



Alcohol duty: registration of alcohol wholesalers

Who is likely to be affected?

Businesses buying and selling alcoholic drinks for wholesale.

General description of the measure

This measure will introduce a requirement for wholesalers of alcohol, at or after the duty point, to be registered with HM Revenue & Customs (HMRC). Existing and new businesses trading wholesale in alcohol will be required to submit an application for registration. They must demonstrate to HMRC that they fulfil certain 'fit and proper' criteria, as well as complying with new record keeping obligations and operating due diligence when making purchases, to prevent exposure to the illicit alcohol market. Additionally, wholesalers and retailers of alcohol will be obliged to purchase alcohol only from registered wholesalers.

Policy objective

This measure is intended to reduce the prevalence of alcohol fraud in the wholesale and retail sectors. Creating a register of approved alcohol wholesalers will restrict the involvement of criminals and businesses willing to risk trading in illicit goods in this sector, consequently reducing the volumes of illicit (untaxed) alcohol entering retail supply chains. This will reduce unfair competition from illicit trading across the wholesale and retail sectors.

Background to the measure

This measure was announced at Autumn Statement 2013 following public consultation in 2012-13.

Detailed proposal

Operative date

The law will be enacted on and after the date of Royal Assent to Finance Bill 2015.

This measure will take effect from 1 October 2015 when a three month application window will open for wholesalers. HMRC will undertake a fifteen month programme of assurance activity from 1 January 2016 to assess whether all these businesses meet the 'fit and proper' criteria. Any new business which wishes to start trading and which has not applied to register before 1 January 2016 must apply to HMRC at least 45 working days before they intend to operate as HMRC will assess their 'fit and proper' status prior to their commencement. On and after 1 April 2017, the obligations for those who purchase alcohol from wholesalers will come into effect. This will include retailers of alcohol as well as wholesalers purchasing alcohol from other wholesalers.

In addition, new penalties will be introduced to encourage compliance but also deal with serious offenders. On and after 1 January 2016, wholesalers who are found to be either trading without having applied for registration before 1 January 2016, or trading beyond the conditions of their fit and proper approval, will be liable to a possible penalty. From 1 April 2017, new offences will also apply for those who buy from an unapproved wholesaler.

Current law

This measure introduces a new scheme. No current legislation applies to registration of wholesalers and no legislation applies to purchases of alcohol from a wholesaler.

Proposed revisions

Legislation will be introduced in Finance Bill 2015 to amend the Alcoholic Liquor Duties Act 1979 (ALDA 1979).

Secondary legislation will come into force on and after 1 October 2015.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	nil	-5	+15	+235	+215
	These figures are set out in Table 2.2 of Budget 2014 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Autumn Statement 2013.				
Economic impact	The measure is not expected to have any significant economic impacts.				
Impact on individuals households and families	This measure is unlikely to have a direct impact on individuals and households as it is intended to reduce tax evasion, benefitting genuine alcohol wholesaler businesses and the Exchequer. This measure is not expected to have significant impacts on family formation, stability or breakdown.				
Equalities impacts	The change is not expected to have a disproportionate impact on any protected equality groups.				
Impact on business including civil society organisations	<p>There are approximately 21,000 businesses which will be expected to apply for registration for this scheme. HMRC expect that not all of these will be successful. As well as businesses which will be expected to register, also affected by this scheme will be alcohol retailers who will be expected to comply with due diligence requirements.</p> <p>There will be some additional burdens for businesses which include familiarisation with the legislation and the requirement to include the unique reference number on invoices. There is also an anticipated one-off burden on businesses who will be required to check HMRC's online lookup system to ensure all the suppliers they are currently dealing with are registered.</p> <p>The anticipated ongoing burden arises from the need to maintain record keeping on-site accessible to HMRC and the periodic online lookup to verify suppliers remain registered. There is an additional ongoing burden in the form of new businesses entering the market.</p> <p>In total, HMRC anticipates one-off costs across businesses of £9 million, and an additional annual burden of £3 million.</p>				

	Cost	Time Period (yrs)
Compliance Costs		
One-off Costs	£9.2m	N/A
Average Annual Costs	£2.6m	5
Total Costs (PV)	£21.2m	N/A
Compliance Benefits		
One-off Benefits	N/A	N/A
Average Annual Benefit	N/A	N/A
Total Benefit (PV)	N/A	N/A
Net Benefit (NPV)	-£21.2m	N/A
Impact on Administrative Burden (included in Net Benefit)		
Increase	Decrease	Net Impact
£2m	£0m	£2m
<p>The impact on administrative burden (£2 million included in net benefit) represents the expected costs and benefits for the first year only. The £2.6 million included in compliance costs represent the average annual amount over the five years.</p>		
Operational impact (£m) (HMRC or other)	<p>This measure will cost HMRC approximately £6.2 million in one off IT costs and approximately £47 million in staffing and other resource costs for the 5 year period from 2014-15 to 2018-19.</p> <p>Early indications are that there could be a significant impact on the Tax Tribunal System and HMRC are working with the Ministry of Justice to better understand what that is and what the associated costs would be.</p>	
Other impacts	<p><u>Carbon assessment:</u> the measure is not anticipated to have any significant impact on carbon emissions.</p> <p><u>Small and micro business assessment:</u> The requirements of the scheme do not differ depending on size of business. The scheme should result in a reduction in the undercutting of legitimate businesses by competition using illicit supplies of alcohol which can disproportionately hit smaller businesses. The anticipated one-off cost to small and micro sized businesses is estimated to be negligible, whereas the ongoing burden is estimated to be approximately £1 million per year.</p> <p><u>Justice impact test:</u> this has been discussed with Ministry of Justice and awaits further work.</p> <p>Other impacts have been considered and none have been identified.</p>	

Monitoring and evaluation

The measure will be monitored through information collected from tax receipts and tax gaps and the results of enforcement and compliance activity.

