

2015 No. 1516

EXCISE

The Wholesaling of Controlled Liquor Regulations 2015

Made - - - - *15th July 2015*

Laid before the House of Commons *16th July 2015*

Coming into force - - *1st October 2015*

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 88A(7), 88B(1), 88C(3), 88E and 88I of the Alcoholic Liquor Duties Act 1979(a) and section 133 of the Finance Act 1999(b) 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. In these Regulations—

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

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

“relevant information” means information (including information contained in an application under Part 2 or Part 3 of these Regulations) which is required or authorised by virtue of these Regulations to be delivered to the Commissioners; and

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

(a) 1979 c. 4; sections 88A, 88B, 88C, 88E and 88I were inserted by the Finance Act 2015 (c. 11), section 54(3). The power to make regulations under those sections 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”.

(b) 1999 c. 16; the reference to the Commissioners of Customs and Excise in section 133 is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs by virtue of section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11).

PART 2

APPROVAL, REGISTRATION, ETC.

Application for approval

3.—(1) Every person who is required to be approved under section 88C of the Act (the “applicant”) must apply on a prescribed form to the Commissioners for approval in respect of all the premises on which the applicant carries on or intends to carry on a controlled activity.

(2) An application for approval must contain full information about every matter referred to in the prescribed form.

(3) The Commissioners may require the applicant to make a declaration that the information provided in the application is true and complete.

Letters of registration

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

(2) The Commissioners may prescribe the information which must be contained in a letter of registration.

(3) A letter of registration must contain the information (if any) prescribed and may contain such other information as the Commissioners consider appropriate in any individual case.

(4) If the Commissioners refuse an application for approval they must notify the person who made the application of that fact and give the reasons for the refusal.

Requirement to notify changes

5.—(1) An approved person must give to the Commissioners notice of any change in—

- (a) the information contained in the letter of registration; or
- (b) such other information as the Commissioners may prescribe.

(2) Where –

- (a) an approved person gives notice in accordance with paragraph (1); 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.

(3) Where an approved person intends to cease to carry on a controlled activity he must give notice of that fact to the Commissioners no later than 30 days before the day on which the activity will cease.

Unique reference numbers

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

(2) Where, under Part 3 of these Regulations, group treatment applies to two or more bodies corporate, the Commissioners may assign one URN to all the bodies corporate to which group treatment applies.

(3) An approved person must make the URN available to customers and suppliers and include it on prescribed forms of documentation or communications associated with the business.

Conditions and restrictions

7. In addition to any conditions or restrictions that the Commissioners may think fit to impose on an approved person under section 88C(3) of the Act, the approval of a person is subject to such conditions and restrictions as the Commissioners may prescribe.

Record keeping

8.—(1) An approved person must keep and make available such records relating to controlled activities as the Commissioners may prescribe.

(2) An approved person required by this regulation to keep a record must do so at the time of or as soon as possible after —

- (a) the happening of the event that is required to be recorded; and
- (b) in any other case, the moment when the information that is required to be recorded is first known to the approved person.

(3) Any record that is required to be kept by this regulation must be preserved for a period of six years, or such lesser period as the Commissioners may allow, starting on the day that the obligation to keep the record arises.

Sales treated as sales of controlled liquor

9. For the purposes of Part 6A of the Act, a sale is to be treated as a sale of controlled liquor if—

- (a) the sale of the liquor is made at a time before the excise duty point for that liquor falls; and
- (b) in relation to that sale, the purchaser takes delivery of the liquor on or after the excise duty point.

Excluded sales

10. The Commissioners may prescribe descriptions of sales that are excluded sales for the purposes of Part 6A of the Act.

PART 3 GROUPS

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

11. This Part applies where two or more bodies corporate are members of a group for the purposes of Part 6A of the Act (for which see section 88J of the Act (a)).

12.—(1) Where this Part applies, an application may be made for each member of the group who is required to be approved under section 88C of the Act to be approved and registered under a single registration (“group treatment”).

(2) In this regulation “registered” means entered on the register maintained by the Commissioners in accordance with section 88D(1) of the Act (b) and “registration” is construed accordingly.

(a) Section 88J was inserted by section 54(3) of the Finance Act 2015.
(b) Section 88D was inserted by section 54(3) of the Finance Act 2015.

13.—(1) The application must contain 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 for group treatment.

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

(3) The Commissioners may require the person making the application to make a declaration that the information is true and complete.

(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 under this Part as a member of more than one group at the same time.

Applications by a representative member

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

- (a) another body corporate (which is eligible under this Part) to be treated as a member of the group;
- (b) a body corporate to cease to be treated as a member of the group;
- (c) the bodies corporate no longer to be treated as members of the group; or
- (d) 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 (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 all of the members of the group.

Applications by group members other than the representative member

15.—(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

16.—(1) The Commissioners may, by notice given to a body corporate, terminate its treatment as a member of a group from a date which is specified in the notice.

(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 fewer 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 which is specified in the notice.

PART 4

ELECTRONIC COMMUNICATION

Delivery of information

17.—(1) Save as the Commissioners may otherwise allow in any particular case, relevant information must be delivered to the Commissioners electronically in accordance with paragraph (2) (an “electronic communication”).

(2) The Commissioners must prescribe the form and method of electronic delivery of relevant information under paragraph (1) (a “prescribed electronic method”).

