

EXPLANATORY MEMORANDUM TO

THE RAW TOBACCO (APPROVAL SCHEME) REGULATIONS 2016

2016 No. 1172

1. Introduction

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

2. Purpose of the instrument

- 2.1 These Regulations set out the framework for a raw tobacco approval scheme. They make provision for applications for approval to carry on any activity involving raw tobacco, the conditions and restrictions which may apply to such an approval and allow certain exemptions from the requirement to be approved. They also ensure that certain enforcement provisions apply to the restrictions in respect of raw tobacco.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This is the first exercise of the powers to make regulations under section 8M (regulations about approval etc.), 8N (exemptions from requirement for approval) and 8U (application of Customs and Excise Management Act 1979) of the Tobacco Products Duty Act 1979.

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 The Tobacco Products Duty Act 1979 (TPDA) contains provisions concerned with the duty liability of tobacco products and prevention of duty evasion. However, raw tobacco is not subject to excise duty under UK or EU law.
- 4.2 Section 179 of the Finance Act 2016 inserted new sections 8K to 8U into the TPDA to assist in the prevention of illegal manufacture of tobacco products through the control of raw tobacco.
- 4.3 Section 8L(1) TPDA prohibits any person from carrying out a controlled activity otherwise than in accordance with an approval given by the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners"). A "controlled activity" means any activity involving raw tobacco (see section 8K TPDA).
- 4.4 A person who carries on any activity involving raw tobacco without an approval, or fails to comply with the terms of an approval or exemption, is liable to penalties

(under sections 8O-8S TPDA). The raw tobacco is also liable to seizure (under section 8U TPDA).

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 Raw tobacco which is not yet in a smokeable form is not subject to excise duty or any controls. This presents a risk of duty evasion through raw tobacco being freely and legally imported and either processed into smoking products in unregistered premises or sold in small quantities to consumers for home processing.
- 7.2 In March 2015, following consultation, the Government announced its intention to introduce an approval scheme to tighten controls on the use of raw tobacco in order to reduce the risk of evasion. Primary legislation was introduced in the Finance Act 2016 which requires those carrying on a “controlled activity” in relation to raw tobacco to be approved by HMRC.
- 7.3 The Regulations provide for the following administrative matters to implement the approval scheme:

Approval scheme

- 7.4 The Regulations provide that anyone who intends to carry out a controlled activity (see paragraph 4.3 above) must apply to the Commissioners for approval. They also provide that approval is not required where an exemption applies (see paragraph 7.10 and 7.11 below). All applications must be in writing. The Regulations provide for HMRC to prescribe in a published notice the administrative requirements related to the form, manner and contents of an application form, including whether the application must be made electronically.
- 7.5 The Regulations enable HMRC to request, by notice, additional information and site visits in order to determine an application. If an applicant does not provide additional information or agree to an inspection the application for approval is treated as withdrawn.
- 7.6 The Regulations require HMRC to either approve or refuse an application and notify the applicant of that decision. Where an application is approved HMRC must give the approved person notice of this including confirmation of each activity the approved person is approved to carry out and the premises at or from which the activity can be carried out.

Conditions and restrictions

- 7.7 The Regulations make provision for the imposition of conditions and restrictions in relation to an approval and allow for HMRC to prescribe details of these in a published notice.

Revocation, variation, transfer and surrender

- 7.8 The Regulations make provision for an applicant to apply to vary the terms of, transfer, or surrender an approval. They also provide for HMRC to prescribe in a published notice the administrative requirements related to the form, manner and contents of an application, including whether the application must be made electronically. HMRC must either approve or refuse an application to vary the terms of, transfer or surrender an approval. New conditions or restrictions may be imposed by HMRC on the transfer of an approval.
- 7.9 The Regulations also make provision for the investigation of whether an approved person is meeting the conditions or restrictions of an approval. A failure to comply with the terms of the approval provides HMRC with reasonable cause to vary or revoke an approval.

