

EXPLANATORY MEMORANDUM TO
THE WHOLESALING OF CONTROLLED LIQUOR REGULATIONS 2015

2015 No. 1516

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.

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

2. **Purpose of the instrument**

- 2.1 The instrument provides for applications for approval and registration of persons who carry on a controlled activity the conditions and restrictions that may be imposed on such approvals, the arrangements for group approvals, electronic communications, record keeping, penalties and forfeiture.

- 2.2 A "controlled activity" means the selling, offering or exposing for sale, or arranging the sale, of controlled liquor wholesale (see paragraph 4.2 below).

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

- 3.1 This instrument is the first instrument made in reliance on the powers contained in new Part 6A of the Alcoholic Liquor Duties Act 1979 (c.4) (see paragraph 4 below).

4. **Legislative Context**

- 4.1 Section 54 (3) of the Finance Act 2015 (c. 11) inserted new Part 6A into the Alcoholic Liquor Duties Act 1979 ("the Act"). That Part imposes a requirement that a UK person who carries on a controlled activity must be approved by the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners").

- 4.2 A "controlled activity" is defined in new section 88A(8) of the Act and means the selling, offering or exposing for sale or arranging the sale, of controlled liquor wholesale. A sale is of "controlled liquor" if it is a sale of dutiable alcoholic liquor on which duty is charged under the Act and the excise duty point for the liquor falls at or before the time of sale (see new section 88A(2) of the Act). The Commissioners may also by Regulations make provision for when a sale is to be treated for the purposes of Part 6A as a sale of controlled liquor (see new section 88B of the Act).

4.3 Part 6A of the Act also confers Regulation making powers on the Commissioners to implement the approval scheme (see paragraph 7.4 below).

5. Territorial Extent and Application

5.1 This instrument applies to all of 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 Alcohol duty fraud in the UK costs taxpayers an estimated £1.3bn per annum. The most prevalent form of alcohol fraud involves the smuggling or diversion of alcoholic drinks into the UK in large commercial quantities, duty unpaid. Organised criminal gangs do this by systematically exploiting the EU-wide duty suspension arrangements which allow excise goods to move between authorised warehouses duty unpaid until released for consumption onto the home market.

7.2 The wholesale sector is the major point where illicit alcohol is diverted by organised criminals into retail supply chains to intermingle with legitimate goods. This link in the supply chain is vulnerable because it is the only activity not required to be authorised by HMRC or the licensing authorities. Introducing a requirement for wholesalers to be approved by HMRC will address this and reduce opportunities for fraud, and is expected to bring significant benefits.

7.3 Following a 2012 formal consultation on alcohol anti-fraud measures the Government announced that it would consult further on the introduction of an approval scheme for alcohol wholesalers. The Government announced at Autumn Statement 2013 that it would introduce an alcohol wholesaler registration scheme. Primary legislation was introduced in the Finance Act 2015.

7.4 This instrument provides for the following administrative matters to implement the scheme:

Approval and registration

The Regulations provide that anyone required to be approved under the Act, that is, anyone who carries on, or intends to carry on, a controlled activity (see paragraph 4.2 above) must apply for approval. All approved persons will be registered by HMRC. They also provide for HMRC to prescribe various administrative requirements in a notice and to prescribe in a notice conditions and

restrictions to which an approval may be subject. The Regulations require any changes in information provided to the Commissioners to be notified to them, provide for the conferment and use of unique reference numbers, and make provision about record keeping.

The Regulations also describe certain sales that are to be treated as sales of controlled liquor and provide that HMRC may prescribe in a notice wholesale sales which are excluded sales for the purposes of Part 6A of the Act.

Group registration

The Regulations set out the basis on which bodies corporate that satisfy the criteria to form a group can apply for approval under a single registration and elect a representative member. They also provide for members of a group to be jointly and severally liable for any penalties which may be imposed on the representative member.

Electronic communication

The Regulations make provision for communications between HMRC and an alcohol wholesaler and vice versa to be by a prescribed electronic method.

Penalties and forfeiture

The Regulations make provision for penalties of £500 to be levied for each contravention of the regulations or any condition or restriction to which an approval to carry on a controlled activity is subject. They also provide for dutiable alcoholic liquor to be liable to forfeiture where there is a contravention of Part 6A of the Act, any condition or restriction imposed under that Part or the Regulations.

- Consolidation

7.5 This is a new instrument that does not amend any other instruments. There is no need for any consolidation at this time.

8. Consultation outcome

8.1 An initial consultation was undertaken in 2012, 'Alcohol Fraud: Legislative measures to tackle existing and emerging threats to the UK alcohol duty regime' followed by a further consultation in 2013, 'Alcohol Fraud: Next Steps'.

8.2 There was much support for the concept of a registration scheme, although most respondents stressed that burdens on legitimate businesses should be kept to a minimum, in particular the checks and record keeping requirements. HMRC responded to these concerns early on in the consultation process by putting forward an alternative proposal, to allow businesses to risk assess for themselves the frequency with which they carried out checks of a supplier's registration status.

HMRC also decided not to proceed with proposals to require checks to be made of a buyer's wholesaler approval status. These changes were widely welcomed.

- 8.3 Comments received were considered and consolidated into a Summary of Responses document which was published in 2014. The full consultation and summary of responses can be found at:

<https://www.gov.uk/government/consultations/alcohol-fraud-next-steps>

9. Guidance

- 9.1 Before the introduction of the scheme the Government will have published detailed guidance about how the scheme will operate, including the application and approval process, in the form of internet publications. A public notice will also be published. Upon implementation, guidance will be reviewed and revised as necessary.

10. Impact

- 10.1 There will be some additional burdens for businesses including familiarisation with legislation, registration and the requirement to include the unique reference number on invoices and to use the online look up system to verify a wholesaler's status.

The measure is expected to have no impact on civil society organisations.

- 10.2 The introduction of this measure will impact on Her Majesty's Courts and Tribunals Service as there will be an increase in the number of appeals being heard at tribunal.

- 10.3 A Tax Information and Impact Note (TIIN) covering this instrument was published on 10 December 2014 alongside the draft clauses of the Finance Bill 2015 and is available on the government website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. 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 The requirements of the scheme are the same for all businesses. The scheme should result in a reduction in the undercutting of legitimate businesses by competition using illicit supplies of alcohol which can disproportionately hit smaller businesses.

12. Monitoring & review

12.1 HMRC will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

John Waller at HMRC Tel: 03000 588063 or email: john.c.waller@hmrc.gsi.gov.uk can answer any queries regarding the instrument.