

## SCHEDULES

### SCHEDULE 10

Section 105

#### PENALTIES FOR CONTRAVENTIONS OF ALCOHOL WHOLESALING PROVISIONS

##### *Liability to penalty*

- 1 A penalty is payable by a person (“P”) who contravenes [section 100\(1\)](#) or [103\(1\)](#).

##### *Amount of penalty*

- 2 (1) If the contravention is deliberate and concealed, the amount of the penalty is the maximum amount (see [paragraph 10](#)).
- (2) If the contravention is deliberate but not concealed, the amount of the penalty is 70% of the maximum amount.
- (3) In any other case, the amount of the penalty is 30% of the maximum amount.
- (4) The contravention is—
- (a) “deliberate and concealed” if the contravention is deliberate and P makes arrangements to conceal the contravention, and
  - (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 100\(1\)](#) or [103\(1\)](#) 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.

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- (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, 50% of the maximum amount,
  - (b) in the case of a contravention that is deliberate but not concealed, 35% of the maximum amount, and
  - (c) in any other case, 20% of the maximum amount.
- (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, 30% of the maximum amount,
  - (b) in the case of a contravention that is deliberate but not concealed, 20% of the maximum amount, and
  - (c) in any other case, 10% of the maximum amount.

#### *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, and
  - (d) [paragraph 9](#) applies as if the officer were liable to a penalty.
- (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.

*The maximum amount*

- 10 (1) In [this Schedule](#), “the maximum amount” means £10,000.

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- (2) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, the Treasury may by regulations substitute for the sum for the time being specified in [sub-paragraph \(1\)](#) such other sum as appears to them to be justified by the change.
- (3) In [sub-paragraph \(2\)](#), “relevant date” means—
  - (a) the date on which the Finance (No. 2) Act 2023 is passed, and
  - (b) each date on which the power conferred by that sub-paragraph has been exercised.
- (4) Regulations under [this paragraph](#) do not apply to any contravention which occurred before the date on which they come into force.

*Appeal tribunal*

- 11 In [this Schedule](#) “appeal tribunal” has the same meaning as in Chapter 2 of Part 1 of the FA 1994.