EXPLANATORY MEMORANDUM TO

THE BEER (AMENDMENT) REGULATIONS 2011

2011 No. 1795

1. This Explanatory Memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 This instrument introduces changes to the Beer Regulations 1993 (SI 1993/1228) which are required as a consequence of the introduction with effect from 1st October 2011 of the new High Strength Beer Duty and a new reduced rate of General Beer Duty for lower strength beer.

2.2 This instrument amends the Beer Regulations 1993 so that those Regulations apply for the purposes of High Strength Beer Duty as they apply for the purposes of General Beer Duty.

2.3 The instrument also amends the Beer Regulations 1993 to cover the mixing of high strength beer with other beer and the mixing of small brewery beer with beer chargeable with different rates of General Beer Duty.

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

3.1 This instrument is the first use of the powers in section 49 of the Alcoholic Liquor Duties Act 1979 (c. 4) following the amendment of that section by Schedule 1 to the Finance Act 2011 (c. 11). That amendment to section 49 is consequential upon the introduction of the new High Strength Beer Duty.

4. Legislative Context

4.1 Beer produced in or imported into the United Kingdom is liable to excise duty charged by the Alcoholic Liquor Duties Act 1979. The Finance Act 2011 amends that Act so that beer of an alcoholic strength greater than 7.5 per cent is charged with an additional excise duty labelled High Strength Beer Duty, the existing excise duty on beer is renamed "General Beer Duty", and there is a new reduced rate of General Beer Duty for lower strength beer (i.e. beer of a strength over 1.2 per cent alcohol by volume but not exceeding 2.8 per cent alcohol by volume). The new excise duty and the new reduced rate of General Beer Duty apply from 1 October 2011.

4.2 The new High Strength Beer Duty is an excise duty, and as a consequence many of the enactments governing the machinery of general beer duty will apply to the new duty without amendment (for instance, the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (SI 2010/593) which includes provisions on who is liable to pay the duty and when, on making returns, and on enforcement). The Beer Regulations 1993, which, along with the Alcoholic Liquor Duties Act 1979, govern the production of beer in the United Kingdom, are, however, expressly limited in application to General Beer Duty. This instrument amends those

Regulations to change references to “duty” to include High Strength Beer Duty as well as General Beer Duty.

4.3 This instrument also amends the Beer Regulations 1993 to regulate the mixing of small brewery beer with lower strength beer which is required as a consequence of the introduction of the new reduced rate of General Beer Duty for lower strength beer. The Beer Regulations are also amended to include an anti-avoidance provision specifying when production is complete in the case where high strength beer is mixed with any other beer before the duty point.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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 A new duty on high strength beer is being introduced following the Government’s Review of alcohol taxation. A new lower rate of General Beer Duty for lower strength beer is being introduced at the same time. The new duty and lower strength duty rate will help to tackle problem drinking by encouraging industry to produce, and drinkers to consume, less strong beer.

7.2 The accounting and payment requirements for the existing excise duty on beer will apply equally to High Strength Beer Duty. This approach minimises the costs to both business and HMRC of the introduction of the High Strength Beer Duty.

7.3 This instrument makes the consequential amendments required to the Beer Regulations 1993 to ensure that the provisions of those Regulations (for example as to returns and time of payment for registered brewers) apply in respect of High Strength Beer Duty as they do in respect of the existing excise duty.

7.4 The Beer Regulations 1993 establish the time when the production of beer is complete for the purposes of the charge to excise duty. High Strength Beer Duty, like General Beer Duty, is charged on beer produced in the UK. When the new High Strength Beer Duty is implemented, if beer were to be mixed after production is complete under the existing regulations, this could result in the potential for avoidance of the new duty. The instrument prevents this possibility by specifying that where high strength beer is mixed with another beer before the duty point, the production of the resulting beer is completed when the mixing is complete.

7.5 The Beer Regulations 1993 regulate the mixing of small brewery beer with beers chargeable with different rates of duty. A prohibition on mixing small brewery beer was introduced in 2002 in order to protect the Small Brewery scheme against

duty avoidance. In 2006 that prohibition was relaxed so that mixing was permitted if the product of it was charged at the standard rate of duty. This instrument provides that mixtures of beers which attract different rates of duty will attract either the standard rate of general beer duty or the lower strength beer reduced rate depending on the resultant strength of the mixture. Application of existing regulations without amendment would mean that such mixtures would be unable to take advantage of the lower strength beer duty rate, even if the final mixture were to be 2.8 per cent or below. This would not be in line with the aim in introducing the lower strength beer rate for general beer duty.

- ***Consolidation***

7.6 There are no plans for consolidation at this time.

8. Consultation outcome

8.1 The beer industry has been consulted extensively throughout the development of the measure. The Government's Review of alcohol taxation was announced in the June 2010 Budget and an informal consultation was held over the summer of 2010. Draft Finance Bill legislation was published on 9 December 2010 for comment and no negative responses were received. A further period of four weeks has been allocated for consultation on the draft regulations and the Explanatory Memorandum as the changes made by this instrument are largely of a consequential nature. No comments were received.

9. Guidance

9.1 HM Revenue and Customs have provided guidance in the form of an update to the Excise Beer Duty Notice which is accessible on the HMRC website at http://www.hmrc.gov.uk.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note was published on 23 March 2011 alongside the Budget and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. 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 To minimise the impact of the requirements on small firms employing up to 20 people, the approach taken is to ensure that there are negligible administrative burdens and costs involved for businesses implementing this provision.

The impact of the new requirements on small firms employing up to 20 people cannot be avoided completely. However, care was taken during the development of the new duty to ensure that administrative burdens identified for small businesses were kept to an absolute minimum.

12. Monitoring & review

12.1 HM Revenue and Customs will monitor the new high strength beer duty to ensure that the policy objective of successful implementation of the new tax is achieved.

13. Contact

Ian Bebbington at HM Revenue & Customs (tel: 0161 827 0803) or e-mail: ian.bebbington@hmrc.gsi.gov.uk who can answer queries regarding this instrument.