

EXPLANATORY MEMORANDUM TO
THE AGGREGATES LEVY (REGISTRATION AND MISCELLANEOUS PROVISIONS)
(AMENDMENT) REGULATIONS 2014

2014 No. 836

- 1.** This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Aggregates Levy (Registration and Miscellaneous Provisions) Regulations 2001 (“the principal Regulations”) to make a number of administrative changes to the aggregates levy as a consequence of the suspension of certain levy exemptions on 1 April 2014. All of the changes made by the instrument come into force on that date.

3. Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The Government announced on 13 September 2013 that it would suspend the application of certain elements of the aggregates levy that had become subject to a formal State aid investigation by the European Commission, opened on 31 July 2013. This instrument makes changes to the provisions dealing with exemption from registration and obligations to notify certain information that are consequential to the partial or entire suspension of certain exemptions.
- 3.2 It has been necessary to breach the 21 day rule in relation to the making and laying and the coming into force of statutory instruments under the negative procedure. This is because the Government has an obligation to bring the suspension into effect as soon as practicable, taking account of the Finance Bill process. This obligation is achieved by making the primary legislation subject to a resolution under the Provisional Collection of Taxes Act 1968 (c. 2) which enables the measure to take effect on 1 April 2014 rather than having to wait for Royal Assent. Once the resolution has been passed it will be necessary to breach the 21 day rule for this instrument in order to ensure that the administrative provisions in this instrument are brought into effect at the same time the suspension comes into effect.

4. Legislative Context

- 4.1 The primary legislation relating to the aggregates levy is contained in sections 16 to 48 of, and Schedules 4 to 10 to, the Finance Act 2001 (“the Act”). The exemptions affected by the suspension are contained in section 17(3) and (4) of the Act. The provisions dealing with registration are set out in section 24 of the Act. Amendments to the Act necessitated by the suspension are being made by the clause headed “Aggregates levy: removal of certain exemptions” in the Finance (No.2) Bill 2014, coming into effect on 1 April 2014. A further clause headed “Aggregates levy: power to restore exemptions” in the Bill provides for secondary legislation to restore the exemptions should circumstances allow – this provision comes into force at Royal Assent.
- 4.2 The principal Regulations provide, among other things, that where a person’s only activity is the commercial exploitation of aggregate that is exempt under certain parts of section 17(3) and 17(4) of the Act, including those parts that will be affected by the suspension, that person is exempt from the requirement to register for the levy and all consequent obligations and liabilities (regulation 3(1) and (2)). However, in specified situations they must notify HMRC of the material they are commercially exploiting (regulation 3(3)) and of any change in the circumstances already notified (regulation 3(4)).

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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 The aggregates levy is an environmental tax introduced on 1 April 2002. Part of its rationale is to encourage the recycling of aggregates and the use of waste and by-products from other processes, including the extraction of other non-aggregate minerals, in place of virgin aggregate. Certain exemptions, exclusions and reliefs from the levy are designed to give effect to that rationale.
- 7.2 By a judgment issued on 7 March 2012 the European General Court annulled a 2002 decision by the European Commission not to raise objections against the levy. As a result of that judgment, the Commission carried out a preliminary assessment of the levy in order to determine whether to raise objections against the tax on the ground that it potentially gave rise to State aid. On 31 July 2013 the

Commission notified its decision to open a formal State aid investigation. It reached that decision because it had doubts as to whether certain exemptions from the levy are in line with the logic and nature of the tax. Because of the doubts the Commission has expressed the UK is obliged, under article 108(3) of the Treaty on the Functioning of the European Union, to suspend those elements that are the subject of the investigation until such time as they are pronounced compatible with the internal market.

7.3 Where materials become taxable from 1 April 2014 those commercially exploiting such materials will no longer be exempt from registration, nor will they be subject to the requirement to notify HMRC that they are commercially exploiting the materials. Those that have already notified HMRC that they are commercially exploiting materials that were exempt before 1 April 2014 but become taxable from that date will not be required to notify HMRC that their circumstances have changed.

- Consolidation

7.4 This instrument makes minor amendments to the principal Regulations. HMRC has no plans to consolidate these Regulations.

8. Consultation outcome

8.1 Following receipt of the Commission's letter dated 31 July 2013 it was necessary to obtain legal advice and have discussions with the Commission in order to determine exactly which aspects of the levy must be suspended, and the extent to which they must be suspended, before consulting with affected businesses in the industry on how to bring the suspension into effect.

8.2 Revenue & Customs Brief 31/13, published on 11 October 2013, invited anyone who wished to comment on the suspension before the publication of the draft legislation to register their interest. HM Treasury sent out questions to all those that registered an interest and set a deadline of 15 November 2013 for responses. Officials from HM Treasury and HMRC subsequently held a number of meetings with interested businesses and their professional advisers, and with industry representative bodies.

8.3 The need for this consultation and to allow time to take account of comments received during the course of this consultation when preparing the legislation meant that it was impossible to consult for a full 12 weeks before publication of the legislation in draft. A subsequent, technical consultation on legislation prepared to give effect to the suspension and published in draft lasted for the full 8 weeks.

9. Guidance

- 9.1 The details of the introduction of the suspension of the levy exemptions are explained in a Tax Information and Impact Note (TIIN) published on 19 March 2014. Two public notices covering aggregates levy, which are available at www.hmrc.gov.uk, will be reviewed and updated by 1 April 2014 to reflect the suspension of the exemptions from that date.

10. Impact

- 10.1 HMRC estimates that approximately 200 businesses will be affected, incurring a small increase in administrative burden through registering and accounting for the tax and extra record keeping. Businesses commercially exploiting the materials that become taxable may incur a significant financial burden if the cost of the levy cannot be passed on fully to their customers. There will be no impact on charities or voluntary bodies.
- 10.2 There will be no impact on the public sector.
- 10.3 A Tax Information and Impact Note covering this instrument was published on 19 March 2014 and is available on the HMRC website at <http://www.hmrc.gov.uk/the-library/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is a general tax provision and the same for all affected businesses.
- 11.3 Interested businesses and industry representative bodies have been consulted during preparations to implement the suspension.

12. Monitoring & review

- 12.1 Compliance with the changes to the exemption from registration and to the requirements to provide certain notifications will be monitored and reviewed as part of HMRC's normal assurance process to ensure that the changes made by this instrument achieve their aims.

13. Contact

Cathy Smith at HMRC Tel: 03000 585949 or email: Cathy.Smith2@hmrc.gsi.gov.uk can answer any queries regarding the instrument.