Further advice

If you have any questions about this change, please contact John Waller on 03000 588063 (email:john.c.waller@hmrc.gsi.gov.uk).

1 Wholesaling of controlled liquor

- (1) ALDA 1979 is amended as set out in subsections (2) to (5).
- (2) In section 4 (interpretation) –
 - (a) in subsection (1), in the definition of “wholesale”, after ““wholesale”” insert “(except in Part 6A)”,
 - (b) in the Table in subsection (3), at the appropriate place insert –
““excise duty point””, and
 - (c) in subsection (4), after “Act” insert “(except in Part 6A)”.
- (3) After Part 6 insert –

“PART 6A

WHOLESALING OF CONTROLLED LIQUOR

88A Definitions

- (1) This section defines certain expressions used in this Part.
- (2) Controlled liquor is sold “wholesale” if –
 - (a) the sale is of any quantity of the liquor,
 - (b) the seller is carrying on a trade or business and the sale is made in the course of that trade or business,
 - (c) the sale is to a buyer carrying on a trade or business, for sale or supply in the course of that trade or business, and
 - (d) the sale is not an incidental sale, a group sale or an excluded sale.
- (3) A sale is of “controlled liquor” if –
 - (a) it is a sale of dutiable alcoholic liquor on which duty is charged under this Act at a rate greater than nil, and
 - (b) the excise duty point for the liquor falls at or before the time of the sale.
- (4) A sale is an “incidental sale” if –
 - (a) the seller makes authorised retail sales of alcoholic liquor of any description, and
 - (b) the sale is incidental to those sales.
- (5) A sale is an “authorised retail sale” if it is made by retail under and in accordance with a licence or other authorisation under an enactment regulating the sale and supply of alcohol.
- (6) A sale is a “group sale” if the seller and the buyer are both bodies corporate which are members of the same group (see section 88J).

- (7) A sale is an “excluded sale” if it is of a description prescribed in or under regulations made by the Commissioners.
- (8) “Controlled activity” means—
 - (a) selling controlled liquor wholesale,
 - (b) offering controlled liquor for sale in circumstances in which the sale (if made) would be a wholesale sale, or
 - (c) arranging in the course of a trade or business for controlled liquor to be sold, or offered for sale, wholesale.
- (9) “UK person” means a person who is UK-established for the purposes of value added tax (see paragraph 1(10) of Schedule 1 to the Value Added Tax Act 1994).
- (10) “Enactment” includes an enactment contained in—
 - (a) an Act of the Scottish Parliament;
 - (b) an Act or Measure of the National Assembly for Wales;
 - (c) Northern Ireland legislation.

88B Further provision relating to definitions

- (1) The Commissioners may by regulations make provision as to the cases in which sales are, or are not, to be treated for the purposes of this Part as—
 - (a) wholesale sales,
 - (b) sales of controlled liquor,
 - (c) incidental sales,
 - (d) authorised retail sales, or
 - (e) group sales.
- (2) The Commissioners may by regulations make provision as to the cases in which a person is, or is not, to be treated for the purposes of this Part as carrying on a controlled activity by virtue of section 88A(8)(b) or (c) (offering controlled liquor for sale and arranging for controlled liquor to be sold, or offered for sale, wholesale).

88C Approved persons

- (1) A UK person may not carry on a controlled activity otherwise than in accordance with an approval given by the Commissioners under this section.
- (2) The Commissioners may approve a person under this section to carry on a controlled activity only if they are satisfied that the person is a fit and proper person to carry on the activity.
- (3) The Commissioners may approve a person under this section to carry on a controlled activity for such periods and subject to such conditions or restrictions as they may think fit or as they may by or under regulations made by them prescribe.
- (4) The conditions or restrictions may include conditions or restrictions requiring the controlled activity to be carried out only at or from premises specified or approved by the Commissioners.
- (5) The Commissioners may at any time for reasonable cause revoke or vary the terms of an approval under this section.

- (6) In this Part “approved person” means a person approved under this section to carry on a controlled activity.

88D The register of approved persons

- (1) The Commissioners must maintain a register of approved persons.
- (2) The register is to contain such information relating to approved persons as the Commissioners consider appropriate.
- (3) The Commissioners may make publicly available such information contained in the register as they consider necessary to enable those who deal with a person who carries on a controlled activity to determine whether the person in question is an approved person in relation to that activity.
- (4) The information may be made available –
 - (a) on the internet, and
 - (b) by such other means as the Commissioners consider appropriate.

88E Regulations relating to approved persons and controlled activities

- (1) The Commissioners may by regulations make provision –
 - (a) regulating the approval and registration of persons under this Part,
 - (b) regulating the variation or revocation of any such approval or registration or of any condition or restriction to which such an approval or registration is subject,
 - (c) about the register maintained under section 88D,
 - (d) regulating the carrying on of controlled activities, and
 - (e) imposing obligations on approved persons.
- (2) The regulations may, in particular, make provision –
 - (a) requiring applications, and other communications with the Commissioners, to be made electronically,
 - (b) as to the procedure for the approval and registration of bodies corporate which are members of the same group and for the members of such a group to be jointly and severally liable for any penalties imposed under Schedule 2B or the regulations,
 - (c) requiring approved persons to keep and make available for inspection such records relating to controlled activities as may be prescribed in or under the regulations,
 - (d) imposing a penalty not exceeding £1,000 for a contravention of –
 - (i) the regulations, or
 - (ii) any condition or restriction imposed under this Part, and
 - (e) for dutiable alcoholic liquor (whether or not charged with any duty and whether or not that duty has been paid) to be subject to forfeiture for a contravention of –
 - (i) this Part or the regulations, or
 - (ii) any condition or restriction imposed under this Part.

