

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>HMRC</b>	<b>Title:</b> <b>Impact Assessment of Excise: Modernisation and Compliance Checks</b>	
<b>Stage:</b> Final	<b>Version:</b> 3.0	<b>Date:</b> 8 <sup>th</sup> March 2010
<b>Related Publications: Consultation Documents</b> – Modernising Powers, Deterrents and Safeguards: Excise: Modernisation and Compliance Checks – 9 <sup>th</sup> July 2009 and 9 <sup>th</sup> December 2009		

### Available to view or download at:

<http://www.hmrc.gov.uk/consultations>

**Contact for enquiries:** Laura Lucking

**Telephone:** 078255 46464

### What is the problem under consideration? Why is government intervention necessary?

Excise legislation has evolved over many years, resulting in different systems and procedures applying to different regimes. These differences impact particularly on those involved in the production, holding and movement of alcohols, tobacco and oils. While there are good reasons for this in some cases, in others it has led to duplication of information and unnecessary administrative complexity. After the Commissioners of Revenue and Customs Act 2005 created HMRC from the two former Departments a project was set up to review the powers, safeguards and deterrents available across the different tax and duty regimes, introducing alignment where appropriate and ensuring they are fit for modern purposes. Excise forms the final tranche of this work on compliance checking powers.

### What are the policy objectives and the intended effects?

Following the 2008 Finance Act (FA 2008) and with extension in the 2009 Finance Act (FA 2009), HMRC have aligned record-keeping rules, information and inspection powers and assessment and claim time limits across the majority of taxes and duties for which they have responsibility. Excise duties have been the main exception. The focus of the excise review was to ensure that HMRC has powers that are modern and can be used effectively to tackle large scale excise frauds, met the needs of changing operational focus and retain sufficient safeguards for legitimate traders and businesses. It was also important to look at aligning any areas with changes made in the FA 2008 and 2009, where appropriate.

### What policy options have been considered? Please justify any preferred option. 1. Do nothing

2. Modernise the excise administrative provisions (this is now being progressed over a longer period and therefore is not covered in this Impact Assessment, estimated benefits are in version 2.0 9/12/2009)
3. Modernise the excise compliance checking powers, including alignment of record-keeping rules and time limits for assessing additional duty due or making claims for duty relief.

Option 3 is preferred, with Option 2 following over a longer period to allow requirements, costs and benefits to be more fully explored. Improved compliance checking powers will help HMRC deal more effectively with those operating illicitly while limiting the impact on the legitimate trade.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** A post implementation review will take place between 1 – 3 years after the full implementation of any option.

### Ministerial Sign-off For final Impact Assessment:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.*

Signed by the responsible Minister:

Date: 19 March 2010



## Summary: Analysis & Evidence

**Policy Option: 3**

**Modernise the excise compliance checking powers**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'. HMRC costs will be on staff training, which should be minimal as these are relatively small changes to existing legislation. If appropriate HMRC will share training material with traders, whose only costs in relation to the changes will be to update their knowledge.	
	<b>One-off</b> (Transition)	<b>Yrs</b>		
	<b>£ Negligible</b>			
	<b>Average Annual Cost</b> (excluding one-off)			
	<b>£ Not Applicable</b>		<b>Total Cost (PV)</b>	<b>£ Negligible</b>
Other <b>key non-monetised costs</b> by 'main affected groups' As with any change in policy there would be an initial familiarisation process with the changes to the powers, however it is expected this will be minimal for taxpayers. The key change would be in relation to the new information power and taxpayers may need to understand that process for making representations.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Uniformity across recording-keeping principles would assist taxpayers in understanding their obligations, reducing instances of mistake. Aligned time-limits will make it easier for traders to know what is expected and when. There may be a negligible increase in the level of yield recovered from assessments that can cover 4, rather than 3, years.	
	<b>One-off</b>	<b>Yrs</b>		
	<b>£ Negligible</b>			
	<b>Average Annual Benefit</b> (excluding one-off)			
	<b>£ Negligible</b>		<b>Total Benefit (PV)</b>	<b>£ Negligible</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Taxpayers would benefit from aligned record-keeping principles and time limits across the taxes and duties. Enhanced HMRC powers to tackle illegitimate trading, used in conjunction with operational strategies to address the non-compliant should benefit legitimate businesses who face unfair competition from illicit trade.				

