



## **ALCOHOL DUTY REVIEW: FURTHER TECHNICAL DETAIL CONSULTATION NOVEMBER 2022**

### **ABOUT SIBA**

The Society of Independent Brewers (SIBA) was established in 1980 to represent the growing number of independent breweries in the UK. Today SIBA has around 700 brewery members.

SIBA's membership encompasses a broad range of brewers from very small nano-breweries to larger firms owning pubs, taprooms and shops. Its members produce approximately 6% of the beer consumed in the UK, while the vast majority of UK beer production is in the hands of four global breweries, which account for around 88% of the entire market. The balance is made up of other internationally owned brands and a number of large, regional 'family' brewers.

Our members are a key part of the hospitality sector responsible for more than 2,000 licensed premises. Around 40% of our members own, lease and rent pubs and 70% run a taproom, shop or visitor centre on the brewery site.

Small breweries in the UK employ about 10,000 full time equivalents and directly contribute around £270 million to GDP each year. The brewing sector as a whole is a major contributor to the Treasury, responsible for approximately 30% of overall alcohol receipts.

Small breweries employ a considerable number of people and generate a disproportionate amount of Treasury revenue through other direct taxes as a result. They also contribute directly to local economies, local communities and are forces for good in the world.

### **CONTACT INFORMATION**

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## INTRODUCTION

Given the critical importance of the alcohol duty system for small and independent brewers, SIBA welcomes the opportunity to provide further technical assistance to ensure this once in a generation opportunity to reform the system is not missed.

SIBA supports the introduction of the draught duty rate and is grateful to the Treasury and to Ministers for listening to SIBA's concerns and expanding this to include the 20 and 30 litres that are used by small breweries and community pubs. Our members hope that over time the Treasury will consider raising the relief from 5% to 20% or more. However, SIBA has concerns about the impact of some of the technical aspects which could harm pubs, bottle shops and others who rely on the sale of takeaway beer. In the response below we have detailed ways to amend the draft legislation so that this important aspect continues to be permitted while ensuring that the objectives of draught duty are achieved.

Many of our members were disappointed that draught duty and the other positive aspects of the reforms have been delayed beyond February next year. These had already been factored into their business planning for next year and for a typical brewery between 5-10,000 hectolitres (hl) the cost of the delay is around £25,000. Managing the transition two thirds of the way through the brewing year and half way through the fiscal year will add additional upheaval for small businesses. SIBA has therefore called for arrangements to smooth this transition by allowing breweries to use their 2021 total production to determine their relief for the January-July period next year. We hope that the Treasury will agree to this.

While welcoming the ambition to expand the successful Small Breweries' Relief (SBR) on its 20<sup>th</sup> anniversary to other alcoholic products under Small Producer Relief (SPR), it will add new complexities for small producers who will have to apply and consider cash reliefs and tapers in hectolitres of pure alcohol (HPLA). Such changes have never before been tried or tested and the compound effect could be substantial on the brewing sector and on consumers. It is imperative that the final details are right and then regularly reviewed to ensure that any negative impact is addressed. SIBA hopes that support with the transition will be provided, especially for smaller producers. SIBA was pleased that the Treasury has listened to our views on the average ABV to set the taper as well as changes to the farmgate exemption so that these producers must register with HMRC.

SIBA remains concerned that small brewers will be caught in the middle and squeezed on two fronts by the impact at the lower alcohol level and the lack of equivalence with cider duty. We continue to believe that the full SBR differential should be maintained at the lower level so that small brewers have a chance to compete against the Global brewers that dominate the sector and that cider duty should be equalised.

While outside the scope of the technical consultation, it should be acknowledged that this is an extremely challenging time for the sector which has not yet recovered from the impacts of the Covid-19 pandemic nor built the resilience it needs. Production fell nearly 40% in 2020 compared to 2019 levels and last year remained 16% below 2019 levels and small breweries now face the combined impacts of energy price increases, supply constraints and a cost of



living crisis. More than 160 active breweries closed for good over the pandemic and at least 60 have closed this year with more on the brink.

SIBA is also concerned that independent breweries in Northern Ireland (NI) will continue to be disadvantaged under the changes to the alcohol duty system and strongly believes that the system changes should fully apply in NI. Under the NI Protocol they are currently placed at a disadvantage in procuring raw materials from Great Britain (GB) and the divergence in the alcohol duty system from EU regulations will cause further friction for the internal market. If the duty changes do not apply then HMRC should give urgent consideration to facilitate frictionless trade between NI and GB and introduce straightforward processes to allow NI breweries to pay duty at the new rate on sales to GB.

