



STATUTORY INSTRUMENTS.

S.I. No. 198 of 2023



EUROPEAN UNION (SPIRIT DRINKS) REGULATIONS 2023

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Contents

Regulation

1. Citation
2. Interpretation
3. Obligations of producers
4. Prohibition on placing on the market, distribution or sale, etc. of spirit drink in non-compliance of Spirit Drinks Regulation
5. Protection of geographical indications and product specification
6. Application for registration of geographical indication and provisional grants
7. Prohibition on production of spirit drinks if not entered on verification list
8. Designation of competent authorities
9. Appointment, etc. of authorised officer
10. Functions of authorised officer
11. Assistance, etc. to authorised officer
12. Search warrant
13. Compliance notice
14. Appeal against compliance notice
15. Seizure and detention for non-compliance with compliance notice
16. Service of compliance notice or notification
17. Obstruction, etc.
18. Summary offences
19. Offences by bodies corporate
20. Revocation

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EUROPEAN UNION (SPIRIT DRINKS) REGULATIONS 2023

I, CHARLIE MCCONALOGUE, Minister for Agriculture, Food and the Marine, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving full effect to Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Spirit Drinks) Regulations 2023.

Interpretation

2 (1) In these Regulations—

“Article” unless otherwise indicated, means an Article of the Spirit Drinks Regulation;

“authorised officer” means—

- (a) a person appointed as an authorised officer under Regulation 9,
- (b) an authorised officer appointed under section 49 of the Food Safety Authority of Ireland Act 1998 (No. 29 of 1998), or
- (b) a member of the Garda Síochána;

“compliance notice” means a notice served under Regulation 13;

“Spirit Drinks Regulation” means Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019¹, as amended by Commission Delegated Regulation (EU) 2021/1096 of 21 April 2021², Commission Delegated Regulation (EU) 2021/1334 of 27 May 2021³, Commission Delegated Regulation (EU) 2021/1335 of 27 May 2021⁴, Commission Delegated Regulation (EU) 2021/1465 of 6 July 2021⁵ and Commission Delegated Regulation (EU) 2022/1303 of 25 April 2022⁶;

“Minister” means Minister for Agriculture, Food and the Marine.

(2) A word or expression that is used in the Spirit Drinks Regulation and that is also used in these Regulations has, unless the contrary intention appears, in these Regulations the same meaning as it has in the Spirit Drinks Regulation.

(3) These Regulations shall be deemed to be food legislation for the purposes of the Food Safety Authority of Ireland Act 1998 (No. 29 of 1998).

¹ OJ No. L 130, 17.5.2019, p. 1

² OJ No. L 238, 06.7.2021, p. 1

³ OJ No. L 289, 12.8.2021, p.1

⁴ OJ No. L 289, 12.8.2021, p.4

⁵ OJ No. L 321, 13.9.2021, p.12

⁶ OJ No. L 197, 26.07.2022, p.7

Obligations of producers

3. (1) The producer of a spirit drink shall comply with Article 6 (ethyl alcohol and distillates used in alcoholic beverages), Article 7 (categories of spirit drinks) and Article 11 (compound terms).

(2) The producer of a spirit drink who fails to comply with paragraph (1) commits an offence and is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €500,000.

(3) The producer of a spirit drink shall keep records for the period of at least 7 years to demonstrate compliance with Articles 6, 7 and 11 and of the sale, distribution or disposal or import or export of the drink. The records shall be available for production for inspection by an authorised officer.

(4) The producer of a spirit drink who fails to comply with paragraph (3) commits an offence and is liable on summary conviction to a class A fine.

Prohibition on placing on the market, distribution or sale, etc. of spirit drink in non-compliance of Spirit Drinks Regulation

4. (1) A person who places on the market, distributes, sells or imports or exports a spirit drink which is not in compliance with Article 9 (presentation and labelling), Article 10 (legal names of spirit drinks), Article 11 (compound terms), Article 13 (additional rules on description, presentation and labelling), Article 14 (indication of place of provenance), Article 15 (language used for names of spirit drinks) or Article 17 (prohibition of lead-based capsules and foil) commits an offence.

(2) A person who places on the market, distributes, sells or imports or exports a foodstuff other than an alcoholic beverage which is not in compliance with Article 12 (allusions) commits an offence.

(3) A person who commits an offence under this Regulation is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €500,000.

Protection of geographical indications and product specification

5. An operator marketing a spirit drink who uses a geographic indication other than in compliance with Article 21 (protection of geographical indications) or Article 22 (product specification) commits an offence and is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €500,000.

