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STATUTORY INSTRUMENTS

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**2009 No. 2890**

**FOOD**

**The Scotch Whisky Regulations 2009**

<i>Made</i>	- - - -	<i>26th October 2009</i>
<i>Laid before Parliament</i>		<i>30th October 2009</i>
<i>Coming into force</i>	- -	<i>23rd November 2009</i>

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup>.

The Secretary of State<sup>(2)</sup> is a Minister designated<sup>(3)</sup> 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.

There has been open and transparent public consultation during the preparation of the following Regulations as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council<sup>(4)</sup> 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 makes the following Regulations.

**Title, commencement and application**

1.—(1) These Regulations may be cited as the Scotch Whisky Regulations 2009 and come into force on 23rd November 2009.

(2) These Regulations apply to drinks and whisky distillates (whether in the form of a drink or not) manufactured in the United Kingdom.

**Repeal and revocation**

2.—(1) The Scotch Whisky Act 1988<sup>(5)</sup> is repealed.

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(1) 1972 c. 68.

(2) 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.

(3) S.I. 1989/1327, to which there are amendments not relevant to these Regulations.

(4) OJ No L 31, 1.2.2002, p 1, last amended by Commission Regulation (EC) No 596/2009 (OJ No L 188, 18.7.2009, p 14).

(5) 1988 c. 22.

(2) The Scotch Whisky (Northern Ireland) Order 1988(6) is revoked.

### **Definition of “Scotch Whisky” and categories of Scotch Whisky**

- 3.—(1) In these Regulations “Scotch Whisky” means a whisky produced in Scotland—
- (a) that has been distilled at a distillery in Scotland from water and malted barley (to which only whole grains of other cereals may be added) all of which have been—
    - (i) processed at that distillery into a mash;
    - (ii) converted at that distillery into a fermentable substrate only by endogenous enzyme systems; and
    - (iii) fermented at that distillery only by the addition of yeast;
  - (b) that has been distilled at an alcoholic strength by volume of less than 94.8 per cent so that the distillate has an aroma and taste derived from the raw materials used in, and the method of, its production;
  - (c) that has been matured only in oak casks of a capacity not exceeding 700 litres;
  - (d) that has been matured only in Scotland;
  - (e) that has been matured for a period of not less than three years;
  - (f) that has been matured only in an excise warehouse or a permitted place;
  - (g) that retains the colour, aroma and taste derived from the raw materials used in, and the method of, its production and maturation;
  - (h) to which no substance has been added, or to which no substance has been added except—
    - (i) water;
    - (ii) plain caramel colouring; or
    - (iii) water and plain caramel colouring; and
  - (i) that has a minimum alcoholic strength by volume of 40%.
- (2) In these Regulations—
- “Single Malt Scotch Whisky” means a Scotch Whisky that has been distilled in one or more batches—
- (a) at a single distillery;
  - (b) from water and malted barley without the addition of any other cereals; and
  - (c) in pot stills;
- “Single Grain Scotch Whisky” means a Scotch Whisky that has been distilled at a single distillery except—
- (a) Single Malt Scotch Whisky; or
  - (b) a Blended Scotch Whisky;
- “Blended Malt Scotch Whisky” means a blend of two or more Single Malt Scotch Whiskies that have been distilled at more than one distillery;
- “Blended Grain Scotch Whisky” means a blend of two or more Single Grain Scotch Whiskies that have been distilled at more than one distillery; and
- “Blended Scotch Whisky” means a blend of one or more Single Malt Scotch Whiskies with one or more Single Grain Scotch Whiskies.

## General interpretation

### 4.—(1) In these Regulations—

“authorised officer” means any person appointed by an enforcement authority under regulation 17;

“blending” has the meaning given in the first sub-paragraph of paragraph (7) of Annex I to Regulation (EC) No 110/2008 as it applies in relation to a combination of whiskies and “blend” and “blended” shall be construed accordingly;

“enforcement authority” means an authority exercising a function conferred on it by regulation 16;

“excise warehouse” means a place of security approved under section 92(1) of the Customs and Excise Management Act 1979(7) or section 15(1) of the Alcoholic Liquor Duties Act 1979(8);

“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 or 3 of the Local Government etc. (Scotland) Act 1994(9); and

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

“manufacture” includes—

- (a) keeping for the purpose of maturation; and
- (b) keeping, or using, for the purpose of blending, except for domestic blending for domestic consumption;

“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;

“packaging” has the meaning given in paragraph (17) of Annex I to Regulation (EC) No 110/2008;

“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 32;

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(7) 1979 c. 2, to which there are amendments not relevant to these Regulations.