## **DRAUGHT RELIEF**

### **Q1 - DOES THE DISPENSE SYSTEM CRITERIA OUTLINED IN THE DRAFT LEGISLATION ADEQUATELY DISTINGUISH BETWEEN ON AND OFF TRADE CONTAINERS? IS THERE AN OPPORTUNITY FOR ELIGIBLE CONTAINERS TO BE DIVERTED TO THE OFF-TRADE?**

SIBA fully supports the introduction of a Draught Relief and is thankful to the Government for listening to the concerns of small breweries and expanding the eligibility criteria to include 20 and 30 litre containers. Thirty percent of the containers used by small breweries are smaller than 40 litres but this can range up to 100% for those who only produce keg beer.<sup>1</sup> Their inclusion will ensure that the UK's independent brewers and community pubs can fully benefit from this new initiative.

The key objective of the Draught Relief is to support the on-trade, in particular the community pubs which were so badly impacted by the Covid-19 pandemic. Pubs provide a supervised environment for the consumption of alcohol as well as supporting other social objectives such as reducing loneliness and providing a community space. They are deserving of further support and have come under particular pressure in recent years through a combination of economic and regulatory changes.

We fully agree with the Government's objective to support the on-trade and to ensure that the Draught Relief is not open to abuse or fraudulent activity, nor result in large retailers, such as supermarkets, entering the draught beer market. However we are concerned that the Government's strident approach will lead to some unwelcome consequences for the community pubs that we all wish to support, along with independent bottle shops around the country.

Currently there are thousands of independent bottle shops and pubs as well as brewery taprooms and shops that serve takeaway beer. In Table 1 we have listed the range and type of venues that may offer this service, although the amount could significantly vary. While we

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<sup>1</sup> SIBA's survey of 172 small brewers detailed in the January 2022 consultation response

are not able to offer a figure we could estimate that it could vary from 40-200 litres per month.

**TABLE 1**

Type of venue	Typical type of takeaway
Rural community pub	Carton/flagon/ bottle of cask beer
Micropub	Carton/ flagon/ bottle of cask beer
Town centre pub	Carton/ flagon/ bottle of cask beer. Some may offer growler/ crowler of keg beer
Independent bottle shop	Growler/ crowler of keg beer
Beer festival	Carton/flagon/ bottle of cask beer
Brewery taproom or shop	Carton/flagon/ bottle/ growler/ crowler of keg or cask beer

This practice has existed for centuries and is often seen in rural pubs for patrons who are driving and cannot enjoy a fresh pint during their visit. There are also thousands of unlicensed restaurants that rely on the pub next door to provide their customers with beer to enjoy during their meal. Equally at beer festivals they ensure that no beer is wasted.

Takeaway beer has expanded through necessity during the pandemic when pubs were closed by the Government and was assisted by the temporary automatic off-licence introduced in the Business and Planning Act, which has recently been extended. Growlers and other containers that are reusable also support sustainability goals and the Government’s desire to incentivise greater uptake of reuse and refill business models. In recent years innovative businesses have entered the beer market in response.<sup>2</sup>

This beer is poured from the draught dispense and placed into different sized containers which can include growlers and cartons. A list of typical containers is provided in Table 2. In line with its sustainability policies, SIBA applauds takeaway beer in reusable containers such as glass growlers. It would be unfeasible for premises to have separate kegs or casks to serve takeaway sales which would also affect the freshness of the beer being sold. Nor would the supplier or brewer know how much has been sold for on-premise consumption, given that takeaways could be just a few pints of a 9 or 18 gallon cask.

**TABLE 2**

Type	Typical size	Material
Beer carton	2 pints	cardboard
Takeaway milk bottles	2-4 pints	plastic
Expandable beer carrier	4 pints	plastic
Beer flagon	4 pints	plastic
Growlers	2-5 pints	glass
Crowlers	1-1.5 pints	aluminium

The draft legislation introduces a repackaging restriction for qualifying draught products where authorisation is required to repackaging draught beer into smaller containers that are not for immediate consumption. Authorisation is only available to those approved under section 37 (such as producers) or in an excise warehouse. Failure to be authorised can result in a penalty fine and forfeiture of the alcoholic products and dispensing equipment. As the

<sup>2</sup> For example the Filling Station - <https://www.thefilling-station.com/>



vast majority of the beer consumed in pubs is below 8.5% ABV and arrive in large draught containers, they would by definition be qualifying draught products and the draft legislation does not appear to allow pubs to buy non-qualifying draught products below 8.5%. As pub landlords would be unlikely to qualify for authorisation, or, if they did, would find the process burdensome and place further pressure on HMRC resources, they would not be permitted to sell takeaway beer as they currently do. It is not clear whether independent breweries who are already approved can continue to sell beer in takeaway containers from their brewery shops and taprooms.

SIBA believes that there are other solutions that HMRC could include in the legislation to permit takeaway beer to continue from community pubs without large retailers such as supermarkets benefitting from the new system.

### **Proposed amendment 1**

Change the definition of qualifying draught products to refer to the understanding that a majority of the alcoholic product will be consumed on the premises that it is supplied to. This would include the following amendment:

#### *8. Alcoholic products qualifying for draught relief*

*“Qualifying draught products” means alcoholic products that:*

*Are of an alcoholic strength of less than 8.5%,*

*At the excise duty point are packaged in large draught containers, and*

*Where the majority of the alcoholic product is intended for consumption on the premises to which it is supplied*

And remove the sections on repackaging.

