Draft Regulations laid before the Assembly under paragraph 8F(9) of Part 1A of Schedule 7 to the European Union (Withdrawal) Act 2018 for approval

Draft Statutory Rules of Northern Ireland

2023 No. 0000

Food

The Spirit Drinks Regulations (Northern Ireland) 2023

Made - - - - \*\*\*

Coming into operation in accordance with regulation 1(1)

The Department of Agriculture, Environment and Rural Affairs, in exercise of the powers conferred by sections 11 and 22 of, and Part 1C of Schedule 2 and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018([[1]](#footnote-2)), makes the following Regulations.

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([[2]](#footnote-3)) 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.

PART 1

Introductory

Citation and commencement

1. — These Regulations may be cited as the Spirit Drinks Regulations (Northern Ireland) 2023 and come into operation on the day following the day on which they are made.

Interpretation

1. — The Interpretation Act (Northern Ireland) 1954([[3]](#footnote-4)) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.
   1. In these Regulations—

“authorised officer” means any person appointed by an enforcement authority under regulation 6;

“Annex I” means Annex I to Regulation (EU) 2017/787;

“contravention” includes a failure to comply;

“enforcement authority” means an authority exercising a functions conferred on it by regulation 5;

“officer” –

* + 1. 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;
    2. 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;

“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;

“Regulation (EU) 2019/787” means Regulation (EU) 2019/787 of the European Parliament and of the Council on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008;

“Regulation (EC) 936/2009” means Commission Regulation (EC) 936/2009([[4]](#footnote-5)) applying the agreements between the European Union and third countries on the mutual recognition of certain spirit drinks;

“spirit drink” has the meaning given in paragraph (1) of Article 2 of Regulation (EU) 2019/787.

* 1. Other expressions used in these Regulations and Regulation (EU) 2019/787 have their meaning in Regulation (EU) 2019/787.
  2. Part 1 of Schedule 1 applies to the interpretation of Part 2 of that Schedule.

PART 2

Enforcement of European Union provisions

Compliance with European Union provisions

1. — A person is guilty of an offence if they contravene any provision of Regulation (EU) 2019/787 mentioned in column 1 of Part 2 of Schedule 1 as read with any provision mentioned in any corresponding entry in column 2 of that Part of that Schedule.
   1. But paragraph (1) does not apply—
      1. to the production of a spirit drink that is produced on or before 19th May 2009 in accordance with the requirements of—
         1. Council Regulation (EEC) No 1576/89([[5]](#footnote-6)) laying down general rules on the definition, description and presentation of spirit drinks, and
         2. Commission Regulation (EEC) No 1014/90([[6]](#footnote-7)) laying down detailed implementing rules on the definition, description and presentation of spirit drinks;
      2. 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;
      3. to the marketing of a spirit drink produced in accordance with the requirements of Chapters I and II of Regulation (EC) No 110/2008([[7]](#footnote-8)) on or before 25th May 2021 and marketed in accordance with the requirements of those Chapters of that Regulation;
   2. A person is guilty of an offence if they contravene Article 1 of Regulation (EC) 936/2009.

Designation of competent authorities

1. — Each district council is designated as the competent authority for the purpose of Article 43(1) of Regulation (EU) 2019/787 for the control of spirit drinks in its district, including for drinks being—
   * 1. imported into, or exported from, Northern Ireland;
     2. moved from Northern Ireland into Great Britain;
     3. moved into Northern Ireland from Great Britain.
   1. Each district council is designated as the competent authority responsible for controls in respect of the enforcement of Article 1 of Regulation (EC) No 936/2009 in its district, including for drinks being—
      1. imported into, or exported from, Northern Ireland;
      2. moved from Northern Ireland into Great Britain;
      3. moved into Northern Ireland from Great Britain.

Enforcement

1. Each district council must enforce the provisions of these Regulations within its district, including for drinks being—
   * 1. imported into, or exported from, Northern Ireland;
     2. moved from Northern Ireland into Great Britain;
     3. moved into Northern Ireland from Great Britain.

