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STATUTORY INSTRUMENTS

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**2023 No. 806**

**The Alcoholic Products (Excise Duty) Regulations 2023**

**PART 2**

**Alcoholic strength**

**The volume of alcoholic product in any container**

2.—(1) For the purposes of Part 2 of the Act, except where paragraph (4) applies, the volume of alcoholic product in any container is to be ascertained in accordance with paragraphs (2) and (3).

(2) Subject to paragraph (3), the volume of alcoholic product in any container is to be ascertained by reference to—

- (a) the label of the container of the alcoholic product,
- (b) any invoice issued in relation to the alcoholic product,
- (c) any delivery note issued in relation to the alcoholic product, and
- (d) any document similar to an invoice or delivery note issued in relation to the alcoholic product.

(3) Where the volumes ascertained by reference to the sources described in paragraph (2)(a) to (d) differ, the volume of alcoholic product in any container is to be taken to be the greater of those volumes.

(4) Where—

- (a) a large pack does not meet the tolerance requirements set out in Schedule 1, or
- (b) due care has not been taken to ensure that the volume of an alcoholic product ascertained in accordance with paragraphs (2) and (3) accurately represents its actual volume,

the volume of alcoholic product in the container is to be taken to be the actual volume of alcoholic product with which the container is filled.

(5) The Commissioners<sup>(1)</sup> must publish a notice making provision for the purposes of paragraph (4)(b) about the meaning of “due care”.

(6) Whether due care has been taken for the purposes of paragraph (4)(b) is to be ascertained in accordance with a notice published under paragraph (5).

**The strength of alcoholic product**

3.—(1) For the purposes of Part 2 of the Act, except where paragraph (6) applies, the strength of an alcoholic product is to be ascertained in accordance with paragraphs (2) to (5).

(2) Paragraphs (3) and (4) apply to cask-conditioned alcoholic products or any unfinished alcoholic products.

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(1) “The Commissioners” is defined in section 1(1) of CEMA, which definition was substituted by paragraph 22(b) of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 117(3) of the Act applies this definition of “the Commissioners”.

(3) Subject to paragraph (4), the strength of a cask-conditioned alcoholic product or any unfinished alcoholic product is to be—

- (a) the strength the producer of the alcoholic product reasonably expects it to have when sold by retail or otherwise supplied for consumption,
- (b) ascertained by reference to the label of the container of the alcoholic product,
- (c) ascertained by reference to any invoice issued in relation to the alcoholic product,
- (d) ascertained by reference to any delivery note issued in relation to the alcoholic product, and
- (e) ascertained by reference to any document similar to an invoice or delivery note issued in relation to the alcoholic product.

(4) Where the strengths ascertained by reference to the sources described in paragraph (3)(a) to (e) differ, the strength of a cask-conditioned alcoholic product or any unfinished alcoholic product is to be taken to be the greater of those strengths.

(5) In the case of any alcoholic product to which paragraphs (3) and (4) do not apply, its strength is to be ascertained—

- (a) by reference to the label of the container of the alcoholic product,
- (b) if there is no label on the container of the alcoholic product, by reference to any other document relating to the container, or
- (c) if there is no label on the container of the alcoholic product and it is not possible to ascertain the strength by reference to a document relating to the container, using the actual strength method.

(6) Where due care has not been taken to ensure that the strength of an alcoholic product ascertained in accordance with paragraphs (3) to (5)(b) accurately represents its actual strength, the strength of the alcoholic product is to be ascertained using the actual strength method.

(7) The Commissioners must publish a notice making provision for the purposes of paragraph (6) about the meaning of “due care”.

(8) Whether due care has been taken for the purposes of paragraph (6) is to be ascertained in accordance with a notice published under paragraph (7).

(9) A notice published under paragraph (7) may make provision by reference to specified factors or documentation.

(10) In this regulation—

“cask-conditioned alcoholic product” means any alcoholic product which undergoes fermentation in the container from which it is served for consumption, but does not include alcoholic product served for consumption from containers of such type as may be specified in a notice published by the Commissioners;

“producer” means a person approved under section 82 of the Act (approval requirement: producers);

“unfinished alcoholic product” means any alcoholic product in any stage of production before it has reached the state of maturity at which it is fit for consumption.

#### **Assessments where incorrectly low rate of alcohol duty applied**

4.—(1) This regulation applies if—

- (a) alcohol duty<sup>(2)</sup> is charged on alcoholic products,

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(2) “Alcohol duty” is defined in section 47 of the Act (alcohol duty: charge).

- (b) the duty is charged on the basis of strength ascertained in accordance with regulation 3(3) to 3(5)(b), and
  - (c) the strength is to be ascertained using the actual strength method.
- (2) The Commissioners—
- (a) may assess as being alcohol duty due from the liable person an amount equal to any duty shortfall, and
  - (b) must notify that person or that person’s representative of any assessment under sub-paragraph (a).
- (3) In this regulation “duty shortfall” means any difference between—
- (a) the actual amount of alcohol duty chargeable on the alcoholic product, and
  - (b) the lower amount that, at the excise duty point<sup>(3)</sup>, was charged as a result of ascertaining strength in accordance with regulation 3(3) to 3(5)(b).
- (4) The reference in paragraph (2) to the “liable person” is a reference to the person liable to pay the alcohol duty on the alcoholic products.

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(3) “Excise duty point” is defined in section 49 of the Act (excise duty point and payment).