### **Proposed amendment 2**

Change the definition of qualifying draught products to state that they should be intended to be sold in premises with an on-licence under the Licensing Act 2003. This would permit breweries to also sell non-qualifying draught products in large draught containers with the full duty paid instead of applying the draught relief in circumstances where the bottle shop only has an off licence and wishes to only sell takeaway beer. This would include the following amendment:

#### *8. Alcoholic products qualifying for draught relief*

*“Qualifying draught products” means alcoholic products that:*

*Are of an alcoholic strength of less than 8.5%,*

*At the excise duty point are packaged in large draught containers, and*

*Are intended to be sold to premises that are permitted under the Licensing Act 2003 to supply alcohol for consumption on the premises*

And remove the sections on repackaging.



**Q2 - DO THE DISPENSE SYSTEM CRITERIA OUTLINED IN THE DRAFT LEGISLATION CAPTURE 'BAG IN A BOX' FORMATS? IF NOT, ARE THERE DESIGN CRITERIA FOR 'BAG IN A BOX' FORMATS USED IN THE ON-TRADE WHICH DISTINGUISH THEM FROM CONTAINERS USED IN THE OFF-TRADE?**

The dispense system criteria outlined in the draft legislation does appear to capture 'bag in a box' that can be connected to hand pump lines using a connector. The Government should also clarify that the definition allows gravity dispensed beer. SIBA would like to see the Government consider ways to encourage the use of reusable draught containers as most small breweries use stainless steel firkins and kegs which are used multiple times for many years.

**Q3 - OTHER THAN THE FACT THEY ARE PRESSURISED, DESIGNED TO BE CONNECTED TO A DISPENSE MECHANISM AND THE SIZE OF THE CONTAINERS, ARE THERE ANY OTHER DISTINGUISHING CHARACTERISTICS OF DRAUGHT CONTAINERS WHICH CAN BE EASILY IDENTIFIED AT THE DUTY POINT AND WHICH WOULD ENSURE THAT THE PRODUCT CAN ONLY BE SOLD IN THE ON-TRADE?**

SIBA believes these are adequate ways to distinguish draught containers. It should be emphasised that cask beer containers are not pressurised as suggested in the question but this has been made clear in the draft legislation. As highlighted above, the Government should consider how Draught Relief sits within its sustainability goals and consider ways to encourage the use of reusable draught containers.

**Q4 - IS DEFINING A DISPENSE SYSTEM NECESSARY TO ENSURE THE RELIEF ONLY BENEFITS THE ON-TRADE? WOULD REMOVING THIS REQUIREMENT AND RELYING ON THE CONTAINER SIZE BE SUFFICIENT TO ENSURE PRODUCTS WERE NOT DIVERTED TO THE OFF-TRADE?**

Defining the dispense system is an unnecessary complication in the draft legislation and draught duty relief will be able to operate without its inclusion. SIBA's suggested amendment above should also help to ensure that products are not diverted to the off-trade.

**SMALL PRODUCER RELIEF**

**Q5 - WOULD THE PROPOSED DESIGN OF THE SMALL PRODUCER RELIEF (SPR) AS OUTLINED IN THE CONSULTATION RESPONSE ACHIEVE THE GOVERNMENT'S OBJECTIVE OF PROVIDING A MORE GENERAL FORM OF RELIEF TO SMALL PRODUCERS IN A WAY THAT IS CONSISTENT WITH THE ALCOHOL REVIEW'S WIDER OBJECTIVES?**



The expansion of Small Breweries' Relief (SBR) to include other products under Small Producer Relief (SPR) underlines the important contribution the scheme has made to brewing over the past 20 years. While SPR does provide a more general form of relief to small producers it may not be fully consistent with the Government's stated objectives to simplify the current system, make the basis of alcohol taxation more economically rational or reduce the administrative burdens.

## **HLLPA**

As stated in our previous consultation submission, the move to Hectolitres of Pure Alcohol (HLLPA) adds an additional complexity for small businesses who now have to consider their average ABV as well as their total production. They will then have to use a new formula and refer to eight different look up tables to determine their rate of duty according to the product type and strength. This move to HLLPA will also act as a 'cash cap' and discourage breweries from producing the full range of products and discourage innovation. In particular it will severely impact those small breweries that have established a business predicated on a higher average ABV.

SIBA still has concerns about the change from a percentage basis to a cash basis and the lack of clarity whether this would be updated in line with the main rates to maintain equivalence. We do not want to see the cash value of Small Producer Relief eroded away over time by decisions made at the Budget about the main duty rate and not reflecting these in the cash basis rate.

## **LOWER RATE**

Currently small breweries receive full duty relief between 2.9-3.4% but under the new changes a typical brewery at 2,000hl (90HLLPA) will receive a maximum of 25% relief in cash terms. As the brewing industry is dominated by a few extremely large producers that control 90% of the market, it is small breweries' relative competitiveness which provides them with the ability to operate. Expanding the reduced rate from 2.9% to 3.4% will result in many leading brands reducing their ABV to benefit which will undermine the small brewers' ability to compete. It is likely that the Global breweries will then use the duty savings to aggressively expand their share of the space on the bar.