(8) 1979 c. 4.

(9) 1994 c. 39.

“permitted place”, in relation to a place where a whisky has been matured in Scotland, means any place in Scotland to which a whisky (or whisky distillate) that had previously been matured in an excise warehouse in Scotland is moved for a purpose mentioned in sub-paragraph (a), (b), (c), (d) or (f) of regulation 16(2) of the Excise Warehousing (Etc.) Regulations 1988<sup>(10)</sup>;

“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<sup>(11)</sup>), 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, ship or aircraft;

“presentation” has the meaning given in paragraph (15) of Annex I to Regulation (EC) No 110/2008;

“protected locality” means a locality mentioned in regulation 10(5);

“protected region” means a region mentioned in regulation 10(6);

“Regulation (EC) No 110/2008” means Regulation (EC) No 110/2008<sup>(12)</sup> 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;

“relevant court” means—

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

“sell” includes offer or expose for sale or have in possession for sale;

“whisky” has the meaning given in point 2 of Annex II to Regulation (EC) No 110/2008;

“whisky-based drink” means a drink, other than whisky, that contains whisky; and

“whisky distillate” means a whisky distillate as described in point 2(a)(i) and (ii) of Annex II to Regulation (EC) No 110/2008.

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

(3) In these Regulations “container” (except as used in the expression “shipping container”) has the same meaning as in paragraph (16) of Annex I to Regulation (EC) No 110/2008, and includes any cap or other device by which the receptacle has been closed, any tag attached to the receptacle, and any sheathing covering its neck, and—

- (a) any reference to a container of Scotch Whisky must be construed as a reference to a container into which Scotch Whisky has been put for the purpose of subsequent sale; and
- (b) any reference to the front of a container includes a reference to any label attached to the front of a container.

(4) In these Regulations any reference to the labelling of Scotch Whisky must be construed as a reference to the labelling of a container of Scotch Whisky for the purposes of subsequent sale (whether by attaching a label to the container, direct printing onto the container, moulding on the container or any other method by which information is included on a container).

<sup>(10)</sup> S.I. 1988/809.

<sup>(11)</sup> 1984 c. 22.

<sup>(12)</sup> OJ L 39, 13.2.2008, p 16, as last amended by Regulation (EC) No 1334/2008 of the European Parliament and of the Council (OJ No L 354, 31.12.2008, p 34).

(5) In these Regulations any reference to the packaging of Scotch Whisky must be construed as a reference to the packaging of a container of Scotch Whisky for the purposes of subsequent sale.

### **Manufacture**

5.—(1) A person must not manufacture a whisky distillate in Scotland unless it is manufactured in the manner described in regulation 3(1)(a) and (b).

(2) A person must not manufacture any whisky in Scotland except Scotch Whisky.

### **Marketing**

6.—(1) A person must not label, package, sell, advertise or promote any drink as Scotch Whisky or Scotch if it is not Scotch Whisky.

(2) A person must not label, package, sell, advertise or promote any drink in any other way that creates a likelihood of confusion on the part of the public as to whether the drink is Scotch Whisky.

### **Movement from Scotland to another country**

7.—(1) A person must not move any of the following categories of Scotch Whisky from Scotland to another country in a wooden cask or other wooden holder—

- (a) Single Grain Scotch Whisky;
- (b) Blended Malt Scotch Whisky;
- (c) Blended Grain Scotch Whisky; or
- (d) Blended Scotch Whisky.

(2) During the period until (and including) 22<sup>nd</sup> November 2012, a person must not move any Single Malt Scotch Whisky from Scotland to another country in a wooden cask or other wooden holder.

(3) On and after 23<sup>rd</sup> November 2012 a person must not move any Single Malt Scotch Whisky from Scotland to another country except in a bottle (made of any inert material) that is labelled for retail sale.

(4) For the purposes of this regulation a person is regarded as having moved Scotch Whisky from Scotland to another country if they—

- (a) physically move the whisky from Scotland to another country; or
- (b) arrange (whether directly or through a third party) for another person to physically move the whisky from Scotland to another country.

(5) In this regulation “retail sale” means any sale except a sale for use or resale in the course of a trade or business.

### **Compulsory sales descriptions**

8.—(1) The category into which a Scotch Whisky falls must be stated on—

- (a) the front of a container of Scotch Whisky; and
- (b) any individual packaging used for the transportation of the container, or used for display purposes during the marketing of the whisky, unless, in both cases, the front of the container is clearly visible through that packaging.

