

EXPLANATORY MEMORANDUM TO
THE BEER, CIDER AND PERRY, SPIRITS, AND WINE AND MADE-WINE
(AMENDMENT) REGULATIONS 2006

2006 No. 1058

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument amends the Beer Regulations 1993 (S.I. 1993/1228), the Beer and Excise Warehousing (Amendment) Regulations 2002 (S.I. 2002/1265), the Cider and Perry Regulations 1989 (S.I. 1989/1355), the Spirits Regulations 1991 (S.I. 1991/2564), the Spirits (Rectifying, Compounding and Drawback) Regulations 1988 (S.I. 1988/1760), and the Wine and Made-wine Regulations 1989 (S.I. 1989/1356). It also revokes the Wine and Made-wine of a Strength exceeding 1.2 per cent. and not exceeding 5.5 per cent. (Prohibition of Fortification) Regulations 1989 (S.I. 1989/916), the Excise Duty (Relief on Alcoholic Ingredients) Regulations 1978 (S.I. 1978/1786), the Alcoholic Liquors (Amendment of Units and Methods of Measurement) Regulations 1979 (S.I. 1979/1146), and the Excise Duty (Relief on Alcoholic Ingredients) (Amendment) Regulations 1992 (S.I. 1992/3157). The overall result of these changes is to simplify the arrangements made by the amended Regulations.

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

3.1 None

4. Legislative Background

4.1 Beer, cider and perry, spirits, and wine and made-wine produced in or imported into the United Kingdom are liable to excise duty. The production of beer, cider and perry, spirits, and wine and made-wine made in the United Kingdom is governed by the Alcoholic Liquor Duties Act 1979 (c.4), and by the Beer Regulations 1993, the Cider and Perry Regulations 1989, the Spirits Regulations 1991 and the Wine and Made-wine Regulations 1989. This instrument amends those Regulations to remove provisions that have been identified as being redundant, obsolete or duplicated elsewhere. It amends the Beer Regulations 1993 to remove prohibitions on the carrying out of certain operations on small brewery beer, such as mixing with beer that is subject to a different rate of duty. It also amends the Spirits (Rectifying, Compounding and Drawback) Regulations 1988 to remove the requirement for a rectifier or compounder who is authorised to receive duty-free spirits to make entry of his premises.

4.2 The Alcoholic Liquor Duties Act 1979 provides for excise duty to be charged on wine and made-wine produced for sale by a producer, whether licensed or not. The Wine and Made-wine Regulations 1989 do not provide for the collection of duty on

wine or made-wine produced by an unlicensed producer. This instrument amends those Regulations to remedy this defect. Similar provision is made for cider and perry.

4.3 This instrument also revokes the Wine and Made-wine of a strength exceeding 1.2 per cent. and not exceeding 5.5 per cent. (Prohibition of Fortification) Regulations 1989 as these regulations are no longer necessary.

4.4 Additionally the instrument revokes the Excise Duty (Relief on Alcoholic Ingredients) Regulations 1978, the Alcoholic Liquors (Amendment of Units and Methods of Measurement) Regulations 1979, and the Excise Duty (Relief on Alcoholic Ingredients) (Amendment) Regulations 1992 which have been superseded by provision contained in section 4 of the Finance Act 1995.

5. Extent

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

7.1 This instrument amends excise legislation covering the alcohol sector. Much of the existing legislation covering the operations of alcohol producers was conceived at a time when the former Commissioners of Customs and Excise intervened more frequently in the day-to-day commercial activities of alcohol producers. For example, it used to be common to have permanent on site distillery control officers, but this is no longer the case. Consequently, some of the legislation is outdated, and can lead to burdens being imposed on business that are no longer justified. This instrument removes and revokes regulations that have been identified as being redundant, outdated or duplicated elsewhere. In particular it:

- Removes overly prescriptive requirements that govern how cider and perry makers, spirits manufacturers and wine and made-wine producers place, fix and gauge their vessels for examination;
- Removes superfluous record-keeping requirements for cider and perry makers, spirits producers and wine and made-wine producers;
- Removes the requirement for cider and perry makers and wine and made-wine producers to take stock and submit a stock return;
- Removes regulations governing the treatment of wort or wash and the calculation of gravity in the manufacture of spirits;
- Removes overly prescriptive requirements that govern what methods can be used to ascertain the alcoholic strength of spirits, by widening methods that can be used;
- Revokes regulations controlling the fortification of both UK manufactured and imported wines and made-wines of a strength exceeding 1.2 per cent. but not exceeding 5.5 per cent, which are no longer needed; and
- Revokes regulations which provide for the repayment of excise duty charged on beer, cider, made-wine, perry, spirits and wine used in the production or manufacture of certain eligible articles as they have been superseded by other legislation.

