

2008 No. 3206

FOOD

The Spirit Drinks Regulations 2008

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These Regulations are made in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972^(a).

The Secretary of State^(b) is a Minister designated^(c) for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the description of, and other requirements relating to, spirit drinks.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Secretary of State that it is expedient for the reference to Regulation (EC) No 110/2008^(d) of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 to be construed as a reference to that Regulation as amended from time to time.

There has been open and transparent public consultation during the preparation of these Regulations as required by Article 9 of Regulation (EC) No 178/2002^(e) of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

Accordingly, the Secretary of State for Environment, Food and Rural Affairs makes the following Regulations.

Title and commencement

1. These Regulations may be cited as the Spirit Drinks Regulations 2008 and come into force on 16th January 2009.

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- (a) 1972 c. 68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).
(b) The functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of Community law related functions in respect of devolved matters, the function of the Secretary of State continues to be exercisable by the Secretary of State as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.
(c) S.I. 1989/1327, to which there are amendments not relevant to these Regulations.
(d) OJ No L 39, 13.2.2008, p 16.
(e) OJ No L 31, 1.2.2002, p 1, last amended by Commission Regulation (EC) No 202/2008 (OJ No L 60, 5.3.2008, p 17).

Revocations

2. The secondary legislation mentioned in Schedule 1 is revoked.

Interpretation

- 3.—(1) In these Regulations—

“authorised officer” means any person appointed by an enforcement authority under regulation 8;

“Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“enforcement authority” means an authority exercising a function conferred on it by regulation 7;

“food authority”—

- (a) in relation to England, means—

- (i) a county council;

- (ii) a metropolitan district council;

- (iii) a non-metropolitan district council for an area for which there is no county council;

- (iv) a London borough council;

- (v) the Common Council of the City of London (in their capacity as a local authority);
and

- (vi) the Council of the Isles of Scilly;

- (b) in relation to Northern Ireland, means a district council;

- (c) in relation to Scotland, means a council constituted under section 2(1) of the Local Government etc. (Scotland) Act 1994(a); and

- (d) in relation to Wales, means a county council or a county borough council;

“officer” —

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body; and

- (b) in relation to an unincorporated body, means any member of its governing body or a chief executive, manager or other similar officer of the body;

“penalty” means the amount specified in a penalty notice;

“penalty notice” means a notice offering the opportunity, by payment, in accordance with these Regulations, of a specified amount, to discharge any liability to be convicted of the penalty offence to which the notice relates;

“penalty offence” means an offence for which a penalty notice may be given under regulation 22;

“port health authority” means—

- (a) in relation to the London port health district (within the meaning given by section 7(1) of the Public Health (Control of Disease) Act 1984(b)), the Common Council of the City of London; and

- (b) in relation to any port health district constituted by order under section 2(3) of that Act, the port health authority for that district;

“premises” includes any place, vehicle or trailer, shipping container (whether used for transporting cargo or for storage), stall or moveable structure, and ship or aircraft;

(a) 1994 c. 39.

(b) 1984 c. 22.

“registered Annex III geographical indication” means a geographical indication registered in Annex III to Regulation (EC) No 110/2008;

“Regulation (EC) No 110/2008” means Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89, as amended from time to time;

“relevant court” means—

- (c) in relation to England, Northern Ireland and Wales, a magistrates’ court; and
- (d) in relation to Scotland, a sheriff; and

“spirit drink” has the meaning given in paragraph (1) of Article 2 of Regulation (EC) No 110/2008 as read with paragraphs (2) and (3) of that Article.

(2) Other expressions used in these Regulations and Regulation (EC) No 110/2008 have their meaning in Regulation (EC) No 110/2008.

(3) Part 1 of Schedule 2 applies to the interpretation of Part 2 of that Schedule.

Compliance with Community provisions

4.—(1) A person is guilty of an offence if they contravene, or fail to comply with, any provision of Regulation (EC) No 110/2008 mentioned in column 1 of Part 2 of Schedule 2, as read with any provision mentioned in any corresponding entry in column 2 of that Part of that Schedule.

(2) A person is guilty of an offence if they—

- (a) directly or indirectly make commercial use of a registered Annex III geographical indication in a way mentioned in Article 16(a) of Regulation (EC) No 110/2008;
- (b) misuse, imitate or evoke a registered Annex III geographical indication, even if the true origin of the product is indicated or the geographical indication is used in translation or accompanied by an expression such as “like”, “type”, “style”, “made”, “flavour” or any other similar term;
- (c) use any other false or misleading indication as to the provenance, origin, nature or essential qualities on the description, presentation or labelling of a product that is liable to convey a false impression that the product is a registered Annex III product; or
- (d) use any other practice that is liable to mislead the consumer into thinking that the product is a registered Annex III product.

(3) But paragraphs (1) and (2) do not apply—

- (a) to the production of a spirit drink that is produced on or before 19th May 2009 in accordance with the requirements of—
 - (i) Council Regulation (EEC) No 1576/89(a) laying down general rules on the definition, description and presentation of spirit drinks; and
 - (ii) Commission Regulation (EEC) No 1014/90(b) laying down detailed implementing rules on the definition, description and presentation of spirit drinks; or
- (b) to the marketing of a spirit drink produced in accordance with the requirements of Council Regulation (EEC) No 1576/89 and Commission Regulation (EEC) No 1014/90 on or before 19th May 2009 and marketed in accordance with the requirements of those Regulations.

(a) OJ No L 160, 12.6.1989, p 1, last amended by the Act of Accession of 2005 (OJ No L 157, 21.6.05, p 11) and subsequently repealed by Regulation (EC) No 110/2008. However, the provisions of Council Regulation (EEC) No 1576/89 continue to apply on a transitional basis by virtue of Article 28(3) of Regulation (EC) No 110/2008.