(2) The categories are—

- (a) Single Malt Scotch Whisky;
- (b) Single Grain Scotch Whisky;

- (c) Blended Malt Scotch Whisky;
  - (d) Blended Grain Scotch Whisky; and
  - (e) Blended Scotch Whisky.
- (3) The name of the category must be—
- (a) printed in a conspicuous place in such a way as to be easily visible and legible to the naked eye and indelible so that it is clear that it is the sales description of the whisky;
  - (b) printed in a way that gives equal prominence to each word making up the name of the category; and
  - (c) as prominent as any other description of the whisky on the container or packaging, except for—
    - (i) any separate use of the description “Scotch Whisky”;
    - (ii) any statement relating to the year in which the whisky was distilled, the year in which it was bottled, the period for which it was matured or the age of the whisky; and
    - (iii) any descriptive word or words forming part of the brand name.
- (4) The name of the category must not be—
- (a) overlaid or interrupted by other written or pictorial matter; or
  - (b) used in conjunction with any other words.
- (5) But paragraph (4)(b) does not prevent the name of a Scottish locality or region from being appended to the name of the category of the whisky to indicate where the Scotch Whisky was distilled if—
- (a) it appears immediately before the name of the category;
  - (b) the whisky was distilled in the named locality or region; and
  - (c) the use of that name does not otherwise contravene regulation 10.
- (6) A person must not label, package or sell any Scotch Whisky in a way that does not comply with paragraph (1), (3) or (4).
- (7) A person must not label, package, sell, advertise or promote any Scotch Whisky as falling within a category if it does not fall into that category.

#### **Names of distilleries and distillers etc.**

9.—(1) The name of a distillery mentioned in Schedule 1 must not be used as a brand name, or as part of a brand name of a Scotch Whisky, or be used in a similar fashion in terms of its positioning or prominence, unless the whisky has been wholly distilled at that distillery.

(2) Any name adopted for a Scotch Whisky distillery after these Regulations come into force, including the name of a new or re-opened Scotch Whisky distillery, must not be used by the proprietor of that distillery as a brand name, or as part of a brand name, for a Scotch Whisky, or be used in a similar fashion in terms of its position or prominence, unless the Scotch Whisky has been wholly distilled at that distillery.

(3) But paragraph (2) does not apply in the circumstances specified in Schedule 2.

(4) Scotch Whisky must not be labelled, packaged, advertised or promoted in any other way that, having regard to the presentation of the product as a whole, creates a likelihood that the public may think that it has been distilled at any distillery or place other than the distillery or place at which it was actually distilled.

(5) Single Malt Scotch Whisky and Single Grain Scotch Whisky must not be labelled, packaged, advertised or promoted in any way that, having regard to the presentation of the product as a whole, creates a likelihood that the public may think that the whisky was distilled by any person other than

the person who distilled it, or the owner or operator of the distillery at which it was distilled, whether by an indication that that person is the distiller, the owner or operator of the distillery, or otherwise.

(6) A person must not label, package, advertise or promote any Scotch Whisky in a way that contravenes the requirements of paragraph (1), (2), (4) or (5), or sell any Scotch Whisky that has been labelled or packaged in that way.

### **Locality and region geographical indications**

**10.**—(1) A whisky or whisky-based drink must not be labelled, packaged, advertised or promoted in a way that includes the name of a protected locality or a protected region unless—

- (a) in the case of whisky, the whisky is Scotch Whisky that has been distilled in that locality or region; or
- (b) in the case of a whisky-based drink, the only whisky in the drink is Scotch Whisky that has been distilled in that locality or region.

(2) But paragraph (1) does not apply in the circumstances specified in Schedule 3.

(3) A whisky or whisky-based drink must not be labelled, packaged, advertised or promoted in a way that includes any reference to a name that is similar to the name of a protected locality or protected region if, having regard to the presentation of the product as a whole, the reference may create a likelihood of confusion on the part of the public as to where the whisky or whisky-based drink was distilled.

(4) A person must not label, package, advertise or promote any whisky or whisky-based drink in a way that contravenes paragraph (1) or (3), or sell any whisky or whisky-based drink that has been labelled or packaged in that way.

(5) The protected localities are—

- (a) “Campbeltown”, comprising the South Kintyre ward of the Argyll and Bute Council as that ward is constituted in the Argyll and Bute (Electoral Arrangements) Order 2006(13); and
- (b) “Islay”, comprising the Isle of Islay in Argyll.

