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STATUTORY INSTRUMENTS

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[2023] No. 0000

EXCISE

The Alcoholic Products (Excise Duty) Regulations [2023]

*Made* - - - -

\*\*\*\* [2023]

*Laid before the House of Commons*

\*\*\*\* [2023]

*Coming into force* - -

\*\*\*\* [2023]

The Commissioners for His Majesty's Revenue and Customs make these Regulations in exercise of the powers conferred by sections [2(3) and (4)], [44(1), (e), (f) and (i) and (2)(c)] and [73(1)] of the Finance Act [2023](a).

PART 1

Introduction

**Citation and commencement**

1. These Regulations may be cited as the Alcoholic Products (Excise Duty) Regulations [2023] and come into force on [insert date].

**Interpretation**

2. In these Regulations—

“the Act” means the [Finance Act 2023];

“alcohol duty” means the duty of excise charged on alcoholic products under section [4] of the Act (alcohol duty: charge);

“large pack” means a container(b) that is intended to contain a volume of more than 10 litres but not more than 400 litres.

**Notices**

3. A notice published by the Commissioners(c) under these Regulations may make different provision for different purposes or different areas.

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- a) 2023 c. x (“the Act”).
- b) Section 1(1) of the Customs and Excise Management Act 1979 (c. 2) (“CEMA”) provides that “container” includes any bundle or package and any baggage, box, cask or other receptacle whatsoever”. Section [72(3)] of the Act has the effect that the use of the expression “container” has the same meaning in the Act as in CEMA.
- c) “The Commissioners” is defined in section 1(1) of CEMA (the definition of “the Commissioners” was substituted by paragraph 22(b) of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11). Section [72(3)] of the Act applies this definition of “the Commissioners”.

## PART 2

### Alcoholic strength

#### **The amount of alcoholic product in any container**

4.— Except in the case of alcoholic product to which paragraph (2) applies, the amount of alcoholic product in any container is deemed to be the greater of the amount ascertained by reference to any information on—

- (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.

(2) The amount of alcoholic product in a large pack is deemed to be—

- (a) in the case of a large pack in relation to which the tolerance requirements set out in Schedule 1 are met, the greater of the amount ascertained by reference to any information on—
  - (i) the label of that pack;
  - (ii) any invoice indicating the amount of alcoholic product in that pack;
  - (iii) any delivery note indicating the amount of alcoholic product in that pack; and
  - (iv) any document similar to an invoice or delivery note indicating the amount of alcoholic product in that pack.
- (b) in the case of a large pack in relation to which the tolerance requirements set out in Schedule 1 are not met, the amount of alcoholic product with which the large pack is filled.

#### **The strength of alcoholic product**

5.— In this regulation and regulation 6 “the actual strength method” means ascertaining the strength of an alcoholic product in accordance with Schedule 2.

- (1) Except where paragraph (3) applies, the strength of an alcoholic product is deemed to be—
  - (a) in the case of a cask or bottle conditioned alcoholic product or any other unfinished alcoholic product, the greater of—
    - (i) the strength the alcoholic product is reasonably expected to have when sold by way of retail or otherwise supplied for consumption;
    - (ii) the amount ascertained by reference to any information on the label of the container of the alcoholic product;
    - (iii) the amount ascertained by reference to any information on any invoice issued in relation to the alcoholic product;
    - (iv) the amount ascertained by reference to any information on any delivery note issued in relation to the alcoholic product; and
    - (v) the amount ascertained by reference to any information on any document similar to an invoice or delivery note issued in relation to the alcoholic product.
  - (b) in any other case, the strength ascertained—
    - (i) by reference to information on the label of the container of the alcoholic product;
    - (ii) if there is no label on the container of the alcoholic product, by reference to any other document relating to the container; or
    - (iii) 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.

(2) Where due care has not been taken to ensure that the strength of an alcoholic product ascertained in accordance with paragraph (2) accurately represents its actual strength, the strength of the alcoholic product is to be ascertained using the actual strength method.

(3) The Commissioners must publish a notice making provision for the purposes of paragraph (3) about the meaning of “due care”.

(4) A notice published under paragraph (4) may make provision by reference to specified factors or documentation.

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

**6.—** This regulation applies if—

- (a) alcohol duty is charged on alcoholic products;
- (b) the duty is charged on the basis of strength ascertained in accordance with regulation 5(2)(a) or (b); and
- (c) it turns out that 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 subparagraph (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, was charged as a result of ascertaining strength in accordance with regulation 5(2)(a) or (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.

## **PART 3**

### **Reliefs**

#### **Relief from duty for undrinkable sediment**

**7.—** This regulation applies to such part of a cask-conditioned alcoholic product as cannot be consumed, referred to as “undrinkable sediment”.

(1) Undrinkable sediment is relieved at the duty point from alcohol duty.

