STATUTORY INSTRUMENTS

2008 No. 1885

EXCISE

The Beer, Cider and Perry and Wine and Made–wine (Amendment) Regulations 2008

Made - - - -	*16th July 2008*
Laid before Parliament	*17th July 2008*
Coming into force - -	*1st September 2008*

The Commissioners for Her Majesty's Revenue and Customs make the following regulations in exercise of the powers conferred by sections 41A(7), 46(1), 49(1), 61(1), 62(5) and 64(1) of the Alcoholic Liquor Duties Act 1979(**a**) and sections 1 and 2 of the Finance (No.2) Act 1992(**b**):

Citation and commencement

1. These Regulations may be cited as the Beer, Cider and Perry and Wine and Made-wine (Amendment) Regulations 2008 and come into force on 1st September 2008.

Beer

2.—(1) Amend the Beer Regulations 1993(**c**) as follows.

(2) For regulation 26 substitute —

"**Drawback of duty**

26.—(1) Where—

(a) any beer has been removed from a registered brewery or a registered store;

(b) the beer has become spoilt or otherwise unfit for use; and

(c) the Commissioners are satisfied that the beer has not been and will not be consumed in the United Kingdom,

(**a**) 1979 c.4. Section 41A was inserted by the Finance Act 1991 (c.31), section 7(2). Section 46 was substituted by the Finance Act 1991, section 7(4), Schedule 2 , paragraph 13 and amended by the Finance Act 1994 (c.9), section 9, Schedule 4, Part 2, paragraphs 14 and 31. Sections 61 and 64 were amended by the Finance Act 1994, section 9, Schedule 4, Part 2, paragraphs 14, 39 and 41. Section 4(2) of the Alcoholic Liquor Duties Act 1979 provides for that Act to be construed as one Act with the Customs and Excise Management Act 1979 (c.2), and section 4(3) applies the definitions in that latter Act. Section 1(1) of the Customs and Excise Management Act 1979 (amended by the Commissioners for Revenue and Customs Act 2005 (c.11)) defines "the Commissioners". The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005. Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**b**) 1992 c. 48.

(**c**) S.I. 1993/1228, to which there are amendments not relevant to this instrument.

then, subject to paragraph (2) below, the registered brewer or, as the case may be, the registered holder shall be entitled to drawback of duty in respect of the beer.

(2) The claimant must comply with the conditions set out in this part of these Regulations and with such other conditions (if any) as the Commissioners see fit to impose in a notice published by them and not withdrawn by a further notice.

(3) A claim for drawback of duty shall not be made in respect of any spoilt beer which has been adulterated or diluted except that such a claim may be made in respect of spoilt beer that was diluted before the duty point.

(4) No claim for drawback of duty shall be made if the event giving rise to the claim occurred more than three years after the duty on the beer in question was paid.

(5) In this part of these Regulations "claimant" means the registered brewer or, as the case may be, the registered holder claiming drawback of duty.".

(3) Omit regulation 27.

(4) In regulation 28—

(a) in sub-paragraph (2)(b) for "returned" substitute "destroyed";

(b) after paragraph (3) insert—

"(4) In this regulation "returned" means returned to the claimant's premises and "claimant's premises" means the claimant's registered brewery or, as the case may be, the claimant's registered premises.".

(5) For regulation 29(2) substitute–

"(2) A registered brewer may reprocess spoilt beer in a manner which is satisfactory to the Commissioners, but no claim for drawback of duty shall be made for any spoilt beer to which this paragraph applies unless and until the reprocessing of that beer has commenced.

(3) If any spoilt beer is so reprocessed, regulation 30 below shall apply as if for the word "destruction" in that regulation there were substituted the word "reprocessing".".

(6) For regulation 30 substitute—

"**30.**—(1) The claimant must enter in the spoilt beer record—

(a) the date, time, place and method of destruction;

(b) the quantity of the spoilt beer; and

(c) the strength of the spoilt beer.

(2) If the Commissioners so require, the claimant shall give to them prior notice of any planned destruction.

(3) The period of notice which the Commissioners may require shall be —

(a) two clear business days, in the case of destruction at a registered brewery or registered store; or

(b) five clear business days, in the case of destruction at any other premises.

(4) In paragraph (3) above, "business day" has the meaning given in regulation 20(5) above.".

(7) Omit regulation 31.

(8) In regulation 32 omit "remission or repayment of duty or".

(9) In regulation 33(1)—

(a) omit "remission or repayment of duty or"; and

(b) in sub-paragraph (b), omit "charged or" and "charge or".

