

2011 No. 1795

EXCISE

The Beer (Amendment) Regulations 2011

Made - - - - *20th July 2011*

Laid before Parliament *21st July 2011*

Coming into force - - *1st October 2011*

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 93(1)(d), (e), (2)(d), (g), (h), (l), (3) and (4), 118A(1) and (2) and section 127A of the Customs and Excise Management Act 1979(a), sections 2(3), (3A) and (4), 41A(1),(2) and (7), 49(1)(a), (b), (c), (d), (e), (f), (g), (h) and (2) of the Alcoholic Liquor Duties Act 1979(b), and sections 1 and 2 of the Finance (No. 2) Act 1992(c), make the following regulations:

Citation and Commencement

1. These Regulations may be cited as the Beer (Amendment) Regulations 2011 and come into force on 1st October 2011.

Amendment of the Beer Regulations 1993

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

(2) In regulation 4 (interpretation) for the definition of “duty” substitute—

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- (a) 1979 c. 2; section 1(1) defines “the Commissioners”; the definition of “the Commissioners” was substituted by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraph 22(b); section 93(2)(g) was substituted, and section 93(2)(h) and (l), and the final paragraph of section 93(2) were inserted, by the Finance Act 1986 (c. 41), Schedule 3, paragraphs 4 and 5; section 93(2)(g) and section 93(3) were amended by the Finance (No. 2) Act 1992 (c. 48), Schedule 2, paragraph 2; section 118A was inserted by the Finance Act 1991 (c. 31), Schedule 5 and amended by the Finance (No. 3) Act 2010 (c. 33), Schedule 13, paragraph 1; section 127A was inserted by the Finance Act 1983 (c. 28), section 6 and amended by the Finance (No. 2) Act 1992, Schedule 1, paragraph 7.
- (b) 1979 c. 4; section 2 was substituted by article 6 of the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979 S.I. 1979/241; section 2(3A) was inserted by the Finance Act 1981 (c. 35), Schedule 8, paragraph 10, and amended by the Finance Act 1991, Schedule 2, paragraph 3 and the Finance Act 1997 (c. 16), section 5(3); section 41A was inserted by the Finance Act 1991, section 7(2) and section 41A(7) was amended by the Finance (No. 2) Act 1992, Schedule 18, Part I; section 49 was substituted by the Finance Act 1991, Schedule 2, paragraph 14; section 49(1)(e) was substituted by the Finance (No. 2) Act 1992, Schedule 1, paragraph 11 and section 49(1) was amended by the Finance Act 2011 (c. 11), Schedule 1, paragraph 11; section 4(3) of the Alcoholic Liquor Duties Act 1979 provides for “the Commissioners” to have the same meaning in that Act as in the Customs and Excise Management Act 1979 (c. 2).
- (c) 1992 c. 48; section 1(7) and section 2(5) define “the Commissioners” as “the Commissioners of Customs and Excise”. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 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; section 2 was amended by the Finance Act 1998 (c. 36), Schedule 2, paragraph 6.
- (d) S.I. 1993/1228, amended by S.I. 1995/3059, S.I. 2000/3213, S.I. 2002/1265, S.I. 2002/2692, S.I. 2006/1058, S.I. 2008/1885 and S.I. 2010/593.

““duty” means any duty of excise charged on beer by section 36(1) of the Act (general beer duty) or section 37(1) of the Act (high strength beer duty)(a);”.

- (3) In regulation 8 (when the production of beer begins and when it is completed)—
- (a) at the beginning of paragraph (2) for “For” substitute “Except where paragraph (4) applies, for”;
 - (b) in paragraph (2) for “(the charge of excise duty)” substitute “(general beer duty), section 37 of the Act (high strength beer duty)”; and
 - (c) after paragraph (3) insert—

“(4) Where before the duty point two or more beers are mixed (in this paragraph referred to as “the constituent beers”) and one or more of the constituent beers is of a strength exceeding 7.5 per cent—

 - (a) the time at which production of the beer resulting from that mixture is completed is the time when mixing is completed; and
 - (b) the constituent beers are relieved of duty.”.
- (4) For paragraph (4) of regulation 22 (mixing)(b) substitute—
- “(4) Paragraph (5) applies where—
- (a) beer to which any duty suspension arrangements apply is mixed with any beer that would, had the duty been charged immediately before the time of mixing, have been charged with a different rate of general beer duty; or
 - (b) beer A is mixed with beer B and—
 - (i) beer A is beer to which any duty suspension arrangements apply and which would, had the duty been charged immediately before the time of mixing, have been charged with a rate of duty given by section 36D(4) or section 36F(7) of the Act(c); and
 - (ii) beer B is beer to which any duty suspension arrangements apply and which would, had the duty been charged immediately before the time of mixing, have been charged with the rate of duty specified in section 36(1AA)(za) of the Act(d).
- (5) Where this paragraph applies—
- (a) if the strength of the resulting mixture exceeds 1.2 per cent but does not exceed 2.8 per cent, the rate at which general beer duty is charged on that mixture is the rate specified in section 36(1AA)(za) of the Act; and
 - (b) in all other cases, the rate at which general beer duty is charged on the resulting mixture is the rate specified in section 36(1AA)(a)(e) of the Act.”.