**Key Assumptions/Sensitivities/Risks** While this option should help to reduce taxpayers' compliance costs through aligned time limits and make HMRC more efficient in carrying out its responsibilities, HMRC does not have the evidence base to provide accurate figures for the overall benefits or impacts of these changes.

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ Not quantifiable</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ Not quantifiable</b>
-------------------------	-------------------------	---	---

What is the geographic coverage of the policy/option?		United Kingdom		
On what date will the policy be implemented?		01/04/11		
Which organisation(s) will enforce the policy?		HMRC		
What is the total annual cost of enforcement for these organisations?		<b>£ Negligible</b>		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		<b>£ N/A</b>		
What is the value of changes in greenhouse gas emissions?		<b>£ N/A</b>		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro £0	Small £0	Medium £0	Large £0
Are any of these organisations exempt?	No	No	No	No

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)		
Increase of	<b>£ Negligible</b>	Decrease of	<b>£ Negligible</b>	<b>Net Impact</b>
				<b>£ Negligible</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Introduction

HMRC has approximately 11,000 customers across the different excise regimes, ranging from large to small businesses. Taxpayers within these regimes bring in over £45 billion per year, the vast majority from a small number of big players. This represents 10 per cent of the total amount of revenue collected by HMRC each year.

This revenue is generated within the following excise regimes which are examined in this consultation:

- goods for consumption: alcohol (beer, wine, made-wine, cider, perry and spirits), tobacco and energy products, including the holding and movement of such goods in duty suspension;
- gambling: profits based (general betting duty, bingo duty, pool betting duty, gaming duty and remote gaming duty); and by ticket sales (lottery duty);
- air passenger duty (APD) charged on chargeable passengers in chargeable aircraft; and
- Amusement Machine Licensing Duty (AML<sup>1</sup>).

The current tax gap figures for the excise regimes state that the exchequer is losing between £1.9 billion and £4.7 billion in unpaid duty every year<sup>2</sup> –

Tobacco (cigarettes and hand rolling tobacco): £1bn - £2.65bn

Alcohol (spirits only): £150m - £350m

Oils (petrol and diesel in Great Britain and Northern Ireland ): £790m - £1.740bn.

In the period since 2005 HMRC has seized nearly 15 million litres of alcohol with a taxable dutiable value of over £33 million, issued demands for more than £178 million of evaded duty and prosecuted 15 major criminal gangs who were involved in alcohol fraud.<sup>3</sup>

For oils<sup>4</sup> in the period since 2005, 4 million litres of diesel has been confiscated, 84 fuel laundering plants have been disrupted and 45 criminal convictions have been successfully obtained.

For tobacco, in the period since 2000 HMRC has seized over 14 billion cigarettes and more than 1000 tonnes of hand rolling tobacco in the UK and abroad. It has broken up over 370 criminal gangs, successfully prosecuted over 2,000 people and issued over £35 million worth of Confiscation Orders<sup>5</sup>.

HMRC needs effective powers to be able to counter this level of threat.

Excise legislation focuses on those classified as Revenue Traders (s1(1) Customs and Excise Management Act 1979 - CEMA). This term is wide ranging and includes any person carrying on a trade or business subject to any of the revenue trade provisions of the customs and excise Acts and those who 'buy, sell, import, export, deal in or handle' any goods liable to excise duty<sup>6</sup>.

---

<sup>1</sup> The Government issued a consultation on the future of gaming machine taxation on 16 July 2009. The deadline for responses was 23 October 2009. The Government is analysing the responses received to the consultation, and will give full consideration to the industry's views before any decisions are taken.

In addition to the consultation on gaming machines, the Government will continue to engage with the gaming machine industry about the general state of the sector and the impact of taxation.

<sup>2</sup> From 'Measuring Tax Gaps 2009', HMRC, December 2009, [www.hmrc.gov.uk/stats/measuring-tax-gaps.pdf](http://www.hmrc.gov.uk/stats/measuring-tax-gaps.pdf)

<sup>3</sup> Figures from the "Renewal of the Tackling Alcohol Fraud" Strategy published by HMRC and UKBA at Budget 2009 <http://www.hmrc.gov.uk/budget2009/tackling-alcohol-2850.pdf>

<sup>4</sup> HMRC Autumn Performance Report 2008 p.53 <http://www.hmrc.gov.uk/about/autumn-report-2008.pdf>

<sup>5</sup> Figures from "Tackling Tobacco Smuggling Together" published by HM Revenue and Customs and the UK Border Agency in November 2008 <http://www.hmrc.gov.uk/pbr2008/tobacco-2800.pdf>

<sup>6</sup> Annex A in the first Impact Assessment includes a more detailed list of excise sectors covered by this consultation, and a list of the most common types of revenue trader. Annex B in the first Impact Assessment provides indicative figures of the numbers involved in and the amounts generated by the main excise regimes.