(b) OJ No L 105, 25.4.1990, p 9, last amended by Commission Regulation (EC) No 2140/98 (OJ No L 270, 7.10.1998, p 9). Commission Regulation (EEC) No 1014/90 was subsequently repealed by virtue of the repeal of Regulation (EEC) No 1576/89 (under which Commission Regulation (EEC) No 1014/90 was adopted) by Regulation (EC) No 110/2008. However, the provisions of Commission Regulation (EEC) No 1014/90 continue to apply on a transitional basis by virtue of the operation of Article 28(3) of Regulation (EC) No 110/2008.

(4) In this regulation “registered Annex III product” means a spirit drink for which a registered Annex III geographical indication may be used in accordance with Regulation (EC) No 110/2008.

Verification under Article 22 of Regulation (EC) No 110/2008

5.—(1) The Commissioners are designated as the authority responsible for verifying that a relevant spirit drink that is to be placed on the market using a geographical indication registered in Annex III to Regulation (EC) No 110/2008 complies with the specifications in the technical file (if any) relating to that geographical indication before it is placed on the market.

(2) A spirit drink is a relevant spirit drink if—

- (a) it is a spirit drink produced in the United Kingdom that uses a geographical indication registered in Annex III to Regulation (EC) No 110/2008 to identify the drink as originating in the territory of a country, region or locality in the United Kingdom; or
- (b) it is a whisky produced in Northern Ireland that uses the geographical indication “Irish Whiskey”, “Uisce Beatha Eireannach” or “Irish Whisky”.

Designation under Article 24 of Regulation (EC) No 110/2008

6.—(1) Each food authority is designated as the competent authority for the purpose of Article 24(1) of Regulation (EC) No 110/2008 for the control of spirit drinks in its area except to the extent that a port health authority is designated as the competent authority within any part of that area under paragraph (2).

(2) Each port health authority is designated as the competent authority for the purpose of Article 24(1) of Regulation (EC) No 110/2008 for the control of spirit drinks in its district for drinks being imported into or exported from the United Kingdom.

Enforcement

7.—(1) Each food authority must enforce the provisions of these Regulations within its area except to the extent that these Regulations fall to be enforced by a port health authority within its district.

(2) Each port health authority must enforce the provisions of these Regulations in its district in respect of drinks being imported into or exported from the United Kingdom.

Appointment of officers

8. Each food authority and port health authority must appoint officers for the purposes of the enforcement of these Regulations.

Duty to give assistance and provide information

9.—(1) Each competent and enforcement authority must give such assistance and information to any other competent or enforcement authority as it may reasonably require for the purpose of its duties under these Regulations.

(2) The Commissioners may disclose any information in their possession to a competent or enforcement authority for the purposes of these Regulations.

(3) No person, including a servant of the Crown, may disclose any information received from the Commissioners under paragraph (2) if—

- (a) the information relates to a person whose identity—
 - (i) is specified in the disclosure; or
 - (ii) can be deduced from the disclosure;
- (b) the disclosure is for a purpose other than the purposes specified in paragraph (2); and
- (c) the Commissioners have not given their prior consent to the disclosure.

(4) Any person who contravenes paragraph (3) is guilty of an offence.

Powers of entry

10.—(1) An authorised officer may enter any premises at any reasonable hour for the purpose of ensuring that the provisions of these Regulations are being complied with.

(2) The authorised officer may take with them—

- (a) such other persons as they consider necessary; and
- (b) any representative of the European Commission.

(3) An authorised officer must not exercise the powers under paragraph (1) or (2) except on the production, if so required, of a duly authenticated document showing their authority.

(4) Admission to any premises used only as a private dwellinghouse may not be demanded as of right unless 24 hours notice of the intended entry has been given to the occupier or the entry is in accordance with a warrant granted under this regulation.

(5) If a justice of the peace, on sworn information in writing, is satisfied of the matters mentioned in paragraph (6), they may sign a warrant permitting an authorised officer to enter any premises, if needs be by reasonable force.

(6) The matters are that—

- (a) there are reasonable grounds for believing that Condition A or B is met; and
- (b) Condition C, D or E is met.

(7) Condition A is that on the premises there are items or products of the type mentioned in regulation 11(1)(a) or documents or records of the type mentioned in regulation 11(1)(e) and that their inspection is likely to disclose evidence of a contravention of, or failure to comply with, these Regulations.

(8) Condition B is that a contravention of, or failure to comply with, these Regulations has occurred, is occurring or is about to occur on those premises.

(9) Condition C is that admission to the premises has been, or is likely to be, refused, and that the occupier has been informed (whether orally or in writing) that a warrant may be applied for.

(10) Condition D is that an asking for admission to the premises has been, or is likely to be, refused, and informing the occupier that a warrant under this regulation may be applied for may defeat the object of the entry.

(11) Condition E is that the premises are unoccupied or that the occupier is temporarily absent and it may defeat the object of the entry to await their return.

(12) A warrant granted under paragraph (5) —

- (a) is valid for one month, beginning with the day on which it is granted; and
- (b) must be produced for inspection to the person (if there is one) who appears to the officer to be the occupier of the premises.

(13) An authorised officer who enters any premises that are unoccupied or where the occupier is temporarily absent must leave the premises as effectively secured against unauthorised entry as when they found them.

(14) An authorised officer may carry out an inspection at the request of another member State or the European Commission.

(15) In this regulation, a reference to a justice of the peace—

- (a) in Scotland includes a reference to the sheriff; and
- (b) in Northern Ireland is a reference to a lay magistrate.

