



## ALCOHOLIC LIQUOR DUTIES ACT 1986 (AMENDMENT) ORDER 2015

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Statutory Document No. 2015/0162



*Alcoholic Liquor Duties Act 1986*

## **ALCOHOLIC LIQUOR DUTIES ACT 1986 (AMENDMENT) ORDER 2015**

*Approved by Tynwald: 19<sup>th</sup> May 2015*

*Coming into operation in accordance with article 2*

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The Treasury makes the following Order under section 180 of the Customs and Excise Management Act 1986, as applied by section 72(2) of the Alcoholic Liquor Duties Act 1986.

### **1 Title**

This Order is the Alcoholic Liquor Duties Act 1986 (Amendment) Order 2015.

### **2 Commencement**

- (1) Subject as follows, the amendments made by this Order come into operation on 1 June 2015<sup>1</sup>.
- (2) So far as relating to section 71C(1) of the Act, article 5 comes into operation on 1 January 2016 (but see paragraph (5) for the application of section 71C(1) in cases where an application has been made but not disposed of by that date).
- (3) So far as relating to section 71F of the Act, article 5 comes into operation on such day as the Treasury may by regulations appoint.
- (4) An application for a person to be approved under section 71C of the Act may not be made before 1 October 2015.
- (5) Where such an application made before 1 January 2016 has not been disposed of by that date, section 71C of the Act does not apply in relation to the person until the application is disposed of.

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<sup>1</sup> Section 180(3) of the Customs and Excise Management Act 1986, as applied by section 72(2) of the Alcoholic Liquor Duties Act 1986, provides that the Treasury may by order add to, amend, vary or repeal any provision of the Act in such manner as may appear to it expedient for the purpose of making the Act correspond (subject to such modifications, exceptions or adaptations as it considers appropriate) with the like legislation from time to time in operation in the United Kingdom, but no such order shall come into operation until it has been approved by Tynwald.

- (6) An application is “disposed of” when —
- (a) it is determined by the Treasury;
  - (b) it is withdrawn; or
  - (c) it is abandoned or otherwise ceases to have effect.

### **3 Interpretation**

In this Order, “the Act” means the Alcoholic Liquor Duties Act 1986.

### **4 Amendment of section 74 of the Act**

- (1) Section 74 (interpretation) of the Act is amended as follows.
- (2) In subsection (1), in the definition of “wholesale”, after ““wholesale”” insert “(except in Part VIA)”.<sup>22</sup>
- (3) In the Table in subsection (3), at the appropriate place insert —  
“excise duty point”<sup>22</sup>.
- (4) In subsection (4), after “Act” insert “(except in Part VIA)”.<sup>22</sup>

### **5 Wholesaling of controlled liquor**

- (1) After Part VI of the Act, insert —

## **PART VIA**

### **WHOLESALE OF CONTROLLED LIQUOR**

#### **71A Definitions**

- (1) This section defines certain expressions used in this Part.
- (2) 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.
- (3) 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,

and a reference to buying controlled liquor wholesale is to be read accordingly.

- (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 71J).
- (7) A sale is an “excluded sale” if it is of a description prescribed by or under regulations made by the Treasury.
- (8) “Controlled activity” means —
  - (a) selling controlled liquor wholesale;
  - (b) offering or exposing 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 wholesale, or offered or exposed for sale in circumstances in which the sale (if made) would be a wholesale sale.
- (9) “Island person” means a person who is established in the Island for the purposes of value added tax (see paragraph 1(10) of Schedule 2 to the Value Added Tax Act 1996).
- (10) “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<sup>2</sup> (an Act of Parliament)).

## **71B Further provisions relating to definitions**

- (1) The Treasury 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.

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<sup>2</sup> 1994 c.23 (of Parliament).

- (2) The Treasury 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 71A(8)(b) or (c) (offering and exposing for sale and arranging for sale etc).

### **71C Approval to carry on controlled activity**

- (1) An Island person may not carry on a controlled activity otherwise than in accordance with an approval given by the Treasury under this section.
- (2) The Treasury may approve a person under this section to carry on a controlled activity only if it is satisfied that the person is a fit and proper person to carry on the activity.
- (3) The Treasury may approve a person under this section to carry on a controlled activity for such periods and subject to such conditions or restrictions as it thinks fit or as it may by or under regulations made by it prescribe.
- (4) The conditions or restrictions may include conditions or restrictions requiring the controlled activity to be carried on only at or from premises specified or approved by the Treasury.
- (5) The Treasury 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.

### **71D The register of approved persons**

- (1) The Treasury must maintain a register of approved persons.
- (2) The register is to contain such information relating to approved persons as the Treasury considers appropriate.
- (3) The Treasury may make publicly available such information contained in the register as it considers 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 by such means (including on the internet) as the Treasury considers appropriate.

### **71E Regulations relating to approval, registration and controlled activities**

- (1) The Treasury 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 71D;
  - (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 Treasury, to be made electronically;
  - (b) as to the procedure for the approval and registration of bodies corporate who are members of the same group and for members of such a group to be jointly and severally liable for any penalties imposed under –
    - (i) the regulations; or
    - (ii) Schedule 2B;
  - (c) requiring approved persons to keep and make available for inspection such records relating to controlled activities as may be prescribed by or under the regulations;
  - (d) imposing a penalty of an amount prescribed by the regulations (which must not exceed £1,000) for a contravention of –
    - (i) the regulations; or
    - (ii) any condition or restriction imposed under this Part;
  - (e) for the assessment and recovery of such a penalty; and
  - (f) 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.

