

EXPLANATORY MEMORANDUM TO
THE BEER, CIDER AND PERRY AND WINE AND MADE-WINE (AMENDMENT)
REGULATIONS 2008

2008 No. 1885

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations 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).

2.2 They provide for an entitlement to claim drawback of excise duty in respect of beer, cider and wine and made-wine which has become spoilt or otherwise unfit for use after it has been sent out from registered or licensed premises, subject to compliance with specified conditions.

2.3 They also provide for spoilt products to be removed from registered or licensed premises for the purposes of destruction without payment of duty and revoke provisions that have been identified as being no longer necessary.

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

None

4. Legislative background

4.1 Section 46 (Beer), 61 (Wine and Made-wine) and 64 (Cider) of the Alcoholic Liquor Duties Act 1979(c.4) (“ALDA”) provide for the remission or repayment of excise duty on products that have accidentally become spoilt or otherwise unfit for use, subject to compliance with such conditions as the Commissioners may by regulations impose.

4.2 However, where the registered brewer, producer or, as the case may be, maker has delivered the product to another person, those sections provide that the product must be returned to the registered brewer etc as so spoilt or unfit. There is no provision in those sections (or the regulations made under them) which allows relief to be claimed in circumstances where the spoilt product is not returned to the premises of the brewer etc but is destroyed in a cellar of a public house or at a remote destruction site.

4.3 Sections 1 and 2 of the Finance (No.2) Act 1992 (c.48) provide powers to fix excise duty points and to provide for drawback of duty. In particular, section 2(1)(a) provides that the Commissioners may, in relation to any duties of excise, by regulations make provision conferring an entitlement to drawback of duty in prescribed cases where they are satisfied that goods chargeable with duty have not been, and will not be, consumed in the UK.

4.4 These Regulations amend the Beer Regulations 1993, the Cider and Perry Regulations 1989 and the Wine and Made-wine Regulations 1989 to provide, subject to compliance with specified conditions, an entitlement to drawback of duty on products that have been removed from registered or licensed premises, have become spoilt or otherwise unfit for use and where the Commissioners are satisfied that the product will not be consumed in the UK. There is no requirement that the spoilt product must be returned to the registered or licensed premises.

4.5 They also provide for the removal of products from registered or licensed premises for the purposes of destruction without payment of duty and prescribe a duty point and the persons liable to the duty at that point if the products are applied to some other purpose.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 A concession is granted to the brewing industry which gives them practical control of the destruction of spoilt beer away from registered premises. It facilitates pub cellar destructions where it is recognised that circumstances make physical return of the spoilt beer to the brewery impractical. The concession removes the requirement for brewers having to uplift casks and kegs containing beer from cellar and the health and safety risk faced; and obviates the need for unnecessary transportation. The concession is a relaxation of the Beer Regulations and means that spoilt beer does not have to be returned to the registered brewery for destruction in order for spoilt beer relief to be claimed.

7.2 The National Association of Cider Makers has requested that the same provisions should be applied to cider as both cider and beer are sold in identical packaging.

7.3 This instrument will facilitate trader compliance with HMRC requirements by allowing the in-cellar destruction of cider, wine and made-wine and, at the same time, give statutory effect to the current concession for beer. This will ensure consistency and equality among traders in the beer, wine and cider industries.

7.4 It also provides for drawback of duty on duty-paid spoilt products which are regularly sent to destruction sites and gives statutory effect to a current informal concession by providing for the removal of beer from a registered brewery without payment of duty for remote destruction. It also modernises current provisions within Regulations by removing those provisions which have been identified as being redundant.

7.5 These changes are uncontroversial and should facilitate legitimate trade. The relevant trade associations have been informally consulted on the proposed amendments to the Regulations and were supportive of the changes.

8. Impact

8.1 An Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

8.2 The impact on the public sector is nil.

9. Contact

Moirira Bruce at HM Revenue and Customs (telephone 0161 827 0911 or e-mail: moira.bruce@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.