EXPLANATORY MEMORANDUM TO

THE ALCOHOLIC PRODUCTS (EXCISE DUTY) REGULATIONS 2023

2023 No. 806

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue & Customs and is laid before the House of Commons by Command of His Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument ensures the operability of the new alcohol duty structure, as introduced by Finance (No. 2) Act 2023, from 1 August 2023. It does this by including standardised requirements in areas such as calculating the volume and strength of alcoholic products, which are required to calculate duty under the new structure. It reproduces and formalises instances where alcohol duty is not charged on undrinkable products, or wine and cider made for consumption by the grower of the fruit ingredients. It also introduces necessary requirements for alcoholic products eligible for draught product rates and small producer relief. As per section 89 of Finance (No. 2) Act 2023, non-compliance with any obligations in the regulations attracts a penalty under section 9 of Finance Act 1994. These regulations are the first step in the delivery of the new alcohol duty system (see section 7 for further detail).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument breaches the 21-day rule because of a delay to the parent Act (Finance (No. 2) Act 2023) receiving Royal Assent, meaning there was no power to lay the instrument sooner. The regulations in this instrument are vital to the changes to alcohol duty, which have long been announced as coming into force on 1 August 2023. The regulations were published in draft for consultation (see section 10) and His Majesty's Revenue & Customs have been in regular discussion with industry, who are prepared for this date. Any delay to the coming into force to meet the 21-day rule would have a detrimental impact on all alcohol businesses.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The powers to make this instrument are contained in Part 2 of the Finance (No. 2) Act 2023. This Act replaces the current primary legislation for alcohol duty and introduces structural changes to the way alcohol duty will operate from 1 August 2023; this instrument is the first occasion the powers in this part of the Act are used.

6.2 Fundamental to the changes is moving all alcoholic products to paying a single alcohol duty on a strength-based system of taxation, away from a product-specific approach where each alcohol pays its own duty type calculated in different ways (for example, wine duty is calculated with reference to volume of product, beer duty is calculated in relation to the hectolitre % of alcohol) – see Schedule 7 of Finance (No. 2) Act 2023 for the new alcohol duty rate structure.

6.3 Under the new structure, alcohol duty is calculated in reference to the alcohol by volume (ABV) strength of a product. The Alcoholic Products (Excise Duty) Regulations 2023 set out how the strength of a product is to be ascertained (in relation to its labelled strength in most cases), replacing the current product specific regulations which all have different, or in some cases no, requirements.

6.4 Also introduced by the Finance (No. 2) Act are two new reduced rates of alcohol duty; for products sold in draught containers of a size of 20 litres or more (draught relief), and products made by smaller alcohol producers (small producer relief). Regulations included in this instrument provide necessary administration and eligibility criteria for these new reduced rates of duty.

6.5 For draught relief this includes a requirement for a duty payer who has elected to pay the full rate of duty, rather than the draught rate, to provide suitable documentation confirming the rate paid when supplying the alcohol.

6.6 For small producer relief, requirements are introduced for documentary evidence confirming that for imported alcohol paying reduced rates of duty based on the size of the overseas producer (in terms of how much alcohol they make in a year), the person making the product overseas meets the eligibility criteria as set out in Chapter 3 of the Finance (No. 2) Act 2023. Regulations are also introduced to support the delivery of these reforms in Northern Ireland, after the agreement of the Windsor Framework.

6.7 A second instrument, The Finance (No. 2) Act 2023, Part 2 (Alcohol Duty) (Appointed Day, Savings, Consequential Amendments and Transitional Provisions) Regulations 2023, will set 1 August 2023 as the date that the primary legislation (with the exception of the chapter on approvals – see section 7) comes into force. It will also include saving provisions for parts of existing primary law that are to be retained; transitional provisions to ensure that terminology continues to work until the new approval legislation takes effect (see section 7); and consequential amendments to other legislation impacted by the move to a singular approach of alcohol taxation (e.g., ensuring any old terminology such as “alcoholic liquor” is replaced with “alcoholic product”).

7. Policy background

What is being done and why?

7.1 The structure of the alcohol duty system in the United Kingdom requires commercial producers of alcohol to be registered with His Majesty’s Revenue & Customs before they can begin to produce alcohol, and that monthly duty payments are submitted by those registered, to account for the duty charged on the alcohol produced.

7.2 At Budget 2020, the government announced it would take forward a review of alcohol duty to consider the way a future duty system would work in the United Kingdom. Historically, ‘alcohol duty’ has operated in a product-specific approach which has developed piecemeal over many years. For example, each of the main alcohol types - beer, wine, cider and spirits - have their own rules around administration and how duty is calculated. Primary legislation was contained in the Alcoholic Liquor Duty Act 1979, with each alcohol type having its own set of regulations, such as the Beer Regulations 1993, to administer the production and duty requirements. The registration requirements to produce each alcohol type is different, leading to an overly complicated system, which is burdensome for businesses.

7.3 The Alcohol Duty Review has been a wide-reaching redesign of the way alcohol duty is structured and administered in the United Kingdom and has been extensively consulted on. Finance (No. 2) Act 2023 introduced the new primary legislation required for changes to enable a move to a single, ‘alcoholic product’ approach whereby all products pay ‘alcohol duty’, rather than beer duty, wine duty etc. All alcohol legislation is being updated and harmonised to move away from the individual product approach, meaning the requirements around production and duty payment are the same for all products. A single alcohol production approval will be introduced, replacing the need for a separate approval for each different activity, along with a single ‘alcohol duty’ return to pay applicable duty in one place, simplifying and modernising the process for businesses.