Validation of an electronic communication

- 18.**—(1) A prescribed electronic method must incorporate an electronic validation process.
- (2) Unless the contrary is proved—
- (a) the use of a prescribed electronic method will be presumed to have resulted in the making of an electronic communication to the Commissioners only if this has been successfully recorded as such by the relevant electronic validation process;
 - (b) the time of making of an electronic communication to the Commissioners using a prescribed electronic method will be presumed to be the time recorded as such by the relevant electronic validation process; and
 - (c) the person making an electronic communication to the Commissioners will be presumed to be the person identified as such by any relevant feature of the prescribed electronic method.

Electronic communication by the Commissioners

19.—(1) Where a person has communicated with the Commissioners by means of a prescribed electronic method in respect of an approval given under section 88C of the Act, the Commissioners may issue an electronic acknowledgement of the communication.

- (2) Where a person has—
- (a) applied for approval by a prescribed electronic method;
 - (b) notified the Commissioners by a prescribed electronic method; or
 - (c) otherwise communicated with the Commissioners by a prescribed electronic method,

the Commissioners may communicate electronically with the person in respect of that application, notification or communication.

PART 5

PENALTIES

Interpretation of this Part

20. In this Part “P” means a person who contravenes a requirement of these Regulations or any condition or restriction to which P’s approval to carry on a controlled activity is subject.

Liability to a penalty

- 21.**—(1) A penalty is payable by P.
- (2) The amount of the penalty is £500 for each contravention.

Assessment and recovery

22.—(1) Where P is liable to a penalty under regulation 21, the Commissioners may assess the amount due by way of penalty and notify P, or P’s representative, accordingly.

- (2) The notification must state the contravention in respect of which the penalty is assessed.
- (3) Two or more contraventions may be treated by the Commissioners as a single contravention for the purposes of assessing a penalty under this regulation.
- (4) A penalty under this regulation must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (5) An assessment is to be treated as an amount of duty due from P under the Act and may be recovered accordingly.

(6) An assessment of a penalty under this regulation 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.

(7) In this regulation “representative” means a person’s personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to that person or any of that person’s property or any other person acting in a representative capacity in relation to that person.

Reasonable excuse

23.—(1) Liability to a penalty does not arise under regulation 21 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 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.

(3) Where it appears to the Commissioners or (on an appeal made to the appeal tribunal) the tribunal that there is no reasonable excuse for continuation of conduct for which there was at first a reasonable excuse, liability to a penalty under regulation 21 is to be determined as if the conduct began at the time when there ceased to be a reasonable excuse for its continuation.

(4) In this regulation “appeal tribunal” has the same meaning as in Chapter 2 of Part 1 of the Finance Act 1994^(a).

Joint and several liability of members of a group

24. All bodies corporate who, in accordance with Part 3 of these Regulations, are treated as members of a group when any penalty under Schedule 2B of the Act, or these Regulations, becomes payable by the representative member, together with any bodies corporate who become treated as members of the group while any penalty remains unpaid, are jointly and severally liable for any penalty payable by the representative member.

PART 6

FORFEITURE

Forfeiture

25.—(1) Paragraph (2) applies if a person (“P”) contravenes—

- (a) section 88C(1) of the Act (approval to carry on controlled activity);
- (b) any condition or restriction imposed under Part 6A of the Act; or
- (c) these Regulations.

(2) Where this paragraph applies, any dutiable alcoholic liquor (whether or not charged with any duty and whether or not that duty has been paid) which is in the possession, custody or control of P for the purposes of carrying on a controlled activity is subject to forfeiture.

(3) If P is a body corporate that is treated as a member of a group in accordance with Part 3 of these Regulations, paragraph (2) applies to any dutiable alcoholic liquor which is in the possession, custody or control of any member of the group for the purposes of carrying on a controlled activity.

(4) Paragraph (5) applies if a person (“P”) contravenes section 88F^(b) of the Act (restriction on buying controlled liquor wholesale).

(a) 1994 c. 9, relevantly amended by S.I. 2009/56.

(b) Section 88F was inserted by the Finance Act 2015, section 54(3).

(5) Where this paragraph applies, any dutiable alcoholic liquor (whether or not charged with any duty and whether or not that duty has been paid) purchased in contravention of section 88F and which is in the possession, custody or control of P is subject to forfeiture.

(6) If P is a body corporate that is treated as a member of a group in accordance with Part 3 of these Regulations, paragraph (5) applies to any dutiable alcoholic liquor purchased in contravention of section 88F which is in the possession, custody or control of any member of the group.

*Edward Troup
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15th July 2015

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 88C of the Alcoholic Liquor Duties Act 1979 (c. 4) (“the 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. A “controlled activity” is defined in section 88A(8) of the Act. Section 88F of the Act provides that a person may not buy controlled liquor wholesale from a UK person unless the UK person is such an approved person.

These Regulations make provision about applications for approval (including the approval and registration of bodies corporate that are members of the same group), the issuing of letters of registration to approved persons, requirements to notify changes in registration particulars, the assignment of unique reference numbers to approved persons, the revocation and variation of an approval, record keeping requirements for approved persons, the imposition of conditions and restrictions on an approval, sales that are treated as sales of controlled liquor and the making of electronic communications.

They also impose a penalty of £500 for each contravention of a requirement of the Regulations or any condition or restriction to which an approval is subject, and provide for the assessment and recovery of such penalties. They also make corporate bodies that are treated as member of a group in accordance with Part 3 of the Regulations jointly and severally liable for any penalty under Schedule 2B of the Act or these Regulations.

The Regulations also provide for dutiable alcoholic liquor to be subject to forfeiture where a person contravenes section 88C or section 88F of the Act, any condition or restriction imposed under Part 6A of the Act, or the Regulations.

A Tax Information and Impact note (TIIN) covering this instrument was published on 10th December 2014 alongside draft clauses of the Finance Bill 2015 and is available on the government website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

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