Application for registration of geographical indication and provisional grants

6. (1) Where an application for registration of geographical indication under Article 24 relates to a geographical area in the State, the Minister is the authority in the State to whom the application may be submitted.

(2) An authorised officer authorised in that behalf by the Minister may grant provisional protection to a name for the purposes of Article 25.

Prohibition on production of spirit drinks if not entered on verification list

7. (1) An operator who is not entered on the list of operators (in this Regulation referred to as the “verification list”) who produces spirit drinks with a geographical indication in the State, drawn up and kept by the Minister under Article 38, shall not produce spirit drinks in the State.

(2) The Minister—

- (a) shall withdraw from the verification list an operator who ceases to produce spirit drinks, and
- (b) may withdraw from that list an operator who has been convicted of an offence under Regulation 3(2), 4 or 5 or has failed to comply with a compliance notice in respect of non-compliance with the Spirit Drinks Regulation for such time as the Minister considers appropriate and the operator can demonstrate compliance, as the case may be, with Articles 6 and 7 or Articles 21 and 22.

(3) Where the Minister proposes to withdraw under paragraph (2)(b) an operator from the verification list, the Minister shall notify the operator of the proposal and afford the operator an opportunity to make to him or her, within 14 days of the notification, representations regarding the proposal. The Minister shall consider any such representations. The Minister may, where no representations are made, upon the expiration of the 14 days from notification, or, where representations are made after considering them, withdraw the operator from the verification list and notify the operator of the withdrawal.

(4) An operator who fails to comply with paragraph (1) commits an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €500,000.

(5) The Minister or such other person carrying out verification of compliance under Article 38 may charge an operator a fee to cover the costs of verification. An operator shall not be entered on the verification list unless any such fee is paid.

Designation of competent authorities

8. (1) The Minister, the Revenue Commissioners and the Health Service Executive are designated as the competent authorities responsible for ensuring the Spirit Drinks Regulation (other than Article 12) is complied with.

(2) The Food Safety Authority of Ireland is designated as the competent authority responsible for ensuring that Article 12 of the Spirit Drinks Regulation is complied with.

Appointment, etc. of authorised officer

9. (1) The Minister may appoint in writing such persons or classes of persons as he or she considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer under these Regulations, specified in the appointment.

(2) The Chief Executive of the Health Service Executive may appoint in writing such officers of the Executive as he or she considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer under these Regulations, specified in the appointment.

(3) The Revenue Commissioners may appoint in writing such officers of the Commissioners as the Commissioners consider appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer under these Regulations, specified in the appointment.

(4) The Minister, the Chief Executive of the Health Service Executive or the Revenue Commissioners may terminate the appointment of an authorised officer appointed by him or her, whether or not the appointment was for a fixed period or specified purpose.

(5) An appointment as an authorised officer ceases—

- (a) if it is terminated in accordance with paragraph (4),
- (b) if it is for a fixed period, on the expiration of that period,
- (c) if the person appointed is an officer of the Minister, of the Health Service Executive or of the Revenue Commissioners, upon the person ceasing to be such an officer.

(6) Nothing in paragraph (5) prevents the Minister, the Chief Executive of the Health Service Executive or the Revenue Commissioners from reappointing as an authorised officer a person to whom paragraph (5) relates.

(7) An authorised officer appointed under this Regulation shall be furnished with evidence of his or her appointment and, when exercising a function conferred on him or her, the officer shall, if requested by a person affected, produce such evidence for inspection.

(8) A person appointed as an authorised officer under the Regulations revoked under Regulation 20 who holds an appointment as an authorised officer upon the revocation of those Regulations continues as an authorised officer and is deemed appointed under this Regulation.

Functions of authorised officer

10. (1) For the purpose of ensuring the Spirit Drinks Regulation is complied with, where an authorised officer has reasonable cause to suspect that –

- (a) a spirit drink or ingredient of a spirit drink is present, has been present or may be present on land or premises,
- (b) a spirit drink or ingredient of a spirit drink is or has been produced, stored or otherwise dealt with on land or premises,
- (c) equipment, plant or machinery used in connection with a spirit drink or ingredient of a spirit drink is or may be on land or premises,
- (d) a document relating to a thing referred to in paragraph (a), (b) or (c) is present, was present or may be present on land or premises,
- (e) a contravention of the Spirit Drinks Regulation or these Regulations is being or has been committed,
- (f) evidence of a contravention to which paragraph (e) relates may be, is or has been on land or premises,

the authorised officer may, at all reasonable times, enter the land or premises and he or she may –

