EXPLANATORY MEMORANDUM TO

THE ALCOHOLIC PRODUCTS (EXCISE DUTY) (AMENDMENT) REGULATIONS 2024

2024 No. 1186

1. Introduction

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

2. Declaration

2.1 James Murray MP, Exchequer Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Andy Higgins, Deputy Director for Indirect Tax, at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Emma Thompson at HMRC: mailbox.alcoholpolicy@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Alcoholic Products (Excise Duty) Regulations 2023 to ensure the effective and simpler administration of alcohol duty. These regulations are the second stage in the delivery of the new alcohol duty system. One of the key changes introduced by this instrument is a single approval – the Alcoholic Products Producer Approval (APPA) – for all producers of alcoholic products. This instrument specifies information to be contained in an approval application and the obligation on producers to notify HMRC of changes including starting or stopping production of alcoholic products. Further key changes introduced by this instrument include the harmonisation of returns and payments requirement for all producers of alcoholic products. This is by the introduction of a single monthly return covering the duty due for all alcoholic products across all of a producer's sites. It also standardises the return period and payment dates across all categories of alcoholic products. The regulations will be accompanied by new digital services for approvals, returns and payments.

4.2 Also linked to improving the administration of alcohol duty, this instrument includes arrangements and requirements for holding alcoholic products in duty suspension (without payment of duty). It covers record-keeping obligations and documentation to be held by producers holding alcoholic products in duty suspension. Similarly, the instrument covers the arrangements to allow producers to move alcoholic products held on approved premises from duty suspension to duty paid via constructive removal. Additionally, the instrument includes provisions for the repayment of duty for spoilt alcoholic products.

Where does the legislation extend to, and apply?

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

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

5. Policy Context

What is being done and why?

5.1 At Budget 2020, the Government announced the Alcohol Duty Review to consider improvements to the current system to make it simpler, more economically rational and less administratively burdensome on businesses and HMRC. Recognising the scale of the changes being introduced, the review proceeded in two delivery phases. The first phase was delivered on 1 August 2023 via the Finance (No. 2) Act 2023 and the Alcoholic Product (Excise Duty) Regulations 2023. This ensured all categories of alcoholic products are taxed consistently in reference to alcoholic strength. It also introduced two duty reliefs – Draught Relief and Small Producers Relief.

5.2 The second phase of the review will be delivered by this instrument. It aims to simplify the administration of the alcohol duty regime, recognising that the alcohol duty system has operated in a product-specific manner, developing independently for discrete alcoholic products. It will do this by harmonising administrative obligations for all categories of alcoholic products, removing arbitrary distinctions and excise requirements. This includes introducing a single approval and single duty return for all alcoholic products, standardising payment date and harmonising other administrative requirements and processes for all alcoholic products.

What was the previous policy, how is this different?

5.3 Previously each alcohol regime had developed independently meaning each alcoholic product had individual administrative requirements. The overall policy aim of Phase 2 of the Alcohol Duty Review has been to harmonise and equalise administrative requirements for all alcoholic products.

<u>Approvals</u>

5.4 Each alcoholic product had its own approval processes, requirements and features of the approval. For example, brewers required a registration to produce beer and a separate registration to hold beer in duty suspense. Cider producers would also require a registration to produce cider and hold that cider in duty suspense. Other fermented products and wine producers required excise licenses to produce and hold their products in duty suspense. Spirits producers required an excise license to produce spirits, an approval of plant and process and an approval to hold spirits without payment of duty in an associated distiller's warehouse. This meant that businesses producing multiple categories of alcoholic products would need to comply with separate registration or licenses for each premises.

5.5 The policy now moves away from alcoholic product-specific approvals to a single approval - the Alcoholic Product Producer Approval (APPA) - covering all types of production across all production premises. One approval covers several premises and different alcoholic product types. Under an APPA, alongside production of alcoholic products, an approved person can be authorised to hold alcoholic products product produced by themselves or others in duty suspense. An approved person can also be

approved to carry out other activities such as packaging and processing or other operations to alcoholic products.

5.6 In order to give effect to the policy changes for approvals there have been significant updates to HMRC IT systems and processes. A digital service for online approvals is expected to be introduced from 1 February 2025 meaning businesses with existing alcohol registrations or licenses will be migrated to the APPA, and new businesses will be able to apply for the APPA online via the service. Offline options are available for digitally excluded producers, such as those in remote areas of the country.