Powers of an authorised officer

11.—(1) An authorised officer (“O”) entering premises under regulation 10 may—

- (a) inspect the premises, and any still and any other plant, machinery or equipment on those premises, and any of the following items found on those premises—
 - (i) any spirit drink partly or fully packaged ready for sale;
 - (ii) any product purporting to be a spirit drink partly or fully packaged ready for sale;
 - (iii) any other liquid that the officer has reasonable grounds for believing is a distillate or drink (including any vessel in which the liquid is found);
 - (iv) any raw material or ingredients that may be used to produce any distillate or drink, including colourings and flavourings;
 - (v) any mash;
 - (vi) any empty container;
 - (vii) any label;
 - (viii) any packaging;
 - (ix) any advertising or promotional materials relating to a drink, or other documentation relating to a distillate or to a drink;
 - (b) search the premises;
 - (c) take samples;
 - (d) carry out any inquiries, examinations or tests;
 - (e) have access to, and inspect and copy, any documents or records (in whatever form they are held) relating to matters covered by these Regulations, and remove them to enable them to be copied;
 - (f) have access to, and inspect and check the data on, and operation of, any computer, and any associated electronic storage device or apparatus (“computer equipment”) that is, or has been in use in connection with, the documents or records mentioned in sub-paragraph (e), including data relating to deleted files and activity logs; and for this purpose O may require any person having charge of, or otherwise concerned with the operation of, the computer equipment to afford to O such assistance (including the provision of passwords) as O may reasonably require, and, during the course of the checks, O may recover data held on the computer equipment; and
 - (g) where a document or record mentioned in sub-paragraph (e) is kept by means of a computer, require the record to be produced in a form in which it may be taken away.
- (2) O may direct a person that the following must be left undisturbed for as long as is reasonably necessary for the purpose of any examination or investigation—
- (a) any one or more of the items mentioned in paragraph (1)(a)(i) to (ix); and
 - (b) any premises on or in which any of those items are found.
- (3) A person is guilty of an offence if they fail to comply with a direction given to them by O under paragraph (2).
- (4) O may seize and detain any item of the type mentioned in paragraph (1)(a)(i) to (ix) that O has reason to believe may be required as evidence in proceedings under these Regulations.
- (5) O may seize as liable to destruction any product of the type mentioned in paragraph (1)(a)(i) or (ii)—
- (a) that O reasonably believes contravenes any provision of Regulation (EC) No 110/2008 mentioned in column 1 of Part 2 of Schedule 2, as read with any provision mentioned in any corresponding entry in column 2 of that Part of that Schedule; or
 - (b) in respect of which O reasonably believes that an offence has been committed under regulation 4(2).
- (6) O may seize any computer equipment for the purpose of copying documents or records of the type mentioned in paragraph (1)(e), and for checking the data on, and operation of, any computer equipment that is, or has been, in use in connection with, those documents or records

(and in doing so may recover data), provided it is returned as soon as practicable and, in any event, within 28 days, beginning with the day on which the equipment is seized.

(7) If O is not able to remove an item, product or computer equipment seized under paragraph (4), (5) or (6) immediately, they may—

- (a) mark it in any way that they see fit; and
- (b) give the person appearing to them to be in charge of the item, product or computer equipment a notice—
 - (i) identifying it; and
 - (ii) prohibiting the removal of the item, product or computer equipment from the premises on which it was found until it is collected by an authorised officer.

(8) Any person, other than an authorised officer, who removes any item or product identified under paragraph (7) from the premises on which it was found is guilty of an offence.

(9) O must not exercise the powers under this regulation except on the production, if so required, of a duly authenticated document showing their authority.

Procedure on seizure

12.—(1) An authorised officer (“O”) must follow the procedures set out in this regulation if they seize anything under regulation 11(4), (5) or (6).

(2) O must give to the person appearing to O to be in charge of the premises from which the seized item, product or computer equipment is seized (“the premises”) a notice that must state—

- (a) what O has seized;
- (b) when O seized it;
- (c) the grounds for the seizure of the item, product or equipment; and
- (d) the address to which, and the period during which, a claim may be made for the return of the item, product or equipment.

(3) But where the premises are unoccupied, or no-one appears to O to be in charge of the premises, O must attach a notice to a conspicuous part of the premises, or to some conspicuous object on the premises, containing the information mentioned in sub-paragraphs (a) to (d) of paragraph (2).

(4) A person having a proprietary interest in the seized item, product or computer equipment (including a creditor who has a debt secured on the item, product or computer equipment) may notify the enforcement authority of any claim that the seized item, product or equipment was not liable to seizure, setting out the grounds for the claim in full.

(5) The claim must be made within 28 days of the seizure, beginning on the day on which the seized item, product or computer equipment is seized, to the address specified in the seizure notice.

(6) If a notification of a claim is not received within 28 days in respect of an item seized under regulation 11(4), the enforcement authority may retain the seized item for as long as necessary while it is being held for the purpose of any criminal investigation or proceedings or for use as evidence at a trial.

(7) If a notification of a claim is received within 28 days in respect of an item seized under regulation 11(4), the enforcement authority must—

- (a) return the seized item within 28 days, beginning with the day on which the claim is received; or
- (b) retain the seized item or product for as long as necessary while it is being held for the purpose of any criminal investigation or proceedings, or for use as evidence at a trial, but it must notify the claimant that the seized item is being retained, and of the reason why it is being retained within 28 days, beginning with the day on which the claim is received.

