EXPLANATORY MEMORANDUM (SUPPLEMENTARY) TO

THE WHOLESALING OF CONTROLLED LIQUOR (AMENDMENT) REGULATIONS 2015

2015 No. 1921

1. Introduction

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

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

2. Purpose of the instrument

2.1 The instrument amends the Wholesaling of Controlled Liquor Regulations 2015(S.I. 2015/1516) ("the principal Regulations"). It substitutes regulations 20 and 25(1)(b) and (c) so that they clearly identify the requirements which, if contravened, will render a person liable to a penalty and dutiable alcoholic liquor subject to forfeiture.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument has been made as a consequence of a defect in the principal Regulations which the Select Committee drew to the attention of the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") in a request for a memorandum dated 9th September 2015, to which the Commissioner responded on 10th September. The instrument was reported in the Committee's second Report prepared on 16th October 2015.

3.2 It was not clear to the Committee to which requirements of the principal Regulations regulation 20 was intended to apply. This instrument substitutes regulation 20 of the principal Regulations so that it is clear which requirements, if contravened, render a person liable to a penalty. They also substitute regulation 25(1)(b) and (c) to reflect the wording in regulation 20.

Other matters of interest to the House of Commons

3.3 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 54(3) of the Finance Act 2015 (c. 11) inserted new Part 6A into the Alcoholic Liquor Duties Act 1979 ("the Act"). That Part imposes a requirement that a UK person who carries on a controlled activity must be approved by the Commissioners.

4.2 A "controlled activity" is defined in new section 88A(8) of the Act and means the selling, offering or exposing for sale or arranging the sale, of controlled liquor wholesale. A sale is of "controlled liquor" if it is a sale of dutiable alcoholic liquor on

which duty is charged under the Act and the excise duty point for the liquor falls at of before the time of sale (see new section 88A(2) of the Act).

4.3 Section 88E of the Act confers regulation making powers on the Commissioners to implement the approval scheme including the power to impose a penalty for an amount prescribed by the regulations, and for dutiable alcoholic liquor to be subject to forfeiture, for a contravention of the regulations or any condition or restriction imposed under Part 6A of the Act (see sections 88E(2)(d) and 88E(2)(f)).

4.4 This instrument substitutes regulation 20 of the principal Regulations so that it is clear that a contravention of any requirement imposed by or under regulations 5(1), 5(3), 6(3) and 8, or any condition of restriction to which an approved person's approval is subject, will render a person liable to a penalty.

4.5 As a result of the substation of regulation 20, regulation 25(1)(b) and (c) has also been substituted to make it clear that a contravention of the same requirements of the Regulations, or any condition or restriction to which an approved person's approval is subject, will make dutiable alcoholic liquor used for the purposes of carrying on a controlled activity subject to forfeiture.

5. Extent and Territorial Application

5.1 This instrument extends to all of the United Kingdom.

5.2 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 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 registration scheme for wholesalers of alcohol has been introduced to combat alcohol duty fraud in the UK. The cost to UK taxpayers from alcohol duty losses is an estimated £1.3bn per annum. Introducing a requirement for wholesalers to be approved by HMRC will reduce opportunities for fraud, and is expected to bring significant benefits.

7.2 Persons approved under the scheme are subject to penalties for contraventions of specified requirements contained in the principal Regulations and any dutiable alcohol subject to forfeiture. This is provided for in the principal Regulations to ensure businesses approved to trade wholesale in controlled liquor continue to maintain their fit and proper status. Businesses that fail to meet the terms of their approval or breach specific requirements will be penalised where appropriate to encourage compliance. This instrument identifies the specific requirements of the principal Regulations which, if contravened, would render an approved person liable to a penalty and dutiable alcoholic liquor subject to forfeiture.

Consolidation

7.3 There are currently no plans to consolidate the principal Regulations.

8. Consultation outcome

8.1 No consultation was necessary regarding this amendment. The full consultation and summary of responses regarding the introduction of the approval scheme for wholesalers can be found at:

https://www.gov.uk/government/consultations/alcohol-fraud-next-steps

9. Guidance

9.1 Before the introduction of the scheme, the Government will have published detailed guidance about how the scheme will operate, including the penalties which are applicable. A public notice will also be published. Upon implementation, guidance will be reviewed and revised as necessary.

10. Impact

10.1 This instrument has no impact on businesses in addition to the impact already identified for the principal Regulations.

10.2 This instrument has no impact on the public sector.

10.3 A Tax Information and Impact Note (TIIN) has not been prepared for this instrument as it contains no substantive changes to tax policy.

11. Regulating small business

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

11.2 The requirements of the approval scheme are the same for all businesses.

12. Monitoring & review

12.1 HMRC will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

13.1 Ruth Ryan at HMRC Telephone: 03000 587917 or email: ruth.ryan1@hmrc.gsi.gov.uk can answer any queries regarding the instrument.