SIBA believes that the Treasury has underestimated the cost of this policy to the Exchequer (see Table 3 for revised published Treasury costs) and our analysis shows that if just the top nine leading major brands of lager and bitter in the on trade reduced their ABV to below 3.5% it would cost the Treasury £200 million a year in lost revenue.<sup>3</sup>

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<sup>3</sup> Based on SIBA analysis of information available of the total production and ABV of nine top brands sold in the UK

**TABLE 3**

Alcohol duty changes £ millions		2022-23	2023-24	2024-25	2025-26	2026-27
2021 figures (Budget 2021) <sup>4</sup>		-20	-115	-125	-140	-155
2022 adjustments (Growth Plan) <sup>5</sup>		+25	-15	-80	-30	-30
2022 new adjustments (Autumn Statement) <sup>6</sup>		+25	-25	-80	-25	-25

### HIGHER RATE

The decision to remove relief from the general rate of duty above 8.5% ABV will undermine the innovative new products that have emerged at this level in recent years including barrel aged imperial stouts, Barley wines and Double IPAs. These are products not generally made by Globally owned brewers. As an example, it will increase the duty rate for a 10% ABV cask of imperial stout from £60.92 to £103.52 – an increase of £40. At the same time these products will count towards a brewers’ total production under SPR and also penalise them if they do produce them by increasing their average ABV and reducing their overall relief. In the on-trade, these are specialist products sold in small volumes of a third or half a pint.

### OVERALL IMPACT

The move to HLPAs, coupled with the changes to the lower duty rate, may have a perverse impact on the small brewery sector. While the Government’s stated aim is to encourage the production of lower strength drinks, the extension of the lower rate (as explained in detail above) is highly likely to result in Global brewers reformulating their beers. Because the Treasury is not providing full relief at the lower level small breweries are unlikely to be able to compete at this level. They will be disincentivised from making lower alcohol products and therefore only be able to compete by producing higher ABV products. This will accordingly reduce their relief and create a vicious downward spiral for these businesses.

### SPIRITS/ OTHER PRODUCTS

Under SPR a producers’ total production across all categories will count for relief purposes including those products above 8.5% ABV that do not themselves benefit from SPR. Such a move will have significant negative implications for small brewers that currently produce other alcoholic products, particularly spirits. SIBA has found at least ten small brewers that are in this situation with others likely to be impacted. Many of these businesses have

<sup>4</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1043688/Budget\\_AB2021\\_Print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043688/Budget_AB2021_Print.pdf)

<sup>5</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1105989/CCS207\\_CCS0822746402-001\\_SECURE\\_HMT\\_Autumn\\_Statement\\_2022\\_BOOK\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1105989/CCS207_CCS0822746402-001_SECURE_HMT_Autumn_Statement_2022_BOOK_Web_Accessible.pdf)

<sup>6</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1118417/CCS1022065440-001\\_SECURE\\_HMT\\_Autumn\\_Statement\\_November\\_2022\\_Web\\_accessible\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1118417/CCS1022065440-001_SECURE_HMT_Autumn_Statement_November_2022_Web_accessible__1_.pdf)



diversified in recent years, which is something that the changes to the alcohol duty system are intended to recognise and encourage.<sup>7</sup> In previous correspondence with SIBA, the Exchequer Secretary stated that the changes will ensure “no brewer’s duty bill increases by more than 5%”<sup>8</sup>. Yet under these proposals a brewer will see their bill increase by 82% (see case study 2).

Below are two case studies of small brewers that have diversified to produce spirits as well as beer. They have told us that the changes currently proposed will result in them making fundamental changes to their business models including closing their breweries. In light of the impact on small businesses that have diversified and innovated, the Treasury should consider solutions such as changes to Small Producer Relief or allowing these businesses to be included within the HMRC’s discretionary powers for connected purposes.

### **CASE STUDY 1**

Currently this small brewery produces 7,780 hectolitres (hl) of beer each year. Their average ABV is 4.7%. This means that it produces 365.66 HPLA, which under the proposals in the consultation would be the equivalent of 8125 hectolitres.<sup>9</sup>

This business also produces spirits which equates to 800 HPLA per year. This means that their total production would be 1165.66 HPLA. Under the consultation proposals that could be the equivalent of producing 25,904 hl per annum.

Currently their duty for beer is £12.94, but if the changes are introduced in their current form this could increase to £15.26 in the off trade and £14.50 in the ontrade. This would place them at a competitive disadvantage in the beer sector. Their total duty bill for the brewery would increase from £473,000 to £548,270 (as they do 35% in the ontrade) a £75,270 increase.

### **CASE STUDY 2**

This small brewery has invested in its spirits business and intends for it to start production next year. They currently produce 5,000hl of beer at an average of 4.5% ABV, which equates to 225 HPLA.