(2) Relief given under this regulation is subject to any conditions specified in a notice published by the Commissioners.

(3) If a person subject to a condition specified under paragraph (3) breaches that condition the Commissioners—

- (a) may assess as being alcohol duty due from the person an amount equal to the alcohol duty that would have been charged on the undrinkable sediment if, at the duty point, relief had not been given under this regulation; and
- (b) must notify that person or the person’s representative of the assessment.

(4) In this regulation “cask-conditioned alcoholic product” means 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.

## Grower's domestic consumption relief

8.— Wine(a) and other fermented product(b) may without payment of alcohol duty be sent out from an alcoholic product production premises for the domestic consumption of the grower of the ingredients from which the wine or other fermented product is produced.

(1) Cider(c) made from fruit grown by the producer may without payment of alcohol duty be sent out from the producer's alcoholic product production premises for consumption—

- (a) domestically, by the producer; or
- (b) free of charge and in the course of their employment, by agricultural workers employed by the producer.

(2) Relief given under this regulation is subject to any conditions specified in a notice published by the Commissioners.

(3) If a person subject to a condition specified under paragraph (3) breaches that condition the Commissioners—

- (a) may assess as being alcohol duty due from the person an amount equal to the alcohol duty that would have been charged on any part of the alcoholic product in relation to which the breach occurred if, at the duty point, relief had not been given under this regulation; and
- (b) must notify that person or the person's representative of the assessment.

(4) In this regulation—

“alcoholic product production premises” means any premises, rooms, places and vessels on or in which cider, wine or other fermented product is made by an approved producer for use in their trade as producer;

“approved producer” means a producer of cider, wine or other fermented product who is approved under section [38] of the Act (approval requirement: producers) or exempt from the approval requirement under section [40] or [41] of the Act (exemption: production for personal consumption and research and experiments);

“grower” includes bee-keeper and “grown” is to be construed accordingly.

## Small producer relief - certificates

9.— This regulation applies if—

- (a) alcoholic product is imported into the United Kingdom;
- (b) alcohol duty is chargeable on that product; and
- (c) the importer indicates to His Majesty's Revenue and Customs that the product is a small producer alcoholic product on which alcohol duty is charged at a discounted rate in accordance with Chapter 3 of Part [1] of the Act (small producer relief).

(2) The importer must, on request by an officer of Revenue and Customs, produce a certificate endorsed by or on behalf of the authorities of the country or territory in which the alcoholic product was produced certifying that the product meets the requirements of Chapter 3 of Part [1] of the Act (“a small producer relief certificate”).

(3) If the importer does not produce a small producer relief certificate in respect of an alcoholic product in accordance with paragraph (2), this may be considered as evidence that the product is not small producer alcoholic product for the purposes of section [16] of the Act (assessments where incorrectly low rate of alcohol duty applied).

(4) In this regulation “small producer alcoholic product” has the meaning given by section [11] of the Act (small producer alcoholic products).

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- a) “Wine” is defined in paragraph [9] of [Schedule 1] to the Act.
- b) “Other fermented product” is defined in paragraph [10] of [Schedule 1] to the Act.
- c) “Cider” is defined in paragraph [4] of [Schedule 1] to the Act.

**SCHEDULE 1**

Regulation [4]

**THE TOLERANCE REQUIREMENTS**

**1.** The tolerance requirement for a large pack filled with a metered or weighed amount of alcoholic product is that the amount of alcoholic product does not exceed the greater of the amount ascertained by reference to any information on the label of that pack and any information in any invoice, delivery note or similar document indicating the amount of alcoholic product in that pack by more than—

- (a) in the case of a pack intended to contain a volume exceeding 100 litres, 0.5 per cent of that volume; or
- (b) in any other case, 0.5 litres.

**2.** If paragraph 1 does not apply, the tolerance requirement is that the amount of alcoholic product in a large pack does not exceed the greater of the amount ascertained by reference to any information on the label of that pack and any information in any invoice, delivery note or similar document indicating the amount of alcoholic product in that pack by more than—

- (a) in the case of a pack intended to contain a volume exceeding 200 litres, 3 litres;
- (b) in the case of a pack intended to contain a volume exceeding 100 litres but not exceeding 200 litres, 2 litres; or
- (c) in any other case, 1 litre.