(10) After regulation 33 insert—

"**Removal without payment of duty**

33A.—(1) Subject to such conditions as the Commissioners may impose in a notice published by them and not withdrawn by a further notice, a registered brewer may remove spoilt beer from a registered brewery without payment of duty for the purpose of destruction.

(2) If any beer which has been removed from a registered brewery in accordance with paragraph (1) is applied to some purpose other than destruction, the time of that occurrence shall be the duty point.

(3) Where a duty point arises by virtue of paragraph (2), the registered brewer who removed the spoilt beer from the registered premises without payment of duty shall be jointly and severally liable to pay the duty with the person specified in regulation 19(1).

Cancellation of drawback

33B.—(1) The Commissioners may at any time cancel drawback of duty granted in accordance with this Part where they are satisfied that a contravention of any condition imposed by or under this Part has taken place.

(2) Where drawback of duty has been cancelled in accordance with paragraph (1), the person to whom sums were paid or credited in respect of the drawback shall be liable to the Commissioners for such sums and that person is the prescribed person for the purposes of section 2 (3A) of the Finance (No.2) Act 1992. ".

Cider and Perry

3.—(1) Amend the Cider and Perry Regulations 1989(**a**) as follows.

(2) In regulation 4 (interpretation), after the entry for "registered", insert—

""return" means a return that is required to be furnished in accordance with regulation 23;".

(3) In the proviso to regulation 12 (removal without payment of duty), after "regulation 23(2)" insert "or, as the case may be, regulation 23(7)".

(4) In regulation 23 (furnishing of returns and payment of duty) after paragraph (6) insert—

"(7) Where, for the purposes of destruction,—

(a) the Commissioners have allowed spoilt cider to be sent out from cider premises without payment of duty; and

(b) an excise duty point arises under the proviso to regulation 12 above,

the person liable to pay the duty shall be the person holding the cider at the excise duty point.

(8) Where paragraph (7) applies, the maker who sent the cider out without payment of duty shall be jointly and severally liable to pay the duty with the person specified in that paragraph.".

(5) For regulations 25 and 26 (relief from duty on spoilt cider) substitute —

"**Drawback of duty**

25.—(1) Where—

(a) any cider has been sent out or removed from cider premises;

(b) the cider has become spoilt or otherwise unfit for use; and

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(**a**) S.I. 1989/1355; a relevant amending instrument is S.I. 2007/4.

(c) the Commissioners are satisfied that the cider has not been and will not be consumed in the United Kingdom,

then, subject to paragraph (2) below, the maker shall be entitled to drawback of duty in respect of the cider.

(2) The maker must comply with the conditions set out in this part of these Regulations and with such other conditions (if any) as the Commissioners see fit to impose in a notice published by them and not withdrawn by a further notice.

Conditions for drawback of duty

26.—(1) A maker claiming drawback of duty must—

(a) satisfy the Commissioners that—

(i) duty has been paid on the spoilt cider;

(ii) he was the person who paid that duty; and

(iii) the duty has not been repaid or drawn back;

(b) subject to paragraph (3) below, destroy the spoilt cider so that it is rendered unsaleable as a beverage to the satisfaction of the Commissioners;

(c) if the Commissioners so require, give to them prior notice of any planned destruction; and

(d) keep and preserve such records as the Commissioners may specify in a notice published by them and not withdrawn by a further notice.

(2) For the purposes of paragraph (1)(a), duty shall be deemed to have been paid on the spoilt cider if it is accounted for on the return for the same accounting period as that in which the claim for drawback of duty in relation to that cider is made.

(3) A maker may re-process spoilt cider in a manner which is satisfactory to the Commissioners, but no claim for drawback of duty shall be made for any spoilt cider to which this paragraph applies unless and until the re-processing of that cider has commenced.

(4) No claim for drawback of duty shall be allowed in respect of any spoilt cider that has been adulterated or diluted since it was sent out from cider premises.

(5) No claim for drawback of duty shall be made if the event giving rise to the claim occurred more than three years after the duty on the cider in question was paid.

Notice of destruction

27. The period of notice which the Commissioners may require of any planned destruction shall be—

(a) two clear business days, in the case of destruction at cider premises; or

(b) five clear business days, in the case of destruction at any other premises.

Claims

28.—(1) A maker shall make a claim for drawback of duty to the Commissioners on his return.