Appointment of officers

1. Each district council must appoint persons as authorised officers for the purposes of the enforcement of these Regulations.

Duty to give assistance and provide information

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.

Powers of Entry

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.
   1. The authorised officer may take with them such other person as they consider necessary.
   2. 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.
   3. Admission to any premises used only as a private dwelling house 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.
   4. If a lay magistrate, on sworn information in writing, is satisfied of the matters mentioned in paragraph (6), they may grant a warrant permitting an authorised officer to enter any premises, if needs be by reasonable force.
   5. The matters are that—
      1. there are reasonable grounds for believing that Condition A or B is met, and
      2. Condition C, D or E is met.
   6. Condition A is that on the premises there are items or products of the type mentioned in regulation 9(1)(a) or documents or records of the type mentioned in regulation 9(1)(e) and that their inspection is likely to disclose evidence of a contravention of these Regulations.
   7. 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.
   8. 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.
   9. 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.
   10. 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.
   11. A warrant granted under paragraph (5)—
       1. is valid for one month, beginning with the day on which it is granted, and
       2. must be produced for inspection to the person (if there is one) who appears to the officer to be the occupier of the premises.
   12. 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.

Powers of an authorised officer

1. — An authorised officer (“O”) entering premises under regulation 8 may—
   * 1. 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—
        1. any spirit drink partly or fully packaged ready for sale;
        2. any product purporting to be a spirit drink partly or fully packaged ready for sale;
        3. 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);
        4. any raw material or ingredients that may be used to produce any distillate or drink, including colourings and flavourings;
        5. any mash;
        6. any empty container;
        7. any label;
        8. any packaging;
        9. any advertising or promotional materials relating to a drink, or other documentation relating to a distillate or to a drink;
     2. search the premises;
     3. take samples;
     4. carry out any inquiries, examinations or tests;
     5. 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;
     6. 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;
     7. 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.
   1. 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—
      1. any one or more of the items mentioned in paragraph (1)(a)(i) to (ix);
      2. any premises on or in which any of those items are found.
   2. A person is guilty of an offence if they fail to comply with a direction given to them by O under paragraph (2).
   3. 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.
   4. O may seize as liable to destruction any product of the type mentioned in paragraph (1)(a)(i) or (ii) that O reasonably believes contravenes any provision of Regulation (EU) 2019/787 mentioned in column 1 of Part 2 of Schedule 1, as read with any provision mentioned in any corresponding entry in column 2 of that Part of that Schedule.
   5. 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.
   6. If O is not able to remove an item, product or computer equipment seized under paragraph (4), (5) or (6) immediately, they may—
      1. mark it in any way that they see fit, and
      2. give the person appearing to them to be in charge of the item, product or computer equipment a notice—
         1. identifying it, and
         2. 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.
   7. 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.
   8. 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