## Policy objectives and intended effects

When the Commissioners of Revenue and Customs Act 2005 created HMRC it left in place all the legislation that governed the different tax and duty regimes. This meant that there were different powers and obligations for the different taxes. The Review of Powers, Deterrents and Safeguards was introduced to address this issue, looking across the regimes to ensure the powers and safeguards were suitable for the modern climate, and introducing alignment where appropriate.

As a result of this work legislation was passed in the Finance Acts 2008 and 2009 providing aligned powers for all HMRC taxes and duties in relation to time limits, record-keeping requirements and information and inspection powers. However the significant differences in the excise regimes, where the focus is on goods rather than records, resulted in excise being reviewed separately.

The main focus of excise powers is to enable HMRC officers to check that goods held or moved in duty suspension do not enter the market without duty being paid, and to enable officers to check the quality of excisable goods coming into the UK market (e.g. whether the diesel being sold through petrol stations is safe). Therefore to complete the work of the Review of Powers it was necessary for HMRC to look at whether the legislation and powers governing the excise regimes provided the powers needed to tackle the current risks, whilst also giving the safeguards needed in modern times.

During the first consultation HMRC took the opportunity to look at possible ways to modernise the administrative processes of the excise framework. Excise administrative requirements have grown up over a long period, and often in a piecemeal fashion, and therefore can be complex and difficult to manage. HMRC was looking for ways to simplify the processes and procedures involved for taxpayers engaging in the regime.

The responses to the proposed changes were broadly positive but stakeholders made it clear that the modernisation should be solidly based with computerised solutions. In light of this, the modernisation work is being taken forward over a longer time scale to allow HMRC to build a better picture of what an IT system would need to deliver and the costs and benefits involved for both the Department and the trade.

As part of a wider project the compliance powers for customs duties and international trade are being reviewed over the next few years. The changes made to excise as a result of this work will be taken into account as the customs work moves forward.

## Policy Development Process

### *First Consultation (July – October 2009)*

The consultation process started with the publication of the Excise: Modernisation and Compliance Checks consultation document, and the first impact assessment, on 9th July 2009. That process lasted 12 weeks until 1<sup>st</sup> October 2009.

The consultation document sought views on the full range of proposals relating to both modernisation of excise administration and the review of the compliance checking powers.

The responses are detailed in the 'Excise: Modernisation and Compliance Checks; the next stage' document and impact assessment that were published on 9<sup>th</sup> December 2009<sup>7</sup>.

The consultation sought views from a broad cross section of external stakeholders, both through representative bodies and through direct contact with key businesses, as well as from a wide range of internal stakeholders involved in operating the excise regimes. Information was also gathered from HMRC analysts and through interrogation of internal HMRC systems.

---

<sup>7</sup> Documents can be found at <http://www.hmrc.gov.uk/pbr2009/supplementary.htm#ia>

HMRC conducted nine one to one external meetings; attended three meetings hosted by representative bodies to discuss the proposals and received fourteen written responses.

Responses to the first consultation were in general positive, both in relation to the modernisation proposals and the compliance checks changes. The first consultation successfully gained responses from across the different excise sectors and they helped refine the proposals.

### **Second Consultation (December 2009 – March 2010)**

The second consultation was published on 9th December 2009, again providing a 12 week period for responses. With modernisation proposals being taken forward over a different time frame this iteration focused on the detail of proposed changes to the compliance powers within CEMA, with draft clauses published on 14th January 2010.

HMRC received written responses from across the regimes and held meetings which were attended by a variety of external stakeholders to discuss the details of the proposed legislation, as well as attending various other Fora. The key comments are outlined below. HMRC also held meetings with internal stakeholders with views sought from across the Department.

Responses were generally positive, recognising that HMRC is attempting to ensure it has all the tools necessary to tackle the illicit trade, whilst ensuring there is adequate and useful protection for legitimate businesses.

