials; or
  - (b) that the products or materials are being or have been otherwise dealt with in accordance with regulations under section 2 or 6,the Treasury may assess an amount as duty due from him under section 2 in respect of those products or, as the case may be, in respect of such products as in its opinion might reasonably be expected to be manufactured from those materials, and they may notify him or his representative accordingly.<sup>32</sup>
- (3) Where a person has failed to keep or make any records or returns required by regulations under section 2 or 6, or it appears to the Treasury that any such records or returns are inaccurate or incomplete, it may require him to pay any duty under section 2 which it considers would have been shown to be due if proper records or returns had been kept or made.



**7A Fiscal marks: introductory**

Fiscal marking applies to tobacco products that are —

- (a) cigarettes, or
- (b) hand-rolling tobacco.<sup>33</sup>

**7B Fiscal mark regulations**

- (1) The Treasury may make provision by regulations —
  - (a) requiring the carrying of fiscal marks by tobacco products to which fiscal marking applies, and
  - (b) as to such matters relating to fiscal marks as appear to the Treasury to be necessary or expedient.
- (2) In this Act “**fiscal mark**” means a mark carried by tobacco products indicating all or any of the following —
  - (a) that excise duty has been paid on the products;
  - (b) the rate at which excise duty was paid on the products;
  - (c) the amount of excise duty paid on the products;
  - (d) when excise duty was paid on the products;
  - (e) that sale of the products —
    - (i) is only permissible on dates ascertainable from the mark;
    - (ii) is not permissible after (or on or after) a date so ascertainable;
    - (iii) is not permissible before (or before or on) a date so ascertainable.
- (3) Regulations under this section may, in particular, make provision about —
  - (a) the contents of a fiscal mark;
  - (b) the appearance of a fiscal mark;
  - (c) in the case of tobacco products that have more than one layer of packaging, which of the layers is (or are) to carry a fiscal mark;
  - (d) the positioning of a fiscal mark on the packaging of any tobacco products;
  - (e) when tobacco products are required to carry a fiscal mark.
- (4) Regulations under this section may make different provision for different cases.<sup>34</sup>

**7C Fiscal marks: public notices**

- (1) The Treasury may by notices published by it regulate any of the matters mentioned in paragraphs (a) to (d) of section 7B(3).

- (2) A notice under this section may provide for provision made by regulations under section 7B to have effect subject to provisions of the notice.
- (3) A notice under this section may make different provision for different cases.<sup>35</sup>

#### **7D Failure to comply with fiscal mark regulations and public notices**

- (1) This section applies if a person fails to comply with any requirement imposed by or under —
  - (a) regulations made under section 7B, or
  - (b) a notice published under section 7C.
- (2) Any article in respect of which the person fails to comply with the requirement shall be liable to forfeiture.
- (3) The person's failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (of Parliament) (civil penalties), as it has effect in the Island.
- (4) The Treasury may by regulations make such provision as is mentioned in subsection (5) about the calculation of the penalty in a case where the failure involves post-dating of any tobacco products.

For this purpose "post-dating" means that the products carry a fiscal mark ("the later period mark") that —

- (a) is not one they are required to carry by virtue of this Act, and
  - (b) is one they would be required to carry by virtue of this Act if the requirement to pay the duty charged on them under section 2 took effect at a time later than that at which it in fact takes effect.
- (5) The provision that may be made by regulations under subsection (4) is for the penalty to be calculated by reference to the duty currently charged on the products.

For this purpose "the duty currently charged" on the products is the amount of the duty charged under section 2 that would be payable on the products if the requirement to pay the duty took effect at the time of the failure.<sup>36</sup>

#### **7E Sale of marked tobacco when not permitted: penalties**

- (1) This section applies if provision made by or under —
  - (a) regulations made under section 7B, or
  - (b) a notice published under section 7C,provides for any tobacco products to carry a period of sale mark.
- (2) In this section —

“a period of sale mark” means a fiscal mark indicating any of the matters mentioned in subsection (2)(e) of section 7B; and

“prohibited time”, in relation to tobacco products that carry a period of sale mark, means a time when, according to the mark, sale of the products is not permissible.

- (3) If —
- (a) a person sells by way of retail sale, or exposes for retail sale, any tobacco products that carry a period of sale mark, and
  - (b) he so sells or exposes the product at a prohibited time,
- his so selling or exposing the products shall attract a penalty under section 9 of the Finance Act 1994 (of Parliament) (civil penalties), as it has effect in the Island, and the products are liable to forfeiture.<sup>37</sup>

## **7F Offences: possession and sale etc of unmarked tobacco**

- (1) In this section “unmarked products” means tobacco products that are subject to fiscal marking but do not carry a compliant duty-paid fiscal mark.
- (2) For the purposes of this section “duty-paid fiscal mark” means a fiscal mark carried by tobacco products indicating that excise duty has been paid on the products.
- (3) For the purposes of this section a duty-paid fiscal mark carried by tobacco products of any description is “compliant” if it complies with all relevant requirements for any duty-paid fiscal mark that by virtue of this Act is required to be carried by such tobacco products of that description as are by virtue of this Act required to carry such a mark.

