

EXPLANATORY MEMORANDUM TO

THE SOFT DRINKS INDUSTRY LEVY REGULATIONS 2018

2018 No. 41

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 The legislation sets out the detailed legislative framework for the Soft Drinks Industry Levy (the levy) which commences on 6 April 2018
- 2.2 In particular, the legislation provides the detailed scope of the levy, including exemptions and administrative obligations such as the requirements relating to registration, returns and record keeping.

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 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Primary legislation establishing the levy was included in Finance Act 2017. The primary legislation included a range of powers to make secondary legislation setting out the detailed legislative framework for the scope and operation of the levy.
- 4.2 The legislation enables HMRC to register taxpayers and collect the Soft Drinks Industry Levy. In addition, this SI sets out the detailed scope of the levy and a range of obligations for businesses that are registered for the Soft Drinks Industry Levy. Without this legislation, HMRC would not be able to register any taxpayers or collect 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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 At Budget 2016, the government announced the introduction of a new levy, from April 2018, 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 major producers have implemented significant product reformulation with others having confirmed plans to reduce sugar content,
- 7.2 Primary legislation establishing the levy was included in Finance Act 2017. The primary legislation provides the main legal framework for the levy and has determined, for example, what drinks are potentially liable for the levy, who has to register and account for the levy, what activities give rise to a liability and the levy rates.
- 7.3 Consistent with other taxes, the primary legislation includes a number of powers allowing secondary legislation to provide further legislative detail on the scope and operation of the levy. All of the provisions in this legislation are necessary for an effective and efficient tax regime. The legislation details all of the exemptions from the levy. It also details a range of taxpayer obligations concerning registration, returns, payment, evidence requirements and record-keeping.

8. Consultation outcome

- 8.1 HMRC and HM Treasury held a public consultation on the design of the levy in late summer 2016. There were 154 respondents and over half of all respondents were in favour of the levy. A wide range of comments were made and several material changes, to the rules around importers and when liability arises, in order to reduce the risk of fraud and reduce burdens on business were made to the primary legislation as a result.
- 8.2 There were 18 responses to the technical consultation on the draft legislation – mostly from businesses and trade associations. Of these, 12 provided substantive comments on the draft secondary legislation, 4 asked for clarification on how the levy would affect their businesses, and 2 were general comments. The main theme of the substantive responses concerned the exemptions, in particular the exemptions for milk-based drinks, milk-substitute drinks and alcohol replacement drinks.
- 8.3 As a result of the technical consultation, a small number of drafting changes have been made to the legislation. These include changes to the detail of the exemptions for milk drinks and alcohol substitute drinks. Minor drafting changes were also made to the provisions concerning warehousing and tax credits. In all cases, the changes made were for the purpose of expressing more clearly and accurately the policy intention behind the relevant provisions.

9. Guidance

- 9.1 Guidance for external stakeholders on the scope of the levy, along with who needs to register, is available on www.gov.uk. HMRC will continue to develop this guidance, expanding it to cover other administrative subjects.

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 activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses, the approach was taken in the primary legislation to exempt small producers – anyone producing up to 1 million litres of liable soft drinks per annum. It was not possible to exempt small businesses that import as this would have created a significant avoidance opportunity and made it much more difficult to identify and tackle evasion involving imports.

12. Monitoring & review

- 12.1 This legislation implements policies that have previously been announced. It will have limited regulatory impact on businesses given the relatively targeted small number businesses that may be affected. As such a review clause is not appropriate. The Government made a commitment during Finance Bill debate in April 2017 to review the scope of the levy in 2020. In addition, HMRC will continue to consult business on the implementation of the levy.

13. Contact

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