Returns

5.7 Previously there was no consistency in the return obligations for alcoholic products producers making different categories of product. For instance, beer producers were normally required to submit a beer duty return on the 15th day of each month. For cider, wine and other fermented products, producers were normally required to submit a duty return on the 15th day of each month. Spirits producers did not have a regular return requirement as they accounted for duty via the Alcohol Tobacco Warehousing Declarations regime. Spirits producers did however have to file a quarterly production return declaring the materials used and spirits produced.

5.8 The policy standardises the returns obligations for alcoholic product producers by introducing a single return date of the 15th day of the calendar month for all alcoholic products. Whilst the obligation for spirits producers to complete a quarterly distillery return remains, the return has been simplified to now require declaration of the amount of spirits produced each quarter. The policy is given effect by the accompanying Manage your Alcohol Duty digital service enabling producers to submit monthly duty returns online from 1 March 2025. Spirits producers will also be able to complete the quarterly distillery return via the digital service each quarter. Offline options are however available for digitally excluded producers such as those in remote areas of the country.

Payments

5.9 Under the previous policy, payments obligations for all categories of alcoholic product varied. For example, brewers normally had to pay duty no later than the 25th calendar day of the month. By contrast, cider producers were normally required to pay cider duty on the 15th day of the month. The same applied for producers of other fermented products and wine. Spirits producers did not have a fixed payment date as they accounted for duty via the Alcohol Tobacco Warehousing Declarations regime.

5.10 The policy changes for payments entail standardising payments obligations for alcoholic product producers. A single payment date of the 15th day of the calendar month is introduced for all alcoholic products. To support the policy, an accompanying digital service enabling businesses to submit monthly duty payments online will apply. The Manage your Alcohol Duty digital service will launch on 1 March 2025. Offline options for submitting payments are however available for digitally excluded producers.

Duty suspension

5.11 Under the previous policy, each category of alcoholic products had its own processes and requirements for producers holding alcoholic products in duty suspension. Brewers required an additional registration to hold beer they had produced in duty suspension. Wine, cider and other fermented products did not require additional licenses or registrations and could hold products produced by them without payment

of duty by virtue of duty not being payable until products are released for consumption. A further distinction is that spirits producers required a distiller's warehouse to hold spirits produced in duty suspension.

5.12 Additionally, only brewers could hold beer produced by third parties without payment of duty on their production premises. All other categories of alcoholic products required an excise warehouse to hold alcoholic products produced elsewhere. The revised policy, given effect via this SI, unifies the position that all alcoholic product producers are approved to hold their own products in duty suspension on approved premises. All alcoholic product producers can also apply for the ability to hold third party produced products in duty suspension on their approved premises.

Constructive removal

5.13 Previously the policy for constructive removal applied individually to each category of alcoholic products, with the provisions contained in product specific regulations. The revised policy harmonises constructive removal provisions for all alcoholic products. This introduces consistent requirements for all producers to move alcoholic products held on their premises from duty suspended to duty paid.

Spoilt alcoholic products

5.14 Whilst the policy for spoilt alcoholic product remains the same, under the changes introduced, the policy is harmonised and specified consistent for all alcoholic products, replacing previous product-specific arrangements.

6. Legislative and Legal Context

How has the law changed?

6.1 The Finance (No. 2) Act 2023 is the primary legislation ensuring the operability of the new alcohol duty structure from 1 August 2023. The Act provided powers to introduce structural changes to the way alcohol duty will operate and these were exercised via the Alcoholic Products (Excise Duty) Regulations 2023. This instrument amends the Alcoholic Products (Excise Duty) Regulations 2023 to provide for a single excise duty system for alcoholic products.

6.2 This instrument ensures the effective administration of alcohol approvals, returns and payments operate as intended, as set out in Part 2 of the Finance (No. 2) Act 2023. It also harmonises arrangements for alcoholic product producers holding alcoholic products in duty suspense, constructive removal and repayment of duty for alcoholic products spoilt after the duty point. This is by replacing product specific requirements set out in product specific regulations, and equalising requirements applicable to all alcoholic products. The powers to make this instrument are contained in Part 2 of the Finance (No. 2) Act 2023.

6.3 Fundamental to the changes delivered by this instrument is moving away from a product-specific approach for the administration of Alcohol Duty by standardising and equalising requirements for all alcoholic products.