(2) Where, by virtue of his being registered in respect of more than one cider premises, he makes more than one return for the same accounting period, he shall make the claim on the return relating to the premises in respect of which the return of duty was made.

Cancellation of drawback

29.—(1) The Commissioners may at any time cancel drawback of duty granted in accordance with these Regulations where they are satisfied that a contravention of any condition imposed by or under these Regulations has taken place.

(2) Where drawback of duty has been cancelled in accordance with paragraph (1), the person to whom sums were paid or credited in respect of the drawback shall be liable to the Commissioners for such sums and that person is the prescribed person for the purposes of section 2 (3A) of the Finance (No.2) Act 1992.".

Wine and Made-wine

4.—(1) Amend the Wine and Made-wine Regulations 1989(**a**) as follows.

(2) In regulation 4 (interpretation), after the entry for "producer", insert—

""return" means a return that is required to be furnished in accordance with regulation 23;".

(3) In the proviso to regulation 12 (removal without payment of duty), after "regulation 23(2)" insert "or, as the case may be, regulation 23(7)".

(4) In regulation 23 (furnishing of returns and payment of duty) after paragraph (6) insert—

"(7) Where, for the purposes of destruction,—

(a) the Commissioners have allowed spoilt wine or made-wine to be sent out from a winery without payment of duty; and

(b) an excise duty point arises under the proviso to regulation 12 above,

the person liable to pay the duty shall be the person holding the wine or made-wine at the excise duty point.

(8) Where paragraph (7) applies, the producer who sent the wine or made-wine out without payment of duty shall be jointly and severally liable to pay the duty with the person specified in that paragraph.".

(5) For regulations 25 and 26 (relief from duty on spoilt wine or made-wine) substitute—

"**Drawback of duty**

25.—(1) Where—

(a) any wine or made-wine has been sent out or removed from a winery;

(b) the wine or made-wine has become spoilt or otherwise unfit for use; and

(c) the Commissioners are satisfied that the wine or made-wine has not been and will not be consumed in the United Kingdom,

then, subject to paragraph (2) below, the producer shall be entitled to drawback of duty in respect of the wine or made-wine.

(2) The producer must comply with the conditions set out in this part of these Regulations and with such other conditions (if any) as the Commissioners see fit to impose in a notice published by them and not withdrawn by a further notice.

Conditions for drawback of duty

26.—(1) A producer claiming drawback of duty must—

(a) satisfy the Commissioners that—

(i) duty has been paid on the wine or made-wine;

(**a**) S.I. 1989/1356; a relevant amending instrument is S.I. 2007/4.

(ii) he was the person who paid that duty; and

(iii) the duty has not been repaid or drawn back;

(b) subject to paragraph (3) below, destroy the wine or made-wine so that it is rendered unsaleable as a beverage to the satisfaction of the Commissioners;

(c) if the Commissioners so require, give to them prior notice of any planned destruction; and

(d) keep and preserve such records as the Commissioners may specify in a notice published by them and not withdrawn by a further notice.

(2) For the purposes of paragraph (1)(a), duty shall be deemed to have been paid on the spoilt wine or made-wine if it is accounted for on the return for the same accounting period as that in which the claim for drawback of duty in relation to that wine or made-wine is made.

(3) A producer may re-process spoilt wine or made-wine in a manner which is satisfactory to the Commissioners, but no claim for drawback of duty shall be made for any spoilt wine or made-wine to which this paragraph applies unless and until the re-processing of that wine or made-wine has commenced.

(4) No claim for drawback of duty shall be allowed in respect of any spoilt wine or made-wine that has been adulterated or diluted since it was sent out from the winery.

(5) No claim for drawback of duty shall be made if the event giving rise to the claim occurred more than three years after the duty on the wine or made-wine was paid.

Notice of destruction

27. The period of notice which the Commissioners may require of any planned destruction shall be —

(a) two clear business days, in the case of destruction at a winery; or

(b) five clear business days, in the case of destruction at any other premises.

Claims

28.—(1) A producer shall make a claim for drawback of duty to the Commissioners on his return of duty.

(2) Where, by virtue of his being licensed in respect of more than one winery, he makes more than one return for the same accounting period, he shall make the claim on the return relating to the winery in respect of which the return of duty was made.

Cancellation of drawback

29.—(1) The Commissioners may at any time cancel drawback of duty granted in accordance with these Regulations where they are satisfied that a contravention of any condition imposed by or under these Regulations has taken place.