### **71F Restriction on buying controlled liquor wholesale**

- (1) A person may not buy controlled liquor wholesale from an Island person or a UK person unless that person is an approved person in relation to the sale.
- (2) In subsection (1), “approved person” includes a person approved by the Commissioners of Revenue and Customs under section

88C of the Alcoholic Liquor Duties Act 1979 (an Act of Parliament)<sup>3</sup>.

### 71G Offences

- (1) A person who contravenes section 71C(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 71C(1) by offering or exposing 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 71C(1) by arranging in the course of a trade or business for controlled liquor to be sold wholesale, or offered or exposed 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 arrange for the liquor to be sold wholesale.
- (4) A person who contravenes section 71F is guilty of an offence if the person knows or has reasonable grounds to suspect that the Island person or the UK person, as the case may be, 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) custody for a term not exceeding 6 months;
  - (b) a fine; or
  - (c) both.
- (6) A person guilty of an offence under this section is liable on conviction on information to —
  - (a) custody for a period not exceeding 7 years;
  - (b) a fine; or
  - (c) both.

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<sup>3</sup> 1979 c.4 (of Parliament); section 88C was inserted by means of section 54 of the Finance Act 2015 c.11 (of Parliament).



### **71H Penalties**

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

### **71I 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; and
- (d) may confer a discretion on the Treasury.

### **71J 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 Island or 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 1 of the Companies Act 1974.
- (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 1 of the Companies Act 1974; and
  - (b) a body corporate is established or has a fixed establishment in the Island or the United Kingdom if it is so established or has such an establishment for the purposes of value added tax.

**71K Index**

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

approved person	section 71C(6)
authorised retail sale	section 71A(5)
controlled activity	section 71A(8)
enactment	section 71A(10)
group (in relation to bodies corporate)	section 71J(1)
group sale	section 71A(6)
incidental sale	section 71A(4)
Island person	section 71A(9)
sale of controlled liquor	section 71A(2)
UK person	section 71A(10)
wholesale	section 71A(3). <del>22</del> .

**6 Penalties for contraventions of Part VIA**

After Schedule 2A insert —

**~~22~~ SCHEDULE 2B**

[Section 71H]

**PENALTIES FOR CONTRAVENTIONS OF PART VIA****1 Liability to penalty**

A penalty is payable by a person (“P”) who contravenes section 71C(1) or 71F.

**2 Amount of penalty**

- (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.

### 3 Reductions for disclosure

- (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 Treasury about it;
  - (b) giving the Treasury reasonable help in identifying any other contraventions of section 71C(1) or 71F of which P is aware; and
  - (c) allowing the Treasury 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 Treasury has discovered or is 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 Treasury 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, 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.

## 5 Special reduction

- (1) If the Treasury thinks it right because of special circumstances, it 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.

## 6 Assessment

- (1) Where P becomes liable for a penalty under this Schedule, the Treasury 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 Treasury to indicate the contravention comes to its knowledge.
- (5) Two or more contraventions may be treated by the Treasury as a single contravention for the purposes of assessing a penalty under this Schedule.

## 7 Reasonable excuse

- (1) Liability to a penalty does not arise under this Schedule in respect of a contravention which is not deliberate if P satisfies the Treasury 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.

## 8 Companies: officer's liability

- (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 Treasury may specify by written notice to the officer.
- (2) Sub-paragraph (1) does not allow the Treasury to recover more than 100% of a penalty.
- (3) In the application of sub-paragraph (1) to a body corporate, "officer" means —
  - (a) a director (including a shadow director);
  - (b) a manager;
  - (c) a secretary; and
  - (d) the registered agent of a limited liability company registered pursuant to the Limited Liability Companies Act 1996.
- (4) In sub-paragraph (3), "shadow director" means a person in accordance with whose directions or instructions the directors of the company are accustomed to act. However, a person is not deemed a shadow director by means only that the directors act on advice given by him or her in a professional capacity.
- (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 Treasury has 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, limited liability company or unincorporated association, but does not include a partnership.


## **9 Double jeopardy**

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.

## **10 The maximum amount**

- (1) In this Schedule “the maximum amount” means £10,000.
- (2) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, it may by regulations substitute for the sum for the time being specified in sub-paragraph (1) such other sum as appears to it to be justified by the change.
- (3) In sub-paragraph (2), “relevant date” means —
- (a) 26 March 2015; 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.

## **11 Appeal tribunal**

In this Schedule “appeal tribunal” means the VAT and Duties Tribunal as established pursuant to Schedule 13 to the Value Added Tax Act 1996. .

MADE 22<sup>ND</sup> APRIL 2015

**W E Teare**  
*Minister for the Treasury*

*EXPLANATORY NOTE**(This note is not part of the Order)*

This Order amends the Alcoholic Liquor Duties Act 1986 (“the Act”) to provide for the introduction of an Alcoholic Wholesalers Registration System (“AWRS”) from 1 October 2015.

The Order inserts a new Part VIA into the Act which requires those that wholesale dutiable alcohol (“controlled liquor”), where the excise duty point (i.e. the point where duty becomes payable on that product) falls at or before the time of sale, to be approved by, and registered with, the Treasury. Persons will only be able to buy controlled liquor wholesale from an approved person, that is to say a person approved and registered under AWRS in the Island or the United Kingdom.

New section 71G provides criminal penalties for offences of selling, or offering or exposing for sale or arranging the selling or offering or exposing for sale, of controlled liquor by a person who is not an approved person (contrary to section 71C). Criminal penalties are also provided for offences where a person knows or has reasonable grounds to suspect that a person from whom controlled liquor is bought is not an approved person in relation to the sale (contrary to section 71F). A new Schedule 2B is also added to the Act which details other civil penalties for contraventions of Part VIA.

A new section 71I also allows the Treasury to make regulations.