7.4 Given the scale of the changes being introduced, the review is proceeding in two delivery phases. The first of these is the Finance (No. 2) Act 2023 and associated regulations (this instrument), which have effect from 1 August 2023. These pieces of legislation move the structure of alcohol duty to a strength-based system, with the duty applicable to all alcohol types being charged in relation to a product’s strength. This means that for all alcohol, stronger products pay more duty (in contrast, for example, the old structure saw instances where an 11% and a 14% wine would pay the same rate of duty).

7.5 The two new reduced rates of duty, often referred to as ‘draught relief’ and ‘small producer relief’ are also introduced in phase one. Draught relief is a reduced rate of duty for alcohol intended to be sold in the on-trade, and small producer relief offers a reduced rate of duty on a sliding scale as a business grows, to producers whose overall alcohol production is less than 4,500 hectolitres in a year (subject to certain conditions). For small producer relief, this instrument provides documentary and eligibility requirements.

7.6 The Finance (No. 2) Act 2023 also includes legislation to restructure the administration of alcohol duty, such as the move towards a single alcohol approval. To accommodate these changes His Majesty’s Revenue & Customs needs to make significant updates to its IT systems and processes. As such the administrative changes cannot be included within the first delivery phase for 1 August 2023, but instead will form part of a second phase which will go live once the necessary infrastructure is in place. Current plans are that the updated infrastructure, and new administration processes, will be introduced from the second half of 2024. Until that time current approvals will remain in place.

7.7 The practical effect of the legislative changes being made on 1 August 2023 is that primary legislation will be almost exclusively held within the Finance (No. 2) Act 2023, with only small parts of current primary legislation remaining in force until phase two.

7.8 For the secondary legislation, the current product-specific alcohol regulations (such as the Beer Regulations 1993) will largely remain as they are, with consequential changes to update terminology (for example, replacing "alcoholic liquor" with "alcoholic product") as needed. This is because they predominately deal with the administration matters that form part of the second phase of the alcohol review. Where changes to secondary legislation are needed, for example to ensure that alcohol duty can operate the strength-based approach from 1 August 2023, these regulations are contained in the instrument to which this Explanatory Memorandum relates. The long-term aim is to replace all product-specific regulations with a single set of regulations that apply to all alcohol types (see section 9).

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 The aim of the alcohol review is to consolidate all existing secondary legislation relating to alcohol production and administration into a single set of alcoholic regulations, that will apply regardless of product type. This would involve repealing the various product-specific regulations that currently exist, streamlining the legislative picture. This instrument begins that process by, for example, bringing all ascertainment of strength provisions into one place and ending the equivalent in the product specific (e.g. the Beer Regulations 1993, the Wine and Made Wine Regulations 1989, etc) regulations.

9.2 Consolidation will be complete once the second phase of the project has concluded in 2024 (see section 7 for more detail on the phases of work).

10. Consultation outcome

10.1 A draft version of this instrument was published on gov.uk (www.gov.uk/government/consultations/draft-regulations-alcoholic-products-excise-duty-regulations) on 13 February 2023, for an 8-week consultation period ending 9 April 2023. Key industry stakeholders were alerted to this, and His Majesty's Revenue & Customs initiated a proactive communication campaign (social media, trade press articles) to highlight the consultation to the wider alcohol industry.

10.2 At the close of the consultation period, nine responses directly relating to the draft instrument had been received, with a further 28 responses submitted under the heading of a consultation response, but which made no reference to the instrument or the drafting. Of the nine responses, comments included support for changes to how strength may be calculated, request to see supporting guidance and identifying some sequencing errors in the draft. No issues were raised by respondents that required a change to the drafting.

10.3 The draft regulations have been updated since the consultation, to include the requirement for producers of products eligible draught products to provide information on the duty rate paid, to update the rates of duty in the Travellers'

Allowance Order, to exclude a person dealing in completely denatured alcohol from the requirement to hold an excise licence, and to reflect the agreement of the Windsor Framework.

10.4 The Alcohol Duty Review was subject to two prior consultations, both of which can be viewed here: https://www.gov.uk/government/consultations/the-new-alcohol-duty-system-consultation.

11. Guidance

11.1 His Majesty's Revenue & Customs held a series of industry working groups with representatives from each alcohol sector, to aid business preparation for the wider alcohol changes. Existing alcohol Public Notices on Gov.uk will be updated in time for the changes taking effect on 1 August 2023, draft copies of which were shared with industry stakeholders as part of readiness work in the lead up to the changes coming in.

11.2 In addition, new guidance material has been produced covering the new reduced rates of duty for draught products and small producer relief, and again, these were shared with stakeholders during development. All guidance can be accessed from this gov.uk page: https://www.gov.uk/topic/business-tax/alcohol-duties.

11.3 Finally, a new online calculator has been provided to help alcohol producers calculate their eligibility to, and rate for, the new small producer relief. https://tax.service.gov.uk/guidance/work-out-your-small-producers-relief.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies as a result of this instrument.

12.2 There is no, or no significant, impact on the public sector as a result of this instrument.

12.3 A Tax Information and Impact Note covering this instrument was published on 23 March alongside Finance (No. 2) Act 2023 and is available on the website 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.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on taking no mitigating action to assist small businesses is that these regulations do not contain significant new regulation or administration aside from what would reasonably be expected and is equally applicable to all business sizes.

14. Monitoring & review

14.1 The approach to monitoring of this legislation will be considered as part of the wider evaluation of the changes to alcohol duty.

14.2 The 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 make provision relating to a tax.

15. Contact

15.1 Michael Seward at His Majesty's Revenue & Customs can be contacted at mailbox.alcoholpolicy@hmrc.gov.uk with any queries regarding the instrument.

15.2 Nisadha Bandara, Deputy Director for Indirect Tax, at His Majesty's Revenue & Customs can confirm that this Explanatory Memorandum meets the required standard.

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