88F Restriction on buying controlled liquor wholesale

A person may not buy controlled liquor wholesale from a UK person unless the UK person is an approved person in relation to the sale.

88G Offences

- (1) A person who contravenes section 88C(1) by selling controlled liquor wholesale is guilty of an offence if the person knows or has reasonable grounds to suspect that—
 - (a) the buyer is carrying on a trade or business, and
 - (b) the liquor is for sale or supply in the course of that trade or business.
- (2) A person who contravenes section 88C(1) by offering controlled liquor for sale in circumstances in which the sale (if made) would be a wholesale sale is guilty of an offence if the person intends to make a wholesale sale of the liquor.
- (3) A person who contravenes section 88C(1) by arranging in the course of a trade or business for controlled liquor to be sold, or offered for sale, wholesale is guilty of an offence if the person intends to arrange for the liquor to be sold, or offered for sale, wholesale.
- (4) A person who contravenes section 88F is guilty of an offence if the person knows or has reasonable grounds to suspect that the UK person from whom the controlled liquor is bought is not an approved person in relation to the sale.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine.

88H Penalties

Schedule 2B contains provision about penalties for contraventions of this Part.

88I Regulations

Regulations under this Part—

- (a) may make provision which applies generally or only for specified cases or purposes,
- (b) may make different provision for different cases or purposes,
- (c) may include incidental, consequential, transitional or transitory provision,
- (d) may confer a discretion on the Commissioners, and
- (e) may make provision by reference to things specified in a notice published by the Commissioners (and not withdrawn by a subsequent notice).

88J Groups

- (1) Two or more bodies corporate are members of a group for the purposes of this Part if each is established or has a fixed establishment in the United Kingdom and—
 - (a) one of them controls each of the others,
 - (b) one person (whether a body corporate or an individual) controls all of them, or

- (c) two or more individuals carrying on a business in partnership control all of them.
- (2) For the purposes of this section, a body corporate is to be taken to control another body corporate if—
 - (a) it is empowered by or under an enactment to control that body’s activities, or
 - (b) it is that body’s holding company within the meaning of section 1159 of, and Schedule 6 to, the Companies Act 2006.
- (3) For the purposes of this section—
 - (a) an individual or individuals are to be taken to control a body corporate if the individual or individuals (were the individual or individuals a company) would be that body’s holding company within the meaning of section 1159 of, and Schedule 6 to, the Companies Act 2006, and
 - (b) a body corporate is established or has a fixed establishment in the United Kingdom if it is so established or has such an establishment for the purposes of value added tax.

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This Table lists the places where some of the expressions used in this Part are defined or otherwise explained.

approved person	section 88C(6)
authorised retail sale	section 88A(5)
controlled activity	section 88A(8)
enactment	section 88A(10)
group (in relation to bodies corporate)	section 88J(1)
group sale	section 88A(6)
incidental sale	section 88A(4)
sale of controlled liquor	section 88A(3)
UK person	section 88A(9)
wholesale	section 88A(2).”

- (4) In section 90 (procedure for regulations)—
 - (a) after subsection (1) insert—
 - “(1A) A statutory instrument containing regulations under Part 6A is subject to annulment in pursuance of a resolution of the House of Commons.”
 - (b) in subsection (2), after “containing” insert “any other”.
- (5) After Schedule 2A insert—

“SCHEDULE 2B

Section 88H

PENALTIES FOR CONTRAVENTIONS OF PART 6A

Liability to penalty

- 1 A penalty is payable by a person (“P”) who contravenes section 88C(1) or 88F.

Amount of penalty

- 2 (1) If the contravention is deliberate and concealed, the amount of the penalty is £10,000.
- (2) If the contravention is deliberate but not concealed, the amount of the penalty is £7,000.
- (3) In any other case, the amount of the penalty is £3,000.
- (4) The contravention is –
- (a) “deliberate and concealed” if the contravention is deliberate and P makes arrangements to conceal the contravention,
 - (b) “deliberate but not concealed” if the contravention is deliberate but P does not make arrangements to conceal the contravention.

Reductions for disclosure

- 3 (1) Paragraph 4 provides for reductions in penalties under this Schedule where P discloses a contravention.
- (2) P discloses a contravention by –
- (a) telling the Commissioners about it,
 - (b) giving the Commissioners reasonable help in identifying any other contraventions of section 88C(1) or 88F of which P is aware, and
 - (c) allowing the Commissioners access to records for the purpose of identifying such contraventions.
- (3) Disclosure of a contravention –
- (a) is “unprompted” if made at a time when P has no reason to believe that the Commissioners have discovered or are about to discover the contravention, and
 - (b) otherwise, is “prompted”.
- (4) In relation to disclosure “quality” includes timing, nature and extent.
- 4 (1) Where P discloses a contravention, the Commissioners must reduce the penalty to one that reflects the quality of the disclosure.
- (2) If the disclosure is prompted, the penalty may not be reduced below –
- (a) in the case of a contravention that is deliberate and concealed, £5,000,
 - (b) in the case of a contravention that is deliberate but not concealed, £3,500, and

- (c) in any other case, £2,000.
- (3) If the disclosure is unprompted, the penalty may not be reduced below –
 - (a) in the case of a contravention that is deliberate and concealed, £3,000,
 - (b) in the case of a contravention that is deliberate but not concealed, £2,000, and
 - (c) in any other case, £1,000.