(6) The protected regions are—

- (a) “Highland”, comprising that part of Scotland that is north of the line dividing the Highland region from the Lowland region;
- (b) “Lowland”, comprising that part of Scotland that is south of the line dividing the Highland region from the Lowland region; and
- (c) “Speyside”, comprising—
  - (i) the wards of Buckie, Elgin City North, Elgin City South, Fochabers Lhanbryde, Forres, Heldon and Laich, Keith and Cullen and Speyside Glenlivet of the Moray Council as those wards are constituted in the Moray (Electoral Arrangements) Order 2006(14); and
  - (ii) the Badenoch and Strathspey ward of the Highland Council as that ward is constituted in the Highland (Electoral Arrangements) Order 2006(15).

(7) In this regulation “the line dividing the Highland region from the Lowland region” means the line beginning at the North Channel and running along the southern foreshore of the Firth of Clyde to Greenock, and from there to Cardross Station, then eastwards in a straight line to the summit of Earl’s Seat in the Campsie Fells, and then eastwards in a straight line to the Wallace Monument, and from there eastwards along the line of the B998 and A91 roads until the A91 meets the M90 road at

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(13) S.S.I. 2006/378.

(14) S.S.I. 2006/372.

(15) S.S.I. 2006/481.

Milnathort, and then along the M90 northwards until the Bridge of Earn, and then along the River Earn until its confluence with the River Tay, and then along the southern foreshore of that river and the Firth of Tay until it comes to the North Sea.

### **Use of the words ‘pure’ and ‘malt’ and derivations**

**11.** A person must not label, package, sell, advertise or promote any Scotch Whisky in a way that includes—

- (a) the phrase ‘pure malt’ or any derivation of that phrase; or
- (b) the words ‘pure’ and ‘malt’, or any derivation of those words in a way that, although the words are separated from each other (whether by text or otherwise), the word ‘pure’ (or any derivation of it) is used adjectivally in connection with the word ‘malt’ (or any derivation of it).

### **Maturation, age and distillation statements**

**12.—**(1) Without prejudice to the obligation to comply with the directly applicable requirements of Article 12(3) of Regulation (EC) No 110/2008 (which requires, among other things, that any maturation period or age may only be specified in the description, presentation or labelling of a spirit drink where it refers to the youngest alcoholic component in the drink), a person must not label, package, sell, advertise or promote any Scotch Whisky in a way that includes a reference to its maturation period or age unless the maturation period or age is expressed in years.

(2) A person must not label, package, sell, advertise or promote any Scotch Whisky in a way that includes a reference relating to when it was distilled unless—

- (a) the reference relates to a single calendar year;
- (b) all of the whisky in the drink was distilled in that year;
- (c) the presentation of the whisky also includes a reference to—
  - (i) the year of bottling of the whisky;
  - (ii) the maturation period of the whisky; or
  - (iii) the age of the whisky; and
- (d) the reference to the year of bottling, the maturation period, or age of the whisky appears in the same field of vision as the reference to the year of distillation.

(3) A person must not label, package, sell, advertise or promote any Scotch Whisky in a way that includes a reference to any number (however expressed) if the reference to that number may create a likelihood of confusion on the part of the public as to whether the number relates to the maturation period of the whisky, its age or when it was distilled.

### **Transitional provisions relating to labelling and packaging**

**13.—**(1) A person is not to be taken to have contravened, or to have failed to comply with, regulation 8, 9, 10, 11 or 12 by reason of the labelling or packaging of any whisky or whisky-based drink on or before 22nd November 2011.

(2) It is for a person seeking to rely on paragraph (1) in relation to any whisky or whisky-based drink to prove that the drink was labelled or packaged on or before 22nd November 2011.

### **Transitional provisions relating to advertising and promotion**

14. A person is not to be taken to have contravened, or to have failed to comply with regulation 8, 9, 10, 11 or 12 by reason of the advertising or promotion of any whisky or whisky-based drink on or before 22nd November 2011.

### **Designation**

15. In relation to Scotch Whisky, the Commissioners for Her Majesty's Revenue and Customs are designated as a competent authority for the purpose of Article 24(1) of Regulation (EC) No 110/2008 in relation to the verification function imposed on them by regulation 5(1) of the Spirit Drinks Regulations 2008(16).

### **Enforcement**

16.—(1) Each food authority must enforce the provisions of these Regulations within its area.

(2) Each port health authority must enforce the provisions of these Regulations within its district.

### **Appointment of officers**

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

### **Duty to give assistance and provide information**

18. Each enforcement authority must give such assistance and information to any other enforcement authority as it may reasonably require for the purpose of its duties under these Regulations.

### **Powers of entry**

19.—(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 such other persons as they consider necessary.