- (i) search the land or premises,
- (ii) board and search a vehicle, vessel or container,
- (iii) examine a spirit drink, an ingredient for a spirit drink, equipment, plant or machinery used in connection with a spirit drink or an ingredient of a spirit drink,
- (iv) take, without payment, samples of a spirit drink or an ingredient of a spirit drink or an article, or substance as he or she may reasonably require and carry out or cause to be carried out on a sample such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
- (v) require the production of a record (including, if a record is in non-legible form, in a legible form) or thing relating to a spirit drink or an ingredient of a spirit drink,
- (vi) retain a record or thing (for so long as is necessary),
- (vii) make a record using any means, including but not limited to, writing, photography or video,
- (viii) give a direction to, or request information of, a person regarding a spirit drink or ingredient of a spirit drink as he or she considers necessary,
- (ix) require the name and address of a person and the name and address of any other person including the owner of, or person to whom a spirit drink or ingredient of a spirit

drink is being delivered or who is causing it to be delivered,

- (x) require of a person the ownership, identity and origin of a spirit drink or an ingredient of a spirit drink,
- (xi) require a person in charge or control of a vessel, vehicle or container to refrain from moving it,
- (xii) mark or otherwise identify a spirit drink or an ingredient of a spirit drink or a sample taken under subparagraph (iv), or
- (xiii) seize and detain a spirit drink or an ingredient of a spirit drink.

(2) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 12 other than if he or she has reasonable cause to suspect that before a search warrant could be sought in relation to the dwelling anything to which paragraph (1) relates is being or is likely to be destroyed or disposed of.

(3) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under this section.

(4) An authorised officer, when exercising a power under this Regulation may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.

(5) Where a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under these Regulations, the member may, without warrant, arrest the person.

(6) Where in the course of exercising any powers under this Regulation an authorised officer finds or comes into possession of any thing that the officer believes to be evidence of an offence or suspected offence under these Regulations, it may be seized and retained for use in evidence in criminal proceedings.

(7) A member of the Garda Síochána or an officer of the Revenue Commissioners in uniform may stop a vehicle in a public place for the purposes of an inspection under this Regulation.

(8) Nothing in this Regulation operates to prejudice a power conferred by another enactment to search, or to seize or detain property, which may be exercised by a member of the Garda Síochána or an officer of the Revenue Commissioners.

Assistance, etc. to authorised officer

11. (1) A person who has—

- (a) a spirit drink or an ingredient of a spirit drink,
- (b) a record relating to a spirit drink or an ingredient of a spirit drink or any process that concerns the manufacture, sale, supply,

storage or transport of a spirit drink or an ingredient of a spirit drink, or

- (c) a vehicle, vessel, aircraft, container, equipment, machinery or other thing used in connection with a spirit drink, in his or her possession or under his or her control, or information or a record relating to any of them,

shall give such—

- (i) assistance to an authorised officer, or person who accompanies the officer, and
- (ii) information to an authorised officer on request being made in that behalf by the officer,

as the officer may reasonably require for the exercise of his or her functions under these Regulations.

(2) The owner, occupier or person in charge of land or premises used in connection with the production, sale or supply of a spirit drink or an ingredient of a spirit drink shall, if required by an authorised officer, where it is practicable and possible, provide suitable equipment or facilities or a suitable part of the land or premises or both for the officer to carry out his or her functions under these Regulations.

(3) An authorised officer may require a person to give to the officer such information as is in the person's power or procurement or as regards any land or premises specified by the officer including—

- (a) whether or not the land or premises is used, either partly or wholly, for or in connection with the production, sale or supply of a spirit drink or an ingredient of a spirit drink,
- (b) the name of the person who is in occupation of the land or premises, and
- (c) whether or not the land or premises is let and, if let, the name and address of the person to whom, and the period of time for which, it is let.

(4) A person who contravenes paragraph (1) or (2) or fails to comply with a requirement under paragraph (3) commits an offence and is liable on summary conviction to a class A fine.

Search warrant

12. (1) Where a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting that-

- (a) there is a spirit drink or an ingredient of a spirit drink on land or premises,
- (b) there is a record or other thing relating to a spirit drink or ingredient of a spirit drink on land or premises,

- (c) equipment, plant or machinery used in connection with the production, sale or supply of a spirit drink or ingredient of a spirit drink is or may be on land or premises,
- (d) a document relating to a thing referred to in paragraph (a), (b) or (c) is present, was present or may be present on land or premises,
- (e) that there is evidence of a contravention of the Spirit Drinks Regulation or these Regulations on land or premises,

the judge may issue a search warrant.