(8) If a notification of a claim is not received within 28 days in respect of a product seized under regulation 11(5), the enforcement authority may—

- (a) if a decision is taken by the enforcement authority not to destroy the seized product but to retain it for the purpose of any criminal investigation or proceedings, or for use as evidence at a trial, retain the seized product for as long as necessary for one of those purposes, but the enforcement authority must—
 - (i) notify the relevant person that the seized product is being retained, and of the reason why it is being retained, within 28 days of the expiry of the claim period, beginning with the day after the claim period expires; or
 - (ii) where the enforcement authority does not know who the relevant person is, and this cannot be ascertained after reasonable enquiries have been made by the enforcement authority, attach a notice to a conspicuous part of the premises, or a conspicuous object on those premises, within 28 days of the expiry of the claim period, beginning with the day after the claim period expires, stating that the seized product is being retained, and the reason why it is being retained; or
- (b) destroy the seized product within 28 days, beginning with the day after the 28 day claim period expires, if it reasonably believes that the product contravenes these Regulations, and—
 - (i) notify the relevant person that the seized product has been destroyed within 10 days of its destruction, beginning with the day on which the product is destroyed (or the last day of destruction where the destruction of the product takes place on more than one day); or
 - (ii) where the enforcement authority does not know who the relevant person is, and this cannot be ascertained after reasonable enquiries have been made by the enforcement authority, attach a notice to a conspicuous part of the premises, or to a conspicuous object on those premises, within 10 days of the destruction of the product, beginning with the day on which the product is destroyed (or the last day of destruction where the destruction of the product takes place on more than one day) stating that the seized product has been destroyed.

(9) In paragraph (8) the “relevant person” means—

- (a) if the enforcement authority knows the identity of a person with a proprietary interest in the seized product, that person or (where more they know the identity of more than one person with a proprietary interest in the seized property) each of those persons; or
- (b) if the enforcement authority does not know the identity of a person with a proprietary interest in the seized product, the person appearing to them to be in charge of the premises.

(10) In the case of any product destroyed under paragraph (8)(b), the enforcement authority may recover the following costs as a debt from any person who had a proprietary interest in the product immediately before its destruction (apart from a creditor who has a debt secured on the product)—

- (a) the costs of the removal and transport of the product from the premises to the place at which it is stored;
- (b) the costs of the storage of the product for up to 28 days;
- (c) any costs for the removal and transport of the product if it is moved from one place of storage to another place of storage;
- (d) the costs of the transport of the product from the place of storage to the place of destruction; and
- (e) the costs of the destruction of the product.

(11) If a notification of a claim is received within 28 days in respect of an item seized under regulation 11(5), the enforcement authority must—

- (a) return the seized product within 28 days, beginning with the day on which the claim is received;
- (b) if a decision is taken by the enforcement authority not to destroy the seized product but to retain it for the purpose of any criminal investigation or proceedings or for use as evidence at a trial, retain the product for as long as necessary for one of those purposes

but the enforcement authority must notify the claimant that the seized product is being retained, and of the reason why it is being retained, within 28 days of the claim, beginning with the day on which the claim is received; or

- (c) within 28 days of the claim, beginning with the day on which the claim is received, take proceedings (“paragraph (11)(c) proceedings”) in a relevant court for an order giving them authority to destroy the product.

(12) In paragraph (11)(c) proceedings the relevant court may—

- (a) authorise the enforcement authority to destroy the seized product;
- (b) authorise the enforcement authority to retain the product for the purpose of any criminal investigation or proceedings, or for use as evidence at a trial, for as long as necessary for one of those purposes; or
- (c) require the enforcement authority to return the product to the claimant and impose a deadline by which this must be done.

(13) If, in paragraph (11)(c) proceedings, the relevant court authorises the enforcement authority to destroy the seized product, it may also make an order requiring the claimant (but not a claimant who is a creditor with a debt secured on the product) to pay such of the following costs as the court may specify—

- (a) the costs of the removal and transport of the product from the premises to the place at which it is stored;
- (b) the costs of the storage of the product for up to 28 days;
- (c) any costs for the removal and transport of the product if it is moved from one place of storage to another place of storage;
- (d) the costs of the transport of the product from the place of storage to the place of destruction; and
- (e) the costs of the destruction of the product.

(14) If a notification of a claim is received within 28 days in the case of any computer equipment seized under regulation 11(6), the enforcement authority must—

- (a) return the seized computer equipment within 7 days of the claim, beginning with the day on which the claim is received, or, if shorter, within the remainder of the maximum 28 day period provided for in regulation 11(6); or
- (b) take proceedings in a relevant court within 7 days of the claim, beginning with the day on which the claim is received unless there are 7 days or less remaining before the expiry of the maximum 28 day period provided for in regulation 11(6), for an order authorising the enforcement authority to retain the seized computer equipment in accordance with the requirements laid down in regulation 11(6).

(15) If, in the case of any computer equipment seized under regulation 11(6), the relevant court authorises the enforcement authority to retain the seized computer equipment, they may impose conditions as to the basis on which the equipment may continue to be retained, including the imposition of a deadline by which the equipment must be returned that is shorter than the 28 day maximum period provided for in regulation 11(6).

(16) The procedure in a magistrates’ court under this regulation is by way of complaint, and—

- (a) in England and Wales, the Magistrates’ Courts Act 1980(a) applies to the proceedings; and
- (b) in Northern Ireland, the Magistrates’ Courts (Northern Ireland) Order 1981(b) applies to the proceedings.

(17) The procedure before the sheriff under this regulation is by way of summary application.

(a) 1980 c. 43.

(b) S.I. 1981/1675 (N.I. 26).

