



CLIMATE CHANGE (SINGLE USE VAPING PRODUCTS) REGULATIONS 2024

Index

Regulation	Page
PART 1 – INTRODUCTION	3
1 Title	3
2 Commencement	3
3 Interpretation.....	3
PART 2 – PROHIBITION AND OFFENCES	4
4 Prohibition – Vaping Products	4
5 Offences.....	5
PART 3 – ENFORCEMENT AND CIVIL SANCTIONS	5
6 Authorised Officer.....	5
7 Civil Sanctions.....	5
8 Defence of due diligence.....	5
9 Time limit for the prosecution of offences	6
SCHEDULE	7
ENFORCEMENT AND CIVIL SANCTIONS	7

Statutory Document No. 20XX/XXXX

*Climate Change Act 2021*

CLIMATE CHANGE (SINGLE USE VAPING PRODUCTS) REGULATIONS 2024

*Approved by Tynwald:**Coming into operation in accordance with regulation 2*

The Department of Environment, Food and Agriculture, having consulted in accordance with section 35¹ of the Climate Change Act 2021, makes the following Regulations under sections 29, 30, 32 and 33 of that Act.

PART 1 – INTRODUCTION

1 Title

These Regulations are the Climate Change (Single Use Vaping Products) Regulations 2024.

2 Commencement

If approved by Tynwald, these Regulations come into operation at the end of the period of six months beginning with the day following that on which they are approved².

3 Interpretation

In these Regulations –

“**the Act**” means the Climate Change Act 2021;

“**charity**” has the same meaning as in section 4 of the Charities Registration and Regulation Act 2019;

“**compliance notice**” has the meaning given by paragraph 1 of the Schedule;

¹ By virtue of section 35 of the Climate Change Act 2021, before exercising any power to make regulations or an order under that Act, the Department must consult “any person to whom the regulations relate, or who appears to the Department to represent such person, and any other person that the Department considers appropriate.”

² Tynwald procedure – approval required in accordance with section 30(4) of the Act.

“**end user**” means any person to whom a vaping product is supplied, other than, —

- (a) for the purpose of supplying it, in the course of a business or the activities of a charity, to another person; or
- (b) for the purpose of a manufacturing process;

“**enforcement undertaking**” means an undertaking given under paragraph 6 of the Schedule;

“**final notice**” means a notice under paragraph 3 of the Schedule;

“**notice of intent**” means a notice served under paragraph 2 of the Schedule;

“**plastic**” means a material (except compostable plastic) consisting of polymer as defined in Article 3(5) of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)³ as amended from time to time, to which additives or other substances may have been added, and which can function as a main structural component of final products, with the exception of natural polymers that have not been chemically modified;

“**prohibited vaping product**” means a vaping product that is a device which is —

- (a) not intended to be refilled, replenished, recharged or refuelled; and
- (b) constructed, made or otherwise consists wholly or partly, of plastic;

“**supply**” means supply of a prohibited vaping product in the course of a business and includes —

- (a) selling such a product whether for consideration or not;
- (b) the presentation of such product as a promotional prize or gift; and
- (c) an offer to sell or supply such a product;

“**vaping product**”, in relation to a device, has the same meaning as in section 3 of the Vaping Products Act 2024.

PART 2 – PROHIBITION AND OFFENCES

4 Prohibition – Vaping Products

The supply of a prohibited vaping product to a person who has attained the age of 18 is prohibited.

³ OJ L 396, 30.12.2006, p. 1.

5 Offences

- (1) A person who supplies a prohibited vaping product to an end user commits an offence and on summary conviction is liable to a fine not exceeding level 5 on the standard scale.
- (2) Paragraph (1) does not apply where a supply referred to in that paragraph –
 - (a) takes place before the end of the period of six months beginning with the day these Regulations come into operation; or
 - (b) is to an end user who is a detainee in a prison or other place of detention.
- (3) In this regulation –
 - (a) “**detainee**” has the same meaning as that in section 26 of the Custody Act 1995.
 - (b) “**prison**” means a place designated as an institution in accordance with section 11 of the Custody Act 1995;
 - (c) “**other place of detention**” includes –
 - (i) a police station designated in accordance with section 15(1) of the Custody Act 1995; and
 - (ii) any part of a court building, being a part where defendants in criminal proceedings are or may be held before, during or after their appearance before a court pursuant to section 18A(1)(b) of the Custody Act 1995.

PART 3 – ENFORCEMENT AND CIVIL SANCTIONS

6 Authorised Officer

An authorised officer may enter premises where the authorised officer has reasonable grounds for suspecting that –

- (a) an offence under regulation 5(1) has been committed; or
- (b) there has been any other contravention of these Regulations.

