**EXPLANATORY MEMORANDUM TO**

**THE CONSUMER RIGHTS ACT 2015 (ENFORCEMENT) (AMENDMENT) ORDER 2023**

**2023 No. [XXXX]**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of His Majesty on behalf of the Department for Business and Trade.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 This Instrument will enable Trading Standards to fully exercise their investigative powers to check compliance with the Tobacco Products (Traceability and Security Features) Regulations 2019 (SI 2019/594).

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 This Instrument makes an amendment to the Consumer Rights Act 2015 to allow Trading Standards to fully exercise their powers in relation to a function conferred under The Tobacco Products (Traceability and Security Features) (Amendment) Regulations 2023 (SI 2023/606). Although the Instrument will be made by the Secretary of State for Business and Trade, the substantive policy measure is led by HMRC, and any comments or questions fall within the purview of HMRC.

## 4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

## 5. European Convention on Human Rights

5.1 Kevin Hollinrake MP, the Parliamentary Under-Secretary of State for Enterprise, Markets and Small Business has made the following statement regarding Human Rights:

"In my view the provisions of The Consumer Rights Act 2015 (Enforcement) (Amendment) Order 2023 are compatible with the Convention rights."

## 6. Legislative Context

6.1 This Instrument was laid before Parliament on the same day as the Tobacco Products (Traceability and Security Features) (Amendment) Regulations 2023 ("the amending regulations"). Those Regulations amend the Tobacco Products (Traceability and

Security Features) Regulations 2019 ("the 2019 Regulations"), to provide for stronger sanctions for breaches of the 2019 regulations.

6.2 The amending regulations also insert regulation 24A, which gives Trading Standards a discretionary function to investigate compliance with the 2019 regulations and to share information with HMRC where breaches are uncovered.

6.3 In order to fully carry out this new function, Trading Standards will need to be able to exercise the powers listed in Schedule 5 to the Consumer Rights Act 2015. This Instrument achieves that by inserting an additional entry into the table at paragraph 11 of Schedule 5 so that for Trading Standards' purposes, regulation 6(1) of the 2019 Regulations is 'enforcer's legislation'. This will enable Trading Standards to exercise certain powers in Schedule 5 for the purpose of determining whether there has been a breach of the 2019 Regulations.

## 7. Policy background

***What is being done and why?***

7.1 Although large criminal gangs coordinate the supply of illicit tobacco, most illicit sales are made by small scale operators, usually retail outlets and individuals. This makes the scale of illicit distribution difficult to contain.

7.2 High duty rates reduce the affordability of tobacco products and so support the government's public health objective to reduce smoking prevalence. Illicit sales damage legitimate business, undermine public health and facilitate the supply of tobacco to young people.

7.3 At Budget 2020, the Government announced a package of measures for stronger, more visible street level enforcement. The announcement included a grant of c.£1 million to support Trading Standards' anti-illicit tobacco projects. The announcement also revealed plans to consult on new sanctions linked to the Tobacco Track and Trace system (TT&T).

7.4 TT&T was introduced in 2019 and gives HMRC the ability to monitor the manufacture and supply of legitimate tobacco products. This helps identify where genuine product is diverted towards the illicit market and prevents illicit products infiltrating legitimate supply chains.

7.5 In line with the government's manifesto commitment, primary legislation setting out powers for the new sanctions was introduced in Finance Act 2022; section 93 of that Act inserted new sections 8JA to 8JC into the Tobacco Products Duty Act 1979.

7.6 The provisions in the Tobacco Products Duty Act 1979 provide powers to make regulations to issue penalties of up to £10,000; to seize product involved in a contravention of applicable law and to exclude retailers from the TT&T registration system, therefore restricting their ability to buy duty paid tobacco for retail purposes.

7.7 HMRC introduced The Tobacco Products (Traceability and Security Features) (Amendment) Regulations 2023 which will enact the new sanctions and confer functions on Trading Standards.

7.8 The sanctions will be imposed and administered by HMRC based on referrals by Trading Standards. Trading Standards will carry out investigations and will be able to refer evidence of contraventions to HMRC for action. This approach will support

more visible, street-level enforcement through targeting small-scale offenders, who play a key role in street-level distribution of illicit tobacco.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## 9. Consolidation

9.1 This instrument does not consolidate other legislation.

## 10. Consultation outcome

10.1 Following announcement at Spring Budget 2020, an eight-week consultation was launched on 1 December 2020. The consultation proposed new sanctions to be used by HMRC and, innovatively, Trading Standards, including a penalty of up to £10,000 to tackle tobacco duty evasion. There were 37 responses from public health bodies or anti-smoking groups, local government (including Trading Standards), tobacco manufacturers, the retail sector and private individuals. All respondents supported the proposals which included extending powers to Trading Standards.

10.2 The consultation outcome is published at: https://www.gov.uk/government/consultations/sanctions-to-tackle-tobacco-duty-evasion/outcome/sanctions-to-tackle-tobacco-duty-evasion-summary-of-responses

## 11. Guidance

11.1 HMRC is preparing guidance on the implementation of these measures for businesses which will be published on gov.uk in advance of the implementation of the sanctions.

## 12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note has not been prepared for this instrument because this SI is being introduced so Trading Standards can exercise their existing Schedule 5 powers in relation to functions conferred under The Tobacco Products (Traceability and Security Features) (Amendment) Regulations 2023, which has its own Tax Information and Impact Note.

## 13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to provide clear and consistent guidance outlining how businesses will be compliant or non-compliant with the regulations.

13.3 The basis for the final decision on what action to take to assist small businesses is that businesses selling compliant products will not need to do anything. This measure is aimed at those who sell non-compliant products.

## 14. Monitoring & review

14.1 The instrument does not include a statutory review clause in accordance with section 28(3)(a) of The Small Business, Enterprise and Employment Act 2015 because the regulations make provision in connection with a duty.

## 15. Contact

15.1 Khaleel Abdul-Razak at HMRC can be contacted with any queries regarding the instrument (Telephone: 03000 516782 or email: khaleel.abdul-razak@hmrc.gov.uk).

15.2 Nisadha Bandara, Deputy Director for Excise & Environmental Taxes at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Gareth Davies MP, Exchequer Secretary at HM Treasury, and Kevin Hollinrake MP, Parliamentary Under-Secretary of State for Enterprise, Markets and Small Business at Department for Business and Trade), can confirm that this Explanatory Memorandum meets the required standard.