These changes demonstrate the Government's commitment to removing unnecessary or redundant legislation.

7.2 The Beer Regulations 1993 prohibit certain operations on small brewery beer, such as mixing beers chargeable with different rates of duty. These prohibitions were introduced in 2002 in order to protect the Small Brewery scheme against duty avoidance. As a result of the post-implementation review of the Small Brewery scheme, we accepted that outright prohibition of these practices was onerous. This instrument therefore relaxes these restrictions. Mixing is permitted if the product of it is charged at the standard rate of duty. The amendment is minor and will facilitate trade.

7.3 The effect of the anomaly described in paragraph 4.2 above is that unlicensed production of wine and made-wine, and unregistered production of cider and perry, may result in civil penalties, seizure of property or prosecution for evasion of excise duty. However, the duty that was evaded cannot be collected. This instrument remedies this defect. This change is minor, uncontroversial, and should facilitate legitimate trade. The relevant trade associations have been informally consulted on the proposal and were supportive.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is negligible.

9. Contact

Sharon McDermott at Her Majesty's Revenue and Customs Tel: 0161 827 0350 or e-mail: Sharon.McDermott@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

FULL REGULATORY IMPACT ASSESSMENT (RIA)

Deregulation and Simplification of Alcohol Drinks Sector Legislation

Purpose and intended effect

The policy objective

A major Government aim is to remove all unnecessary burdens upon business. This measure contributes towards that aim in respect of the alcohol trade. The Government has identified many outdated, obsolete and/or burdensome requirements imposed on the alcoholic drinks sector by primary and secondary legislation and where feasible, has repealed or reduced the stringency of those requirements.

These changes, which are contained in the Finance Bill 2006 and the Beer, Cider and Perry, Spirits, and Wine and Made-wine (Amendment) Regulations 2006, repeal and amend appropriate requirements as set out in:

The Alcoholic Liquors Duties Act, 1979;

The Spirits Regulations, 1991;

The Cider and Perry Regulations, 1989;

The Wine and Made-wine Regulations, 1989;

The Beer Regulations, 1993; and

The Spirits Rectifying, Compounding and Drawback Regulations 1988.

In addition, the Government has made further changes to this legislation where simplification and modernisation was needed.

Background

As part of a rolling programme of modernising alcohol legislation, HM Revenue & Customs (HMRC) identified many examples of obsolete requirements of, and restrictions on, distillers in primary law and the Spirits Regulations. Much of these were based around outmoded methods of control of spirits production from a time when officials were stationed permanently in distilleries. Nowadays, HMRC control these businesses using risk based targeting and audit techniques. These methods place less reliance upon physical presence at distillers' premises.

Extant requirements such as that distillers should "give notice" to the proper officer when undertaking operations or processes in the manufacture of spirits and taking account of spirits, are no longer enforced and have become obsolete. There are several other examples such as keeping specific accounting records and performing specified activities that are no longer appropriate in a modern day environment. HMRC have consulted the spirits trade informally in order to gauge their initial reactions to the measures and have received favourable responses.

Rationale for government intervention

The Government's aim is to reduce the regulatory burdens on UK businesses. If UK businesses have less legislative requirements to comply with this will allow them to become more competitive in the world market which may enable them to supply products domestically at a lower price, benefiting the British consumer. At PBR 2005, the

Government announced that this work was to be extended to all alcohol legislation and that this would forerun a wider programme of simplification in all areas of excise legislation.

A second, separate part of the Alcohol Simplification Measures for reducing burdens on the alcoholic drinks sector relates to modernising the duty deferment guarantee system. HMRC are considering the removal of the automatic requirement for businesses to provide a financial guarantee as a condition of being able to make monthly, instead of daily, payments of duty. As no legislative change is likely to be required, a separate Operational Impact Assessment will be prepared when the duty deferment guarantee policy change is introduced.

Consultation

(i) Within government

HMRC have consulted with HM Treasury. Given the nature of the provisions that are being repealed, it was not necessary to consult any other Government department.

(ii) Public consultation

HMRC have informally consulted the Spirits, Beer, Wine and Cider industries regarding the repeal and relaxation of these obsolete requirements and have received favourable responses. HMRC plan to enter into further discussions with industry to seek to identify any additional areas where the current legislation could be relaxed or simplified.