For this purpose “relevant requirement” means a requirement, imposed by virtue of this Act, as to any of the matters mentioned in paragraphs (a) to (d) of section 7B(3) (contents, appearance and positioning etc. of fiscal marks).

- (4) If a person —
- (a) is in possession of, transports or displays, or
  - (b) sells, offers for sale or otherwise deals in,
- unmarked products then, except in such cases as may be prescribed in regulations made by the Treasury and the products are liable to forfeiture.
- (5) It is a defence for a person charged with an offence under subsection (4) to prove that the unmarked products were not required by virtue of this Act to carry a duty paid fiscal mark.
- (6) A person guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding £2,500.<sup>38</sup>

**7G Offences: use of premises for sale of unmarked tobacco**

- (1) A manager of premises commits an offence if he suffers the premises to be used for the sale of unmarked products.

In this section “unmarked products” has the same meaning as in section 7F.

- (2) It is a defence for a person charged with an offence under subsection (1) to prove that the unmarked products were not required by virtue of this Act to carry a duty-paid fiscal mark.

For this purpose “duty-paid fiscal mark” has the same meaning as in section 7F.

- (3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding £2,500.

- (4) A court by or before which a person is convicted of an offence under subsection (1) may make an order prohibiting the use of the premises in question for the sale of tobacco products during a period specified in the order.

- (5) The period specified in the order under subsection (4) shall not exceed six months; and the first day of the period shall be the day specified as such in the order.

- (6) A manager of premises commits an offence if he suffers the premises to be used in breach of an order under subsection (4).

- (7) A person guilty of an offence under subsection (6) shall be liable on summary conviction to a fine not exceeding £2,500.

- (8) For the purposes of this section a person is a manager of premises if he —
- (a) is entitled to control their use,
  - (b) is entrusted with their management, or
  - (c) is in charge of them.<sup>39</sup>

**7H Interfering with fiscal marks: penalties**

- (1) This section applies where a person —
- (a) alters or overprints any fiscal mark carried by any tobacco products in compliance with any provision made under this Act, or
  - (b) causes any such mark to be altered or overprinted.
- (2) His altering or overprinting of the mark, or his causing it to be altered or overprinted, shall attract a penalty under section 9 of the Finance Act 1994 (of Parliament) (civil penalties), as it has effect in the Island.
- (3) The products that carried the mark shall be liable to forfeiture.

- (4) The penalty under subsection (2) shall be calculated by reference to the duty currently charged on the products.

For this purpose “the duty currently charged” on the products is the amount of the duty charged under section 2 that would be payable on the products if the requirement to pay the duty took effect at the time of the conduct attracting the penalty.<sup>40</sup>

#### **7I Raw tobacco: definitions**

- (1) The following definitions apply for the purposes of sections 7J to 7S.
- (2) “**Raw tobacco**” means the leaves or any other part of a plant of the genus *Nicotiana* but does not include —
  - (a) any part of a living plant; or
  - (b) a tobacco product.
- (3) “**Controlled activity**” means any activity involving raw tobacco.<sup>41</sup>

#### **7J Raw tobacco: requirement for approval**

- (1) A person may not carry on a controlled activity after 1 April 2017 otherwise than in accordance with an approval given by the Treasury under this section.
- (2) The Treasury may approve a person to carry on a controlled activity only if satisfied that —
  - (a) the person is a fit and proper person to carry on the activity; and
  - (b) the activity will not be carried on 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).
- (3) An approval may —
  - (a) specify the period of approval; and
  - (b) be subject to conditions or restrictions.
- (4) The Treasury may at any time for reasonable cause revoke or vary the terms of an approval.<sup>42</sup>

#### **7K Regulations about approval etc**

The Treasury may, by or under regulations, make provision —

- (a) regulating the approval of persons under section 7J;
- (b) about the form, manner and content of an application for approval;
- (c) specifying conditions or restrictions to which an approval is subject;

- (d) regulating the variation or revocation of an approval, or of any condition or restriction to which an approval is subject; and
- (e) about the surrender or transfer of an approval.<sup>43</sup>

### 7L Exemptions from requirement for approval

- (1) The Treasury may by regulations provide that section 7J(1) does not apply in relation to a person (an “**exempt person**”) who —
  - (a) carries on any controlled activity, or a controlled activity of a specified description; and
  - (b) meets the conditions (if any) specified by or under the regulations.
- (2) The regulations may require an exempt person to comply with specified requirements or restrictions relating to the carrying on of a controlled activity.
- (3) The regulations may, in particular —
  - (a) specify the maximum quantity of raw tobacco that may be involved in a controlled activity carried on by an exempt person;
  - (b) require an exempt person to keep records relating to the activity.<sup>44</sup>