1. — An authorised officer (“O”) must follow the procedures set out in this regulation if they seize anything under regulation 9(4), (5) or (6).
   1. 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—
      1. what O has seized,
      2. when O seized it,
      3. the grounds for the seizure of the item, product or equipment, and
      4. the address to which, and the period during which, a claim may be made for the return of the item, product or equipment.
   2. 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).
   3. 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.
   4. 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.
   5. If a notification of a claim is not received within 28 days in respect of an item seized under regulation 9(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.
   6. If a notification of a claim is received within 28 days in respect of an item seized under regulation 9(4), the enforcement authority must—
      1. return the seized item within 28 days, beginning with the day on which the claim is received, or
      2. 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.
   7. If a notification of a claim is not received within 28 days in respect of a product seized under regulation 9(5), the enforcement authority may—
      1. 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—
         1. 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
         2. 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
      2. 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 —
         1. 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
         2. 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.
   8. In paragraph (8) the “relevant person” means—
      1. 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
      2. 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.
   9. 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)—
      1. the costs of the removal and transport of the product from the premises to the place at which it is stored;
      2. the costs of the storage of the product for up to 28 days;
      3. any costs for the removal and transport of the product if it is moved from one place of storage to another place of storage;
      4. the costs of the transport of the product from the place of storage to the place of destruction;
      5. the costs of the destruction of the product.
   10. If a notification of a claim is received within 28 days in respect of an item seized under regulation 9(5), the enforcement authority must—
       1. return the seized product within 28 days, beginning with the day on which the claim is received,
       2. 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
       3. within 28 days of the claim, beginning with the day on which the claim is received, take proceedings (“paragraph (11)(c) proceedings”) in a magistrates’ court for an order giving them authority to destroy the product.
   11. In paragraph (11)(c) proceedings the magistrates’ court may—
       1. authorise the enforcement authority to destroy the seized product,
       2. 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
       3. require the enforcement authority to return the product to the claimant and impose a deadline by which this must be done.
   12. If, in paragraph (11)(c) proceedings, the magistrates’ 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—
       1. the costs of the removal and transport of the product from the premises to the place at which it is stored;
       2. the costs of the storage of the product for up to 28 days;
       3. any costs for the removal and transport of the product if it is moved from one place of storage to another place of storage;
       4. the costs of the transport of the product from the place of storage to the place of destruction;
       5. the costs of the destruction of the product.
   13. If a notification of a claim is received within 28 days in the case of any computer equipment seized under regulation 9(6), the enforcement authority must—
       1. 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 9(6), or
       2. take proceedings in a magistrates’ 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 9(6), for an order authorising the enforcement authority to retain the seized computer equipment in accordance with the requirements laid down in regulation 9(6).
   14. If, in the case of any computer equipment seized under regulation 9(6), the magistrates’ 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 9(6).
   15. The procedure in a magistrates’ court under this regulation is by way of complaint, and the Magistrates’ Courts (Northern Ireland) Order 1981([[8]](#footnote-9)) applies to the proceedings.

Improvement notices

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—
   * 1. states O’s grounds for believing this,
     2. specifies the matter that constitutes the failure to comply with these Regulations,
     3. specifies what P must stop doing, or the measures that, in O’s opinion, P must take in order to comply with these Regulations,
     4. 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,
     5. informs P of the right of appeal to a magistrates’ court conferred by regulation 12, and
     6. informs P of the period within which such an appeal may be brought.
   1. A person is guilty of an offence if they contravene or fail to comply with an improvement notice.

Appeals against improvement notices

1. — Any person who is aggrieved about an improvement notice may appeal against that notice to the magistrates’ court.
   1. The procedure on an appeal to a magistrates’ court under paragraph (1) is by way of complaint, and the Magistrates’ Courts (Northern Ireland) Order 1981 applies to the proceedings.
   2. The period within which an appeal may be brought is 28 days, beginning with the day on which the improvement notice is given.
   3. The magistrates’ court may suspend an improvement notice pending an appeal.

Powers of a magistrates’ court on appeal

1. On an appeal against an improvement notice the magistrates’ court may either cancel the notice or confirm it, with or without modification.

Publication of notices

1. — An enforcement authority must publicise the destruction of any product seized under regulation 9(5) in such manner as it sees fit.
   1. But an enforcement authority must not publicise the destruction of any item seized under regulation 9(5) where it considers that it would be inappropriate to do so.
   2. An enforcement authority must publicise any improvement notice given by it under regulation 11 in such manner as it sees fit.
   3. But an enforcement authority must not publicise an improvement notice given by it under regulation 11—
      1. until the time for appealing against the imposition of the improvement notice has passed;
      2. during the period that any appeal against the imposition of the improvement notice is ongoing; or
      3. in any other case where the enforcement authority considers that it would be inappropriate to do so.

Obstruction

1. A person (“P”) is guilty of an offence if they—
   * 1. obstruct any person (“O”) acting in the execution of these Regulations;
     2. 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;
     3. furnish any false or misleading information to O; or
     4. fail to produce a record when required to do so by O.

Criminal offences: punishment

1. — A person guilty of any offence under regulation 3(1) or (3), 9(3) or (8), 11(2) or 15, is liable—
   * 1. on summary conviction, to a fine not exceeding the statutory maximum;
     2. on conviction on indictment, to a fine.
   1. A person guilty of an offence under regulation 7(4) is liable—
      1. on summary conviction, to a fine not exceeding the statutory maximum, to imprisonment for a term not exceeding three months, or to both;
      2. on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both.