### **Option 3 – Modernise the excise compliance checking powers, including record-keeping requirements and time limits for assessing additional duty due or making claims for duty relief (Recommended)**

The way in which HMRC checks that the right tax has been paid across the majority of HMRC taxes and duties is broadly similar. But there are key differences in the types of check required for goods based excise duty regimes and those required for other HMRC taxes and duties where the focus is much more on paper audit. Within excise goods based regimes the risk lies predominantly with the goods themselves, including their holding and movement in duty suspense, where the high margins provide an incentive for people to involve themselves in the illicit market for those goods.

#### **Proposals Consulted on:**

The second consultation provided detailed proposals on the following areas:

1. an aligned high-level record-keeping rules;
2. aligning time limits for claims and assessments to 4 years, retaining the 20 year extension for certain cases;
3. inspection powers amended in sections 112 and 118 CEMA to allow inspection of documents, and in section 161A to allow the search for documents under a warrant;
4. explicit prohibition of entry to premises used solely as a dwelling;
5. a new power that would enable HMRC to impose a penalty when an officer encounters obstruction on an unannounced visit. To use this penalty the visit would need to be pre-authorized by the tribunal; and
6. a new information power that would allow HMRC to seek information from other parties such as banks. Safeguards would be a formal notice requirement and new right of appeal.

It also sought views on proposals to improve the way HMRC shares information with external licensing authorities regarding excise wrongdoing by those with licences, and on whether there was any merit in looking to utilise VAT anti-fraud techniques in the excise arena.

## **Responses to the Second Consultation - Compliance Checks**

1. Record Keeping – stakeholders generally felt the alignment was sensible, although there was some concern that it was not used to change the type of documents required to be retained which it was felt should always be related to business documents.

*HMRC can reassure respondents that there are no plans to change the regime specific requirements in relation to records.*

2. Time Limits – no issues were raised with the principle and it was generally considered that alignment with the other taxes was sensible. There were questions regarding whether transitional arrangements would be used.

*HMRC can confirm that there are plans to use transitional arrangements, and that they are likely to be based on those used for the VAT changes,*

3. Inspection Powers – stakeholders were generally supportive of the changes proposed. The focus on ensuring HMRC were able to access documents in relation to goods was welcomed, as was making it explicit that officers cannot enter solely domestic dwellings, although there were questions raised regarding the objectivity that would be applied to the concept of ‘solely’. There was support for HMRC using its powers robustly to target illicit trade, and a recognition that there should be detailed guidance for officers on how and when to use the various powers.

*When the changes proposed are implemented HMRC will review the guidance available for officers and will ensure that it provides clear guidance on the changes and how the powers should be used, specifically in relation to domestic dwellings.*

4. Information Powers – there was support for HMRC’s need to be able to access information to determine the provenance of goods. The need for tribunal approval to request information from a non-revenue trader was welcomed, but it was raised that the non-revenue traders should be able to appeal against supplying it, especially if there is a cost involved.

*HMRC can confirm that those who are asked for information under an information notice will be given opportunity to provide representations if they do not think they should be required to. These representations will be supplied to the tribunal (possibly in summary form) as part of the application for the information notice.*

5. Penalty for obstruction – There were no strong views either way in response to this idea. Although some stakeholders could see a theoretical use in having it they could not see that it would add practical value. There was particular concern that it would actually be used against the wrong people i.e. those left in charge of premises but who are not in control of the stock etc. There were also suggestions that to be effective the penalty would have to be so high that it would become disproportionate.

*HMRC will not be taking forward this aspect of the proposals as a result of the various issues raised during consultation.*

6. Information sharing – it was proposed that HMRC should be making better use of information that it holds on excise wrongdoing by those licensed to operate in the excise arena, e.g. retail sellers of alcohol, hauliers. There was mixed response to the concept. Although most saw some value in it, as an additional tool to restrict the amount of illicit market available, there were strong suggestions that various safeguards be put in place to ensure it could not be used against innocent parties.

*HMRC can give reassurance that the information sharing proposal will have a range of safeguards built into the framework. The initial test for passing information will be three seizures from the same premises/person. Each of these seizures has an appeal right and a decision as to whether information will be passed will not be made until the opportunity for appeal has passed. A single HMRC team will have the responsibility for leading this work.*

7. VAT anti-fraud concepts – HMRC also asked for views on the practicalities of using VAT anti-fraud concepts in relation to excise. Particularly whether there would be benefit in using a joint and several liability approach where a purchaser ‘knew or should have known’ that duty had not been paid on the goods they were buying. Although stakeholders welcomed HMRC looking for innovative ways to tackle the illicit trade there were concerns that the VAT approach had a disproportionate impact on legitimate trade and that it would not easily fit with transferral to the excise arena because of the significant differences in the way the duty is administered. However the work did highlight that some of the issues currently causing difficulty in this area may be addressed with the transposition of the EC Directive 118/08/EC in new Holding and Movements regulations. These regulations become effective from the 1<sup>st</sup> April 2010 and HMRC will monitor the impact that these regulations have, particularly in relation to this issue.

