

EXPLANATORY MEMORANDUM TO
THE SPIRIT DRINKS AND SCOTCH WHISKY (AMENDMENT) REGULATIONS
2019

2019 No. 1289

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”), and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument updates existing enforcement legislation by amending the Spirit Drinks Regulations 2008 and Scotch Whisky Regulations 2009, to include references to Regulation (EU) 2019/787 of the European Parliament and of the Council on the definition, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs and the protection of geographical indications for spirit drinks. Regulation (EU) 2019/787 is a new EU spirit drinks regulation, and rules in the Regulation relating to geographical indications (“GIs”) became applicable in the EU from 8th June 2019. This instrument also removes some spent provisions from the 2009 Regulations.

Explanations

What did any relevant law do before this instrument?

- 2.2 Since 2008, spirit drinks have been regulated in the EU by 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 (the “EU Spirit Drinks Regulation”).
- 2.3 The Spirit Drinks Regulations 2008 and the Scotch Whisky Regulations 2009 were made exercising the powers found in section 2(2) of the European Communities Act 1972 (“ECA”), and enforce the rules of the EU Spirit Drinks Regulation in the UK.

Why is it being changed?

- 2.4 Regulation (EC) No 110/2008 has been replaced by Regulation (EU) 2019/787. Regulation (EC) 2019/787 entered into force on 25th May 2019, with the rules on GIs becoming applicable from 8th June 2019, meaning that rules on GIs in the Spirit Drinks Regulations 2008 and Scotch Whisky Regulations 2009 must be amended to reflect the new applicable law.

What will it now do?

- 2.5 Following these amendments, the enforcement provisions on GIs in the Spirit Drinks Regulations 2008 and the Scotch Whisky Regulations 2009 will refer to Regulation (EU) 2019/787, where applicable, rather than Regulation (EC) 110/2008. Transitional provisions in the 2009 Regulations have also been removed as they are no longer applicable.

- 2.6 The remainder of Regulation (EU) 2019/787 will become applicable from 25th May 2021, so the Spirit Drinks Regulations 2008 and Scotch Whisky Regulations 2009 will need to retain references to Regulation (EC) No 110/2008 for the non-GI rules.
- 2.7 On EU Exit, the European Union (Withdrawal) Act 2018 will retain applicable EU legislation. This will be amended to ensure it continues to be operable after EU Exit by separate EU Exit legislation. For spirit drinks, this will have the effect of retaining the GI rules from Regulation (EU) 2019/787 and the non-GI rules (definitions, composition, labelling, etc.) from Regulation (EC) No 110/2008.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 2(2) of the European Communities Act 1972) and the extent and application is as detailed in section 4 below.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is made in exercise of the powers in section 2(2) of the European Communities Act 1972.
- 6.2 A consultation has been carried out as required by Article 9 of Regulation (EC) No 178/2002 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.
- 6.3 The pieces of secondary legislation being amended by this instrument are:
- The Spirit Drinks Regulations 2008; and
 - The Scotch Whisky Regulations 2009.

7. Policy background

What is being done and why?

- 7.1 This instrument will amend the Spirit Drinks Regulations 2008 and the Scotch Whisky Regulations 2009, so that for the provisions on GIs of spirit drinks, reference

is made to the applicable EU regulation. The previous EU spirit drinks regulation, Regulation (EC) No 110/2008 has been superseded by Regulation (EU) 2019/787, for which the GI provisions became applicable on 8th June 2019.

- 7.2 Without these updates the competent authorities empowered by the Regulations would not be able to effectively enforce the rules on GIs, meaning that action taken against products which breached GI protection could be subject to legal challenge.

8. European Union (Withdrawal) Act 2018 / Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the EU. Separate instruments make operability amendments to the retained EU regulations. For spirit drinks this will be the GI provisions from Regulation (EU) 2019/787, and the non-GI provisions from Regulation (EC) 110/2008.

9. Consolidation

- 9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

- 10.1 A consultation was held in July/August 2019, which targeted trade associations and other representative bodies, in line with the requirements of Article 9 of Regulation (EC) No 178/2002.
- 10.2 No objections were received to the proposed amendments to the Spirit Drinks Regulations 2008 and Scotch Whisky Regulations 2009.
- 10.3 Although the amendments relate to reserved policy, versions of the draft instrument were shared with the Devolved Administrations of Scotland, Wales and Northern Ireland, who provided some feedback and drafting comments that were taken into account for further drafts.

11. Guidance

- 11.1 As this regulation updates existing provisions new guidance is not required. However, the UK Government will be publishing guidance on the UK GI schemes that will apply after EU Exit and will encompass these changes, for example how to apply for, amend or cancel a GI award. This will be publically available on GOV.UK on the day that the schemes enter into force, e.g. on 31st October 2019 if a withdrawal agreement with the EU has not been agreed by that date and no further extension is agreed.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because its purpose is to update existing regulatory standards, and so there is expected to be minimal impact on business.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. However this legislation places no additional burdens upon them, so no specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 As this instrument updates existing provisions with references to the applicable regulations, no review clause is required. Defra will however monitor and review the impact of the instruments as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

15. Contact

- 15.1 Jamie Mash, Senior Policy Adviser at the Department for Environment, Food and Rural Affairs, telephone 0208 225 6405 or email: jamie.mash@defra.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Becky Shrubsole, Deputy Director for Farming, Food Sectors and Trade, at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Zac Goldsmith MP, Parliamentary Under Secretary of State for Food and Animal Welfare can confirm that this Explanatory Memorandum meets the required standard.