



STATUTORY INSTRUMENTS.

S.I. No. 118 of 2013



EUROPEAN COMMUNITIES (SPIRITS DRINKS) (AMENDMENT)
REGULATIONS 2013

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I, SIMON COVENEY, 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 (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008¹ as amended by Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008² and Commission Regulation (EU) No 164/2012 of 24 February 2012³, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Spirits Drinks)(Amendment) Regulations 2013.

2. The European Communities (Spirits Drinks) Regulations 2009 (S.I. No. 429 of 2009) are amended by—

(a) in Regulation 2(1)—

(i) substituting the definition of “authorised officer” for the following—

“ ‘authorised officer’ means—

(a) a member of the Garda Síochána,

(b) an officer of Customs and Excise,

(c) an authorised officer within the meaning of the European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2002 (S.I. No. 482 of 2002), or

(d) an authorised officer appointed under Regulation 4A;”

(ii) inserting, after the definition of “authorised officer” the following—

“ ‘derived product’ means ethyl alcohol, products used in the production or rounding of spirit drinks, labels, containers or closing devices for containers for spirit drinks;”, and

¹OJ L 39, 13.2.2008, p.16.

²OJ L 354, 31.12.2008, p.34.

³OJ L 53, 25.2.2012, p.1.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 5th April, 2013.*

(iii) substituting the definition of “Spirits Regulation” for the following—

“ ‘Spirits Regulation’ means Regulation (EC) No. 110/2008 of the European Parliament and of the Council of 15 January 2008 as amended by Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 and Commission Regulation (EU) No 164/2012 of 24 February 2012.”,

(b) inserting after Regulation 4 the following—

“4A. (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 Minister 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.

(3) An appointment as an authorised officer ceases—

(a) if it is terminated in accordance with paragraph (2),

(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 upon the person ceasing to be such an officer or class of person.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom paragraph (3) relates.

(5) An authorised officer appointed under this Regulation shall be furnished with a warrant of his or her appointment and, when exercising a function conferred on him or her as an authorised officer, the officer shall, if requested by a person affected, produce the warrant, or other evidence that he or she is such an officer, for inspection.

4B. (1) For the purposes of these Regulations an authorised officer may—

(a) enter and inspect, at all reasonable times, any premises if he or she is carrying out an official control in accordance with these Regulations or the Spirits Regulation or where he or she has reasonable grounds for believing that—

(i) a spirit drink, derived product or other thing to which the Spirits Regulation relate is, may be or has been present,

- (ii) a record relating to a spirit drink, derived product or other thing to which the Spirits Regulation relate is, may be or has been present, or
 - (iii) equipment, machinery, a vehicle, a vessel or other thing used in connection with a spirit, derived product or other thing to which these Regulations or the Spirits Regulation relate is, may be or has been present, or
 - (iv) a premises has been approved, authorised, registered or licensed for a purpose specified in the Spirits Regulation or these Regulations, is required to be so approved, authorised, registered or licensed or is subject to an application for approval, authorisation, registration or a licence or is ancillary to such a premises,
- (b) examine equipment, machinery, a vehicle, a vessel or other thing used in connection with a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate,
 - (c) require the name and address of the owner, operator or person in possession or control of equipment, machinery, a vehicle, a vessel or other thing used in connection with a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate,
 - (d) require details of place of departure, journey or destination of a spirit drink, derived product or other thing to which these Regulations or the Spirit Regulation relate,
 - (e) inspect equipment, machinery, a vehicle, a vessel or other thing used in connection with a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate and require the operator, person in charge or control of such to refrain from moving it,
 - (f) require the owner, operator, person in charge of any premises, equipment, machinery, a vehicle, a vessel or other thing used in connection with a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate, to produce to the officer such records (and in the case of a record stored in non-legible form, produce to him or her a copy in a legible form) that are in the person's possession or procurement, or under the person's control, as the officer may reasonably require,
 - (g) inspect and take copies of any record (including a legible reproduction of one stored in non-legible form), document or extracts from the record or document that the officer finds or is produced to him or her during an inspection,

- (h) take photographs,
- (i) take, without making a payment, samples of a spirit drink, derived product or other thing to which the Spirits Regulation relate, or any article, substance or liquid as he or she may reasonably require and carry out or cause to be carried out on the samples such tests, analyses, examinations or inspections as he or she considers necessary or expedient; and mark or otherwise identify it.