They intend to produce 2,000 HPLA of spirits per year from 2023 with much of it going into cask for whisky production. This means that although they are producing 2,225 HPLA in total, they will not package this for many years. As SPR is based on the total amount of alcohol contained in alcoholic products produced on those premises they will be producing 2,225 HPLA per annum and therefore have to pay beer duty of £17.64 (off-trade) and £16.76 (on trade). This would take their total beer duty bill from £214,650 to £391,950 (they do 75% in the off trade and 25% in the ontrade). This would mean they are unable to compete in the beer sector and will have to reconsider their business.

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<sup>7</sup> Alcohol Duty Changes 2021, section 5.3 discusses the desire to make it easier for businesses to grow, diversify and adapt to customer demand

<sup>8</sup> See letter dated 15 June 2022 to SIBA

<sup>9</sup> Using the assumptions provided that the average ABV for the tapers is 4.5% ABV



## SMALL BUSINESS IMPACT ASSESSMENT

In the impact summary the Treasury has stated that the measure “is expected to have a negligible impact on up to 10,000 businesses”<sup>10</sup> and there is no published Regulatory Impact Assessment available. This has not taken account of the impacts outlined above which will result in some small firms going out of business. Those that rely on takeaway sales and produce spirits and beer are particularly impacted by these changes. SIBA believes that the Treasury should publish a full impact assessment given proper considerations to these changes.

## CALCULATING TOTAL PRODUCTION

SIBA has previously raised concerns that the definition of production does not take account of wastage where beer is packaged away from the brewery. The current system for calculating production volume includes beer which is sent in bulk to be packaged elsewhere and does not take account of wastage incurred during the packing process which can be as high as 10%. This means that beer which is wasted during packaging is counted towards the brewery’s production volume which in turn determines the duty rate which is applied to all the sales in the following year. This situation does not apply to beer packaged in house. As many smaller breweries outsource their “small pack” packaging, they are consequently disadvantaged.

The changes in the draft legislation seem to address this issue as it does not include in the alcohol production amount any alcoholic products that are spoilt or disposed of before the excise duty point. SIBA would appreciate it if HMRC could clarify this point in the regulations. In addition, some of our members also produce whisky which will be stored in duty suspense and will undergo evaporation as it matures and others produce a wash which is used by other spirits manufacturers. Again SIBA would appreciate it if HMRC could clarify this point in the regulations.

## Q6 - DO YOU AGREE THAT THE GOVERNMENT SHOULD USE AN AVERAGE ABV OF 4.5% AS THE BASIS FOR CONVERTING THE CURRENT SMALL BREWERS RELIEF (SBR) THRESHOLDS FOR USE IN SPR? IF NOT, WHAT WOULD YOU PROPOSE AS AN ALTERNATIVE AND WHY?

It is welcome that the Treasury has agreed to take into account the average ABV of small independent brewers rather than relying on the national average for beer of 4.2%. This is in line with evidence provided by SIBA taken from its robust members’ surveys which clearly shows that the average for small brewers is above 4.5% ABV.<sup>11</sup> However, as this is being applied to other products, SIBA would recommend also taking into account the averages of these as well. Cider has an average ABV of 4.9% and wine based Ready to Drink at 4.7%.<sup>12</sup>

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<sup>10</sup> <https://www.gov.uk/government/publications/reform-of-alcohol-duty-rates-and-reliefs/reform-of-alcohol-duty-and-reliefs>

<sup>11</sup> Data provided to HM Treasury from SIBA’s 2019 and 2021 Members’ Surveys plus further data demonstrating that the average ABV by volume is above 4.5%

<sup>12</sup> BBPA Statistical Handbook 2021



Previously SIBA recommended three guiding principles that the Treasury should adopt in setting the tapers in HPLA:

1. It should be based on the average ABV of small producers and not the overall average ABV for the UK. This is because the average ABV is skewed towards the Global companies that dominate the alcohol sector and it is only fair that the tapers, which after all are only relevant to small producers, should be set by reference to the small producers.
2. It should be based on the average of all products made by small producers eligible for Small Producer Relief including beer, cider and spirits based products.
3. The average ABV should be reviewed initially after three years and then every five years to ensure that the scheme can be adapted to address undesired consequences.

**Q7 - DO YOU AGREE THAT THE MAXIMUM SIZE FOR BUSINESSES TO QUALIFY FOR THE RELIEF SHOULD BE 4,500 HECTOLITRES OF PURE ALCOHOL? IF NOT, WHAT WOULD YOU PROPOSE AS AN ALTERNATIVE AND WHY?**

In its response to the technical consultation on SBR, the Treasury decided to increase the largest size a producer could be to qualify from 60,000hl to 100,000hl which at an average of 4.5% would equate to 4,500 HPLA. SIBA supports this extension and believes that the three rules above should also be used to set the largest size in HPLA.