*Again due to issues raised as part of the consultation this proposal is not being taken forward.*

In light of these comments, and discussions with internal stakeholders, the penalty proposals and VAT fraud concepts will not be taken any further at this time. The impacts assessed below are therefore only in relation to the proposals being taken forward as part of the Finance Bill.

**Full details of the responses, including issues raised that were outside the scope of the consultations, can be found in the [Excise: Modernisation and Compliance Checks: the next stage, Consultation Response Document, March 2010].**

## Current Proposals

It was recognised throughout both consultations that HMRC needs distinct powers for excise, in order to operate the regime effectively and to successfully protect the public, the exchequer and the legitimate trade from the risks associated with illicit and counterfeit product. Whilst aligning record-keeping and time limits was seen as sensible, it was agreed early on that it was not appropriate to align excise information and inspection powers to the compliance checking framework introduced for the other taxes in FA 2008 and 2009. Different powers are needed when the risk is associated with goods and therefore the proposals have focused on making small amendments to the current legislation to ensure that the powers provide what is needed.

The legitimate trade recognised that HMRC need robust powers, acknowledging that safeguards would be in how those powers are applied. They were mainly focused on wanting HMRC to use its powers to their full force to tackle the illicit trade that can undermine their businesses.

Therefore the measure put forward is made up of the following components:

### *Align Record-keeping rules*

The proposal is to align excise with the FA 2008 rules about record-keeping.

This will allow taxpayers to retain information rather than the original records themselves, unless conditions or exceptions are specified in writing by HMRC. Although it is not quantifiable, this should reduce the administrative burden on taxpayers who will be able to store all their records in the form most suitable to their business, with the same overarching principle governing record-keeping for all taxes and duties. It also represents a minor simplification by expressing the requirement in the same way across all taxes and duties.

There are no proposals to change the record keeping requirements specific to individual excise regimes, or the period for which records should be retained.

### *Align Assessment and claim time limits*

The proposal is to bring excise time limits into line with time limits for the other taxes and duties, following the FA 2008 and 2009 changes. This means extending the three year limit for claims and

assessments to four years. The 20 year extension will be retained but the behaviours that trigger its use will be aligned so that there is consistency. However the 20 year extension will not be triggered for a failure to notify unless it is deliberate, which is slightly different to other taxes.

### ***Amend Information and inspection powers***

Most people in the UK want to pay the tax and duty they owe; however for the minority their determination not to pay what is due is part of a wider failure to comply with the law. This is particularly true in relation to excise duties, where those who smuggle alcohol and tobacco may be linked to counterfeit products and the funding of organised crime. Therefore HMRC needs a framework for checking compliance that is strong enough to tackle illicit trade, and is an effective tool in protecting the public, the trade and the exchequer.

It is because of the additional risk that is inherent in goods based excise regimes that it is proposed that the framework set out in Schedule 36 will not be sufficient.

The first consultation highlighted the need to strengthen HMRC's ability to request the records necessary to establish the provenance of the goods. Therefore the amendments made to the CEMA powers largely focus on access to information.

The measure would now introduce the following amendments to the CEMA powers:

- to allow inspection of documents when entering premises of a revenue trader, or suspected revenue trader, under section 112 or section 118 CEMA;
- a legislative prohibition on entry to solely domestic dwellings (within both s112 and s118)
- an amendment of section 161A CEMA to allow the search warrant to be used to search for documents relating to goods liable to excise duty; and
- to clarify the existing entry powers to include premises owned by others who are storing excise goods but who may argue that they are not revenue traders.

The proposals also introduce a new information power that is based in powers introduced by Schedule 36 for other taxes:

- The power would allow HMRC to ask for information from a wider range of institutions and individuals than is currently the case. The information must pertain to excise matters and the protection of the revenue, but using this powers it could be requested from for example a bank. The power has an inbuilt safeguard to ensure that it is used proportionately and appropriately, as this information can only be requested by a notice that has been approved by the tribunal.

