

Regulatory Update: The Tobacco Products Directive

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1. The Tobacco Products Directive (2014/40/EU) (“the Directive”) came into force on 19 May 2014, becoming applicable in Member States on 20 May 2016. This article provides a brief update on UK product regulation law as applicable from 20 May 2020.
2. Article 7 of the Directive deals with the regulation of ingredients within tobacco products. The main provisions of Article 7 provide, in summary, that by 20 May 2020 Member States had to (in respect of cigarette and roll your own tobacco products):
 - a. Prohibit the placing on the market of tobacco products with a characterising flavour;
 - b. Lay down enabling acts to determine whether a tobacco product has a characterising flavour;
 - c. Prohibit the sale of tobacco products containing the following ingredients:
 - i. Vitamins;
 - ii. Taurine;
 - iii. Caffeine;
 - iv. Additives with colouring properties for emissions;
 - v. For products designed for smoking, additives that facilitate inhalation or nicotine uptake;
 - vi. Additives that have CMR properties in unburnt form.
 - d. Prohibit the placing on the market of tobacco products containing flavourings in any of their components such as filters, papers, packages, capsules or any technical features allowing modification of the smell or taste of the tobacco products concerned or their smoke intensity.

3. The Directive is brought into force in the UK by the Tobacco and Related Products Regulations 2016/507, Regulations 15 and 16.
4. In light of this, the current legal position that no one may produce or supply:
 - a. Any tobacco products with, or containing:
 - i. a characterising flavour within the UK although, what amounts to a characterising flavour remains to be seen;
 - ii. vitamins or other additives that create the impression that a tobacco product has a health benefit or presents reduced health risks;
 - iii. caffeine, taurine or other additives and stimulant compounds that are associated with energy and vitality;
 - iv. additives which have colouring effects on emissions; or
 - v. in the case of tobacco products for smoking, additives that facilitate inhalation or nicotine uptake;
 - vi. additives that have CMR properties in unburnt form; or
 - vii. additives in quantities that increase, to a significant or measurable degree, the toxic or addictive effect or CMR properties of the product when it is consumed.
 - b. Any cigarettes or tobacco containing:
 - i. a filter, paper, package, capsule or other component containing flavourings;
 - ii. a filter, paper or capsule containing tobacco or nicotine; or
 - iii. a technical feature allowing the consumer to modify the smell, taste, or smoke intensity of the product.
5. The most obvious change to the UK tobacco industry will be the removal of menthol cigarettes entirely from the market and the potential loss in business to those that sell and manufacture mentholated tobacco products.
6. In welcome news for some, this does not apply to electronic cigarette devices which continue to be able to be sold as normal.

7. The Directive applies to all EU Member States that have ratified the Directive and therefore, it is extremely unlikely that citizens with Member States will be able to import mentholated products from other Member States (due to the risk of providers falling foul of the “supply” provision).
8. The Tobacco Products and Nicotine Inhaling Products (Amendment)(EU Exit) Regulations 2019/41 will, theoretically, amend the aforementioned Regulations on 31 December 2020 however, how this occurs, particular in light of the potential delays to Brexit, remains to be seen.

To discuss this article further or to instruct Matthew on any Regulatory matters please contact his clerks, Chris Mitchell on chris.mitchell@3pb.co.uk, or Tom Cox on tom.cox@3pb.co.uk.

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