

2013 No. 2949

REVENUE AND CUSTOMS

The Spirit Drinks (Costs of Verification) Regulations 2013

Made - - - - 20th November 2013

Laid before Parliament 21st November 2013

Coming into force - - 14th December 2013

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) and section 56(1) and (2) of the Finance Act 1973(b).

The Commissioners for Her Majesty's Revenue and Customs are designated(c) for the purposes of section 2(2) of the European Communities Act 1972 in relation to geographical indications.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Commissioners 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.

Accordingly, the Commissioners, with the consent of the Treasury, make the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Spirit Drinks (Costs of Verification) Regulations 2013 and come into force on 14th December 2013.

(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) 1973 c. 51.
(c) S.I. 2004/706. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs. Regulation 5 of the Spirit Drinks Regulations 2008 (S. I. 2008/3206) designates the Commissioners 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.
(d) OJ No L 39, 13.2.2008, p 16.

Interpretation

2. In these Regulations—

“approved method of communication”, in relation to the making of an application or the making of a payment to the Commissioners in accordance with a provision of these Regulations means a method of communication which has been specified by the Commissioners in a relevant verification scheme, for the making of an application of that kind or the making of a payment of that kind under that provision;

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

“producer” means the owner and operator of a production facility carrying out a stage in the production of a relevant spirit drink;

“production facility” means a facility involved in one or more production processes;

“production process” means a process defined in the technical file required to create the relevant spirit drink;

“Regulation (EC) No 110/2008” means Regulation (EC) No 110/2008(a) 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 spirit drink” has the meaning given in regulation 5(2) of the Spirit Drinks Regulations 2008(b);

“relevant verification scheme” means the scheme for obtaining verification published by the Commissioners in relation to a relevant spirit drink, as amended from time to time;

“technical file” means a document which sets out the specifications with which a relevant spirit drink must comply as provided for under Article 17 of Regulation (EC) No 110/2008 and is submitted under that Regulation;

“verification” means the decision of the Commissioners 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 production processes specified in the technical file relating to that geographical indication before it is placed on the market; and “verify” shall be construed accordingly.

Application for verification

3.—(1) The Commissioners shall publish a relevant verification scheme for each relevant spirit drink.

(2) A producer may apply to the Commissioners for verification of one or more production processes required to create a relevant spirit drink.

(3) An application under paragraph (1) must be made by an approved method of communication.

(4) An application under this regulation must contain the particulars specified in the relevant verification scheme.

(5) Only producers who have—

(a) obtained verification of the production processes required to create a relevant spirit drink, and

(b) paid the appropriate charge under regulation 5 or 6,

may produce and market a relevant spirit drink.

(a) OJ No 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).

(b) S.I. 2008/3206.

Costs of verification

4.—(1) Where an application is made under regulation 3, the Commissioners—

- (a) shall impose charges where verification is obtained;
- (b) may impose charges where verification is not obtained.

(2) The liability to charges under paragraph (1) arises on the making of an application under regulation 3.

Payment of charges to the Commissioners

5.—(1) Payment to the Commissioners of the charges due under regulation 4 must be made by or on behalf of the producer within the time specified in the relevant verification scheme.

(2) The Commissioners shall determine charges with the aim of cost recovery on a financial year basis for each verification scheme and shall specify the details of those charges in the relevant verification scheme.

(3) Charges levied under regulation 4 must not exceed such amount as the Commissioners consider will enable them to meet any expenses reasonably incurred by them in carrying out the verification.

(4) Payment under paragraph (1) must be made by an approved method of communication.

Agents

6.—(1) The Commissioners may authorise agents to carry out the inspection of production processes and production facilities on their behalf for the purposes of obtaining verification.

(2) An agent who carries out an inspection under paragraph (1) shall notify the Commissioners of the results of the inspection and the Commissioners may base their decision whether or not to verify on the results of that inspection.

(3) Where an agent has carried out an inspection under paragraph (1), the agent may recover the costs of that inspection from the producer.

(4) Costs recovered under paragraph (3) must not exceed such amount as the Commissioners consider will enable the agent to meet any expenses reasonably incurred in carrying out the inspection.

(5) The Commissioners may recover from the producer the fees paid by them in respect of an inspection under paragraph (1).

Review

7.—(1) Before the end of each review period, the Commissioners must—

- (a) carry out a review of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Commissioners must, so far as is reasonable, have regard to how Article 22 of Regulation (EC) No 110/2008 (which is implemented by means of these Regulations) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of five years beginning with the day on which these Regulations come into force, and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

*Edward Troup
Jim Harra*

20th November 2013

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Article 22 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 Regulation").

The Regulation makes provision for Member States to introduce measures ensuring that spirit drinks marketed with a protected geographical indication are produced in accordance with the specific conditions laid down in a technical file for the product. This includes chemical, physical and oenological characteristics. In the UK, this affects Scotch Whisky, Plymouth Gin, Irish Whiskey produced in Northern Ireland, Irish Cream produced in Northern Ireland and Somerset Cider Brandy, all of which are registered at Annex III to the Regulation.

Article 22 of the Regulation requires that a relevant spirit drink is verified by a competent authority as being compliant with its technical file before it can be placed on the market. The Article requires that the costs of verification for each relevant spirit drink are borne by the producers who are subject to the controls specified in the technical file.

The Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") are designated as the authority responsible for the verification of UK spirit drinks registered at Annex III to the Regulation and their task is to design and administer verification schemes for each relevant spirit drink to test for compliance with its technical file. The Commissioners must impose charges for the verification, details of which will be published in each verification scheme.

Regulation 1 provides for citation and commencement.

Regulation 2 defines the various terms and expressions used in these Regulations.

Regulation 3 provides for the publication of verification schemes and the method of making an application for verification.

Regulation 4 provides for charges for obtaining verification to be imposed on producers with production facilities engaged in one or more production processes required to create a relevant spirit drink. The charge arises on the making of an application for verification.

Regulation 5 provides for the charges to be determined by and paid to the Commissioners. Details of the requirements will be specified in the relevant verification scheme.

Regulation 6 provides for inspections in the course of obtaining verification to be undertaken by agents authorised by the Commissioners. The regulation also makes provision for the costs of such an inspection to be recovered from the producer by the agent and for the agent's fees to be recovered.

Regulation 7 requires the Commissioners to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Commissioners to consider whether the Regulations

should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

A transposition note has been prepared which sets out how the main elements of Article 22 of the Regulation will be transposed into UK Law. A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

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