Options

Option 1: Do nothing. This would have avoided the burden of progressing legislation that the industry is only mildly supportive of. However, while the costs this obsolete legislation imposes on industry are small on an annual basis, over time these accumulate into more substantial sums. Delaying or avoiding the removal of such legislation would have proved a false economy. Non-legislative options were considered but aside from the duty deferment guarantee policy proposals, repeals and simplifications are only possible by changing the law.

Option 2: To legislate to remove identified, obsolete Primary provisions and regulations at Budget 2006, or soon after, followed by further discussion with industry to identify other potential, simplification measures to be legislated for subsequently.

Option 2 was the preferred option as it provides immediate impact to the commitment to reducing burdens, at the same time as being able to promise to seek more.

Costs and benefits

Sectors and groups affected

All alcoholic drinks producers. In addition, potential new entrants to the market are facilitated by less initial compliance costs.

Benefits

The revised primary and secondary legislation will:

- abolish some obsolete requirements and restrictions and relax other burdensome requirements thereby reducing compliance costs for both existing traders and new businesses;
- remove some obsolete HMRC powers that no longer have any place in supporting modern methods of control, but would merely impose unnecessary compliance burdens, if enforced; and,

- remove certain, anomalous conditions from Beer, Cider and Wine Regulations in order to facilitate equity of treatment across the range of alcohol trades.

HMRC intend to carry out more work on quantifying the benefits and in due course will also undertake a review of the figures in standard cost methodology terms.

Compliance Costs

The main intention of this package is deregulation and there are no additional costs to industry resulting from any of the legislative measures that involve repeal or relaxation.

The repeal of the Attenuation Charge (Alcoholic Liquor Duties Act, section 14 and the associated sections of the Spirits Regulations, 1991) afford compliance cost savings to the distilling industry in that in the calculation of the charge, samples need to be taken and tested. Whilst some larger distillers have their own on site laboratories, most will be required to pay testing and associated transport costs. Having consulted trade associations informally, analysis of their members' statements of annual costs has enabled the Government to estimate annual savings to the industry of £130,000.

One of the changes in this package cannot be fully classed as simplifying the legislation. Excise duty points are being introduced into both the Wine and Made-wine Regulations 1989 and the Cider and Perry Regulations 1989 to cover circumstances where the product is made in unregistered or unlicensed premises. This will allow HMRC to assess for arrears of excise duty when an unregistered or unlicensed producer is found whereas currently they cannot. This does not impose any additional burden of compliance costs for the legitimate trade.

Small Firms Impact Test

The deregulation package will have a positive impact on small businesses. The main compliance cost savings will be in respect of the abolition of the Attenuation Charge. This will benefit small business proportionately more in that their savings will be for testing and transport of samples to laboratories. Most of the larger distillers have their own on-site testing facilities and do not suffer these costs. In addition, the repeal of those obsolete provisions that are no longer enforced by HMRC will also benefit prospective new businesses that would otherwise be unaware that these provisions were not being enforced.

No disproportionately negative impact on small businesses has been identified.

Competition assessment

The deregulation package removes compliance burdens from the alcoholic drinks sector.

It is also worth noting that many of these provisions that are being repealed impose no costs on existing businesses as they are, in most cases, unaffected by the obsolete legislation. However, the provisions may act as a barrier to new entrants that need to review all extant legislation in order to decide what does or does not apply to them. Removing obsolete legislation will make this review easier and so, potentially, open-up the industries to new entrants.

Enforcement, sanctions and monitoring

Implementation of this Deregulation and Simplification package will result in a considerable reduction in the number of Regulations to enforce, particularly within the Spirits industry. The remaining regulations will continue to be enforced by HMRC. Failure to comply with

the regulations may result in the issue of a civil penalty and could also lead to forfeiture of dutiable alcohol.

Implementation and delivery plan

The implementation of the whole Deregulatory and Simplification package of measures is being delivered in stages. The changes to primary legislation are included in the Finance Bill 2006. Changes to secondary legislation are made by the Beer, Cider and Perry, Spirits, and Wine and Made-wine (Amendment) Regulations 2006 which come into force on 1 May 2006. Further discussion with the alcohol industries to identify any additional legislative change will take place during 2006.

Post-implementation review

HMRC intend to review the effectiveness of these regulations and how the alcohol sector legislation is operating with the relevant Trade Associations and other interested parties two years after implementation.

Summary and recommendation

This deregulation package is needed to modernise the legislative framework for alcohol. Overall, this package reduces compliance burdens on business by removing obsolete requirements and restrictions, although some of these controls have, in practice, not been enforced for some time. The amended regulations provide a firm legal base for the industry.

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Ministerial Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

John Healey
Financial Secretary

30th March 2006