Improvement notices

13.—(1) If an authorised officer (“O”) has reasonable grounds for believing that any person (“P”) is failing to comply with these Regulations O may give P a notice (“an improvement notice”) that—

- (a) states O’s grounds for believing this;
- (b) specifies the matter that constitutes the failure to comply with these Regulations;
- (c) specifies what P must stop doing, or the measures that, in O’s opinion, P must take in order to comply with these Regulations;
- (d) require P to stop doing the action specified in the notice, or take the measures specified in the notice, or measures at least equivalent to them, within the period (being not less than 14 days) specified in the notice;
- (e) informs P of the right of appeal to a relevant court conferred by regulation 14; and
- (f) informs P of the period within which such an appeal may be brought.

(2) A person is guilty of an offence if they contravene or fail to comply with an improvement notice.

Appeals against improvement notices

14.—(1) Any person who is aggrieved about an improvement notice may appeal against that notice to the relevant court.

(2) The procedure on an appeal to a magistrates’ court under paragraph (1) is by way of complaint, and—

- (a) in England and Wales, the Magistrates’ Courts Act 1980 applies to the proceedings; and
- (b) in Northern Ireland, the Magistrates’ Courts (Northern Ireland) Order 1981 applies to the proceedings.

(3) An appeal to the sheriff under paragraph (1) is by summary application.

(4) The period within which an appeal may be brought is 28 days, beginning with the day on which the improvement notice is given.

(5) The relevant court may suspend an improvement notice pending an appeal.

Powers of a relevant court on appeal

15. On an appeal against an improvement notice the relevant court may either cancel the notice or confirm it, with or without modification.

Publication of notices

16.—(1) An enforcement authority must publicise the destruction of any product seized under regulation 11(5) in such manner as it sees fit.

(2) But an enforcement authority must not publicise the destruction of any item seized under regulation 11(5) where it considers that it would be inappropriate to do so.

(3) An enforcement authority must publicise any improvement notice given by it under regulation 13 in such manner as it sees fit.

(4) But an enforcement authority must not publicise an improvement notice given by it under regulation 13—

- (a) until the time for appealing against the imposition of the improvement notice has passed;
- (b) during the period that any appeal against the imposition of the improvement notice is ongoing; or
- (c) in any other case where the enforcement authority considers that it would be inappropriate to do so.

Obstruction

17. A person (“P”) is guilty of an offence if they—

- (a) obstruct any person (“O”) acting in the execution of these Regulations;
- (b) fail to give to O any assistance or information that O may reasonably require of P for the performance of O’s functions under these Regulations;
- (c) furnish any false or misleading information to O; or
- (d) fail to produce a record when required to do so by O.

Criminal offences: punishment

18.—(1) A person guilty of any offence under regulation 4(1) or (2), 11(3) or (8), 13(2) or 17, is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to a fine.

(2) A person guilty of an offence under regulation 9(4) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, to imprisonment for a term not exceeding three months, or to both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both.

Offences by bodies corporate etc.

19.—(1) Where an offence committed by a body corporate (other than a limited liability partnership or a Scottish partnership) is proved to have been committed with the consent or connivance of, or is attributable to the neglect of, an officer of the body corporate, or a person purporting to act in such a capacity, that officer or person (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member, and a person purporting to act in such a capacity, in connection with the member’s functions of management as it applies to an officer of a body corporate.

(3) Where an offence committed by an unincorporated body (other than an unincorporated partnership) is proved to have been committed with the consent or connivance of, or is attributable to the neglect on the part of, any officer of that body or a person purporting to act in such a capacity, that officer or person (as well as the unincorporated body) is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where an offence committed by a partnership (including a limited liability partnership and a Scottish partnership) is proved to have been committed with the consent or connivance of, or is attributable to the neglect of a partner, or a person purporting to act in such a capacity, the partner or person (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation “offence” means an offence under these Regulations.

Default of third person

20. Where the commission by one person (“A”) of an offence under these Regulations is due to the act or default of another (“B”), B also commits the offence, and B may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against A.

Defences

21.—(1) It is a defence for a person charged with an offence under these Regulations to prove that they took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) A may not rely on a defence that involves an allegation that the commission of the offence was due to the act or default of B unless—

- (a) at least seven clear days before the hearing A has given to the prosecutor a notice in writing giving such information identifying or assisting in the identification of B as was then in their possession; or
- (b) the court grants them leave.

(3) In proceedings for an offence under regulation 4(1) as read with the provisions of Regulation 110/2008 mentioned in Part 2 of Schedule 2 insofar as they apply to the advertisement of spirit drinks, or an offence under regulation 4(2) committed by the way in which a spirit drink is advertised, it is a defence for the person charged with the offence to prove that—

- (a) at the time of the alleged offence they were a person whose business it was to publish or arrange for the publication of advertisements;
- (b) they received the advertisement for publication in the ordinary course of business; and
- (c) they did not know, and had no reason to suspect, that publication of the advertisement would constitute an offence under these Regulations.

(4) It is a defence for a person charged with an offence under regulation 9(4) to prove that they reasonably believed—

- (a) that it was lawful to disclose the information disclosed; or
- (b) that the information disclosed had already and lawfully been made available to the public.

Giving of penalty notice for penalty offence

22. An enforcement authority may give a penalty notice to a person (“P”) where the authority has reason to believe that P has—

- (a) committed an offence under regulation 4(1) by contravening or failing to comply with a provision of Regulation (EC) No 110/2008 mentioned in Schedule 3; or
- (b) committed an offence under regulation 4(2).

Contents of penalty notice

23. A penalty notice given by an enforcement authority must—

- (a) give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence;
- (b) state the amount of the penalty;
- (c) state the period during which, by virtue of regulation 25, proceedings will not be taken for the offence;
- (d) state the person to whom, and the address at which, the penalty may be paid, and the ways in which the penalty may be paid; and
- (e) state that payment must not be made in cash.

Amount of penalty

24.—(1) The amount of the penalty must be determined by the enforcement authority and must not be less than £1,000 or more than £4,000.