### 7M Raw tobacco: penalties

- (1) A person who contravenes section 7J(1) is liable to a penalty of an amount equal to the amount of duty that would be charged on the relevant quantity of smoking tobacco.
- (2) A person who contravenes a requirement or restriction imposed by regulations under section 7L is liable to a penalty of —
  - (a) £250; or
  - (b) if less, an amount equal to the amount of duty that would be charged on the relevant quantity of smoking tobacco.
- (3) The relevant quantity of smoking tobacco is equal to the quantity by weight of the raw tobacco in respect of which the controlled activity contravening section 7J(1) or (as the case may be) regulations under section 7L has been carried on.
- (4) In this section a reference to “**smoking tobacco**” is a reference to tobacco products within section 1(1)(d) (“other smoking tobacco”).<sup>45</sup>

### 7N Penalties under section 7M: special reduction

- (1) If the Treasury thinks it right because of special circumstances, it may reduce a penalty under section 7M.
- (2) In subsection (1) “**special circumstances**” does not include ability to pay.

- (3) In subsection (1) the reference to reducing a penalty includes a reference to —
  - (a) staying a penalty; and
  - (b) agreeing a compromise in relation to proceedings for a penalty.<sup>46</sup>

#### **7O Penalties under section 7M: assessment of penalty**

- (1) Where a person becomes liable for a penalty under section 7M —
  - (a) the Treasury may assess the penalty; and
  - (b) if it does so, it must notify the person liable.
- (2) A notice under subsection (1)(b) must state the contravention in respect of which the penalty is assessed.
- (3) A penalty payable under section 7M 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.
- (4) An assessment is to be treated as an amount of duty due from the person liable for the penalty and may be recovered accordingly.
- (5) An assessment may not be made later than one year after evidence of facts sufficient in the opinion of the Treasury to indicate the contravention comes to its knowledge.
- (6) 2 or more contraventions may be treated by the Treasury as a single contravention for the purposes of assessing a penalty payable under section 7M.<sup>47</sup>

#### **7P Penalties under section 7M: reasonable excuse**

- (1) A person is not liable to a penalty under section 7M 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 subsection (1)(b) —
  - (a) where the person relies on another person to do anything, that is not a 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.<sup>48</sup>

**7Q Penalties under section 7M: double jeopardy**

A person is not liable to a penalty under section 7M in respect of a contravention in respect of which the person has been convicted of an offence.<sup>49</sup>

**7R Forfeiture of raw tobacco**

Where a person carries on a controlled activity in relation to raw tobacco in contravention of section 7J(1) or a requirement or restriction imposed by regulations under section 7L, the raw tobacco is liable to forfeiture.<sup>50</sup>

**7S Raw tobacco: application of Customs and Excise Management Act 1986**

The Treasury may by regulations provided that specified provisions of the *Customs and Excise Management Act 1986* apply (with or without modification) —

- (a) in relation to persons who carry on controlled activities as they apply in relation to revenue traders whose trade or business relates to tobacco products; and
- (b) in relation to raw tobacco as they apply in relation to tobacco products.<sup>51</sup>

**8 Public documents**

Section 180 of the *Customs and Excise Management Act 1986* (Tynwald procedure, application of legislation, power to amend and date of commencement) shall have effect in relation to this Act as it has in relation to that Act and for this purpose, the references in that section to “section 190” and to “the *Customs and Excise Management Act 1979*” shall be construed as references to “section 10” and “the *Tobacco Products Duty Act 1979*”.

**9 Interpretation**

[P1979/7/10]

(1) In this Act —

“**the Finance Act 1994**” means the Finance Act 1994, an Act of Parliament, as it has effect in the Island;<sup>52</sup>

“**hand-rolling tobacco**” has the meaning given by section 1(2);

“**tobacco products**” has the meaning given by section 1(1).

(2) This Act and the other Acts included in the Customs and Excise Acts 1986 shall be construed as one Act but where a provision of this Act refers to this Act that reference is not to be construed as including a reference to any of the others.

(3) Any expression used in this Act or in any instrument made under this Act to which a meaning is given by any other Act included in the Customs and Excise Acts 1986 has, except where the context otherwise



requires, the same meaning in this Act or in any such instrument as in that Act; and for ease of reference the Table below indicates the expressions used in this Act to which a meaning is given by any other such Act —

*Customs and Excise Management Act 1986*

“the Customs and Excise Acts 1986”

“goods”

“importer”

“shipped”

“stores”.