Special reduction

- 5 (1) If the Commissioners think it right because of special circumstances, they may reduce a penalty under this Schedule.
- (2) In sub-paragraph (1) “special circumstances” does not include ability to pay.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to –
 - (a) staying a penalty, and
 - (b) agreeing a compromise in relation to proceedings for a penalty.

Assessment

- 6 (1) Where P becomes liable for a penalty under this Schedule, the Commissioners must –
 - (a) assess the penalty,
 - (b) notify P, and
 - (c) state in the notice the contravention in respect of which the penalty is assessed.
- (2) A penalty under this Schedule must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (3) An assessment is to be treated as an amount of duty due from P under this Act and may be recovered accordingly.
- (4) An assessment of a penalty under this Schedule may not be made later than one year after evidence of facts sufficient in the opinion of the Commissioners to indicate the contravention comes to their knowledge.
- (5) Two or more contraventions may be treated by the Commissioners as a single contravention for the purposes of assessing a penalty under this Schedule.

Reasonable excuse

- 7 (1) Liability to a penalty does not arise under this Schedule in respect of a contravention which is not deliberate if P satisfies the Commissioners or (on an appeal made to the appeal tribunal) the tribunal that there is a reasonable excuse for the contravention.

- (2) For the purposes of sub-paragraph (1), where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the contravention.

Companies: officer's liability

- 8 (1) Where a penalty under this Schedule is payable by a company in respect of a contravention which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as the Commissioners may specify by written notice to the officer.
- (2) Sub-paragraph (1) does not allow the Commissioners to recover more than 100% of a penalty.
- (3) In the application of sub-paragraph (1) to a body corporate other than a limited liability partnership "officer" means –
- (a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006),
 - (b) a manager, and
 - (c) a secretary.
- (4) In the application of sub-paragraph (1) to a limited liability partnership, "officer" means a member.
- (5) In the application of sub-paragraph (1) in any other case "officer" means –
- (a) a director,
 - (b) a manager,
 - (c) a secretary, and
 - (d) any other person managing or purporting to manage any of the company's affairs.
- (6) Where the Commissioners have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1) –
- (a) paragraph 5 applies to the specified portion as to a penalty,
 - (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,
 - (c) sub-paragraphs (3) to (5) of paragraph 6 apply as if the notice were an assessment of a penalty,
 - (d) paragraph 9 applies as if the officer were liable to a penalty, and
 - (e) Chapter 2 of Part 1 of the Finance Act 1994 (appeals and reviews) applies as if the Commissioners had decided that a penalty of the amount of the specified portion were payable by the officer.
- (7) In this paragraph "company" means any body corporate or unincorporated association, but does not include a partnership.

Double jeopardy

- 9 P is not liable to a penalty under this Schedule in respect of a contravention in respect of which P has been convicted of an offence.

Interpretation

- 10 In this Schedule “appeal tribunal” has the same meaning as in Chapter 2 of Part 1 of the Finance Act 1994.”
- (6) In Schedule 5 to FA 1994 (decisions subject to review and appeal), in paragraph 3(1), after paragraph (o) insert –
- “(p) any decision for the purposes of Part 6A (wholesaling of controlled liquor) as to whether or not, and in which respects, any person is to be, or to continue to be, approved and registered or as to the conditions or restrictions subject to which any person is approved and registered;
 - (q) any decision under Schedule 2B (penalties for contraventions of Part 6A) that a penalty is payable by any person or as to the amount of any such penalty.”
- (7) Subject as follows, the amendments made by this section come into force on the day on which this Act is passed.
- (8) So far as relating to section 88C(1) of ALDA 1979, subsection (3) comes into force on 1 January 2016 (but see subsection (11) for the application of section 88C(1) in cases where an application has been made but not disposed of by that date).
- (9) So far as relating to section 88F of ALDA 1979, subsection (3) comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.
- (10) An application for a person to be approved under section 88C of ALDA 1979 may not be made before 1 October 2015.
- (11) Where such an application made before 1 January 2016 has not been disposed of by that date, section 88C(1) of ALDA 1979 does not apply in relation to the person until the application is disposed of.
- (12) An application is “disposed of” when –
- (a) it is determined by Her Majesty’s Revenue and Customs,
 - (b) it is withdrawn, or
 - (c) it is abandoned or otherwise ceases to have effect.

EXPLANATORY NOTE

WHOLESALE OF CONTROLLED LIQUOR

SUMMARY

1. Clauses [X] amends Part 6 of Alcoholic Liquor Duties Act 1979 (ALDA 1979) to introduce new legislation requiring wholesalers of alcohol, sold at or after the duty point, to be registered to trade by HM Revenue & Customs.

DETAILS OF THE CLAUSE

Clause 88A - Definitions

2. Clause 88A contains various definitions of terms which are used in the act such as 'wholesale, controlled liquor', 'excluded sales' etc.
3. Subsections (2) and (3) define when a sale is made 'wholesale' and when it is a sale of 'controlled liquor'. The sale of the alcohol must be to a buyer carrying on a trade or business for sale in the course of that business. Controlled liquor is not sold wholesale if it is an incidental sale, a group sale or an excluded sale.
4. Subsections (3) and (4) define an incidental sale as a wholesale sale made by an authorised retailer that is incidental to its retail sales. An authorised retail sale is one that is made in accordance with the requirements under a retailer's alcohol licence or similar authorisation.
5. Subsection (7) allows for HMRC to prescribe by regulations for certain sales to be 'excluded sales'.
6. Subsection (8) defines 'controlled activity' as selling, arranging or offering to sell alcohol wholesale.
7. Subsection (9) defines a 'UK person' as someone who is based, i.e. has a business establishment or some other fixed establishment, in the UK for VAT purposes, regardless of whether they are liable to be registered for VAT.