**Q8 - DO YOU AGREE WITH HOW PRODUCTION UNDER LICENCE SHOULD BE TREATED FOR SPR? IF NOT, HOW DO YOU THINK PRODUCTION UNDER LICENCE SHOULD BE TREATED?**

This is in line with the current SBR rules which is sensible to prevent abuse of the relief system. SIBA would welcome clarification that brewing under contract will continue as currently under SBR as this activity is more commonly found amongst small brewers. The HMRC Beer Guidance states that there is no strict definition of production under licence<sup>13</sup> and this has not been defined in the draft legislation. HMRC guidance also provides a general guide stating that under licence:

- *The producer has the right to brew an existing brand of beer, but the name and intellectual property rights are owned by a third party.*
- *The production and sale of the beer will be restricted by the terms of the licence, for example, certain container sizes can only be sold to specific geographical areas or customers.*
- *When sold, the beer will be the property of the producer and will be sold as their own product (the packaging will usually state that it is 'brewed under licence').*

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<sup>13</sup> <https://www.gov.uk/hmrc-internal-manuals/beer-manual/beer4050>



- *The brand owner will receive either a premium paid at the time of the licence agreement or a periodic royalty payment based on sales or production volumes.*

*In practice, brewing under licence usually only involves larger brewers.*

In comparison HMRC guidance on brewing under contract states<sup>14</sup>:

- *Brewer A is asked by brewer B to produce beer on his behalf. He may, for example, have suffered a fire and cannot use his own premises or equipment. Brewer B owns the brand.*
- *Brewer A produces the beer and invoices his services and material costs to Brewer B who then has full title to the beer.*
- *Brewer A is not involved in the marketing or promotion of the beer.*

*Duty on beer produced in this way would be chargeable at the rate payable by the producer, Brewer A.*

*The producing brewer must include the quantity produced in his end of year production figure. This may affect his future eligibility for reduced rates of duty, which should be borne in mind.*

Independent brewers would be content if these definitions are continued over for the new system.

## **SMALL CIDERMAKERS' EXEMPTION**

### **Q9 - DO YOU AGREE WITH THE GOVERNMENT'S PROPOSAL TO REPLACE THE SMALL CIDERMAKERS' EXEMPTION WITH A 100% REDUCTION IN DUTY (GIVING THE EFFECT OF A ZERO RATE) FOR THE SMALLEST CIDERMAKERS WITHIN THE BROADER SPR SCHEME?**

SIBA supports bringing those businesses which benefit from the 'farmgate exemption' under 5 HPLA to be required to register with HMRC and, if applicable, to be registered under AWRS. We did argue in our consultation response that the exemption should be removed as it can act as a barrier for cider makers to expand and provides an unfair competitive advantage to small cider producers. However applying the reduction across products eligible for SPR in this way and ensuring they are registered with HMRC provides a logical approach to address this issue and supports small cider makers to expand their businesses.

### **Q10 - DO YOU AGREE THAT THIS 100% REDUCTION IN DUTY SHOULD APPLY TO PRODUCERS PRODUCING 5 HPLA OR LESS PER YEAR? IF NOT, WHAT WOULD YOU PROPOSE AS AN ALTERNATIVE AND WHY?**

The proposed 5 HPLA level equates to 70 hl for cider at 7% and 110 hl for beer at 4.5%. This makes logical sense within the framework that the Treasury is proposing for SPR.

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<sup>14</sup> <https://www.gov.uk/hmrc-internal-manuals/beer-manual/beer4060>



## Q11 - DO YOU AGREE THAT THIS 100% REDUCTION IN DUTY SHOULD BE EXPANDED TO COVER ALL PRODUCTS BELOW 8.5% ABV RATHER THAN JUST APPLE AND PEAR CIDER?

As outlined above, SIBA believes that this provides a sensible approach to address the farmgate exemption and allow all producers below 8.5% ABV to move through the relief system.

### EFFECTIVE RATES AND TAPERS

## Q12 - DO YOU AGREE WITH THE PROPOSED EFFECTIVE RATES SET OUT IN THE RESPONSE DOCUMENT FOR DRAUGHT AND NON-DRAUGHT BEER, CIDER, WINE AND MADE-WINE AND SPIRITS FOR PRODUCTS BELOW 3.5% ABV, AND AT OR ABOVE 3.5% BUT BELOW 8.5% ABV?

### LOWER RATE

SIBA believes that the Treasury should retain the competitiveness of small independent brewers at the lower level below 3.5%. Without specific safeguards for small brewers, they will not be able to compete at this lower range. The table below (Table 4) demonstrates the likely impact for small brewers using the rates set out in the response document.