### ***Passing details of infringements to other UK regulatory authorities***

HMRC is continuing to look at establishing a more consistent and regular approach to passing information about excise wrongdoing to the relevant UK regulatory authorities, so that this information can be used to inform their assessment of an individual's fitness to hold such a licence and prompt a review of the licence.

This would not require further legislation as HMRC is entitled to disclose information for the purpose of achieving its functions (under section 18(2) Commissioners of Revenue and Customs Act). HMRC has continued to work with the Home Office and other interested parties (particularly the Traffic Commissioners and Vehicle and Operator Services Agency) to establish the details and structure of a protocol.

The current suggestion is that HMRC would pass to external licensing authorities' information where there have been 3 or more failures to comply with the excise regimes (or where a substantial assessment is raised). The independent licensing authority would then be able to decide whether it was relevant to the criteria for retaining that licence. This would act as a deterrent to businesses who currently risk having goods seized due to the high returns but are less likely to risk losing a licence that is

crucial to their business. It would also work for the benefit of legitimate traders who may see licences removed or amended for those businesses who are not acting legitimately, and therefore are able to undercut prices.

HMRC would in no way seek to influence how the information was used, as a key safeguard is the independence of the licensing authority.

This work will continue, and although a legislative change is not required, the benefits of the change are included below as this could have an important impact on HMRC's work to tackle those repeatedly found to be engaged in excise wrongdoing.

## Implementation

A discrete team within the Compliance area will lead on the implementation of the changes to CEMA, as part of their work on New Ways of Working. Although the changes to excise are different and less substantial, the experience they have of implementing the changes to compliance checks (main and other taxes) legislated in FA 2008 and 2009 will be invaluable. As part of this role they will be working to update guidance and develop training material which, as previously, they aim to share with key stakeholders.

The work of the team will be overseen by a Project Board which has experience of working on the implementation of previous changes.

Further details on the costs are detailed below.

## New proposals: Impact

### Revenue

There may be an impact on revenue from changes to time limits, as it will allow taxpayers to make a claim for repayment and HMRC to assess for duty for an additional year.

The level of repayments within excise varies from regime to regime. Approximately £160m is repaid, in total, every year. The majority of this amount is made up of drawback<sup>8</sup> claims from hydrocarbon oils and alcohol (£81 million and £24 million respectively). These drawback claims are sent in quarterly as soon after the relevant event as possible. Therefore the extension to 4 years is likely to have a very limited impact on the value of claims.

As an indication of the amounts involved, in 2007-08 for excise duties there were £170 million in net additional revenue from duty assessments and error corrections by taxpayers.

To try to determine what the overall impact of this change will be on revenue a sampling exercise has been carried out by HMRC's operational areas. This looked at the number of assessments that were affected by the current 3 year cap as a proportion of assessments raised by those areas. It was not possible to carry out a representative sample because of the time it would have taken. So the number of cases that were reviewed across the different areas means that these figures are merely indicative.

The results show that the number of cases per year currently impacted by the 3 year cap is very small. It is assumed that the number of cases using the extension to 4 years would be the same percentage as those currently using the full 3 years, and that the same amount will be assessed for the fourth year as the third year. The result would be an increase in the value of assessments by up to £2 million per annum<sup>9</sup>. This is a negligible increase in revenue and supports the anecdotal view given in consultation

---

<sup>8</sup> Drawback allows for the repayment of excise duty paid on goods that have not been and will not be consumed in the UK.

<sup>9</sup> This is an upper estimate.

meetings, where experience (rather than data) suggested that there would be a minimal impact on traders since it was very rare for circumstances to arise where there would be need to go back 3 years for either a claim or an assessment.

## Costs

### Implementation

There may be one-off 'implementation' costs for some taxpayers and agents as they learn about the changes. The cost is likely to be limited as the proposed changes are relatively minor and amend existing legislation rather than replacing it. The key area will be the new information power and the obligations around it. However as this is based on the powers within Schedule 36 it is expected most will be familiar with the processes. HMRC will also share its own training and guidance where appropriate.

There will be costs for HMRC in training operational and policy staff involved in excise duties, but the type and intensity of training will vary according to their roles. This will be a one-off cost as future training programmes will incorporate the changes for new staff and therefore will be part of business as usual costs.