(2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers as the named authorised officer thinks necessary, at any time or times, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the land or premises named in the warrant.

(3) Where land or premises is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

Compliance notice

13. (1) Where an authorised officer (other than a member of the Garda Síochána) is of the opinion that the Spirit Drinks Regulation is not being or has not been complied with, or there are reasons to believe that these Regulations or the Spirit Drinks Regulation will not be complied with, the officer may serve a notice (“compliance notice”) stating that opinion to the person—

- (a) who appears to be the owner, occupier, or person in charge of premises where a spirit drink or ingredient for a spirit drink is located, or
- (b) in possession or control of a spirit drink or ingredient for a spirit drink,

to which the notice relates.

(2) A compliance notice shall—

- (a) require the person to whom it is served to take such action as specified in the notice,
- (b) inform the person to whom it is served that he or she may appeal the notice in the District Court under Regulation 14, and
- (c) state that if the person to whom it is served fails to comply with the notice, he or she commits an offence.

(3) A compliance notice may require that—

- (a) a spirit drink or ingredient for a spirit drink be dealt with in a manner specified in the notice,

- (b) a spirit drink or ingredient for a spirit drink be detained, disposed of or destroyed in such manner and at a place (if any) specified in the notice,
- (c) that production, distribution or marketing of a spirit drink cease until the notice is complied with,
- (d) the transport or further transport of a spirit drink or ingredient for a spirit drink be prohibited either absolutely or unless such conditions as may be specified in the notice are complied with,
- (e) a person return a spirit drink or ingredient for a spirit drink to the place of departure by a route which in the opinion of the authorised officer is the most direct or prudent,
- (f) a particular operation or activity may only be carried out under and in accordance with such terms and conditions as are specified in the notice.

(4) Where the owner, occupier, or person in charge of a premises, or the person in possession or control of a spirit drink or ingredient for a spirit drink cannot be identified after reasonable enquiry, it is sufficient compliance with paragraph (1) to address a control using the term “the owner/occupier”, or “the person having possession” or a similar designation.

(5) A compliance notice may specify a time limit within which it is to be complied with.

(6) A compliance notice may be modified or withdrawn in a further notice and the earlier notice has effect subject to the modification or withdrawal.

(7) A compliance notice may require a person to choose two or more of the requirements specified in the notice.

(8) A person on whom a compliance notice is served who fails to comply with or causes or permits another person to contravene the notice commits an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €100,000.

Appeal against compliance notice

14. (1) A person to whom a compliance notice is served may, within 7 days from the date of service of the notice, appeal (in this Regulation referred to as an “appeal”) the notice to the judge of the District Court having jurisdiction in the District Court district—

- (a) where the subject of the notice is situated, or
- (b) where the person bringing the appeal ordinarily resides or carries on business,

on the grounds that the notice is unreasonable having regard to the Spirit Drinks Regulation.

(2) Notice of an appeal shall contain a statement of the grounds upon which it is alleged that the notice or any of the terms of the notice are unreasonable.

(3) A person bringing an appeal shall lodge a copy of the notice or appeal with the District Court Clerk concerned not later than 48 hours prior to the hearing of the appeal.

(4) On the hearing of an appeal a judge of the District Court may confirm, modify or annul a control notice.

(5) A person, including a person on whom a compliance notice has been served, who —

- (a) pending the determination of an appeal, deals with a spirit drink or ingredient for a spirit drink to which the notice relates, other than in accordance with the terms of the notice, or
- (b) if the notice is confirmed or modified on appeal, deals with a spirit drink or ingredient for a spirit drink to which the notice relates other than in accordance with the terms of the compliance notice as confirmed or modified,

commits an offence and is liable—

- (i) on summary conviction, to a class A fine, or
- (ii) on conviction on indictment, to a fine not exceeding €100,000.

Seizure and detention for non-compliance with compliance notice

15. (1) Without prejudice to an appeal under Regulation 14, where —

- (a) a person in control of a spirit drink or ingredient for a spirit drink to which a compliance notice relates fails to comply with the notice within the time specified (if any), or
- (b) a compliance notice has been confirmed with or without modification under Regulation 14(4) and the notice has not been complied with,

an authorised officer may at any time seize the spirit drink or ingredient for a spirit drink to which the compliance notice relates, or seize the vessel, vehicle, equipment, machinery or other thing used in connection with the spirit drink or ingredient for a spirit drink.