TABLE 4

Beer duty paid for a 72 pint firkin of 3.4% beer sold to the pub			
	Global brewer reformulates beer from 3.6% to 3.4%	Very small brewer producing 1,000hl stays at 3.4%	Small brewer producing 5,000hl stays at 3.4%
Current duty paid	£27.48	£12.97	£12.97
Proposed duty paid	£10.88	£7.25	£9.49
Difference	<b>-£16.60</b>	<b>-£5.72</b>	<b>-£3.48</b>
Current wholesale price	£66.99	£65	£65
Potential new price	£50.39	£59.28	£61.52
	Assumes new £8 draught products rate (per litre of pure alcohol) with a reduction of £2.67 at 45hlp and £1.02 at 225HLP		

It shows that currently a typical small brewer has the ability to compete on price against a much larger brewer with their 3.4% bitter compared to the 3.6% Global bitter brand for a standard firkin of beer. The Global brewer pays £27.48 in duty and charges a wholesale price of £66.99 whereas the small brewer pays 50% of the duty, £12.97, and sells the beer for £65. This enables the small brewer to pay a proportionate amount of duty to the Treasury, taking account of their significantly different economies of scale, use this to invest in their business and compete in the beer market.

Under the Treasury's proposals, the Global brewer responds by reformulating their beer from 3.6% to 3.4% to take advantage of the lower rate, reducing their duty bill from £27.48 to

£10.88. If they pass on all of the duty savings they could sell the firkin at £50.39, which is £16.60 cheaper than it was previously. This is a price that it is impossible for any independent brewer to compete with, even with a draught duty differential and lower rate factored in.

In comparison under the assumptions made in the consultation, a small brewer at 1000hl would get a cash relief of £2.67. While their duty bill falls to £7.25 (or £9.49 for a brewer at 5,000hl) they could only reduce their selling price to £59.28 if they passed on the full duty difference. This results in a price difference of £9 between the Global brewer and the small brewer, meaning that they can no longer compete at this level.

This could result in a perverse outcome where larger breweries reduce the ABV of their products but small brewers have to increase the average ABV of theirs to be able to compete, which further erodes their relief in HPLA, creating a vicious downward spiral. To alleviate these issues, SIBA proposes that the Treasury sets the cash relief at the lower level on the same curve as the main rate of duty which would result in these duty levels.

**TABLE 5**

	<b>HPLA</b>	<b>Non draught &lt;3.5%</b>	<b>Draught &lt;3.5%</b>
10		£2.11	£2.00
30		£3.51	£3.33
50		£3.79	£3.60
100		£4.00	£3.80
200		£4.29	£4.07
500		£5.50	£5.23
1000		£6.46	£6.13
4000		£8.34	£7.92
5000		£8.42	£8.00

## **EQUIVALENCE WITH CIDER**

The Treasury stated in the Alcohol Duty System consultation that “all products should be taxed in direct proportions to their ABV”<sup>15</sup> and that the “existing system for cider is unfair and distortive”<sup>16</sup>. Yet cider continues to benefit from a significantly lower rate of duty under the new system which is 46% of that for beer. Large producers of cider, which have a lower production cost than for beer, account for 87% of the volumes sold in pubs.<sup>17</sup> SIBA strongly believes this is unfair and a missed opportunity for the Treasury. Taxing them at the same rate could raise £360 million extra every year. The Treasury should therefore commit to a policy of achieving equivalence with cider duty.

<sup>15</sup> Alcohol Duty System Consultation

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1028702/20211026\\_Alcohol\\_Duty\\_Review\\_Consultation\\_and\\_CFE\\_response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1028702/20211026_Alcohol_Duty_Review_Consultation_and_CFE_response.pdf)

<sup>16</sup> Ibid

<sup>17</sup> See SIBA’s consultation response highlighting data from CGA



**Q13 - DO YOU AGREE WITH THE PROPOSED MODELS FOR THE NEW SPR TAPERS?**

**Q14 - IF NOT, WHAT WOULD YOU PROPOSE AS ALTERNATIVES AND WHY? PLEASE PROVIDE SUPPORTING INFORMATION ON YOUR PRODUCTION VOLUMES, STRENGTHS AND COSTS VIA THE SMALL PRODUCER SURVEY**

The tapers are in line with the changes outlined in the SBR technical consultation which was published in 2021. The move to HLPAs and the use of a series of lookup tables does add an additional complexity for small businesses and SIBA hopes that HMRC can publish an easy to use calculator for small breweries.

**MERGERS AND ACQUISITIONS**

**Q15 - DO YOU AGREE WITH THE PROPOSED TRANSITIONAL ARRANGEMENTS FOR SMALL PRODUCERS THAT MERGE WITH ONE OR MORE OTHER SMALL PRODUCERS? IF NOT, WHICH PARTS OF THE MERGERS AND ACQUISITIONS RULES DO YOU DISAGREE WITH? HOW DO YOU THINK THEY SHOULD BE CHANGED?**

**Q16 - DO YOU AGREE THAT IF A PRODUCER'S PRODUCTION DROPS AND THE TRANSITIONAL ARRANGEMENTS PROVIDE A LESS GENEROUS SPR RATE THAN THE USUAL RULES, THE TRANSITIONAL ARRANGEMENTS SHOULD TERMINATE?**

**Q17 - DO YOU AGREE WITH THE PROPOSALS FOR DE-MERGER SITUATIONS?**

This is in line with the proposals outlined in the SBR technical consultation and SIBA agrees with the proposals.