Exemptions

- 7.10 The Regulations allow some exemptions from the requirement to be approved by HMRC in circumstances where there is a low risk of evasion and requiring approval would be disproportionate. The exemptions relate to:
- Waste – a person holding raw tobacco deriving from tobacco plants grown for horticultural purposes in the UK may permanently dispose of the raw tobacco as waste, providing that person is not also involved in any other controlled activity or the manufacture or production of tobacco products.
 - Stalks and stems – a person may carry out any activity involving only stalks and stems without approval providing they do not receive more than 2.5kg in a single delivery or hold more than 20kg in a 12 month period;
 - Small scale transporters – a person may transport an amount of raw tobacco, not exceeding an amount to be prescribed by the Commissioners in a Public Notice in a single load, without approval providing they are delivering raw tobacco to an approved person to an address within an approval. A record must be carried during the transportation demonstrating these conditions are met. That record must also be preserved by the exempt person.
 - Snuff products – a person may carry on any activity involving snuff products, other than manufacture and production of snuff, without approval providing the snuff is in approved packaging or, if outside of approved packaging, does not exceed 50g.
- 7.11 The Regulations provide that a person who is exempt in relation to snuff products and stalks and stems must keep and preserve records that are relevant to any or all activities undertaken involving those products.

Enforcement powers

- 7.12 The Regulations make provision for certain enforcement powers in the Customs and Excise Management Act 1979 (CEMA) to be extended so that they apply to persons

who carry on a controlled activity as they apply in relation to revenue traders; and also apply to raw tobacco as they apply in relation to tobacco products.

- 7.13 Where modification is required to ensure the enforcement powers work effectively in relation to the approval scheme, the Regulations set out the detail of the required modification.
- 7.14 The scheme will be implemented from 1 January 2017 and the general prohibition will come into force from 1 April 2017 along with the enforcement powers.

Consolidation

- 7.15 Consolidation does not arise in this case.

8. Consultation outcome

- 8.1 HMRC has conducted a formal consultation which took place from 20 October 2014 to 30 January 2015 on 2 options: a registration scheme for anyone involved in raw tobacco, and an alternative option on strengthening existing seizure powers for raw tobacco. The consultation exercise concluded that the most proportionate manner to address the issue was to introduce a domestic registration scheme.
- 8.2 Respondents fell into three broad groups: the tobacco industry; including manufacturers and brokers; health promotion groups and individuals. The registration scheme was broadly welcomed by respondents other than individuals seeking to continue to import raw tobacco for personal use as smoking tobacco. Health respondents felt that the best option would be registration combined with enhanced seizure powers for consignments not destined for registered persons. Some of the large manufacturers were concerned that a registration scheme would not be sufficiently robust to address the problem and false documents could be used to get around the controls. The scheme will be designed in such a way to address these concerns. As an activity in relation to raw tobacco will have to be approved as legitimate – i.e. one that doesn't result in the evasion of excise duty – the scheme will be known as an approval scheme, rather than a registration scheme. The scheme will tighten controls, while also providing approved persons with a much less burdensome system to demonstrate legitimate use instead of having to provide assurances for each consignment as is currently the case.
- 8.3 HMRC also conducted an eight week technical consultation on the draft Approval Scheme Regulations which closed on 14 November 2016. A broad range of stakeholders responded including representatives of industry, the health lobby, enforcement agencies and also members of the public. Respondents generally welcomed the scheme to address the evasion of excise duty. Responses broadly related to how to apply for approval.

9. Guidance

- 9.1 HMRC will publish guidance on this order in a Public Notice by 14 December 2016. The notice will be available on the departmental website at www.hmrc.gov.uk.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact note (TIIN) covering this instrument will be published on the website at <https://www.gov.uk/government/collection/tax-information-and-impact-notes-tiins>.

11. Regulating small business

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

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to ensure that there are negligible administrative burdens and costs involved for businesses implementing this provision.

11.3 The basis for the final decision on what action to take to assist small businesses was due to the number of responses received to our formal consultation which was indicative of the size of the numbers of traders involved in raw tobacco activities in the UK.

12. Monitoring & review

12.1 The measure will be monitored through information collected from results of enforcement and compliance activity and the outcome will be subject to internal review after 12 months and the legislation amended accordingly.

13. Contact

13.1 Wendy Longworth at HM Revenue and Customs. Telephone: 03000 587927 or email: wendy.longworth@hmrc.gsi.gov.uk can answer any queries regarding the instrument.