(2) If the spirit drink or ingredient for a spirit drink to which a compliance notice relates is seized in accordance with paragraph (1), an authorised officer may—

- (a) sell, destroy or dispose of the spirit drink or ingredient for a spirit drink or cause it to be sold, destroyed or be disposed of, or
- (b) take such other measures in relation to the spirit drink or ingredient for a spirit drink as the authorised officer considers appropriate in the circumstances.

(3) Any profits arising out of the sale, destruction or disposal of a spirit drink or ingredient for a spirit drink in accordance with paragraph (2) shall be

paid to the owner of the spirit drink or ingredient for a spirit drink less any costs (including ancillary costs) incurred in connection with the seizure, sale, destruction or disposal.

(4) Notwithstanding paragraph (3), the costs (including ancillary costs) of a measure taken under this Regulation are recoverable by the Minister as a simple contract debt in a court of competent jurisdiction from any or all of the following—

- (a) the owner of the spirit drink or ingredient for the spirit drink,
- (b) the person in possession or control of the spirit drink or ingredient for a spirit drink,
- (c) the importer of the spirit drink or ingredient for a spirit drink,
- (d) the consignee, consignor of the spirit drink or ingredient for a spirit drink, or
- (e) a person acting as the servant or agent of a person mentioned in this paragraph.

Service of compliance notice or notification

16. (1) A compliance notice, subject to paragraph (2), or a notification under Regulation 7(3) shall be addressed to the person concerned by name and may be served on or given to the person—

- (a) by giving it to the person, his or her employee, servant or agent,
- (b) by leaving it at the address at which the person ordinarily resides, normally carries out business, or, if an address for service has been furnished, at that address,
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, if an address for service has been furnished, at that address,
- (d) by delivering the compliance notice to the premises to which it relates or by affixing it in a conspicuous position on or near the premises, or
- (e) by sending it by means of electronic mail to a device or facility for the reception of electronic mail where such an electronic mail address has been furnished by the person, but only if the sender's facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail confirming successful transmission of the compliance notice or notification.

(2) If a compliance notice is to be served on or given to a person who is the owner or occupier of a premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the term "the owner/occupier", or "the person having possession" or a similar designation.

(3) A person who, at any time within 6 months after a compliance notice is affixed under paragraph (1) (d), removes, damages or defaces the notice

without lawful authority commits an offence and is liable on summary conviction to a class C fine.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Act 2014 (No. 38 of 2014) is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

Obstruction, etc.

17. A person who—

- (a) obstructs, interferes with, or impedes, an authorised officer, or a person who accompanies an authorised officer, in the course of exercising a function conferred on the officer under these Regulations,
- (b) fails or refuses, without reasonable cause, to comply with a request or direction of an authorised officer under Regulation 10,
- (c) fails, without reasonable cause, to give assistance or requested information to an authorised officer in accordance with Regulation 11, or
- (d) in purporting to give information to an authorised officer for the exercise of the officer's functions under these Regulations—
 - (i) makes a statement that he or she knows to be false or misleading in a material particular or recklessly makes a statement which is false or misleading in a material particular, or
 - (ii) intentionally fails to disclose a material particular,

commits an offence and is liable on summary conviction to a class A fine.

Summary offences

18. An offence—

- (a) under these Regulations (other than Regulation 4(2)) may be brought and prosecuted summarily by the Minister, the Health Services Executive or the Revenue Commissioners, or
- (b) under Regulation 4(2) may be brought and prosecuted summarily by the Food Safety Authority of Ireland.

Offences by bodies corporate

19. (1) Where an offence under these Regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or a

person who was purporting to act in any such capacity, that person as well as the body corporate commits an offence and is liable to be proceeded against and punished as if he or she had committed the first-mentioned offence.

(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 in connection with his or her functions of management as if he or she were a director or manager of a body corporate.

Revocation

20. The following are revoked:

- (a) the European Communities (Spirits Drinks) Regulations 2015 (S. I. No. 316 of 2015);
- (b) the European Communities (Spirits Drinks) (Amendment) Regulations 2015 (S. I. No. 468 of 2015).



GIVEN under my Official Seal,
26 April, 2023.

CHARLIE MCCONALOGUE,
Minister for Agriculture, Food and the Marine.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

These Regulations give full effect to Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on spirit drinks and revoke the previous Regulations (S. I. No. 316 of 2015) and (S. I. No. 468 of 2015)

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