(2) The factors to be taken into account by the enforcement authority in determining the amount of the penalty may include the factors mentioned in Schedule 4.

Restriction on proceedings for penalty offence

- 25.—(1) Where a person is given a penalty notice—
- (a) no proceedings may be brought against them for the penalty offence to which that notice relates before the end of the period of 28 days, beginning with the day on which they were given the notice; and
 - (b) that person may not be convicted of the offence if the penalty is paid in accordance with regulation 26 before the end of that period.
- (2) Paragraph (1) does not apply if the penalty notice is withdrawn in accordance with regulation 29.

Payment of penalty

- 26.—(1) Payment of any penalty must be made to the person specified in the penalty notice by sending it by post or by such method as may be specified in the notice.
- (2) Payment of any penalty may not be made in cash.

Certificate of payment or non-payment of a penalty

27. In any proceedings a certificate purporting to be signed by or on behalf of the enforcement authority, stating that payment in respect of a penalty notice was or was not received on or before a date specified in the certificate is evidence of the facts stated.

Penalty receipts

28. Penalties paid to an enforcement authority must be paid into the Consolidated Fund.

Withdrawal of penalty notice

- 29.—(1) A penalty notice may be withdrawn by an enforcement authority which has reason to believe that it ought not to have been given (whether to the person named in the penalty notice or otherwise).
- (2) A penalty notice may be withdrawn by the enforcement authority giving written notice to the person named in the penalty notice before or after payment of the penalty.
- (3) Where an enforcement authority withdraws a penalty notice it must repay any penalty paid under the penalty notice to the person named in the penalty notice within 28 days, beginning with the day on which the notice of the withdrawal of the penalty notice is given.

Giving of notices

- 30.—(1) Any notice required to be given under these Regulations to any person may be given to them by—
- (a) delivering it to them;
 - (b) leaving it at their proper address; or
 - (c) sending it to them by post at that address.
- (2) The notice may be given to a body corporate by being given to an officer of that body.
- (3) The notice may be given to a limited liability partnership, Scottish partnership or unincorporated partnership by being given to a partner or a person having control or management of the partnership business.
- (4) The notice may be given to any other unincorporated body by being given to an officer of that body.

(5) For the purposes of this regulation and section 7 of the Interpretation Act 1978(a) (service of documents by post) in its application to this regulation, the proper address of any person to whom a notice is to be given is—

- (a) in the case of a body corporate, the address of the registered or principal office of the body;
- (b) in the case of a limited liability partnership or a Scottish partnership, the address of the registered or principal office of the partnership;
- (c) in the case of an unincorporated partnership or any other unincorporated body, the address of the principal office of the partnership or body;
- (d) in the case of a person to whom the notice is given in reliance of any of paragraph (2), (3) or (4), the proper address of the body corporate, partnership or other unincorporated body in question; and
- (e) in any other case, the last known address of the person in question.

(6) For the purposes of paragraph (5) the references to “the principal office” in relation to a company which is registered outside the United Kingdom, a partnership which is carrying on business outside the United Kingdom and any other unincorporated body which has its principal office outside the United Kingdom, include a reference, in each case, to their principal office within the United Kingdom (if any).

(7) Paragraph (8) applies if a person to be given a notice under these Regulations has specified an address (“the specified address”) within the United Kingdom other than their proper address (as decided under paragraph (5)) as the one at which they, or someone on their behalf, will accept documents of the same description as a notice given under these Regulations.

(8) The specified address is also to be treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 in its application to this regulation as the person’s proper address.

(9) In relation to Wales, any notice required to be given under these Regulations to any person must be in English and Welsh.

(10) In this regulation “body corporate” does not include a limited liability partnership or a Scottish partnership.

15th December 2008

Jane Kennedy
Minister of State
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 2

REVOCATIONS

The Spirit Drinks Regulations 1990**(b)**

(a) 1978 c. 30.

(b) S.I. 1990/1179, amended by S.I. 1990/2486, 1995/732.

- The Spirit Drinks (Scotland) Regulations 1990(a)
- The Spirit Drinks Regulations (Northern Ireland) 1990(b)
- The Spirit Drinks (Scotland) Amendment Regulations 1995(c)
- The Spirit Drinks (Amendment) Regulations 1995(d)
- The Spirit Drinks (Amendment) Regulations (Northern Ireland) 1995(e)

SCHEDULE 2 Regulation 3(3), 4(1), 11(5)
and 21(3)

**COMMUNITY PROVISIONS CONTRAVENTION OF WHICH IS AN
OFFENCE**

PART 1

Interpretation

In this Schedule—

“categories 1 to 14” means the categories of spirit drinks numbered 1 to 14 in Annex II to Regulation (EC) No 110/2008; and

“categories 1 to 46” means the categories of spirit drinks numbered 1 to 46 in Annex II to Regulation (EC) No 110/2008.

PART 2

The provisions of Regulation (EC) No 110/2008

Column 1	Column 2	Column 3
Relevant provision of Regulation (EC) No 110/2008	Provisions to be read with the provision of Regulation (EC) No 110/2008 mentioned in column 1	Subject matter
Article 3(1)	Annex I to the E.E.C. Treaty	Agricultural origin of ethyl alcohol used in the production of spirit drinks and their components.
Article 3(2)	Annex I(1) to Regulation (EC) No 110/2008	Ethyl alcohol used in the production of spirit drinks: compliance with the definition in Annex I(1) to Regulation (EC) No 110/2008.
Article 3(3)		The dilution and dissolution of colourants, flavourings and

(a) S.I. 1990/1196 (S. 136), amended by S.I. 1990/2625 (S. 220), 1995/484 (S. 33).
 (b) S.R. (NI) 1990 No 219, amended by S.R. (NI) 1991 No 203, 1995 No 105.
 (c) S.I. 1995/484 (S. 33).
 (d) S.I. 1995/732.
 (e) S.R. (NI) 1995 No 105.