Clause 88B – Further Provisions relating to definitions

8. Clause 88B Subsection (1) allows for HM Revenue & Customs to make regulations to further define how the sales covered in 88A are treated under the scheme. Subsection (2)

allows for provision to further define how HM Revenue & Customs treat cases involving offers for sale and arranging for sale.

Clause 88C – Approved persons

9. Clause 88C sets out the conditions for being granted approval as a registered wholesaler. A trader cannot trade in wholesale alcohol unless they have been approved by HM Revenue & Customs. Applicants will be required to pass a fit and proper test before they can be approved. (The test criteria will be set out in the public notice). If appropriate, conditions or restrictions may be attached to an approval. HM Revenue & Customs will have the power to vary the conditions of approval and if appropriate revoke an approval.

Clause 88D – The register of approved persons

10. Clause 88D states HM Revenue & Customs must maintain a register of approved persons and may make certain information from it available to the public via the internet on an online look-up facility (or other appropriate method) to enable persons making duty paid alcohol purchases to check the approval status of the seller.

Clause 88E – Regulations relating to approved persons and controlled activities

11. Clause 88E allows for HM Revenue & Customs to make regulations setting out the criteria for granting approval and the record keeping requirements of those involved in selling and buying wholesale alcohol.

12. Subsection (1) allows for regulations covering the registration application process, how variations to approvals are handled and the obligations of registered wholesalers. It also allows for any regulations required for administration of the online register.

13. Subsection (2)(b) allows for regulations covering group approvals. Group members will be jointly and severally liable for any penalties levied on the group or its individual members.

14. Subsection (2)(c) allows for regulations requiring both wholesalers and retailers to keep and make available on request appropriate records, for example, sales invoices and details of due diligence checks to ascertain a wholesaler's registration status.

15. Subsection (2)(d) allows for regulations to impose a penalty of up to £1,000 for any contravention of the regulations or conditions of approval.

16. Subsection (2)(e) allows for regulations to provide for alcohol that has been purchased in contravention of the scheme to be forfeited.

Clause 88F – Restriction on buying controlled liquor wholesaler

17. Clause 88F states that a person may not purchase alcohol from a UK wholesaler who is required to be approved unless that person has in fact been approved under the scheme.

Clause 88G – Offences

18. Clause 88G covers the offences for contravention of the scheme.

19. Subsection (1) to (3) states that anyone who knowingly sells, offers to sell or arranges to sell alcohol on a wholesale basis as defined by the scheme, without being approved by HM Revenue and Customs, will be committing an offence.

20. Subsection (4) states that it is an offence for someone to purchase alcohol on a wholesale basis from an unapproved wholesaler where they knew or had reasonable grounds to suspect that the seller was not approved.

Clause 88H – Penalties

21. Provisions covering penalties that may be levied for contraventions of the scheme are covered in Schedule 2B.

Clause 88I – Regulations

22. Clause 88I provides more detail on what can be done by regulations authorised by the Act.

Clause 88J – Groups

23. Clause 88J covers the arrangements for registration of groups of companies.

24. Subsection (1) sets out the requirements for two or more bodies corporate to form a group.

25. Subsection (2) elaborates upon when one body corporate controls another.

26. Subsection (3) states (a) when individuals will be considered to control another body corporate and (b) when a body corporate is to be regarded as having an establishment in the UK for the purposes of being entitled to be a member of a group. The test is whether the company has an establishment in the UK for VAT purposes, regardless of whether they are liable to be registered for VAT.

Schedule 2B – Penalties for contraventions of Part 6A

27. Schedule 2B sets out the penalties that can be levied for contraventions of the scheme.

Liability to a penalty

28. Paragraph 1 states that penalties are payable for contraventions of 88C(1) and 88F (selling without authorisation and buying from an unapproved wholesaler).

Amount of penalty

29. Paragraph 2 sub-paragraphs (1) to (3) set out the levels of penalty that can be charged, depending on whether the offence is considered deliberate and concealed, deliberate but not concealed or otherwise. Sub-paragraph (4) defines ‘deliberate and concealed’ and ‘deliberate but not concealed’.

Reductions for disclosure

30. Paragraph (3) sub-paragraph (1) provides for reductions in penalties for disclosure.

31. Paragraph (3) sub-paragraph (2) describes how a person may disclose a contravention by advising HM Revenue and Customs, assisting in highlighting any additional contraventions and providing all records requested.

32. Paragraph (3) sub-paragraph (3) describes how a disclosure will be considered ‘unprompted’ if it is notified to HM Revenue and Customs prior to them identifying a contravention. All other cases will be considered ‘prompted’.

33. Paragraph 4 provides that following disclosure the Commissioners must reduce the penalty to reflect the quality of the disclosure. It also sets out the minimum levels of the penalties. The amount that the penalty can be reduced by depends upon the quality of the disclosure and whether it is prompted or unprompted.

Special reduction

34. Paragraph 5 states that under special circumstances, not including the ability to pay, HM Revenue and Customs may reduce a penalty.

Assessment

35. Paragraph 6 sets out how penalties will be assessed. HM Revenue and Customs will notify the person by way of a penalty notice, setting out the reason for the penalty. Penalties raised will be due 30 days after the date of issue of the penalty notice. Two or more contraventions may be assessed as one contravention for the purposes of raising a penalty. A penalty must be raised within 12 months of HM Revenue and Customs discovering the contravention.