Offences by bodies corporate etc.

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.
   1. 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.
   2. 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.
   3. 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.
   4. In this regulation “offence” means an offence under these Regulations.

Default of third person

1. 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

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.
   1. 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—
      1. 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
      2. the court grants them leave.
   2. In proceedings for an offence under regulation 3(1) as read with the provisions of Regulation (EU) 2019/787 mentioned in Part 2 of Schedule 1 insofar as they apply to the advertisement of spirit drinks, it is a defence for the person charged with the offence to prove that—
      1. at the time of the alleged offence they were a person whose business it was to publish or arrange for the publication of advertisements,
      2. they received the advertisement for publication in the ordinary course of business, and
      3. they did not know, and had no reason to suspect, that publication of the advertisement would constitute an offence under these Regulations.
   3. It is a defence for a person charged with an offence under regulation 7(4) to prove that they reasonably believed—
      1. that it was lawful to disclose the information disclosed, or
      2. that the information disclosed had already and lawfully been made available to the public.

Giving of a penalty notice for penalty offence

1. An enforcement authority may give a penalty notice to a person (“P”) where the authority has reason to believe that P has committed an offence under regulation 3(1) by contravening a provision of Regulation (EU) 2019/787 mentioned in Schedule 2.

Contents of penalty notice

1. A penalty notice given by an enforcement authority must—
   * 1. give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence,
     2. state the amount of the penalty,
     3. state the period during which, by virtue of regulation 23, proceedings will not be taken for the offence,
     4. 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
     5. state that payment must not be made in cash.

Amount of penalty

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.
   1. 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 3.

Restriction on proceedings for penalty offence

1. — Where a person is given a penalty notice—
   * 1. 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;
     2. that person may not be convicted of the offence if the penalty is paid in accordance with regulation 24 before the end of that period.
   1. Paragraph (1) does not apply if the penalty notice is withdrawn in accordance with regulation 27.

Payment of penalty

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.
   1. Payment of any penalty may not be made in cash.

Certificate of payment or non-payment of a penalty

1. 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

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

Withdrawal of penalty notice

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).
   1. 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.
   2. 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

1. — Any notice required to be given under these Regulations to any person may be given to them by—
   * 1. delivering it to them;
     2. leaving it at their proper address;
     3. sending it to them by post at that address.
   1. The notice may be given to a body corporate by being given to an officer of that body.
   2. 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.
   3. The notice may be given to any other unincorporated body by being given to an officer of that body.
   4. For the purposes of this regulation and section 24 of the Interpretation Act (Northern Ireland) 1954 (service of documents) in its application to this regulation, the proper address of any person to whom a notice is to be given is—
      1. in the case of a body corporate, the address of the registered or principal office of the body;
      2. in the case of a limited liability partnership or a Scottish partnership, the address of the registered or principal office of the partnership;
      3. in the case of an unincorporated partnership or any other unincorporated body, the address of the principal office of the partnership or body;
      4. 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;
      5. in any other case, the last known address of the person in question.
   5. 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).
   6. 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.
   7. The specified address is also to be treated for the purposes of this regulation and section 24 of the Interpretation Act (Northern Ireland) 1954 in its application to this regulation as the person’s proper address.
   8. In this regulation “body corporate” does not include a limited liability partnership or a Scottish partnership.

