

EXPLANATORY MEMORANDUM TO
THE SOFT DRINKS INDUSTRY LEVY (ENFORCEMENT) REGULATIONS 2018
2018 No. 264

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Commissioners of HM Revenue and Customs (HMRC) and is laid before the House of Commons.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These regulations will enable HMRC to use a range of enforcement powers set out in the Customs and Excise Management Act 1979 (CEMA) for the purposes of preventing and tackling evasion in relation to the Soft Drinks Industry Levy (the levy) which commences on 6 April 2018.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The Regulations are the first to be made under the powers cited in them.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

- 4.1 Primary legislation establishing the levy was included in Finance Act 2017. Finance Act 2017 specifically allows HMRC to make regulations that provide enforcement powers - including powers of entry, search and seizure. The primary legislation states that these enforcement regulations may apply any of the powers in the Customs and Excise Management Act 1979 (CEMA).
- 4.2 Without this legislation, HMRC compliance officers will have limited enforcement and compliance powers with which to tackle and prevent evasion of the levy.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Commissioners for HMRC have made the following statement regarding Human Rights:

“In our view the provisions of the Soft Drinks Industry Levy (Enforcement) Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 At Budget 2016, the government announced the introduction of a new levy on soft drinks that contain added sugar to help tackle childhood obesity. The Soft Drinks Industry Levy is at the centre of the Government's Childhood Obesity Plan and aims to encourage producers of soft drinks to reformulate their products and reduce the sugar content of their drinks. Since the levy was announced, most producers have taken significant steps towards reformulating their products.
- 7.2 Although many producers have reformulated their drinks to reduce or remove liability to the levy, it is vital that HMRC have effective compliance powers to deal with any levy evasion and ensure that there is a level playing field for compliant businesses.
- 7.3 Primary legislation establishing the levy was included in Finance Act 2017. Finance Act 2017 specifically allows HMRC to make regulations that provide enforcement powers - including powers of entry, search and seizure. The primary legislation states that these enforcement regulations may apply any of the powers in the Customs and Excise Management Act 1979 (CEMA).
- 7.4 CEMA includes an established set of enforcement powers used by HMRC to tackle and prevent excise duty evasion. These Regulations activate only the CEMA powers necessary to tackle and prevent evasion in relation to the levy. These powers are effective but proportionate.

8. Consultation outcome

- 8.1 HMRC and HM Treasury held a public consultation on the design of the levy in late summer 2016. A number of responses from UK businesses highlighted concerns over the potential for undeclared imported soft drinks to undercut compliant business. The published consultation response document noted these concerns and the government responded by legislating in Finance Act 2017 to provide HMRC with access to the CEMA powers - which have proven to be effective at tackling excise duty evasion.
- 8.2 An eight week technical consultation these enforcement regulations, in draft, concluded in December 2017. There were only two responses. One respondent asked a question about the Tax Information Impact Note (TIIN). These regulations are supported by the TIIN which was published in December 2016 alongside the draft primary legislation establishing the levy. The other respondent stressed the importance of HMRC being able to effectively tackle or prevent evasion around untaxed imports. No substantive comments were received on the proposed drafting of the legislation and no material changes have been made.

9. Guidance

- 9.1 Detailed guidance will be prepared by HMRC for their compliance staff on how to use the powers that will be provided by these Regulations. These will be made available on www.gov.uk.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No mitigating action is proposed for small businesses because these regulations relate to HMRC's enforcement powers and will only affect businesses in the very limited circumstances where HMRC is required to carry out compliance activities. The legislation has no effect on the routine operation of any small businesses.

12. Monitoring & review

- 12.1 This legislation will have very limited direct regulatory impact on businesses. As such, a review clause would not be appropriate. HMRC will monitor the effectiveness of its compliance strategy, including the powers provided by these Regulations.

13. Contact

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