Reasonable excuse

36. Paragraph 7 states that a penalty will not be levied for non-deliberate contraventions if a person is able to demonstrate that they have a valid excuse. However, it will not be considered a valid excuse that a person entrusted someone else to fulfil their responsibilities, for example an agent or accountant, unless the person is able to demonstrate that they took appropriate steps to prevent any contravention.

Companies: officer's liability

37. Paragraph 8 sub-paragraph (1) describes how penalties or a proportion of a penalty that is levied on a company, can also be levied against an officer of that company, if the officer was responsible or partly responsible for a contravention.

38. Paragraph 8 sub-paragraphs (3) to (5) sets out the definition of an 'officer' for a body corporate, limited liability partnership and all other cases.

Double jeopardy

39. Paragraph 9 of Schedule 2B states a penalty will not be levied for a contravention where a person has already been convicted of an offence for the same contravention.

40. Sub-clause (6) provides that any decision as to approval or the conditions under which a person is approved or as to a penalty for contravention of this Part is treated as a decision which is subject to review and appeal for the purposes of Schedule 5 to Finance Act 1994.

41. Sub-clause (7) provides for the amendments to ALDA 1979 to come into force on the date of Royal Assent to the Finance Bill. Sub-clause (8) states that the requirement for a person obliged to apply to be registered as an alcohol wholesaler comes into effect from 1 January 2016. The window for applications will run from 1 October to 31 December 2015. Sub-clause (10) states that applications will not be accepted prior to 1 October 2015.

42. Sub-clause (9) states that the requirement for persons to have to check the approval status of persons from whom they purchase wholesale alcohol will come into effect on a date to be stated in the regulations.

43. Sub-clause (11) states that a wholesaler's obligations under the scheme do not come into effect until such time as their application has been considered and determined.

BACKGROUND NOTE

44. Alcohol duty fraud in the UK costs taxpayers an estimated £1.3bn per annum. The most prevalent form of alcohol fraud involves the smuggling or diversion of alcoholic drinks into the UK in large commercial quantities, duty unpaid.

45. The wholesale sector is the major point where illicit alcohol is diverted into retail supply chains to intermingle with legitimate goods. Yet it is the only element of the alcohol supply chain not required to be authorised by HMRC or the licensing authorities. Introducing a requirement for wholesalers to register with HMRC will reduce opportunities for fraud.

Following a 2012 formal consultation on alcohol anti-fraud measures the Government announced that it would consult further on the introduction of a registration scheme for alcohol wholesalers and launched a further consultation in 2013. The Government announced at Autumn Statement 2013 that it would proceed with plans to introduce the alcohol wholesaler scheme from April 2017.

46. If you have any questions about this change, or comments on the legislation, please contact John Waller on 03000 588063 (email: john.c.waller@hmrc.gsi.gov.uk).

2015 No.

EXCISE

The Wholesaling of Controlled Liquor Regulations 2015

Made - - - - *****

Laid before the House of Commons *****

Coming into force - - *1st October 2015*

The Commissioners for Her Majesty’s Revenue and Customs, in exercise of the powers conferred by sections 88E of the Alcoholic Liquor Duties Act 1979(a) make the following Regulations:

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Wholesaling of Controlled Liquor Regulations 2015 and come into force on 1st October 2015.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Alcoholic Liquor Duties Act 1979;

“approved” means approved under section 88C of the Act by the Commissioners to carry on a controlled activity;

(a) 1979 c. 4; section 88E was inserted by the Finance Act 2015 (c.). Section 88E provides that the Commissioners may by regulations make provision regulating the approval and registration of persons under Part 6A of the Act and the variation or revocation of any such approval or registration or of any condition or restriction to which such an approval or registration is subject, about the register maintained under section 88D, regulating the carrying on of controlled activities and imposing obligations on approved persons. Section 88E(2)(a) provides that the Commissioners may by regulations make provision requiring applications to be made electronically. Section 88E(2)(b) provides that the Commissioners may make regulations as to the procedure for the approval and registration of bodies corporate which are members of the same group and for the members of such a group to be jointly and severally liable for any penalties imposed under Schedule 2B of the Act or the regulations. Section 88E(2)(c) provides that the Commissioners may make regulations requiring approved persons to keep and make available for inspection such records relating to controlled activities as may be prescribed in or under the regulations. Section 88E(2)(d) provides that the Commissioners may by regulations make provision imposing a penalty for a contravention of the regulations or any condition or restriction imposed under Part 6A. Section 88E(2)(e) provides that the Commissioners may by regulations make provision for dutiable goods in the United Kingdom to be subject to forfeiture for a contravention of Part 6A or the regulations or any condition or restriction imposed by Part 6A. The power to make regulations under section 88E is conferred on “the Commissioners” and, by virtue of section 4 (3) “the Commissioners” has the same meaning as given in the Customs and Excise Management Act 1979 (c 2). Section 1 (1) of that Act (as amended by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraphs 20 and 22 (b)) defines “the Commissioners” as “the Commissioners for Her Majesty’s Revenue and Customs”.

“prescribed” means prescribed by the Commissioners in a published notice, as revised or replaced from time to time and “prescribe” is construed accordingly; and

“representative member” means the representative member for a group.

(2) Save for where an alternative meaning is given, expressions used in these Regulations have the same meaning as in Part 6A of the Act.

PART 2

APPROVAL AND REGISTRATION

Application for approval

3.—(1) Every person who is required to be approved (the “applicant”) must apply to the Commissioners for approval in respect of all the premises on which it carries on or intends to carry on a controlled activity.