(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 20(1)(a)(i) to (x) or documents or records of the type mentioned in regulation 20(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 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, or the person in charge, 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) In this regulation, a reference to a justice of the peace—

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

#### **Powers of an authorised officer**

**20.**—(1) An authorised officer (“O”) entering premises under regulation 19 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 whisky partly or fully packaged ready for sale;
  - (ii) any whisky-based drink partly or fully packaged ready for sale;
  - (iii) any product purporting to be a whisky or whisky-based drink partly or fully packaged ready for sale;
  - (iv) any product that O has reasonable grounds for believing is regulated by regulation 6(2);
  - (v) any liquid that O has reasonable grounds for believing is a distillate regulated by these Regulations (including any vessel in which the liquid is found);
  - (vi) any liquid that, although not packaged ready for sale, O has reasonable grounds for believing will be used for a product regulated by these Regulations (including any vessel in which the liquid is found);
  - (vii) any raw material or ingredients that O has reasonable grounds for believing may be used to produce any distillate or drink regulated by these Regulations, including colourings and flavourings;
  - (viii) any mash that O has reasonable grounds for believing may be used to produce any distillate regulated by these Regulations;
  - (ix) any packaging or label that O has reasonable grounds for believing may be used for a product regulated by these Regulations;
  - (x) any advertising or promotional materials relating to a drink, or other documentation relating to a distillate or to a drink, that O has reasonable grounds for believing may be used for a product regulated by these Regulations;

- (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 regulation 20(2) direction”) a person (“P”) 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 (x);
  - (b) any document or record mentioned in paragraph (1)(e);
  - (c) any computer equipment mentioned in paragraph (1)(f); and
  - (d) any premises on or in which any of those items are found.
- (3) P must comply with a regulation 20(2) direction given to them by O.
- (4) A person, other than O and P, who knows about a regulation 20(2) direction must not (although the direction was not given to them) disturb any item or premises in contravention of the terms of the direction.
- (5) O may seize and detain any item of the type mentioned in paragraph (1)(a)(i) to (x) or document or record mentioned in paragraph (1)(e) that O has reason to believe may be required as evidence in proceedings under these Regulations.
- (6) O may seize as liable to destruction any product of the type mentioned in paragraph (1)(a)(i), (ii) or (iii) that O reasonably believes contravenes any provision of these Regulations.
- (7) 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, 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.
- (8) If O is not able to remove an item, product or computer equipment seized under paragraph (5), (6) or (7) immediately, they may—
- (a) mark it in any way that they see fit; and
  - (b) give the person (“P”) appearing to them to be in charge of the item, product or computer equipment a notice (“a regulation 20(8) notice”)—
    - (i) identifying it;
    - (ii) requiring the item or computer equipment to be left undisturbed until it is collected by O; and

(iii) prohibiting the removal of the item, product or computer equipment from the premises on which it was found until it is collected by O.

(9) P must not contravene a regulation 20(8) notice given to them by O.

(10) A person, other than O and P, who knows about a regulation 20(8) notice, must not (although the notice was not given to them) disturb or remove an item, product or computer equipment in contravention of the terms of the notice.

(11) 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**

**21.**—(1) An authorised officer (“O”) must follow the procedures set out in this regulation if they seize anything under regulation 20(5), (6) or (7).

(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 lender who has a debt secured on the item, product or 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 20(5), 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 20(5), the enforcement authority must—

- (a) return the seized item within 14 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 14 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 20(6), 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 14 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 14 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 is satisfied 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 on the day on which the destruction was completed; 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 destruction was completed 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 it knows 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 it 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 lender 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 a product seized under regulation 20(6), the enforcement authority must—
  - (a) return the seized product within 14 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 14 days of the claim, beginning with the day on which the claim is received; or

- (c) within 14 days of the claim, beginning with the day on which the claim is received, take proceedings (“regulation 21(11)(c) proceedings”) in a relevant court for an order giving them authority to destroy the product.
- (12) In regulation 21(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 regulation 21(11)(c) proceedings, the relevant court authorises the enforcement authority to destroy the seized product, the court may also make an order requiring the claimant (but not a claimant who is a lender 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 20(7), the enforcement authority must—
- (a) return the seized computer equipment within seven 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 20(7); or
  - (b) take proceedings in a relevant court within seven days of the claim, beginning with the day on which the claim is received unless there are seven days or less remaining before the expiry of the maximum 28 day period provided for in regulation 20(7), for an order authorising the enforcement authority to retain the seized computer equipment in accordance with the requirements laid down in regulation 20(7).
- (15) If, in the case of any computer equipment seized under regulation 20(7), the relevant court authorises the enforcement authority to retain the seized computer equipment, the court 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 20(7).
- (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(17) applies to the proceedings; and
  - (b) in Northern Ireland, the Magistrates’ Courts (Northern Ireland) Order 1981(18) applies to the proceedings.
- (17) The procedure before a sheriff court under this regulation is by way of summary application.