Although more work is needed to develop the training packages and establish the precise length and nature of the training required, initial figures show between 3,000 and 3,500 staff will need training to some degree. Approximately 2,000 staff will only need a short update on the minor change to the scope of the warrant which is expected to take up to an hour (i.e. to allow search for documents as well as goods). Others will need more comprehensive training to ensure they are versed in all the changes applicable to their work and regimes. This is likely to be completed through e-learning. There may need to be some face-to-face training for up to 80 managers, and this is expected to take up to 1 day (at a cost of £150 – 175 per day per person).

The costs of training the staff and updating guidance will be small and will be absorbed as part of normal business activity.

### Information Sharing

The proposals to have a more consistent process for sharing information with licensing bodies suggest using a central team to coordinate what cases are passed, so that they can take a view on the proportionality issues involved in each case and provide oversight on what information is actually sent. It is expected that this role will sit within an existing team and form part of their established business, therefore not requiring any additional funding.

## Benefits

The impact on HMRC costs and yield from checking will depend on a large number of factors, including how many checks are carried out, how well they are targeted, and the extent and nature of non-compliance in the UK in future years.

Taxpayers will benefit from aligned record-keeping rules that will be consistent across the tax regimes. Whilst specific requirements will remain in place for the regimes uniform underlying rules will help taxpayers understand their obligations.

They will also benefit from a single set of time limits in respect of claims and assessments, as this will apply across their various tax obligations. Modernised criteria for engaging the 20 year extension will also link into the language used in Schedule 36 FA 2008 so that taxpayers can better understand what their rights and obligations are.

Key benefits for taxpayers in relation to the inspection and information powers will stem from knowing that the powers are fit for purpose in relation to tackling the large levels of fraud that take place in these regimes, and that HMRC is able to operate them effectively. The modernised powers will support the revised Alcohol Strategy which is changing the way that HMRC resource is used, to ensure that it is utilised to target the higher risk areas.

Legitimate businesses in the excise sector understand that the powers need to be sufficient to deal with the fraudulent end of the market, and therefore appreciate the need for specialist powers regarding entry, access and information. They also gain significant benefits from using duty suspension arrangements and so accept that in exchange for those benefits they agree to certain conditions, such as unannounced visits. Stakeholders have also repeated throughout the consultation that these powers provide an important reassurance to business that HMRC is acting to protect them by reducing the quantity of illicit product on the market. These powers will assist HMRC's operational ability to level out that playing field and reduces instances of them being undercut by illegitimate competitors.

The type of checks that can take place under the powers in relation to excise products also produces higher levels of confidence in consumers, who would be at risk from counterfeit products entering the market.

There should also be a benefit to legitimate business if work to establish an information sharing protocol with licensing authorities is completed. Although no legislative change is required HMRC has carried out some work to assess the impact of the protocol. Conducting a sample of seizures over a year (2006/7) 203 traders would have fallen within the 3 seizures rule. This is not a substantial number in terms of work load for HMRC or receiving authorities, however these traders made up 24% of total seizures. Therefore the benefit of an additional deterrent via the licensing authority is could be considerable.

## Specific Impact Tests: Checklist

Full details of the specific impact tests are listed at:

[http://bre.berr.gov.uk/regulation/ria/toolkit/specific\\_impact\\_tests.asp](http://bre.berr.gov.uk/regulation/ria/toolkit/specific_impact_tests.asp). These have been applied to the options considered in this consultation.

The process of Equality Impact Assessment screening has been started and this will continue during the course of consultation and policy development.

### *Competition Assessment*

The aim of the modernisation options considered was to make systems and procedures simpler for businesses to operate, while providing greater certainty about how HMRC views the way in which businesses manage and conduct their tax affairs.

Under the amended compliance powers, those businesses that HMRC does not view as low risk could expect to spend more time dealing with HMRC and those classified as low risk will usually spend less. But this will not impact on any business's capacity to enter markets or compete rigorously within them. These powers should help HMRC to more effectively tackle the illicit market in the excise sectors therefore improving the 'level playing field' for compliance businesses.

Applying the Office of Fair Trading's competition filter we have considered whether the proposals contained within the consultation would:

1. Directly limit the number or range of suppliers?
2. Indirectly limit the number or range of suppliers?
3. Limit the ability of suppliers to compete?
4. Reduce suppliers' incentives to compete vigorously?