**SCHEDULE 2**

Reg [5]

**METHOD OF DETERMINING THE STRENGTH OF ALCOHOLIC PRODUCT**

**3.** Except where subparagraph (2) applies, the strength of spirits is to be determined—

- (a) in one of the following manners—
  - (i) by means of a hydrometer, a thermometer and Volume 2 of the Practical Alcohol Tables;
  - (ii) by determining the density of the spirits in air at 20 degrees Celsius and taking the strength of the spirits to be the percentage of alcohol by volume corresponding to that density in the Laboratory Alcohol Table, provided that where the density of any spirits determined as aforesaid falls between any two consecutive numbers in that table the strength shall be determined by linear interpolation;
  - (iii) by a method specified at [REFERENCE] of the document entitled [TITLE] published on [DATE](a)[], which method is to be the same as that set out in the Annex to Commission Regulation (EC) No 2870/2000 of 19 December 2000, which lays down EU reference methods for the analysis of spirits drinks, as it had effect in the United Kingdom immediately prior to IP completion day (11.00 p.m. on 31 December 2020)]; or
- (b) using any method that measures the strength of spirits to a level of accuracy equivalent to, or greater than, that measured by a method set out in subparagraph (1)(a).

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a) The document entitled “[TITLE]” is available at [HYPERLINK] and a hard copy is available for inspection, free of charge, at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

(2) Where spirits contain any substance other than alcohol and water the Commissioners may either—

- (a) require that the strength of the spirits be ascertained by any of the means prescribed by subparagraph (1) after removing from the spirits any such substance to the extent which they consider necessary by distillation or such other process as they direct and adding water to replace the volume so removed; or
- (b) allow the strength of the spirits to be ascertained, as though they contained alcohol and water only, by any of the means prescribed by subparagraph (1).

**4.**—Except where subparagraph (2) applies, the strength of any alcoholic product other than spirits is to be determined—

- (a) in the following manner—
  - (i) a representative sample is to be taken and, after first being cleared of sediment and gas by filtration, a definite quantity thereof by measure at the temperature of 20 degrees Celsius is to be distilled;
  - (ii) the distillate is to be made up at the temperature of 20 degrees Celsius with distilled water to the original measure of the quantity before distillation;
  - (iii) the strength of the distillate made up in accordance with subparagraph (ii) is to be ascertained by determining its density in air at the temperature of 20 degrees Celsius by means of a pycnometer; and
  - (iv) the strength of alcoholic product is to be taken to be the percentage of alcohol by volume in the Laboratory Alcohol Table which corresponds to the density determined in accordance with paragraph (iii) except that where the density so determined is between two consecutive numbers in the table aforesaid the strength is to be determined by linear interpolation; or
- (b) using any method that measures the strength of alcoholic product to a level of accuracy equivalent to, or greater than, that measured by the method set out in subparagraph (1)(a).

(2) Where the result ascertained by a method specified in subparagraph (1) is rendered inaccurate by the presence of substances other than alcohol that method is to be adjusted for the purpose of producing an accurate result.

**5.** In this Schedule—

“Laboratory Alcohol Table” means a table entitled “Laboratory Alcohol Table” showing the relation between density at 20 degrees Celsius and alcoholic strength of mixtures of ethanol and water expressed as percentage by volume at 20 degrees Celsius and percentage by mass(a), and “the Practical Alcohol Tables” mean a set of tables entitled “Practical Alcohol Tables” which complement the basic international alcoholic-strength tables published by the International Organization of Legal Metrology, their purpose being to facilitate the determination of alcoholic strength, or the volume of pure ethanol contained in a mixture of ethanol and water, by means of measurements taken with alcoholometers and alcohol hydrometers graduated at the reference temperature of 20 degrees Celsius(b).

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations provide for a single excise duty system for alcoholic products generally, consolidating and replacing the various systems used for individual alcoholic products. Duty is based on the amount and strength of the finished product. These Regulations also make provision for reliefs from excise duty. These Regulations come into force on [insert date].

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- a) The table entitled “Laboratory Alcohol Table” is available at [HYPERLINK] and hard copies are available for inspection, free of charge, at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.
- b) The tables entitled “Practical Alcohol Tables” are available at [HYPERLINK] and hard copies are available for inspection, free of charge, at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

Part 1 of these Regulations provides for citation and commencement, definitions, and notice-making powers.

Part 2 provides for a new system for measuring alcoholic strength. Regulations 4 and 5 set out the methods for ascertaining the amount and strength of alcoholic product respectively. Regulation 6 sets out the circumstances in which and the means by which HMRC may carry out assessments where an incorrectly low amount of duty has been applied.

Part 3 makes provision in relation to reliefs from duty. Regulation 7 does so for undrinkable sediment, regulation 8 for grower's domestic consumption relief, and regulation 9 for small producer relief (specifically in respect of certificates).

Schedule 1 provides for the tolerance requirements for large packs filled with metered or weighed amounts of alcoholic product. Schedule 2 provides for the method of determining the strength of alcoholic product where due care has not been taken to ensure that the strength ascertained in accordance with any of the deeming methods set out in regulation 5 accurately represents the actual strength of the alcoholic product.

Any notices referred to in these Regulations will be published at [HYPERLINK]. A person unable to access the notices electronically may access them in hard copy by post free of charge on application to [Insert contact details].

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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