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(17) 1980 c. 43.

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

### **Improvement notices**

**22.**—(1) If an authorised officer (“O”) has reasonable grounds for believing that any person (“P”) is failing to comply with regulation 5, 6, 7(1), (2) or (3), 8(6) or (7), 9(6), 10(4), 11 or 12, 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, where provided for in the notice, any measures agreed by O as being 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 23; and
  - (f) informs P of the period within which such an appeal may be brought.
- (2) A person must not contravene or fail to comply with an improvement notice.

### **Appeals against improvement notices**

**23.**—(1) Any person who is aggrieved about an improvement notice may appeal against that notice to a 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 a sheriff court 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.

### **Powers relating to appeals**

**24.**—(1) The relevant court may suspend an improvement notice pending an appeal.

(2) On an appeal against an improvement notice the relevant court may either cancel or confirm the notice with or without modification.

### **Publication of notices**

**25.**—(1) An enforcement authority must publicise the cases in which any product seized under regulation 20(6) has been destroyed, in such manner as it sees fit.

(2) But an enforcement authority must not publish the destruction of any item seized under regulation 20(6) where it considers that it would be inappropriate to do so.

(3) An enforcement authority must publicise the cases in which improvement notices have been given by it under regulation 22, in such manner as it sees fit.

(4) But an enforcement authority must not publicise an improvement notice given by it under regulation 22—

- (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;

- (c) where an appeal against the imposition of the improvement notice is successful; or
- (d) in any other case where the enforcement authority considers that it would be inappropriate to do so.

### **Obstruction**

**26.**—(1) A person (“P”) must not obstruct any person acting in the execution of these Regulations (“O”).

(2) P must give to O any assistance or information that O may reasonably require of P for the performance of O’s functions under these Regulations.

(3) P must not furnish any false or misleading information to O.

(4) P must produce a record to O when required to do so by O.

### **Offences**

**27.** A person is guilty of an offence if they contravene, or fail to comply with regulation 5, 6, 7(1), (2) or (3), 8(6) or (7), 9(6), 10(4), 11, 12, 20(3), (4), (9) or (10), 22(2) or 26.

### **Fines**

**28.** A person guilty of any offence under regulation 27 is liable—

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

### **Offences by bodies corporate etc.**

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

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

### **Default of third person**

**30.** 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**

**31.—(1)** In proceedings for an offence under these Regulations in Scotland it is a defence for the accused to prove that they took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) In proceedings for an offence under these Regulations in the remainder of the United Kingdom it is a defence for the defendant to prove that they took all reasonable steps and exercised all due diligence to avoid committing the offence.

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

- (a) in Scotland at least seven clear days before the trial diet the accused has given to the procurator fiscal a notice in writing giving such information identifying or assisting in the identification of the other person as was then in their possession;
- (b) in the remainder of the United Kingdom at least seven clear days before the hearing the defendant has given to the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in their possession; or
- (c) the court grants them leave.

### **Giving of penalty notice for penalty offence**

**32.** An enforcement authority that has reason to believe that a person has committed an offence under regulation 27 (“the relevant offence”) in relation to a contravention or failure to comply with regulation 5, 6, 7(1), (2) or (3), 8(6) or (7), 9(6), 10(4), 11, 12, 20(3), (4), (9) or (10) or 22(2) may give a penalty notice to that person.

### **Contents and form of penalty notice**

**33.** 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 35, 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**

**34.—(1)** The amount of the penalty must be determined by the enforcement authority and must neither be less than £1,000 nor 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 (but are not limited to) one or more of the factors mentioned in Schedule 4.

### **Restriction on proceedings for penalty offence**

**35.**—(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 36 before the end of that period.

(2) Paragraph (1) does not apply if the penalty notice is withdrawn in accordance with regulation 39.

### **Payment of penalty**

**36.**—(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**

**37.** 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**

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

### **Withdrawal of penalty notice**

**39.**—(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 notice to the person named in the penalty notice before or after the 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.

### **Civil remedy**

**40.**—(1) If the Court of Session is satisfied, on the application of a person mentioned in paragraph (4), that any person has contravened regulation 5, 6, 7(1), (2) or (3), 8(6) or (7), 9(6), 10(4), 11 or 12, in Scotland, the Court may grant an interdict prohibiting such contravention.

(2) If the High Court is satisfied, on the application of a person mentioned in paragraph (4), that any person has contravened regulation 6, 8(6) or (7), 9(6), 10(4), 11 or 12 in England, Northern Ireland or Wales, the Court may grant an injunction prohibiting such contravention.