1. The modernisation proposals, once fully implemented, will not impact on the number or range of suppliers as the idea behind these is to simplify the administration processes for businesses involved in excise regimes. The compliance checks will apply to all businesses, as currently, and there is no evidence that the proposals will impact on the ability of compliant businesses to trade. The revised compliance checks should help HMRC reduce the level of illicit product on the market, improving the ability of legitimate traders to compete

2. There have been no indications that the proposals will indirectly impact on the number or range of suppliers.

3. The compliance checking proposals should improve the ability of legitimate businesses to compete by making it easier for HMRC to remove illegitimate traders from the market. This will mean that legitimate businesses will not be struggling to compete with the significantly lower prices of illicit goods.

4. The proposals will in no way impact on the incentives for suppliers to compete vigorously.

These proposals will not therefore have a negative impact on competition within the excise sector. If the amended powers are taken forward they may help to improve the 'level playing field' and encourage competition by reducing the numbers of those trading in illicit goods.

### *Small Firms Impact Test*

The modernisation proposals within this consultation are designed to reduce administrative burdens on the average compliant business. It is therefore appropriate to encompass all small firms to ensure that they can also access the cost savings. During the consultation process there have been no comments regarding disproportionate impact on small businesses.

The compliance checking proposals will generally not increase costs for compliant businesses. Views have been sought from small businesses during consultation..

### *Legal Aid*

These proposals would not significantly increase legal aid impacts.

### ***Sustainable Development***

These proposals are in accordance with the principles of sustainable development. Simplified administrative processes, and increased ability to tackle the illicit market, supports the principles of a sustainable economy.

The government has committed to five principles of sustainable development. These are

1. Living within environmental limits;
2. Ensuring a strong, healthy and just society;
3. Achieving a sustainable economy;
4. Promoting good governance; and
5. Using sound science responsibly.

The proposals within this consultation do not impact on the first and fifth test as there is no use of science or any impact on environmental limits.

However simplification of the administration processes through modernisation and enhanced powers to assist in tackling the illicit sector of the excise market can be seen to contribute to ensuring a just society and a sustainable economy. This is particularly relevant in relation to the serious non-compliance that takes place within excise which has been used to fund organised crime. If HMRC can better tackle those involved it supports the principle of a just society. This will also help ensure that the market for excise goods becomes more legitimate and therefore promotes the sustainability of that sector.

### ***Environmental Impact Tests***

Carbon – the proposals have no significant carbon emissions impact.

Other Environmental – the proposals have no significant environmental impacts.

### ***Health Impact***

Using the Health Departments three stage screening questions it can be seen that the proposals have no significant impact on health or well-being, and therefore a complete health impact assessment does not need to be completed. However, HMRC's enhanced compliance checking powers may help to reduce risks to health by removing and preventing the sale of potentially harmful counterfeit excise goods to the public.

1. The proposals will have no direct or significant impact on health through its effects on Income, Crime, Environment, Transport, Housing, Education, Employment, Agriculture or Social cohesion. There is the possibility for a minor impact on the reduction of crime through the improved compliance checking powers but this is in relation to crimes of failing to pay duty rates and therefore any following impact on health would be minor.
2. There will be no impact on the lifestyle variables such as physical activity, diet or sexual behaviour. We can speculate that there may be an impact on alcohol use in that reducing illicit activity may push the market price up, by limiting the amount of non-duty paid product available. However that is speculative and would have a very minimal impact.
3. There will be no impact on health and social care services from these proposals.

### ***Rural Proofing***

There are no indications that these proposals will impact differently in rural areas.

### ***Equality Impacts Tests***

Equality Impacts have been considered as part of the consultation process for these proposals. This has been done in conjunction with the customer units, and reviewed with external stakeholders. It indicates that these proposals:

- will have no significant race equality impact.
- will have no significant disability equality impact.
- will have no significant gender equality impact.

The Review has undertaken Equality and Privacy Impact screening as part of developing and consulting on the proposals for this measure. No requirement for full impact assessments on these issues has been identified. The adjustments identified as part of the Review are for operational business and implementation. The Review will continue to monitor progress on these.

### ***Human Rights***

The potential impact on human rights of these proposals has been considered as part of the development of these options. The powers covered by the proposals are modernised versions of the previous CEMA powers. These powers give rise to Human Rights compatibility considerations. Our analysis is that these powers are for legitimate purposes, are lawful and proportionate, therefore justifying any interference with Human Rights. Further more the powers are supported by those who are legitimately operating in the excise arena.

The current powers were reviewed in 1998 to ensure that they were compatible with the, then new, Human Rights Act. They were held to be compliant and therefore the modernisation of those powers is also considered to be human rights compliant.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No