PART 3

Amendment of domestic legislation

Amendment of the Spirit Drinks Regulations 2008

1. — The Spirit Drinks Regulations 2008([[9]](#footnote-10)) are amended as follows.
   1. In regulation 3(1), in the definition of “spirit drink” for the words from “paragraph” to the end substitute “Article 2 of Regulation (EU) 2019/787.”
   2. Omit regulation 6(1) and (2).
   3. In Schedule 2, in Part 2 omit the following entries relating to the following provisions of (EC) 110/2008—
      1. Article 3(1);
      2. Article 3(2);
      3. Article 3(3);
      4. Article 3(4);
      5. Article 5(1);
      6. Article 5(2);
      7. Article 5(3);
      8. Article 9(1);
      9. Article 9(2);
      10. Article 9(4);
      11. Article 9(8);
      12. Article 9(9);
      13. Article 11(1);
      14. Article 11(2);
      15. Article 11(4);
      16. Article 11(5);
      17. Article 12(1);
      18. Article 12(2);
      19. Article 12(3);
      20. Article 13;
      21. Article 14(1).
   4. In Schedule 3 omit the entries numbered 1 to 3 and 7 to 12.

Amendment of the Spirit Drinks, Wine and European Union Withdrawal (Consequential Modifications) (Amendment) (EU Exit) Regulations 2020

1. In the Spirit Drinks, Wine and European Union Withdrawal (Consequential Modifications) (Amendment) (EU Exit) Regulations 2020([[10]](#footnote-11)), omit regulation 2.

Amendment of the Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020

1. In the Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020([[11]](#footnote-12)), omit regulation 13(6)(a).

Amendment of the Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020

1. In the Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020([[12]](#footnote-13)), omit regulation 11(3).

Amendment of the Food Information Regulations (Northern Ireland) 2014

1. In the Food Information Regulations (Northern Ireland) 2014([[13]](#footnote-14)), at the end of the second column of Part 5 of Schedule 5, insert—

and Article 14(2) of Regulation (EU) 2019/787 of the European Parliament and of the Council.

Amendment to the Weights and Measures (Intoxicating Liquor) Order (Northern Ireland) 1989

1. — The Weights and Measures (Intoxicating Liquor) Order (Northern Ireland) 1989([[14]](#footnote-15)) is amended as follows.
   1. In article 1(2), after the definition of “made wine” but before the “and” insert—

“single distilled shochu” means the spirit drink known as single distilled shochu which is single distilled, produced by pot still and bottled in Japan;.

* 1. In the table in Schedule A1, in the row relating to “Spirit drinks”—
     1. in the second column, for the definition of Sprit Dinks, substitute—

Spirit drinks as defined in Article 2 of Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, as that Regulation applies in Northern Ireland.

* + 1. in the fourth column, at the end, insert “, or single distilled shochu in containers of a capacity of 720 ml and 1800 ml”.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on \*\*\*

Name

A senior officer of the

Department of Agriculture, Environment and Rural Affairs

SCHEDULE 1 Regulation 2(3), 3(1), 9(5) and 19(3)

EUROPEAN UNION 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 I of Regulation (EU) 2019/787;

“categories 1 to 44” means the categories of spirit drinks numbered 1 to 44 in Annex I of Regulation (EU) 2019/787.