(3) If the High Court is satisfied, on the application of a person mentioned in paragraph (4), that any person has contravened regulation 7(1), (2) or (3) in a case where regulation 7(4)(b) applies

and the person arranging the movement of the whisky is in England, Northern Ireland or Wales, the Court may grant an injunction prohibiting such contravention.

- (4) The persons are—
- (a) any distiller or blender of Scotch Whisky;
  - (b) the owner of a brand of Scotch Whisky;
  - (c) The Scotch Whisky Association; or
  - (d) any other person appearing to the court to be representative of a group of persons who are distillers or blenders of Scotch Whisky or owners of brands of Scotch Whisky.

### **Giving of notices**

**41.**—(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 by being given to a member of the partnership or a person having the control or management of the partnership business.
- (4) The notice may be given to a Scottish partnership or unincorporated partnership by being given to a partner or a person having the control or management of the partnership business.
- (5) The notice may be given to any other unincorporated body by being given to an officer of that body.
- (6) For the purposes of this regulation and section 7 of the Interpretation Act 1978(19) (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 on any of paragraph (2), (3), (4) or (5), 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.
- (7) For the purposes of paragraph (6) 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).
- (8) Paragraph (9) 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 (6)) 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.

(9) 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.

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

(11) In this regulation "body corporate" does not include a limited liability partnership or a Scottish partnership.

*Jim Fitzpatrick*  
Minister of State  
Department for Environment, Food and Rural  
Affairs

26th October 2009

## SCHEDULE 1

Regulation 9(1)

## DISTILLERIES TO WHICH REGULATION 9(1) APPLIES

<i>Column (1)</i>	<i>Column (2)</i>
Aberfeldy	Glenmorangie
Aberlour	Glen Moray (also known as Glen Moray-Glenlivet)
Abhainn Dearg (also known as Red River)	Glen Ord
Ailsa Bay	Glenrothes
Allt a' Bhainne	Glen Scotia
Ardbeg	Glen Spey
Ardmore	Glentauchers
Auchentoshan	Glenturret
Auchroisk	Highland Park
Aultmore	Inchgower
Balblair	Invergordon
Balmenach	Isle of Arran
Balvenie	Isle of Jura
Ben Nevis	Kilchoman
Benriach	Kilkerran
Benrinnies	Kininvie
Benromach	Knockando
Bladnoch	Knockdhu
Blair Athol	Lagavulin
Bowmore	Laphroaig
Braeval	Linkwood
Bruichladdich	Loch Ewe
Bunnahabhain	Loch Lomond
Cameronbridge	Longmorn
Caol Ila	Macallan
Caperdonich	Macduff
Cardhu	Mannochmore
Clynelish	Milntonduff
Cragganmore	Mortlach
Craigellachie	North British
Daftmill	Oban

*Status: This is the original version (as it was originally made).*

<i>Column (1)</i>	<i>Column (2)</i>
Dailuaine	Port Dundas
Dalmore	Pulteney
Dalwhinnie	Roseisle
Deanston	Royal Brackla
Dufftown (also known as Dufftown-Glenlivet)	Royal Lochnagar
Edradour	Scapa
Fettercairn	Speyburn
Girvan	Speyside
Glenallachie	Springbank
Glenburgie	Strathclyde
Glencadam	Strathisla
Glendronach	Strathmill
Glendullan	Talisker
Glen Elgin	Tamdhu
Glenfarclas	Tamnavulin
Glenfiddich	Teaninich
Glen Garioch	The Glenlivet
Glenglassaugh	Tobermory
Glengoyne	Tomatin
Glen Grant	Tomintoul
Glen Keith	Tormore
Glenkinchie	Tullibardine
Glenlossie	

## SCHEDULE 2

Regulation 9(3)

### CIRCUMSTANCES IN WHICH REGULATION 9(2) DOES NOT APPLY

Regulation 9(2) does not apply where a distillery has changed its name and the new name for the distillery is used as a brand name, or as part of a brand name (or is used in a similar fashion in terms of its position or prominence) for a Scotch Whisky distilled at that distillery before the new name had been adopted.