(2) An authorised officer may require a person to give information regarding the ownership and identity of equipment, machinery, a vehicle, a vessel or other thing used in connection with a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate as is in the person's knowledge or procurement.

(3) Where an authorised officer has reasonable grounds for believing that—

- (a) there is a risk of disease or injury to public health,
- (b) a disease or disease agent is or may be present on a premises, machinery, equipment, vehicle or vessel,
- (c) an offence is being or has been committed under these Regulations,
- (d) there is a risk of contamination from a spirit drink or derived product, or
- (e) evidence of a disease or a disease agent, contamination or an offence to which paragraph (c) relates may be, is or has been on any premises, or in any equipment, machinery, vehicle,

the officer may, in addition to the powers exercisable by him or her under paragraph (1)—

- (i) search the premises,
- (ii) search the equipment, machinery, vehicle, vessel or other thing used in connection with a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate,
- (iii) require a person in charge or control of the equipment, machinery, a vehicle, a vessel or other thing used in connection with a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate to—
 - (I) refrain from using or moving it, and

- (II) give information regarding its ownership, place of departure, journey or destination,
- (iv) seize and detain a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate and mark or otherwise identify it,
- (v) detain any equipment, machinery, vehicle, or vessel for such reasonable period necessary for the purposes of permitting an inspection or a search under these Regulations or the Spirits Regulation,
- (vi) remove any equipment, machinery, vehicle, vessel or other thing used in connection with a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate or books, documents or records and detain them for such reasonable period necessary for the purpose of his or her functions under these Regulations,
- (vii) give such direction to a person who has a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate, a vehicle, vessel, container, equipment, machinery or other thing used in connection with a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate in his or her possession or under his or her control or information relating to such, as the authorised officer may reasonably consider necessary for the purposes of these Regulations.

(4) 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 4C other than where he or she has reasonable grounds for believing that before a search warrant could be sought in relation to the dwelling under Regulation 4C, any evidence of an offence referred to in paragraph (3)(c) is being or is likely to be disposed of or destroyed.

(5) An authorised officer, when exercising a function 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 function.

(6) An authorised officer may use reasonable force, if necessary, to exercise his or her functions under these Regulations.

(7) Where, in the course of exercising a function under these Regulations, an authorised officer finds or comes into possession of anything that the officer has reasonable grounds for believing to be evidence of an offence or suspected offence under these Regulations, the officer

may seize and retain it for use in evidence in proceedings for an offence under these Regulations.

(8) Nothing in section 17 of the Industrial and Provident Societies Act 1893 prevents an authorised officer from exercising a function conferred on him or her by these Regulations.

(9) Where a person is seen or found committing, or is reasonably suspected of being engaged in committing or having committed, an offence under these Regulations, a member of the Garda Síochána may arrest the person without warrant.

(10) Section 4 of the Criminal Justice Act 1984 applies to a person arrested under paragraph (9) as if he or she were detained under that provision.

(11) Where a member of the Garda Síochána or an officer of Customs and Excise has reasonable grounds for believing that there is evidence on a person of an offence committed under these Regulations the member or officer may without warrant—

- (a) search or cause to be searched the person and, if the member or officer considers it necessary, detain the person for such time as is reasonably necessary to carry out the search,
- (b) search or cause to be searched a vehicle in which the member or officer suspects that evidence in relation to an offence committed under these Regulations may be found and for the purpose of carrying out the search, if the member or officer thinks fit, require the person who is in charge or control of the vehicle to bring it to a stop and when stopped to refrain from moving it or, in case the vehicle is already stationary, to refrain from moving it, or
- (c) seize and detain under paragraph (3) or cause to be seized and detained anything found in the course of a search under this Regulation which any such member or officer reasonably suspects to be something which might be required as evidence in proceedings for such an offence.

