

EXPLANATORY MEMORANDUM TO
THE PLASTIC PACKAGING TAX (DESCRIPTIONS OF PRODUCTS)
REGULATIONS 2021

2021 No. 1417

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury 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 This instrument amends the meaning of a "packaging component" that is subject to Plastic Packaging Tax, introduced by the Finance Act 2021 ("the Act"). It modifies the meaning of a "packaging component" (defined in section 48(1) of the Act), as it applies to Plastic Packaging Tax so as to remove three categories of products and add a further category of products to the meaning of a "packaging component".

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument is being laid under the made-affirmative procedure. This is because it makes provision which falls with section 84(5)(a) of the Act. It is, however, also combined with a record-keeping requirement in regulation 4(4)(c) of this instrument that is made using section 63(1) of the Act under the negative procedure. Section 84(3) of the Act allows the Treasury to make regulations that the Commissioners of HMRC can make and section 84(10) of the Act allows provisions subject to the negative procedure to be included in an affirmative instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Exchequer Secretary to the Treasury, Helen Whately, has made the following statement regarding Human Rights:

"In my view the provisions of the Plastic Packaging Tax (Descriptions of Products) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

- 6.1 This instrument is made under sections 48, 63 and 84 of the Act and this is the first use of these powers.

- 6.2 Section 42 of the Act introduces a tax on chargeable plastic packaging components, which is subject to a limited set of exemptions that are set out in section 52.
- 6.3 Section 48(1) of the same Act sets out the meaning of a “packaging component”. In summary, a packaging component is a product designed to be suitable for use in the containment, protection, handling, delivery or presentation of goods at any stage in the supply chain. This applies to products that can be used in this way by themselves, for example plastic wrap, and where they require other products to function, for example lids. However, it does not matter whether packaging components within this description are also used by an end-consumer.
- 6.4 In addition, section 48(5) of the Act allows for regulations to be made to amend the meaning of a “packaging component” by adding or removing descriptions of products.
- 6.5 This instrument removes from this meaning, and thereby the scope of the tax, three categories of packaging products which do not contribute towards the environmental harm that the tax is designed to address. These are (i) packaging products that primarily provide a storage function, (ii) packaging products that are an integral part of the good, and (iii) packaging products that are re-used in the presentation of goods. This instrument also adds single-use products which only perform a packaging function when used by the end-user or consumer to the scope of the tax.

7. Policy background

What is being done and why?

- 7.1 The Plastic Packaging Tax is designed to encourage the use of recycled plastic instead of new plastic material within plastic packaging. In turn, the tax will create greater demand for recycled plastic, and in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.
- 7.2 To ensure the tax is properly targeted, this instrument removes three categories of products from the meaning of a “packaging component” for the purposes of the tax. The approach to use categories describing products, rather than an exhaustive list, has been chosen due to the diverse nature of packaging, the broad definition of packaging component and the rapid development of new packaging types. This approach gives more flexibility as it incorporates further products as they are developed without further legislation. Any exhaustive list developed would be unlikely to capture all relevant products and would become out of date very rapidly.
- 7.3 The first category of products removed from the scope of the tax are packaging products that are primarily designed for long term storage by users or consumers, which do not typically contribute to plastic pollution. In addition to providing a primary storage function, the product must be designed to contain goods at the time of sale to the user and be suitable for re-use for the same or similar goods. Examples of products which meet these conditions include glasses cases, toolboxes, power tool cases, first aid kits, manicure set cases, earphone cases, video game cases, and board game boxes and inserts.
- 7.4 The category at 7.3, does not include any product that is designed to be discarded once the goods inside it at the time of sale have perished or been consumed. Examples of these include drinks bottles sold filled, condiment bottles, re-sealable food packaging such as those for pasta and cheese, tubs for food spreads or ice cream, and shampoo bottles.