### SCHEDULE 3

Regulation 10(2)

#### CIRCUMSTANCES IN WHICH REGULATION 10(1) DOES NOT APPLY

1. Regulation 10(1) does not apply where the name of a protected locality or a protected region forms part of a trade mark or company name registered before 1<sup>st</sup> September 2009 and the name of the protected locality or protected region is only included on the labelling or packaging of a Scotch Whisky, or a Scotch Whisky-based drink, as part of that trade mark or company name.
2. Regulation 10(1) does not apply where the name of a protected locality or a protected region is mentioned only as part of the address of the distiller, producer, bottler, brand owner or seller of the drink.
3. In relation to a Blended Malt Scotch Whisky, a Blended Grain Scotch Whisky or a Blended Scotch Whisky, regulation 10(1) does not apply where—
  - (a) a protected locality or protected region is only mentioned by a reference to the individual whiskies that have been blended together to make the whisky; and
  - (b) the individual whiskies that have been blended together to make the whisky were not distilled anywhere else but in the specified localities or regions.
4. Regulation 10(1) does not apply where a brand owner refers in the labelling, packaging or advertising of one of their brands of Scotch Whisky to another brand of Scotch Whisky owned by them and the reference to the other brand includes a reference to a protected locality or protected region in which that other brand is distilled.

### SCHEDULE 4

Regulation 34(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. Financial harm to consumers.
3. Financial harm to competitors.
4. Duration of non-compliance.
5. Evidence of intention behind the non-compliance.
6. History of non-compliance of the person (“P”) to whom the penalty notice is to be given.
7. Financial gain made by P as a result of the non-compliance.
8. Financial resources of P.
9. Size of P’s business.
10. Availability of the non-compliant product, including the number of retail shops in which it has been marketed.

*Status: This is the original version (as it was originally made).*

11. Where P is a retailer with a number of retail shops, the number of retail shops 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 shops).

12. The conduct of P after the non-compliance is drawn to their attention by an enforcement authority.

13. 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 harm 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 the non-compliant product, including the number of retail shops in which it has been marketed.
8. The conduct of P after the non-compliance is drawn to 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.

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations impose additional national requirements in relation to Scotch Whisky in addition to the requirements that apply to Scotch Whisky by virtue 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. The additional national requirements regulate the manufacture (regulation 5), marketing (regulation 6), movement (regulation 7) and presentation (regulations 8 to 12 and Schedules 1 to 3) of Scotch Whisky (which is defined in regulation 3).

Scotch Whisky is a geographical indication protected under Regulation (EC) No 110/2008. That Regulation regulates all spirit drinks, including whisky, and provides for the protection of geographical indications for spirit drinks, including Scotch Whisky. The Spirit Drinks Regulations 2008 (S.I. 2008/3206) provide for the enforcement of Regulation (EC) No 110/2008 in the United Kingdom. In doing so, the Spirit Drinks Regulations 2008 apply to drinks in the United Kingdom

wherever they have been produced. These Regulations supplement the provisions of Regulation (EC) No 110/2008 as underpinned by the Spirit Drinks Regulations 2008 by laying down stricter rules for the protection of Scotch Whisky (as permitted by Article 6 of Regulation (EC) No 110/2008). They apply to drinks and whisky distillates manufactured in the United Kingdom (regulation 1).

These Regulations repeal the Scotch Whisky Act 1988 (1988 c. 22) and revoke the Scotch Whisky (Northern Ireland) Order 1988 (S.I. 1988/1852 (N.I. 19)) (regulation 2).

They contain transitional provisions (regulations 13 and 14).

They designate the Commissioners for Her Majesty's Revenue and Customs as a competent authority in relation to the verification functions imposed on them by regulation 5 of the Spirit Drinks Regulations 2008 (regulation 15). They provide for food authorities and port health authorities to enforce the Regulations (regulation 16). They provide for the appointment of officers (regulation 17) and impose a duty on enforcement authorities to give assistance and information to each other (regulation 18). They confer powers of entry (regulation 19) and other powers (regulation 20), including seizure and destruction powers. They require certain procedures to be followed in the event of any exercise of the seizure powers (regulation 21). They provide for the issue of improvement notices (regulation 22) and provide for appeals against improvement notices (regulations 23 and 24). They provide for the destruction of seized products and the giving of improvement notices to be publicised (regulation 25).

They prohibit obstruction (regulation 26) create offences for the contravention or failure to comply with specified provisions of the Regulations (regulation 27) and provide for the punishment of criminal offences (regulation 28). They contain provisions relating to offences committed by a body corporate (regulation 29), the commission of an offence due to the act or default of a third person (regulation 30) and defences (regulation 31).

These Regulations also create a scheme for the issuing and payment of penalty notices for an offence under regulation 27 in relation to contravention of, or failure to comply with, specified provisions of these Regulations (regulations 32 to 39).

They enable the Court of Session in Scotland to grant an interdict, and the High Court in England, Northern Ireland and Wales to grant an injunction, prohibiting contraventions of certain provisions of these Regulations (regulation 40).

They contain provisions relating to the giving of notices (regulation 41).

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](http://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](http://www.opsi.gov.uk)).