7 Civil Sanctions

The Schedule has effect for the purpose of the enforcement of these Regulations.

8 Defence of due diligence

- (1) Subject to paragraphs (2) and (5), in proceedings for an offence under these Regulations it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

- (2) P may not rely on a defence under paragraph (1) which alleges that the commission of the offence was due to —
- (a) the act or default of another person (“O”); or
 - (b) P’s reliance on information supplied by O,
- unless the condition in paragraph (3) is met.
- (3) The condition referred to in paragraph (2) is that P has —
- (a) served a notice in accordance with paragraph (4); or
 - (b) obtained the leave of the court.
- (4) The notice must —
- (a) give any information in P’s possession which identifies or assists in identifying O; and
 - (b) be served on the person bringing the proceedings not less than 7 clear days before the hearing of the proceedings.
- (5) P may not rely on a defence under paragraph (1) which alleges that the commission of the offence was due to P’s reliance on information supplied by O unless it was reasonable for P to have relied on the information, having regard in particular to —
- (a) the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and
 - (b) whether P had any reason to disbelieve the information.

9 Time limit for the prosecution of offences

A prosecution for an offence under regulation 5(1) may begin no later than —

- (a) 3 years from the commission of the offence; or
- (b) 1 year from its discovery by the prosecuting authority,

whichever is the earlier.

MADE

CLARE BARBER

Minister for Environment, Food and Agriculture

SCHEDULE**ENFORCEMENT AND CIVIL SANCTIONS**

[Regulation 7]

1 Monetary penalty and compliance notice

- (1) This paragraph applies where the Department is satisfied on the balance of probabilities that a person has contravened regulation 5(1).
- (2) If this paragraph applies, the Department may by notice impose on a person a requirement to –
 - (a) pay a fixed monetary penalty (which may be a variable fixed penalty) to the Department of such amount as the Department may determine; or
 - (b) take such steps as the Department may specify, within such period as it may specify, to secure that the contravention does not continue or recur (“a compliance notice”).
- (3) A requirement under sub-paragraph (2)(a) or (b) may not be imposed on a person on more than one occasion in relation to the same contravention.
- (4) Before imposing on a person a requirement to pay a monetary penalty, the Department may require the person to provide such information as is reasonable for the purpose of establishing the amount of any financial benefit arising from the contravention, so as to determine the amount of monetary penalty to impose.
- (5) A monetary penalty must not –
 - (a) be unreasonable, having regard to the severity of the contravention;
 - (b) exceed 10% of the annual turnover in the Isle of Man of the person on whom the requirement to pay it is imposed, but where that exceeds level 5 on the standard scale, such percentage of the annual turnover that equals level 5.

2 Notice of intent

- (1) Where the Department proposes to require a person to pay a monetary penalty or comply with a compliance notice, the Department must serve on that person a notice of what is proposed (a “notice of intent”).
- (2) The notice of intent may include –
 - (a) the requirements of the proposed compliance notice and, in the case of a monetary penalty, the proposed amount to be paid;

- (b) the grounds for the proposed compliance notice or monetary penalty; and
- (c) information as to —
 - (i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
 - (ii) the circumstances in which the Department may not impose the monetary penalty or compliance notice.
- (3) A person on whom a notice of intent is served may, within 28 days beginning with the day on which the notice was received, make representations and objections to the Department in relation to the proposed imposition of a monetary penalty or compliance notice.

3 Final notice: general

- (1) After the end of the period for making representations and objections referred to in paragraph 2(3), the Department must decide whether —
 - (a) to impose the requirements in the notice of intent, with or without modifications; or
 - (b) to impose any other requirement that the Department has power to impose under this Schedule.
- (2) Where the Department decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 4, in the case of a monetary penalty, or paragraph 5, in the case of a compliance notice.
- (3) The Department must not serve a final notice on a person where the Department is reasonably satisfied that the person would not, by reason of any defence brought to the attention of the Department, be liable to be convicted of an offence in respect of the contravention to which the notice relates if criminal proceedings were to be instigated against the person.

4 Final notice: monetary penalty

A final notice for a monetary penalty must include information as to —

- (a) the grounds for imposing the penalty;
- (b) the amount to be paid;
- (c) how payment may be made;
- (d) the period within which payment must be made, which must be not less than 28 days beginning with the date of the notice;
- (e) rights of appeal under paragraph 10; and
- (f) the consequences of failing to comply with the notice.

5 Final notice: compliance notice

A final notice relating to a compliance notice must include information as to —

- (a) the grounds for imposing the notice;
- (b) what compliance is required and the period within which it must be completed which must be not less than 28 days beginning with the date of the notice;
- (c) rights of appeal under paragraph 10; and
- (d) the consequences of failing to comply with the notice.