**OTHER SPR QUESTIONS**

**Q18 - DO YOU AGREE THAT THE CONNECTEDNESS TEST TO DETERMINE WHETHER BUSINESSES ARE ECONOMICALLY COOPERATING SHOULD BE, AS NOW FOR SBR, (I.E. LINKED TO S. 1122 OF THE CORPORATION TAX ACT 2010)? IF NOT, WHAT WOULD YOU SUGGEST AS AN ALTERNATIVE?**

This is in line with the current policy for SBR and SIBA has no suggestions for an alternative. However, as SIBA has previously highlighted, HMRC should provide clarification around modern collaborations and section 17 in the draft legislation.



It is increasingly common for brewers to jointly produce a beer which is marketed as a collaboration brew between breweries, or 'collabs'. These beers are special, often one off and limited production runs. They primarily serve three purposes; to generate interest and drive sales in a 'special' beer that has never been made before, develop links within the brewing industry and act as a mechanism for two breweries to learn from each other and professionally develop their staff.

Such breweries are otherwise un-connected. Provided that the host brewery owns the beer, then this counts as production volume for the host brewery and pays duty at its own rate on any sale. However, clarification is needed that under the draft legislation they will not be considered connected or group premises for the purposes of calculating the respective SPR rates of duty and that any brewery who participates in a number of modern collaborations will not be treated as connected or group premises with the various other breweries.

For example a brewer from Brewery B will attend the premises of Brewery A to participate in the brewing of a beer. The recipe may be agreed in advance or simply be an ad hoc brew to a pre agreed abv and beer style. Similarly the representative from Brewery B may only be a junior or trainee brewer or indeed the "collaboration" recipe may have been pre agreed by email with the person present from Brewery B merely there as a token presence or training exercise. Brewery A will package the beer and sell it into the market using its own applicable SPR rate to account for duty. The beer will typically be marketed as "a collaboration between breweries A and B". If Brewery B wishes to sell any of the beer, Brewery A will first sell this to Brewery B fully duty paid.

### **Q19 - DO YOU AGREE THAT COMPOUNDERS AND RECTIFIERS OF DUTY-SUSPENDED SPIRITS SHOULD BE EXCLUDED FROM SPR?**

SIBA does not hold a view on this issue.

### **ADMINISTRATION AND IMPLEMENTATION**

### **Q20 - DO YOU AGREE WITH THE PROPOSED "SMALL PRODUCER YEAR" RUNNING FROM 1 FEBRUARY TO 31 JANUARY? IF NOT, PLEASE PROPOSE AN ALTERNATIVE.**

SIBA has no issue with moving to 1 February for the Small Producer Year.

### **Q21 - WHEN DO YOU THINK THE MOST APPROPRIATE TIME WOULD BE TO INTRODUCE THE NEW SMALL PRODUCER RELIEF?**

The changes should be introduced in August alongside the other changes to the Alcohol Duty System. Many independent breweries have already factored in the changes for next year and the delay from 1 February adds additional costs for small businesses, which for a typical brewery between 5-10,000hl is around £25,000. Managing the transition two thirds of the way through the brewing year and half way through the fiscal year will add additional



upheaval for small businesses. SIBA has therefore called for arrangements to smooth this transition by allowing breweries to use their 2021 total production to determine their relief for the January-July period next year.

## **MISCELLANEOUS**

### **Q22 - DO YOU AGREE WITH CHANGING THE NAME OF THE 'MADE-WINE' CATEGORY TO 'OTHER FERMENTED PRODUCTS'? IF NOT, WHAT DO YOU SUGGEST AS AN ALTERNATIVE?**

SIBA does not hold a view on this issue.

### **Q23 - DO YOU AGREE WITH THE REMOVAL OF THE STRENGTH LIMIT OF 8.5% FROM THE DEFINITION OF CIDER?**

SIBA does not hold a view on this issue.

### **Q24 - DO YOU AGREE WITH THE PROPOSED APPROACH TO THE MIXING OF 2 OR MORE ALCOHOLIC PRODUCTS PER THE DRAFT CLAUSES?**

SIBA does not hold a view on this issue.

### **Q25 - DO YOU AGREE THAT THE FACILITY BREWERS CURRENTLY HAVE TO OFFSET DRAWBACK CLAIMS AGAINST DUTY DUE ON THEIR MONTHLY RETURN SHOULD BE EXTENDED TO PRODUCERS OF ALL ALCOHOLIC PRODUCTS?**

SIBA does not hold a view on this issue.

## **Q26 – HOME BREW**

One area that HMRC should consider clarifying is around homebrewing. In recent decades the UK has seen the growth of homebrew clubs who also hold homebrew competitions. Section 27 is a continuation of the current legislation which defines the exemption for personal consumption for the person's own domestic use. HMRC should seek to clarify this in the legislation or forthcoming regulations that homebrew clubs and competitions can legally continue.