6.4 Linked to this instrument, a second instrument due to be made in January 2025 sets 1 February 2025 as the date the remaining parts of the primary legislation (such as sections 82 and 83 of the Finance (No. 2) Act 2023) come into force. In line with the moving away from the product-specific approach, it revokes the product-specific regulations which gave effect to individual approvals, returns and payments obligations for beer, cider, wine, spirits and other fermented products. It will also include transitional provisions 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 'registration' or 'license' is replaced with 'Alcoholic Product Producers Approval').

Why was this approach taken to change the law?

6.5 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.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Alcohol Duty Review was subject to three prior consultations.[1] These consultations covered Phase 1 (rates and reliefs) and Phase 2 (approvals, returns and payments) of the review.

7.2 A draft version of this instrument was published on the gov.uk website on 5 February 2024, for a 6-week consultation period ending 18 March 2024.[2] Key industry stakeholders were alerted to this, and HMRC initiated a proactive communication campaign (social media, trade press articles) to highlight the consultation to the wider alcohol industry.

7.3 At the close of the consultation period, thirteen responses directly relating to the draft instrument had been received. Of the thirteen responses, comments included requests to see supporting guidance and identifying some sequencing and terminology errors in the draft requiring update.

7.4 The key changes made to the draft regulations includes refining the information to be contained in an application for approval so it clear to businesses that HMRC requires an estimate of the applicant's production quantity in the calendar year at the point of application, not each year.

7.5 Also, the provisions for constructive removal have been updated whereby businesses no longer need to apply for HMRC for approval of their means of keeping records. This instrument specifies that businesses need to comply with the record keeping requirements set out in the Notice. Additionally, the language in the instrument has been updated consistently to refer to 'business days'.

7.6 The draft regulations have also been updated since the consultation to specify the obligation for spirits producers to submit a quarterly return specifying their production activity.

8. Applicable Guidance

8.1 The existing alcohol production Public Notices (Notice 226, 163, 162 and 39) on the gov.uk website will be removed and replaced by the new Alcoholic Products

[1] Government Consultations on the New Alcohol Duty System: https://www.gov.uk/government/consultations/the-new-alcohol-duty-system-consultation

[2] Government Consultation on Draft Regulations: The Alcoholic Products (Excise Duty) (Amendment) Regulations 2024: https://www.gov.uk/government/consultations/draft-regulations-the-alcoholic-products-excise-duty-amendment-regulations-2024

Technical Guide in time for the changes taking effect on 1 February 2025. This technical guide supports the shift from a product-specific approach and will apply to all alcoholic products.

8.2 New task-based guidance has also been produced to support businesses in checking if they need an APPA and how to apply for this approval. The guidance also supports businesses in getting access to the new Alcohol Duty online service, in submitting their Alcohol Duty return and paying Alcohol Duty.

8.3 Draft copies of the above guidance were shared with industry stakeholders as part of readiness work in the lead up to the changes to be introduced from 1 February 2025.

8.4 The final guidance will be published in advance of the changes being introduced on the gov.uk website. Other existing Public Notices, such as Notices 197, 196 and 207, will also be updated to refer to the new terminology and processes.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note (TIIN) covering this instrument was published on 23 March 2023 on the gov.uk website as part of the broader package delivering the Alcohol Duty Review[3]. It remains an accurate summary of the impacts that apply to this instrument.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities, or voluntary bodies as a result of this instrument. Businesses are expected to incur one-off costs in familiarising with new processes and training and upskilling staff responsible for managing their alcohol duty. The impact is also due to changes in how producers apply for approval, submit returns and make payments for Alcohol Duty they owe. However, this instrument is expected to have an overall impact of improving customer experience by simplifying and modernising how customers apply for approval and how they submit returns and make payments.

9.3 The legislation does impact small or micro businesses because it applies to all alcohol production activities undertaken by small businesses. Specifically, new cider producers who produce low volumes of cider are currently exempt from requiring an alcohol approval but from 1 February 2025 they will be obligated to gain an APPA from HMRC. Cidermakers who produce less than 70 hectolitres of cider will face a one-off cost of registration as this will be the first time they have to apply for approval. Whilst the approval process attracts no specific cost to administer, it will require administrative time. 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, is equally applicable to all business sizes and will not have a disproportionate impact on small businesses.

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

[3] Reform of Alcohol Duty and reliefs: https://www.gov.uk/government/publications/reform-of-alcohol-duty-rates-and-reliefs/reform-of-alcohol-duty-and-reliefs

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will be considered as part of the wider evaluation of the changes to alcohol duty. The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, James Murray MP has made the following statement: a review clause is not required as the regulations make provision relating to a tax.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").