6 Enforcement undertakings

- (1) Within 28 days of receipt of the notice of intent the recipient may give to the Department a written undertaking to take such action as may be specified in the undertaking within such period as may be so specified (an “enforcement undertaking”).
- (2) An enforcement undertaking must specify —
 - (a) what action will be taken —
 - (i) to secure that the contravention does not recur;
 - (ii) that will secure benefit to the environment equivalent to what has been, or is likely to have been, the detrimental effect of the commission of the contravention; and
 - (b) the period within which the action must be completed.
- (3) An enforcement undertaking must include —
 - (a) a statement that the undertaking is made in accordance with this Schedule;
 - (b) the terms of the undertaking; and
 - (c) information as to how and when the recipient is to be considered to have discharged the undertaking.
- (4) Within 28 days of receiving the enforcement undertaking the Department must consider the undertaking and notify the recipient as to whether or not the undertaking has been accepted.
- (5) Where the Department accepts the enforcement undertaking the notification made under sub-paragraph (4) must include —
 - (a) confirmation that the notice of intent is withdrawn subject to the recipient complying with the enforcement undertaking;
 - (b) information about the consequences of not complying with the enforcement undertaking;
 - (c) information about how the recipient may obtain a completion certificate (referred to in paragraph 7);

- (d) information about the reasons the Department may refuse to issue a completion certificate; and
 - (e) the recipient's right to appeal in accordance with paragraph 10 against a decision of the Department not to issue a completion certificate.
- (6) If the Department has accepted an enforcement undertaking, then, unless the recipient has failed to comply with the undertaking or any part of it, —
- (a) the recipient may not at any time be convicted of an offence in respect of the contravention to which the undertaking relates; and
 - (b) the Department may not serve a further notice of intent, monetary penalty or compliance notice in respect of that contravention.
- (7) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if the Department and the recipient agree in writing.
- (8) Where the Department decides not to accept an enforcement undertaking the notice under sub-paragraph (4) must include the reasons for the decision.
- (9) Where the recipient has made an enforcement undertaking under this paragraph, further enforcement undertakings submitted by that recipient must not be considered by the Department, whether or not such further enforcement undertakings are made in accordance with this paragraph.

7 Completion certificates

- (1) If the Department is satisfied that an enforcement undertaking has been complied with, it must issue a certificate to that effect (a "completion certificate").
- (2) The Department may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.
- (3) The person who gave the undertaking may at any time apply for a completion certificate.
- (4) Within 28 days of receiving an application for a completion certificate the Department must either —
 - (a) issue a completion certificate; or
 - (b) give written notice of the decision not to issue a completion certificate to the applicant, with reasons for that decision.
- (5) Where the Department is not satisfied that an enforcement undertaking has been complied with and has given written notice under sub-

paragraph (4)(b), the person on whom that notice is served may appeal against the Department's decision in accordance with paragraph 10.

- (6) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is to be taken not to have complied with it.
- (7) The Department may by notice in writing revoke a completion certificate if it was issued on the basis of inaccurate, misleading or incomplete information.

8 Withdrawing or amending a notice

The Department may at any time in writing —

- (a) withdraw a notice imposing a monetary penalty or a compliance notice;
- (b) reduce the amount of a monetary penalty; or
- (c) amend the requirements imposed by a compliance notice in order to reduce the amount of work necessary to comply with that notice.

9 Power to recover payments

The Department may recover any monetary penalty imposed under this Schedule as if payable under a court order.

10 Appeals

- (1) An appeal against —
 - (a) a final notice served under paragraph 3; or
 - (b) a decision of the Department not to issue a completion certificate under paragraph 7,is to a court of summary jurisdiction.
- (2) The final notice is suspended pending the determination or withdrawal of the appeal.
- (3) The court of summary jurisdiction may, in relation to the imposition of a requirement or penalty or the service of a notice under this Schedule —
 - (a) withdraw the final notice or decision;
 - (b) confirm the final notice or decision;
 - (c) vary the final notice or decision;
 - (d) take such steps as the Department could have taken in relation to the contravention giving rise to the requirement, penalty or notice; or

- (e) remit the decision whether to confirm the final notice, decision, or any matter relating to that notice or decision, to the Department.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prohibit the supply of a “prohibited vaping product”, defined as a vaping product made from plastic that cannot be refilled or refuelled.

Part 1 provides that, if approved by Tynwald, the Regulations are not commenced for 6 months, and interpretation provisions that link vaping products to the Vaping Products Act 2024.

Part 2 provides the prohibition of supply, exemptions to that prohibition, and sets out the offence on summary conviction and the level of penalty.

Part 3 and the Schedule set out the enforcement and civil sanctions that may be imposed by the Department.

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