- 7.5 The second category of products removed from the scope of the tax are packaging products which are designed to be an integral part of the good sold, without which the good cannot reasonably be used or consumed. To meet this condition, the product must be discarded together with those goods, or when the goods are used or consumed. Examples of products which meet this condition include printer cartridges containing ink or toner, tea bags, mascara brushes, water filter cartridges, aerosol actuators, and inhalers.
- 7.6 A product is not treated as integral if it only acts as packaging or storage for the goods it contains. Examples of products which are not an integral part of the goods and are in scope of the tax include ready meal trays, yoghurt pots, flexible pouches such as those used to contain pet food, coat hangers, liquid soap pumps, lids and closures such as on condiment bottles or jars, and grow bags.
- 7.7 The third category of products removed from the scope of the tax are packaging products that are designed to be re-used in the presentation of goods. This is to ensure that the scope of the tax meets the policy intention and does not apply to items which are not typically considered packaging and which do not contribute towards the environmental harm that the tax is designed to address. Examples of products within this category include re-usable sales display shelves and poster display stands.
- 7.8 Finally, this instrument adds to the scope of the tax products that are single-use and provide a packaging function only when used by the end user. Examples of products which meet this condition include bin bags and other waste disposal bags, carrier bags, sandwich bags, gift wrap and tape, disposable plates, and party cups. This is to ensure that single-use products that contribute towards the environmental harm that the tax is seeking to address but are designed to be suitable for use by the end consumer or user, rather than the supply chain, are also subject to the tax. As products of this kind are typically only conceived to perform a ‘packaging type’ function after sale to a user or consumer, they would not fall with section 48(1) of the Act without this modification.
- 7.9 Where a product satisfies more than one condition, both adding it to and removing it from the meaning of packaging component, the product will not be taxable.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 These are the first regulations made under these powers. As such, there is no need to consolidate the regulations.

10. Consultation outcome

- 10.1 The Treasury conducted a consultation on Plastic Packaging Tax in 2019. The response to the 2019 consultation can be viewed at:
<https://www.gov.uk/government/consultations/plastic-packaging-tax>.
- 10.2 HMRC conducted a further consultation in 2020 on the policy design. This was extended due to Covid-19 to give businesses more time to respond. The consultation and response document can be viewed at:
<https://www.gov.uk/government/consultations/plastic-packaging-tax-policy-design>.

- 10.3 Alongside the response to this consultation, HMRC published the draft primary legislation for technical consultation. This can be viewed at <https://www.gov.uk/government/publications/introduction-of-a-new-plastic-packaging-tax>.
- 10.4 This instrument was published in draft for technical consultation between 20 July and 17 August 2021. This instrument, which has been updated to include clarification of (i) when a product is not considered to be primarily for storage and (ii) the meaning of integral, is the outcome of that consultation.

11. Guidance

- 11.1 Preliminary guidance about Plastic Packaging Tax has been published on GOV.UK and is available at: <https://www.gov.uk/government/publications/get-your-business-ready-for-the-plastic-packaging-tax>.
- 11.2 Further guidance has been published to help businesses get ready for Plastic Packaging Tax and is available at: <https://www.gov.uk/guidance/check-if-you-need-to-register-for-plastic-packaging-tax>. This has been updated ahead of the tax coming into force on 1 April 2022.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies as a result of this instrument beyond that already set out for Plastic Packaging Tax as a whole.
- 12.2 There is no, or no significant impact on the public sector as a result of this instrument beyond that already set out for Plastic Packaging Tax as a whole.
- 12.3 A Tax Information and Impact Note covering this instrument was published on 20 July 2021 alongside a draft of this instrument and is available on the website at <https://www.gov.uk/government/publications/introduction-of-plastic-packaging-tax-from-april-2022>.
- 12.4 The Tax Information and Impact Note remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken for the tax overall is to exempt businesses manufacturing or importing less than 10 metric tonnes of plastic packaging in any 12-month period from registering for and paying the tax. They will still need to keep some basic records to demonstrate that they fall below this threshold, but in many cases their normal business records should meet this requirement.
- 13.3 The basis for the final decision on what action to take to assist small businesses was to achieve a good balance between easing administrative burdens and meeting the environmental objectives of the tax.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that HMRC will evaluate aspects of the tax after monitoring data has been analysed and collected for at least one year.

14.2 This instrument does not include a statutory review clause and, in line with the requirements of section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 a review clause is not required as the regulations amend provisions relating to a tax.

15. Contact

15.1 Mark Palmer at HMRC Email: indirecttaxdesign.team@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Judith Kelly, Deputy Director for Excise and Environmental Taxes, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Helen Whately MP, Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.