

COVID-19, Destruction of Beer in Pub Cellars

Scope

The BBPA recognises that the pressures faced by brewers during the COVID-19 pandemic are diverse. For those producers who may require it, this guidance is intended to clarify the practical requirements of the recent relaxation of the rules regarding destruction of beer by HMRC. In particular to allow destruction of beer remotely in pub cellars in such a way that the beer duty is recoverable from HMRC without the need for an Approved Company representative of the brewery being present.

The advice offered within this guidance should not be interpreted to mean that normal practices will not resume at a later date if remote destruction is not deemed necessary or possible due to COVID-19 guidance, furloughed workers, or a risk to health and safety.

In some instances, brewers have already indicated to their customers that they will uplift and replace all unused stock when it is safe to do so. Under such circumstances it is important to communicate that customers must not attempt to destroy beer.

Please be aware that falsifying records is tantamount to fraud and may result in action being taken by HMRC.

HMRC confirm that the details contained within the guide are consistent with and support their requirements.

Introduction

During the COVID-19 epidemic the normal rules for destruction of unsaleable beer (ullage) have been relaxed by HMRC. Rather than an Authorised Company Representative (ACR) being present to supervise destruction this process can be undertaken by designated pub staff i.e. licensee and providing the brewer has authorised them to do so and that brewer claiming the relief is satisfied that destruction has taken place and retains suitable evidence i.e. in the form of a digital recording.

This easement allows for duty paid on unmerchantable beer to be recovered, and for the brewer to pass that reclaimed excise back to their customer in a manner of their choosing, explained below.

During this period there will be continuing requirements regarding:

- The audit trail confirming destruction of duty paid beer

- Evidence of a full credit of the duty paid, or replacement of the goods to your customer or the owner of the goods at the time they became spoilt
- The need for breweries to maintain their spoilt beer record

Destruction away from registered premises will need to continue to comply with other regulatory and contractual conditions; for example, those of the Environment Agency or your local sewerage undertaker.

Protocol for Destruction

Destroying beer remotely at licensed premises is an undertaking that cannot be considered without the approval of the owning brewer. Such approval *must* be sought either directly from the brewer or if the beer is supplied by a third party, through the supplier who has in turn secured approval from the brewer.

Where permission is granted, beer is destroyed to allow the recovery of duty that has been paid and which must be credited to the brewer after destruction.

Destroying beer in this manner will also help to ease anticipated future pressure on the logistics and supply chain by enabling recovery of larger numbers of empty containers when restrictions on movements have been lifted. Uplift of full containers, particularly from subterranean cellars, needs to be carefully considered and may not be possible whilst social distancing is in place. An approach to this will be addressed under separate BBPA guidance.

Destruction of beer to recover duty is typically on the basis that beer has become unmerchantable. In the first instance this guidance is likely to be applied in preference to any broached container, particularly that in cask, which will not be suitable for sale within days once placed onto the draught dispense system for sale.

Destruction of un-broached containers is likely to be less of a priority and may be considered at a later date, in particular with reference to the best before date of these containers.

1. Destruction of Beer

Until otherwise stated, the rules for destruction of beer in order that duty can be reclaimed have been relaxed to allow nominated pub staff to undertake this process on behalf of the owning brewer.

The following must be observed by those nominated to undertake destruction of beer:

- A verifiable form of instruction/request from the owning brewer/operator that the beer can be destroyed i.e. email

- Any form of permission to destroy beer must include the following:
 - Identification of product (name and beer style)
 - Identification of product strength
 - Identification of all container size/type (i.e. firkin, kilderkin, Euro 30L etc.)
- When destroying beer, accurate records of the following must be kept:
 - The total volume of beer emptied from each relevant container. Where it can be demonstrated that containers have not been breached, the nominal volume of the container will be used.
 - The strength of each beer that is emptied
 - The time, date and location (pub name and address) of emptying for each relevant container
 - The name and position of the person who undertook the destruction, and confirmation they were so authorized by the responsible Owner/Manager/ Tenant

You must create separate entries for each container you destroy. Each claim must contain the information above and be supported by additional photos and/or the self-certification declaration in Appendix 2.

Given the large amount of claims this will create overall, pub staff should be mindful when contacting the brewer or supplier of:

- The amount of claims to be made,
- Whether it is possible to stage claims over time (by Best Before dates, for example), and
- The file size of any digital communications i.e. with photo attachments. Please keep file sizes as small as possible to avoid overloading inboxes, use cloud storage systems (i.e. DropBox) which allow file/photo sharing.

Samples are not required to be taken given the complexity of managing this process.

The volume of beer that is to be destroyed must be accurately recorded i.e. using dip stick (cask only), a graduated measuring jug or cylinder. Beer may be emptied into a bucket or large container before being poured to drain. Any discharge to drain must be made to the foul sewer, not to a surface water sewer and in accordance with any guidance provided by the relevant sewerage undertaker (see 'Minimising Environmental Impact' below for further details). It is the discharger's responsibility to ensure they discharge to the foul sewer.

In the case of beer casks the liquid contents can be emptied directly from the container. However, unless pub staff are trained in the use of specialist equipment expressly intended for the purpose of directly decanting beer from a pressurised keg, the only way to safely dispose of keg beer is through the dispense system. Under no circumstances should attempts be made to access the keg via any other means i.e. by attempts to remove the safety spear.