PART 2

The provisions of Regulation (EU) No 2019/787

|  |  |  |
| --- | --- | --- |
| Column 1  Relevant provision of Regulation (EU) 2019/787 | Column 2  Provisions to be read with the provision of Regulation (EU) 2019/787 mentioned in Column 1 | Column 3  Subject Matter |
|  |  |  |
| Article 6(1) | Article 5 of Regulation (EU) 2019/787 and Annex I to the Treaty on the Functioning of the European Union | Agricultural origin of ethyl alcohol and distillates used in the production of a spirit drink. |
| Article 6(2), first sentence | Categories 1 to 14 of Annex I | The dilution and dissolution of colours, flavourings and other authorised ingredients used in the preparation of alcoholic beverages. |
| Article 6(2), second sentence | Article 6(2), first sentence of Regulation (EU) 2019/787 | Amounts of alcohol to be used in the dilution and dissolution of colours, flavourings and other authorised ingredients in the preparation of alcoholic beverages. |
| Article 6(3) | Annex I to the Treaty on the Functioning of the European Union | Prohibition on the use of alcohol of synthetic origin and other alcohol of non-agricultural origin in alcoholic beverages. |
| Article 7(2) | Categories 1 to 14 of Annex I | General requirements relating to the production, content, colouring and sweetening of a spirit drink falling within categories 1 to 14. |
| Article 7(3) | Annex I to the Treaty on the Functioning of the European Union and Annex I | General requirements relating to the production, content, flavouring, colouring and sweetening of a spirit drink falling within the categories of a spirit drink numbered 15 to 44 of Annex I. |
| Article 7(4) | Annex I to the Treaty on the Functioning of the European Union and Annex I | General requirements relating to the production, content, flavouring, colouring and sweetening of spirit drinks other than those falling within categories 1 to 44. |
| Article 10(1), second subparagraph |  | A spirit drink shall bear a legal name in its description, presentation and labelling. |
| Article 10(1), third subparagraph |  | Legal names shall be shown clearly and visibly on the label of the spirit drink and shall not be replaced or altered. |
| Article 10(2) | Article 10(4) of, and Annex I to, Regulation (EU) 2019/787 | Legal name for a spirit drink falling within categories 1 to 44. |
| Article 10(3) | Annex I | Use of the “spirit drink” legal name for a spirit drink that does not fall within any of the categories numbered 1 to 44. |
| Article 10(5)(b) | Category 33 of Annex I | Restriction on the replacement of a legal name by a compound term which includes the term ‘liqueur’ or ‘cream’. |
| Article 10(6) | Articles 11 and 12 of, and Annex I to, Regulation (EU) 2019/787 and Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers | Requirements relating to the supplementation of legal names. |
| Article 11(2) | Article 10 of Regulation (EU) 2019/787 | Prohibition on terms that may be used in a compound term to describe an alcoholic beverage. |
| Article 11(3) |  | Labelling requirements for compound terms. |
| Article 12(4) | Article 11(3)(c) of Regulation (EU) 2019/787 | Labelling requirements for the use of allusions. |
| Article 13(1), first sentence |  | Requirements for use of references to raw materials in the description, presentation or labelling of a spirit drink. |
| Article 13(1), second sentence | Article 13(1), first sentence, of Regulation (EU) 2019/787 | Requirements for presentation order |
| Article 13(2) | Articles 18 to 22 of Regulation (EU) No 1169/2011, and Article 10 of Regulation (EU) 2019/787 | Restrictions on using spirit drink legal names in ingredient lists for foodstuffs. |
| Article 13(3), the first subparagraph | Article 13(4), first subparagraph, of (EU) Regulation 2019/787. | Labelling requirements for mixtures. |
| Article 13(3), the second subparagraph | Article 13(4), first subparagraph, of (EU) Regulation 2019/787. | Labelling requirements for mixtures. |
| Article 13(3), the third subparagraph, | Article 13(4), first subparagraph, of (EU) Regulation 2019/787. | Labelling requirements for mixtures. |
| Article 13(3a)(a) | Annex I | Labelling requirements for blends. |
| Article 13(3a)(b) | Article 10(6)(d) of Regulation (EU) 2019/787 | Labelling requirements for blends. |
| Article 13(3a)(c) |  | Labelling requirements for blends. |
| Article 13(4), the second subparagraph | Article 13(4), first subparagraph of, and Annex I to, Regulation (EU) 2019/787 | Labelling requirements for mixtures that comply with the requirements for any of the spirit drink categories 1 to 44. |
| Article 13(4), the third subparagraph | Article 13(4), first subparagraph of, and Annex I to, Regulation (EU) 2019/787 | Labelling requirements for mixtures that comply with the requirements for any of the spirit drink categories 1 to 44 |
| Article 13(5), second sentence | Article 13(5), first sentence of, and Annex I to, Regulation (EU) 2019/787 | Use of names of plant raw materials in the description, presentation or labelling of a spirit drink |
| Article 13(6), first sentence |  | Restrictions on the specification of the maturation period or age of a spirit drink. |
| Article 13(7), first sentence | Commission Regulation (EC) No 684/2009 implementing Council Directive 2008/118/EC as regards the computerised procedures for the movement of excise goods under suspension of excise duty | Requirements for the electronic administrative document. |
| Article 13(7), second sentence | Commission Regulation (EC) No 684/2009 implementing Council Directive 2008/118/EC as regards the computerised procedures for the movement of excise goods under suspension of excise duty | Requirements for the inclusion of relevant maturation periods in the electronic administrative document. |
| Article 14(1) |  | Indication of place of provenance. |
| Article 15(1) | Article 15(2) of, and Annexes I and II to, Regulation (EU) 2019/787 | Language to be used in the description, presentation and labelling of a spirit drink. |
| Article 17 |  | Prohibition on the covering of closing devices with lead-based capsules or foil. |
|  |  |  |