(2) Where drawback of duty has been cancelled in accordance with paragraph (1), the person to whom sums were paid or credited in respect of the drawback shall be liable to the Commissioners for such sums and that person is the prescribed person for the purposes of section 2 (3A) of the Finance (No.2) Act 1992.".

Amendment to the Excise Goods (Drawback) Regulations 1995

5. In regulation 6 of the Excise Goods (Drawback) Regulations 1995(**a**), after paragraph (2) insert—

(**a**) S.I. 1995/1046.

"(3) Where a revenue trader is entitled to drawback under —

(a) regulation 25 of the Cider and Perry Regulations 1989 (drawback on spoilt cider);

(b) regulation 25 of the Wine and Made-wine Regulations 1989 (drawback on spoilt wine and made-wine); or

(c) regulation 26 of the Beer Regulations 1993 (drawback on spoilt beer),

he shall make the claim for drawback in accordance with those Regulations and not in accordance with these Regulations.".

Dave Hartnett
Mike Eland

16th July 2008 Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into force on 1st September 2008. They amend the Beer Regulations 1993 (S.I.1993/1228), the Cider and Perry Regulations 1989 (S.I.1989/1355) and the Wine and Made-wine Regulations 1989 (S.I.1989/1356).

Beer

Regulation 2 amends the Beer Regulations 1993.

Regulation 2(2) substitutes regulation 26. New regulation 26 replaces the entitlement of a registered brewer or registered holder to claim remission, repayment or drawback of duty in respect of any beer that has become spoilt or unfit for use, with a single entitlement to claim drawback, subject to complying with conditions set out in the Regulations or imposed by the Commissioners in a notice.

Regulation 2(3) revokes regulation 27 so as to remove the requirement that the spoilt beer has to be returned to the claimant's premises.

Regulation 2(4) and (5) makes consequential amendments.

Regulation 2(6) substitutes regulation 30. It sets out the particulars that a claimant must enter in the spoilt beer record, in addition to those which the Commissioners may specify in a notice under regulation 33. It also provides that, if so required, the claimant must give notice of any planned destruction of spoilt beer and specifies the period of such notice.

Regulation 2(7) revokes regulation 31 so as to remove the restriction that a claim has to be above the minimum amount specified in that regulation.

Regulation 2(8) and (9) makes further consequential amendments.

Regulation 2(10) inserts new regulations 33A and 33B.

New regulation 33A provides for the removal of beer from a registered brewery without payment of duty for the purpose of destruction. It also provides for a duty point if the beer is applied to a purpose other than destruction and specifies the persons who are liable to pay the duty at that point.

New regulation 33B provides for the cancellation of drawback of duty if any condition to which a claim was subject is contravened, and prescribes the person liable to pay the duty where drawback is so cancelled.

Cider and Perry

Regulation 3 amends the Cider and Perry Regulations 1989.

Regulation 3(2) and (3) makes consequential amendments.

Regulation 3(4) amends regulation 23 so as to specify the persons who are liable to pay the duty where spoilt cider has been sent out from cider premises without payment of duty for the purpose of destruction and it is applied to some other purpose.

Regulation 3(5) substitutes regulations 25 and 26 by new regulations 25 to 29.

New regulation 25 replaces a cider maker's entitlement to claim remission or repayment of duty in respect of cider that has become spoilt or unfit for use with a single entitlement to claim drawback of duty, subject to complying with conditions set out in the Regulations or imposed by the Commissioners in a notice.

New regulation 26 specifies those conditions set out in the Regulations to which a claim for drawback of duty is subject.

New regulation 27 specifies the period of notice which must be given, if so required, of any planned destruction of spoilt cider.

New regulation 28 provides that a claim for drawback of duty must be made on the cider maker's return and, where more than one return is made for the same accounting period, on the return that relates to the premises in respect of which the return of duty was made.

New regulation 29 provides for the cancellation of drawback of duty if any condition to which a claim was subject is contravened, and prescribes the person liable to pay the duty where drawback is so cancelled.

Wine and Made-wine

Regulation 4 makes equivalent amendments to the Wine and Made-wine Regulations 1989 in respect of a claim for drawback of duty on wine and made-wine that has become spoilt or unfit for use to those made to the Cider and Perry Regulations 1989 described above.

Regulation 5 amends the Excise Goods (Drawback) Regulations 1995 (S.I.1995/1046) ("the Drawback Regulations") to provide that where a person is entitled to make a claim for drawback of duty under the above provisions he must make a claim in accordance with those provisions and not in accordance with the Drawback Regulations.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen

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