2. Minimising Environmental Impact

Beer that is emptied from containers, particularly from casks, may be destroyed by being poured down the drain. However, it must be considered that any uncontrolled volume of beer destroyed in this way can put strain on the sewerage system and may also cause environmental damage.

Before destroying beer to drain it is important to consider the wastewater set-up for the premises in question to understand the appropriate steps to take to minimise strain or damage to the sewage system. This includes following any guidance provided by the relevant sewerage undertaker.

If a pub waste system connects with the local municipal sewerage system via a foul sewer then before destroying beer to drain, and in order to avoid any risks of prosecution associated with overwhelming the local sewage plant, you *must* first contact your local water Wholesaler who will advise on any requirements for controlled destruction i.e. reduced rate of addition or dilution.

In some cases, i.e. in rural communities, it is possible that a pub does not have access to the foul sewer and instead will feed a on-site or local waste water treatment plant. If this is the case, ***it will not be possible to destroy beer and alternative arrangements must be made for retrieval of beer containers.***

Under the Environmental Permitting Regulations 2016 it is an offence to cause or knowingly permit a discharge of polluting matter without an environmental permit that authorises the discharge. This includes discharges made to a surface water drain that connects to surface water such as rivers or streams.

Waste water treatment plants can easily be overwhelmed by additional polluting load such as beer and it is likely to be an offence under the Regulations if discharge results in pollution to the environment as a result of a waste water treatment plant being overwhelmed.

If beer can be recovered, other types of disposal; for example to treatment by anaerobic digestion, composting or direct to land are alternative waste management activities may be considered and are regulated by the Environment Agency.

More information on the information that is required by wholesalers to permit destruction of beer in pubs connected to the foul sewer can be found in the relevant BBPA guidance note (Destruction of Beer in Cellars to Reduce Risk of Environmental Damage).

3. Allocation of Recovered Duty

The flexibility provided by HMRC allows for an expedited system of beer duty recovery. However, we cannot stress enough that any destruction carried out by a designated pub staff member, if they want to receive credit, must first get written agreement from the brewery to destroy the beer.

If your beer is not provided by the brewery directly, your wholesaler or pub company will need to provide the written agreement on your behalf. See the appendix for examples.

HMRC are allowing:

- Pubs to recover the cost of the beer duty on each container as credit from the brewer, or
- For the brewer to replace the product when they are able to do so safely. The latter will be a commercial matter between brewer and landlord or supplying company.

If a brewer is unable to reclaim the duty due to insufficient evidence on an audit for HMRC's purposes, you will NOT receive credit or replacement stock or will be potentially re-invoiced should HMRC discount the claim after credit is given. Brewers may also perform risk-based assessments of trend monitoring through stock control records to establish that recordation is a true and an accurate reflection. Brewers have a duty of care to HMRC in this instance to ensure duty reclaimed is accurate.

For broached containers, the volume must be measured using a method outlined above, with any undrinkable sediment (casks only) being deducted. Where the container is un-broached, then the container type (i.e. firkin, Kilderkin, Euro 30L) will indicate the nominal contents to be used as the volume destroyed.

Once destroyed, the member of staff must complete an electronic 'Self-Certification Declaration' form, a template for which is provided under Appendix 2. This should be completed immediately following the destruction. Where this form is emailed, the email shall be retained as evidence for the publican, supplier and brewer.

For brewers, all documentation relating to the destruction of unmerchantable beer must be retained and be available for inspection by HMRC for a period of six years.

Appendix One: Examples of how to claim

Example A: You source some or all of your beer through a wholesaler or pub company rather than directly through a brewery.

In this instance, you will need to contact your supplier, the wholesaler, to notify them of the stock, quantities and brands, that will need to be destroyed in the pub cellar. The wholesaler then contacts the breweries on your behalf to seek a written agreement for the destruction, and the terms of what credit you will receive – credit on duty or replacement of stock. Once the supplier has confirmed with those breweries and has written agreement, they will notify you that you may begin the destruction process. You will follow the guide above and send to your wholesaler who will in turn submit on your behalf to the brewery. This should provide a sufficient audit trail for the purposes of the brewery being able to successfully reclaim the duty, while also providing you sufficient details for the internal audit processes to ensure your supplier passes on the appropriate amount of credit or stock.

Example B: You stock your beer directly through one brewery.

In this instance you need only contact the brewery whose brands you stock to seek a written agreement. Following the guide as above should be sufficient to provide the brewer with all the necessary details for HMRC. However, they may have their own template, guidance or additional information they wish for you to complete. Be sure to contact them with any questions before you begin the destruction process to ensure that you do it correctly and are able to receive the credit or replacement stock.

Example C: You stock your beer from multiple breweries.

In this instance you need to seek written agreements from each brewery whose beer you stock. Once you have written agreement, the guide should be a sufficient basis for all breweries, but they may have their own template, guidance or additional information they wish for you to complete. Be sure to brewers with any questions before you begin the destruction process to ensure that you do it correctly and are able to receive the credit or replacement stock.

Appendix Two:

Self-Certification Declaration - template

Pub Information	Name of Staff	
	Position of Staff	
	Name of Pub	
	Pub Address	
	Date you received Brewer Agreement	
	Proof you are designated Staff	
	Date of Destruction	
Beer information		
	Identification of product (name and beer style)	
	Batch number	
	Identification of product strength (ABV)	
	Total volume destroyed	
	Identification container size/type	
	HI% (hectolitres multiplied by ABV)	