(2) Save as the Commissioners may otherwise allow each application for approval must contain any information and be in such form and manner as the Commissioners may prescribe.

(3) An application under this regulation must be made by a prescribed method of communication.

Letters of registration

4.—(1) The Commissioners must notify every person they approve by issuing a letter of registration.

(2) Every letter of registration issued by the Commissioners must contain any information the Commissioners may prescribe and may contain such other information which the Commissioners may deem to be suitable in any case.

Requirement to notify changes in particulars

5.—(1) Every approved person must give notice to the Commissioners by a prescribed method of communication of any change in the information contained in the letter of registration within such period of the change as the Commissioners may prescribe.

(2) Where –

(a) any approved person gives the Commissioners notice of any change in the information contained in the letter of registration, or

(b) without any such notice having been given it appears to the Commissioners that the letter of registration requires correction,

the Commissioners may, unless they revoke the approval, issue an amended letter of registration.

Unique reference numbers

6.—(1) The Commissioners may assign a unique reference number to persons approved under the Act (the “URN”).

(2) The Commissioners may require an approved person to make the URN available to customers and suppliers and to include the URN on prescribed forms of documentation or communications associated with the business.

Record keeping

7. Every approved person must keep and make available such records relating to controlled activities as the Commissioners may prescribe.

PART 3 GROUPS

Applications for approval and registration of bodies corporate which are members of the same group

8.—(1) The Commissioners may require the applicant to provide the information (or any part of the information) mentioned in regulation 3(2) in respect of each of the bodies corporate that are the subject of the application.

(2) The Commissioners may require the applicant to make a declaration that the information is true and complete.

(3) The applicant must satisfy the Commissioners that the bodies corporate which are the subject of the application have consented to group treatment.

(4) The application must specify which one of the bodies corporate that are the subject of the application will be the representative member.

(5) If the Commissioners accept the application, they must notify the representative member of the date on which group treatment will commence.

(6) If the Commissioners refuse the application, they must notify the representative member.

(7) The Commissioners may refuse any application under this Part if it appears necessary to do so for the protection of the revenue.

(8) A body corporate may not be treated as a member of more than one group for the purposes of Part 6A at the same time.

Applications by a representative member.

9.—(1) This regulation applies where two or more bodies corporate are treated as members of a group and the representative member makes an application to the Commissioners—

(a) for another body corporate (which is eligible under this Part) to be treated as a member of the group;

(b) for a body corporate to cease to be treated as a member of the group;

(c) for the bodies corporate no longer to be treated as members of a group; or

(d) for another member to be substituted as the group's representative member.

(2) In respect of an application under paragraph (1)(a), the representative member must satisfy the Commissioners that—

(a) the existing members of the group; and

(b) any body corporate which is the subject of the application,

have consented to group treatment.

(3) A body corporate is to be treated as a member of the group only—

(a) if the application is accepted by the Commissioners; and

(b) from a date notified by the Commissioners to the representative member.

(4) In respect of an application under paragraph 1(b) or 1(c), a body corporate is to be treated as not being a member of the group only—

(a) if the application is accepted by the Commissioners; and

(b) from a date notified by the Commissioners to the representative member and any body corporate which is the subject of the application.

(5) An application under paragraph 1(d) may be made by—

(a) the current representative member; or

(b) the body corporate that is applying to be substituted for the current representative member,

and the applicant must satisfy the Commissioners that the members of the group have consented to the substitution.

(6) In respect of an application under paragraph (1)(d), another member of the group is to be substituted as the representative member—

(a) if the application is accepted by the Commissioners; and

(b) from a date that the Commissioners are satisfied has been notified to the representative member.

Applications by group members other than the representative member

10.—(1) (1) A body corporate may apply to the Commissioners to—

(a) transfer from its current group to a different group; or

(b) cease to be treated as a member of a group.

(2) The Commissioners must be satisfied that the body corporate has given notice of the application to the representative member of the current group and the group it is applying to join.

(3) A body corporate is to be treated as not being a member of the group by virtue of this regulation only-

(a) if the application is accepted by the Commissioners; and

(b) from a date notified by the Commissioners to the representative member and the body corporate which made the application.

Termination of group membership by the Commissioners

11.—(1) The Commissioners may, by notice given to a body corporate, terminate its treatment as a member of a group from a date notified by the Commissioners.

(2) The Commissioners may give notice under paragraph (1) if it appears to them—

(a) to be necessary for the protection of the revenue; or

(b) that the body corporate is not (or is no longer) eligible to be treated as a member of the group.

(3) Where the Commissioners give notice to a body corporate under paragraph (1), notice must also be given to the representative member (if different from the body corporate).

(4) If the body corporate referred to in paragraph (1) is the representative member—

(a) notice must also be given to each member of the group; and

(b) the members of the group must with immediate effect appoint a new representative member in order to continue to be treated as a group

(5) If it appears to the Commissioners that-

(a) the group does not (or has ceased to) have a representative member who is acceptable to the Commissioners; or

(b) there are less than two bodies corporate being treated as members of the group,

they may give notice to each member that the group treatment will cease from a date notified by the Commissioners.

Joint and several liability

12. [Provision for members of a group to be jointly and severally liable for any penalties imposed under Schedule 2B of the Act or the Regulations.]

PART 4
ELECTRONIC COMMUNICATION

Electronic communication

13. [Provision requiring applications and other communications with the Commissioners to be made electronically.]

PART 5
MISCELLANEOUS

Penalties

14. [Provision for the imposition of penalties for a contravention of the Regulations or any condition or restriction imposed under part 6A.]