## 10 Citation and commencement

- (1) This Act may be cited as the Tobacco Products Duty Act 1986 and is included in the Acts which may be cited as the Customs and Excise Acts 1986.
- (2) This Act shall come into operation on such day as the Treasury may by order appoint, and different days may be appointed for different purposes and different provisions.<sup>53</sup>



Schedule<sup>54</sup>TABLE OF RATES OF TOBACCO PRODUCTS DUTY<sup>55</sup>

## Section 2(1)

<b>Table</b>	
1. Cigarettes	An amount equal to the higher of – (a) 16.5% of the retail price plus £207.99 per thousand cigarettes; or (b) £268.63 per thousand cigarettes
2. Cigars	£259.44 per kilogram
3. Hand-rolling tobacco	£209.77 per kilogram
4. Other smoking tobacco and chewing tobacco	£114.06 per kilogram.



## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

<sup>1</sup> Subs (1) amended by SD294/13.

<sup>2</sup> Subs (1A) inserted by SD294/13.

<sup>3</sup> Subss (2) and (2A) repealed by SD451/03.

<sup>4</sup> Subs (3) amended by SD392/93 and by SD294/13.

<sup>5</sup> Subs (4) repealed by SD294/13.

<sup>6</sup> Para (a) substituted by SD543/00.

<sup>7</sup> Para (b) substituted by SD543/00.

<sup>8</sup> Subs (2) amended by SD543/00.

<sup>9</sup> S 3 heading amended by SD1052/10.

<sup>10</sup> S 3 amended by SD1052/10 effective 1/1/2011.

<sup>11</sup> Para (a) substituted by SD543/00.

<sup>12</sup> Subs (1) amended by SD543/00. Para (b) substituted by SD543/00.

<sup>13</sup> Subs (1A) inserted by GC398/92.

<sup>14</sup> Subs (3) amended by SD543/00.

<sup>15</sup> Subs (4) amended by Transfer of Governor's Functions Act 1992 Sch 1, by SD543/00 and by Public Services Commission Act 2015 Sch.

<sup>16</sup> Subs (2) amended by SD2017/0152.

<sup>17</sup> S 5A inserted by SD2017/0045.

<sup>18</sup> S 5B inserted by SD2017/0045.

<sup>19</sup> Para (aa) inserted by SD543/00.

<sup>20</sup> Para (b) amended by SD543/00.

<sup>21</sup> Para (ba) inserted by SD543/00.

<sup>22</sup> Subpara (i) repealed by SD543/00.

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- <sup>23</sup> Para (d) amended by SD543/00.
- <sup>24</sup> Subs (1A) inserted by SD543/00.
- <sup>25</sup> Subs (2) amended by SD459/94.
- <sup>26</sup> S 6A inserted by SD704/06.
- <sup>27</sup> S 6B inserted by SD704/06.
- <sup>28</sup> Subs (3) substituted by SD101/09.
- <sup>29</sup> S 6C inserted by SD704/06. Subss (4) and (5) repealed by SD101/09.
- <sup>30</sup> S 6D inserted by SD704/06.
- <sup>31</sup> S 6E inserted by SD704/06.
- <sup>32</sup> Subs (2) amended by SD570/98.
- <sup>33</sup> S 7A inserted by SD543/00.
- <sup>34</sup> S 7B inserted by SD543/00.
- <sup>35</sup> S 7C inserted by SD543/00.
- <sup>36</sup> S 7D inserted by SD543/00.
- <sup>37</sup> S 7E inserted by SD543/00.
- <sup>38</sup> S 7F inserted by SD543/00.
- <sup>39</sup> S 7G inserted by SD543/00.
- <sup>40</sup> S 7H inserted by SD543/00.
- <sup>41</sup> S 7I inserted by SD2017/0045.
- <sup>42</sup> S 7J inserted by SD2017/0045.
- <sup>43</sup> S 7K inserted by SD2017/0045.
- <sup>44</sup> S 7L inserted by SD2017/0045.
- <sup>45</sup> S 7M inserted by SD2017/0045.
- <sup>46</sup> S 7N inserted by SD2017/0045.
- <sup>47</sup> S 7O inserted by SD2017/0045.
- <sup>48</sup> S 7P inserted by SD2017/0045.
- <sup>49</sup> S 7Q inserted by SD2017/0045.
- <sup>50</sup> S 7R inserted by SD2017/0045.
- <sup>51</sup> S 7S inserted by SD2017/0045.
- <sup>52</sup> Definition of “the Finance Act 1994” inserted by SD459/94.
- <sup>53</sup> ADO (whole Act) 1/4/1987 (GC50/87).
- <sup>54</sup> Sch substituted by SD2017/0111 effective 6 p.m. 08/03/2017.
- <sup>55</sup> Table amended by SD2017/0152.