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- (a) Regulation 4 of S.I. 1993/1228 provides that in those Regulations “the Act” means the Alcoholic Liquor Duties Act 1979. Section 36 of that Act was amended by the Finance Act 2011, section 14 and Schedule 1, paragraph 4. Section 37 of the Alcoholic Liquor Duties Act 1979 was repealed by the Finance Act 1991, Schedule 19, Part II. The Finance Act 2011, Schedule 1, paragraph 1 inserted a new section 37, which provides for a charge of excise duty on high strength beer which is imported into or produced in the United Kingdom on or after 1st October 2011. Section 37(2) defines “high strength beer” as “beer which is of a strength exceeding 7.5 per cent”. Section 2(1) of the Alcoholic Liquor Duties Act 1979 gives the meaning of “strength” as, in relation to beer, its alcoholic strength computed in accordance with that section, the ratio of the volume of the alcohol contained in the beer to the volume of the beer (inclusive of the alcohol contained in it) being expressed as a percentage.
 - (b) Regulation 22(4) was inserted by S.I. 2002/1265, regulation 2(3) and amended by S.I. 2006/1058, regulation 2(3).
 - (c) Sections 36D and 36F were inserted by the Finance Act 2002 (c. 23), Schedule 1, paragraph 2. Section 36D was amended by the Finance Act 2011, Schedule 1, paragraph 6 and section 36F was amended by paragraph 7 of that Schedule. Section 36D(4) gives the lowest rate of general beer duty for small brewery beer from singleton breweries and section 36F(7) gives the lowest rate of general beer duty for small brewery beer from co-operated breweries, in each case 50% of the standard rate of general beer duty.
 - (d) Section 36(1AA)(za) was inserted by the Finance Act 2011, section 14 and provides for a reduced rate of general beer duty for lower strength beer, that is beer of a strength exceeding 1.2 per cent but not exceeding 2.8 per cent.
 - (e) Section 36(1AA)(a) provides the standard rate for general beer duty (paragraphs (b) and (c) of that subsection provide for reduced rates for small brewery beer). Subsection (1AA) was inserted into section 36 by the Finance Act 2002, Schedule 1, paragraph 1 and was amended by the Finance Act 2011, section 14 and Schedule 1, paragraph 4.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st October 2011, amend the Beer Regulations 1993 (S.I. 1993/1228) (“the 1993 Regulations”), which regulate the production and packaging of beer for the purposes of excise duty, and include provisions on holding beer in duty suspension, returns of duty, payment, record-keeping, dilution and mixing of beer, and relief from duty for spoilt beer.

Amendments in the Finance Act 2011 (c. 11) to the Alcoholic Liquor Duties Act 1979 (c. 4) (“ALDA”) create a new charge of excise duty on high strength beer. The new duty, high strength beer duty, is charged in addition to the existing excise duty on beer charged by section 36(1) of ALDA (general beer duty). High strength beer duty is charged on beer of an alcoholic strength exceeding 7.5 per cent which is imported into the United Kingdom or produced in the United Kingdom on or after 1st October 2011.

Amendments to ALDA made by section 14 of the Finance Act 2011 will come into force on 1st October 2011 to introduce a new reduced rate for general beer duty on lower strength beer (of a strength exceeding 1.2 per cent but not exceeding 2.8 per cent) in addition to the existing reduced rates for small brewery beer.

The amendments made by regulations 2(2) and 2(3)(b) apply the provisions of the 1993 Regulations for the purposes of high strength beer duty as they apply for the purposes of general beer duty. Regulation 2(2) amends the definition of “duty” in the 1993 Regulations to include high strength beer duty where previously it referred only to excise duty charged on beer by section 36(1) of ALDA. Regulation 2(3)(b) amends a reference in regulation 8 to the existing excise duty to add a reference to high strength beer duty. Regulation 2(3), subparagraphs (a) and (c) introduce a new provision that where high strength beer is mixed with another beer in duty suspension, the production of the resulting beer is completed when mixing is completed.

Regulation 2(4) amends regulation 22 of the 1993 Regulations on mixing beer. Where small brewery beer was mixed with beer charged with a different rate of general beer duty regulation 22 had required the product of such mixing to be charged with the standard rate of duty. New paragraphs (5) and (6) indicate that either the standard rate of general beer duty or the lower strength beer reduced rate is applicable to the resulting mixture, according to the strength of that mixture.

A Tax Information and Impact Note covering this instrument was published on 23rd March 2011 alongside 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.

STATUTORY INSTRUMENTS

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£4.00