Forfeiture

15. [Provision for dutiable goods to be subject to forfeiture for a contravention of Part 6A or the Regulations, or any condition or restriction imposed under Part 6A.]

Signatory text

Address *Names*
Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Order)

Section 88C of the Alcoholic Liquor Duties Act provides that a UK person may not carry on a controlled activity otherwise than in accordance with an approval given by the Commissioners under that section. Section 88E of the Act provides that the Commissioners may by regulations make provision about various matters including the approval of persons and the variation or revocation of approval.

These Regulations make provision about applications for approval, the issue of letters of registration, requirements to notify changes in registration particulars, unique reference numbers, revocation and variation of approval and record keeping. They also make provision about the procedure for approval and registration of bodies corporate which are members of the same group, the making of electronic communications, penalties and forfeiture.

A Tax Information and Impact note (TIIN) covering this instrument was published on 10 December 2014 alongside draft clauses of the Finance Bill 2015 and this instrument 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.

EXPLANATORY MEMORANDUM TO
THE WHOLESALING OF CONTROLLED LIQUORS REGULATIONS 2015

[2015] No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The instrument deals with applications for approval and registration of wholesalers of duty paid alcohol, the conditions and restrictions that may be imposed on approvals, the arrangements for groups, associated electronic communications and various miscellaneous matters.
3. **Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 This instrument represents the first use of powers in Section 88E of the Alcohol Liquor Duties Act 1979(a).
 - 4.2 It is made in connection with a new requirement for traders who sell, offer to sell or arrange to sell dutiable alcohol at or after a duty point, to be registered and approved by HM Revenue and Customs. This will affect all new and existing alcohol wholesalers.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**
 - 6.1 XST will make this statement at a later date.
7. **Policy background**
 - What is being done and why
 - 7.1 Alcohol duty fraud in the UK costs taxpayers an estimated £1.3bn per annum. The most prevalent form of alcohol fraud involves the smuggling or diversion of alcoholic drinks into the UK in large commercial quantities, duty unpaid.

Organised criminal gangs do this by systematically exploiting the EU-wide duty suspension arrangements which allow excise goods to move between authorised warehouses duty unpaid until released for consumption onto the home market.

- 7.2 The wholesale sector is the major point where illicit alcohol is diverted by organised criminals into retail supply chains to intermingle with legitimate goods. This link in the supply chain is vulnerable because it is the only activity not required to be authorised by HMRC or the licensing authorities. Introducing a requirement for wholesalers to register with HMRC will address this and reduce opportunities for fraud, and is expected to bring significant benefits.
- 7.3 Following a 2012 formal consultation on alcohol anti-fraud measures the Government announced that it would consult further on the introduction of a registration scheme for alcohol wholesalers. The Government announced at Autumn Statement 2013 that it would proceed with plans to introduce the alcohol wholesaler scheme to a Finance Bill 2015 timescale.
- 7.4 This instrument provides for the following administrative matters to implement the registration scheme:

Approval and registration

The Regulations set out how anyone required to be approved under the Act, that is, anyone who trades in wholesale alcohol that is sold at or after a duty point, must apply for approval and will be registered by HMRC. They also provide for HMRC to prescribe various administrative requirements in a notice, including the information required on the application form, how that information is to be submitted and how variations to the approval are notified. The Regulations deal with the requirements to notify changes of information which occur and the consequences of such changes. They also provide for the conferment, use of unique reference numbers and the keeping and making available of records.

Group registration

The regulations set out the basis under which bodies corporate that satisfy the criteria to form a group can apply for approval under a single registration, elect a representative member, make various changes to the group registration and upon which group membership can be terminated. They also provide for joint and several liability for any penalties which may be imposed under the Act or the Regulations.

8. Consultation outcome

- 8.1 An initial consultation was undertaken in 2012, 'Alcohol Fraud: Legislative measures to tackle existing and emerging threats to the UK alcohol duty regime' followed by a further consultation in 2013, 'Alcohol Fraud: Next Steps'.

8.2 There was much support for the concept of a registration scheme, although most respondents stressed that burdens on legitimate businesses should be kept to a minimum, in particular the checks and record keeping requirements. HMRC responded to these concerns early on in the consultation process by putting forward an alternative proposal, to allow businesses to risk assess for themselves the frequency with which they carried out checks of a supplier's registration status. HMRC also decided not to proceed with proposals to require checks to be made of a buyer's wholesaler approval status. These changes were widely welcomed.

8.3 Comments received were considered and consolidated into a Summary of Responses document which was published in 2014. The full consultation and summary of responses 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 application and approval process, in the form of internet publications. A public notice will also be published. Upon implementation, guidance will be reviewed and revised as necessary.

10. Impact

10.1 There will be some additional burdens for businesses including familiarisation with legislation, registration and the requirement to include the unique reference number on invoices and to use the online look up system to verify wholesaler's status

The measure is expected to have no impact on civil society organisations

10.2 The introduction of this measure will impact on Her Majesty's Courts and Tribunals Service as there will be an increase in the number of appeals being heard at tribunal. Work is ongoing to quantify the impact.

10.3 A Tax Information and Impact Note covering this instrument was published on 10 December 2014 and is available on the GOV.UK 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 The requirements of the scheme are the same for all businesses. The scheme should result in a reduction in the undercutting of legitimate businesses by competition using illicit supplies of alcohol which can disproportionately hit smaller 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

John Waller at HMRC Tel: 03000 588063 or email: john.c.waller@hmrc.gsi.gov.uk can answer any queries regarding the instrument.