SCHEDULE 2 Regulation 20

PENALTY OFFENCES

1. Article 6(1).

2. Article 10(1).

3. Article 10(2).

4. Article 10(3).

5. Article 11(3).

6. Article 12(4).

7. Article 13(1).

8. Article 13(2).

9. Article 13(3), the first subparagraph, as read with the first subparagraph of Article 13(4).

10. Article 13(3), the second subparagraph, as read with the first subparagraph of Article 13(4).

11. Article 13(3), the third subparagraph, as read with the first subparagraph of Article 13(4).

12. Article 13(3a)(a).

13. Article 13(3a)(b).

14. Article 13(3a)(c).

15. Article 13(4), the second subparagraph, as read with the first subparagraph of Article 13(4).

16. Article 13(4), the third subparagraph, as read with the first subparagraph of Article 13(4).

17. Article 13(5), second sentence.

18. Article 15.

19. Article 17.

SCHEDULE 3 Regulation 22(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 (EU) No. 2019/787 of the European Parliament and of the Council on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 (OJ No L 130, 17.5.2019, p 1-54); Commission Regulation (EC) No 936/2009 applying the agreements between the European Union and third countries on the mutual recognition of certain spirit drinks (OJ No L 264, 8.10.2009, p 5–6).

Regulation 29 amends and revokes parts of the Spirit Drinks Regulations 2008 (S.I. 2008/3206) that provided for the enforcement of Regulation (EC) No 110/2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ No L 39, 13.2.2008, p. 16-54) and Regulation (EC) 936/2009 for spirit drinks in Northern Ireland.

1. () 2018 (c. 16); Part 1C of Schedule 2 was inserted by section 22 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”); paragraph 21(b) of Schedule 7 was amended by paragraph 53(2) of Schedule 5 to the 2020 Act. [↑](#footnote-ref-2)
2. () OJ No L 31, 1.2.2002, p 1, last amended by Regulation (EU) 2019/1381 of the European Parliament and of the Council (OJ No L 231, 6.9.2019, p 1). [↑](#footnote-ref-3)
3. () 1954 c. 33 (N.I.). [↑](#footnote-ref-4)
4. () OJ No L 264, 8.10.2009, p. 5, [↑](#footnote-ref-5)
5. () 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. [↑](#footnote-ref-6)
6. () 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. [↑](#footnote-ref-7)
7. () OJ No L 39, 13.2.2008, p. 16, last amended and subsequently repealed by Regulation (EU) 2019/787 (OJ L 130, 17.5.2019, p. 1). However, the provisions of Regulation (EC) 110/2008 continue to apply on a transitional basis by virtue of Article 50(1) of Regulation (EU) 2019/787. [↑](#footnote-ref-8)
8. () S.I. 1981/1675 (N.I. 26). [↑](#footnote-ref-9)
9. () S.I. 2008 No. 3206, as amended by S.I. 2020/1636, 1637 and 1661. [↑](#footnote-ref-10)
10. () S.I. 2020 No. 1636. [↑](#footnote-ref-11)
11. () S.I. 2020 No. 1637. [↑](#footnote-ref-12)
12. () S.I. 2020 No. 1661. [↑](#footnote-ref-13)
13. () S.R. 2014 No. 223, as amended by S.R. 2015 Nos. 261 and 365; S.R. 2016 No. 249; S.R. 2019 Nos. 5 and 353; and S.R.2020 Nos. 24 and 80 [↑](#footnote-ref-14)
14. () S.R. 1989 No.164, relevant amendments made by S.R. 2010 No. 203 [↑](#footnote-ref-15)