Article 3(4)	Annex I to the E.E.C. Treaty	other authorised additives. Prohibition on the use of alcohol of synthetic origin and other alcohol of non-agricultural origin.
Article 5(1)	Paragraphs (3) and (5) of Annex I to Regulation (EC) No 110/2008	General requirements relating to the production, content and sweetening of spirit drinks falling within categories 1 to 14.
Article 5(2)	Annex I to the E.E.C. Treaty, paragraphs (3), (5) and (10) of Annex I to Regulation (EC) No 110/2008, and Article 1(2)(b)(i) and (ii) and 1(2)(c) of Council Directive 88/388/EEC ^(a) on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production	General requirements relating to the production, content and sweetening of spirit drinks falling within the categories of spirit drinks numbered 15 to 46 in Annex II to Regulation (EC) No 110/2008.
Article 5(3)	Annex I to the E.E.C. Treaty, paragraphs (3), (5) and (10) of Annex I to Regulation (EC) No 110/2008, and Article 1(2)(a) of Directive 88/388/EEC on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production	General requirements relating to the production, content and sweetening of spirit drinks other than those falling within categories 1 to 46.
Article 9(1)	Article 9(3) of Regulation (EC) No 110/2008	Sales denominations for spirit drinks falling within categories 1 to 46.
Article 9(2)	Articles 2 and 9(5) of, and categories 1 to 46 of Annex II to, Regulation (EC) No 110/2008	Use of the “spirit drink” sales denomination for spirit drinks that do not fall within any of the categories numbered 1 to 46.
Article 9(4)	Annexes II and III to Regulation (EC) No 110/2008	Prohibition on the sales denominations for the spirit drinks falling within categories 1 to 46 being used for other drinks.
Article 9(5)	Chapter III of, and Annex III to, Regulation (EC) No 110/2008	Restriction on the supplementation or replacement of a sales denomination with a geographical indication.

^(a) OJ No L 184, 15.7.1988, p 61, last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ No L 284, 31.10.2003, p 1).

Article 9(6)	Articles 17(1) and 20 of, and Annex III to, Regulation (EC) No 110/2008	Restriction on the supplementation of registered Annex III geographical indications.
Article 9(7)	Categories 1 to 46 of Annex II and Annex III to Regulation (EC) No 110/2008	Prohibition on the use of associating words or phrases such as “like”, “type”, “style”, “made”, “flavour” and any other similar terms with any of the sales denominations laid down for spirit drinks falling within categories 1 to 46 and any of the registered Annex III geographical indications.
Article 9(8)		Prohibition on the substitution of the sales denomination for a spirit drink with a trade mark, brand name or fancy name.
Article 9(9)	Categories 1 to 46 of Annex II to Regulation (EC) No 110/2008 and Directive 2000/13/EC ^(a) of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs	Ingredients listing.
Article 10(1)	Article 10(3) and (4) of, and categories 1 to 46 of Annex II and Annex III to, Regulation (EC) No 110/2008	Requirements relating to compound terms and allusions.
Article 10(2)		Prohibition on the use of a compound term including a sales denomination for a spirit drink falling within a category numbered 1 to 46, or a registered Annex III geographical indication, where a spirit drink has been diluted below the relevant alcoholic minimum strength for that drink.
Article 11(1)	Paragraph (5) of Annex I, and categories 1 to 14 of Annex II, to Regulation (EC) No 110/2008	Mixtures: prohibition against using a sales denomination for a spirit drink falling within a category numbered 1 to 14 where alcohol has been added to the drink.
Article 11(2)	Article 11(3) of, and categories 1 to 46 of Annex II to, Regulation (EC) No 110/2008	Mixtures: requirements relating to the use of the “spirit drinks” sales denomination.

(a) OJ No L 109, 6.5.2000, p 29, last amended by Commission Directive 2007/68/EC (OJ No L 310, 28.11.2007, p 11).

Article 11(4)	Article 11(2) of, and Annex II to, Regulation (EC) No 110/2008	Mixtures: restrictions on the use of the sales denominations for spirit drinks falling within categories 1 to 46, and use of the term “mixed spirit drink”.
Article 11(5)	Article 11(2) and (4) of Regulation (EC) No 110/2008	Mixtures: listing of alcoholic ingredients.
Article 12(1)	Paragraph (7) of Annex I to Regulation (EC) No 110/2008	Raw material indications.
Article 12(2)		Restrictions on the use the supplemental terms “blend”, “blending” and “blended” in the description, presentation or labelling of a spirit drink.
Article 12(3)		Restrictions on the specification of the maturation period or age of a spirit drink.
Article 13		Prohibition on the covering of closing devices with lead-based capsules or foil.
Article 14(1)	Article 14(3) and (4) of Regulation (EC) No 110/2008	Language to be used in the description, presentation and labelling of spirit drinks.
Article 14(2)	Annexes II and III to Regulation (EC) No 110/2008	Prohibition on the translation of the terms in italics in Annex II to Regulation (EC) No 110/2008 and of registered Annex III geographical indications.
Article 15(4)	Articles 17(1) and 22 of, and Annex III to, Regulation (EC) No 110/2008	Compliance with technical file specifications for spirit drinks bearing a registered Annex III geographical indication.

SCHEDULE 3

Regulation 22

PENALTY OFFENCES

1. Article 3(1).
2. Article 9(1).
3. Article 9(2).
4. Article 9(5).
5. Article 9(6).
6. Article 9(7).
7. Article 9(9).
8. Article 11(4).
9. Article 11(5).
10. Article 12(1).
11. Article 13.

12. Article 14(1).

SCHEDULE 4

Regulation 24(2)

FACTORS TO BE TAKEN INTO ACCOUNT IN DETERMINING THE AMOUNT OF A PENALTY

PART 1

Aggravating factors

1. Seriousness of the non-compliance.
2. Harm or potential harm to human health.
3. Financial harm to consumers.
4. Financial harm to competitors.
5. Duration of non-compliance.
6. Evidence of intention behind the non-compliance.
7. History of non-compliance of the person (“P”) to whom the penalty notice is to be given.
8. Financial gain made by P as a result of non-compliance.
9. Financial resources of P.
10. Size of P’s business.
11. Availability of non-compliant product, including the number of retail shops in which it has been marketed.
12. Where P is a retailer with a number of retail outlets, the number of retail outlets operated by them (whether or not there is evidence that the non-compliant product has been, or may have been, marketed in all of those outlets).
13. The conduct of P after the non-compliance had come to the attention of the enforcement authority.
14. Previous action taken by the enforcement authority to help P comply with the Regulations.

PART 2

Mitigating factors

1. Action taken to eliminate or reduce the risk of damage resulting from the non-compliance.
2. Action taken by P to repair the harm done by the non-compliance.
3. Any co-operation given to the enforcement authority by P in responding to the non-compliance.
4. Whether P reported the non-compliance to the enforcement authority.
5. Financial resources of P.

6. Size of P's business.
7. Availability of non-compliant product, including the number of retail shops in which it has been marketed.
8. The conduct of P after the non-compliance was drawn their attention by an enforcement authority.
9. Where the non-compliance was committed by an employee of P, the extent to which the employee was acting outside of their authority.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the enforcement of Regulation (EC) No 110/2008 (OJ No L 39, 13.2.2008, p 16) of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89, and give enforcement authorities new powers in relation to the enforcement of EC requirements relating to spirit drinks, including the power to give improvement notices and to impose monetary penalties by penalty notice.

These Regulations revoke the Spirit Drinks Regulations 1990 (S.I. 1990/1179), the Spirit Drinks (Scotland) Regulations 1990 (S.I. 1990/1196 (S. 136)), the Spirit Drinks Regulations (Northern Ireland) 1990 (S.R. (NI) 1990 No 219), the Spirit Drinks (Scotland) Amendment Regulations 1995 (S.I. 1995/484 (S. 33)), the Spirit Drinks (Amendment) Regulations 1995 (S.I. 1995/732) and the Spirit Drinks (Amendment) Regulations (Northern Ireland) 1995 (S.R. (NI) 1995 No 105) (regulation 2 and Schedule 1). The 1990 Regulations, as amended, made provision for the enforcement of Council Regulation (EEC) No 1576/89 (OJ No L 160, 12.6.1989, p 1) laying down general rules on the definition, description and presentation of spirit drinks and Commission Regulation (EEC) No 1014/90 (OJ No L 105, 25.4.1990, p 9) laying down detailed implementing rules on the definition, description and presentation of spirit drinks. Regulation (EC) No 110/2008 supersedes those EC Regulations.

These Regulations include provisions making the failure to comply with the provisions of Regulation (EC) No 110/2008 mentioned in Schedule 2 an offence and create an additional offence to protect geographical indications registered in Annex III to that Regulation (regulation 4 and Schedule 2).

They designate the Commissioners for Her Majesty's Revenue and Customs as the verification authority for the purpose of Article 22 of Regulation (EC) No 110/2008 (regulation 5). They designate food authorities and port health authorities as the competent authorities for the purpose of Article 24(1) of Regulation (EC) No 110/2008 (regulation 6) and for the enforcement of the Regulations (regulation 7). They provide for the appointment of officers (regulation 8). They impose a duty on competent authorities and enforcement authorities to give assistance and information to each other and empower the Commissioners for Her Majesty's Revenue and Customs to disclose information to an enforcement authority for the purposes of these Regulations (regulation 9). They confer powers of entry (regulation 10) and other powers (regulation 11), including seizure powers, including the seizure of products liable to destruction. They require certain procedures to be followed in the event of any exercise of the seizure powers (regulation 12). They provide for the issue of improvement notices (regulation 13) and provide for appeals against improvement notices (regulations 14 and 15). They provide for the destruction of seized products and the giving of improvement notices to be publicised (regulation 16).

They make obstruction an offence (regulation 17) and provide for the punishment of criminal offences (regulation 18). They also contain provisions relating to offences committed by a body corporate, unincorporated body or partnership (regulation 19), the commission of an offence due to the act or default of a third person (regulation 20) and defences (regulation 21).

These Regulations also create a scheme for the issuing and payment of penalty notices for certain offences. They include provisions relating to the giving of a penalty notice (regulation 22 and Schedule 3), the content of such a notice (regulation 23), the amount of a penalty payable under a penalty notice (regulation 24 and Schedule 4), the period in which a penalty must be paid and the effect of paying a penalty (regulation 25), the method of paying a penalty (regulation 26), the issue of a certificate relating to the payment or non-payment of a penalty (regulation 27), the payment of penalties into the Consolidated Fund (regulation 28), and the withdrawal of a penalty notice (regulation 29).

They also contain provisions relating to the giving of notices (regulation 30).

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available at www.defra.gov.uk or from Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London, SW1P 3JR. It is also annexed to the Explanatory Memorandum for these Regulations, which is available, alongside these Regulations, on the OPSI website (www.opsi.gov.uk).

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STATUTORY INSTRUMENTS

2008 No. 3206

FOOD

The Spirit Drinks Regulations 2008

£5.00