(12) Where a member of the Garda Síochána or an officer of Customs and Excise decides to search or cause to be searched a person under paragraph (11) the member or officer may require the person to accompany that member or officer to either a Garda Síochána station or a customs office for the purpose of being so searched at that station or office.

(13) A member of the Garda Síochána may stop a vehicle, for the purposes of these Regulations and may require it to be moved for inspection to such place as he or she directs.

(14) Nothing in these Regulations operates to prejudice any power to search or to stop, or to seize or detain property, which may, apart from these Regulations, be exercised by a member of the Garda Síochána or an officer of Customs and Excise.

(15) A person who has—

- (a) a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate, or
- (b) equipment, machinery, a vehicle, a vessel or other thing used in connection with a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate 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.

(16) The owner, operator or person in charge of any premises used in connection with a spirit drink, derived product or other thing to which the Spirits Regulation relate shall, if required by an authorised officer, where it is practicable and possible, provide suitable equipment or facilities or a suitable part of the plant or establishment for the officer to carry out his or her functions under these Regulations.

(17) 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 premises specified by the officer including—

- (a) whether or not the premises is used, either partly or wholly, for or in connection with a spirit drink, derived product or other thing to which the Spirits Regulation relate,
- (b) the name of the owner, occupier or person who is in charge of the premises, and
- (c) whether or not the 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.

4C. (1) If a judge of the District Court is satisfied by information on the sworn information of an authorised officer that there are reasonable grounds for believing that—

- (a) evidence of or relating to the commission or intended commission of an offence under the Spirits Regulation or these Regulations relating to a spirit drink, derived product or other thing to which the Spirits Regulation relates on any premises,
- (b) there is or was a spirit drink, derived product or other thing to which the Spirits Regulation relates or equipment or other thing made, used or adapted for use (including manufacture or transport) in connection with a spirit drink or derived product on a premises, or
- (c) a record related to a thing to which subparagraph (a) or (b) relates is or may be on the premises,

then 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 or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter the premises named in the warrant and to exercise all or any of the functions conferred on an authorised officer under these Regulations.

4D. (1) Where an authorised officer is of the opinion that—

- (a) a contravention of the Spirits Regulation or these Regulations may have taken place, may be taking place, or
- (b) there is a risk to public health,

the officer may serve a notice (“compliance notice”) stating that opinion on the person—

- (i) who appears to be the owner, occupier, operator or person in charge of the premises, or
- (ii) in possession or control of a spirit drink, derived product or other thing 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 4E, and

(c) state that if the person to whom it is served fails to comply with the notice, he or she commits an offence and is liable to a penalty set out in Regulation 5.

(3) A compliance notice may—

(a) require that a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate be detained, disposed of or destroyed in a manner and at a place (if any) specified in the notice,

(b) prohibit or regulate any activity specified in the notice, including prohibiting or restricting entry onto the premises specified in the notice,

(c) require that the owner, occupier, operator or person in charge of any premises dispose of a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate in a manner specified in the notice,

(d) prohibit the transport or further transport of a spirit drink, derived product, or other thing to which these Regulations or the Spirits Regulation relates, either absolutely or unless such conditions as may be specified in the notice are complied with,

(e) require a person to return a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate, to the place of departure (whether within the State or otherwise) by a route which in the opinion of the authorised officer is the most direct or prudent,

(f) require that such alterations or additions be made to any premises, vehicle, vessel, machinery or equipment as may be specified in the notice,

(g) require a person to secure a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relates in a manner (if any) as may be specified in the notice,

(h) require a person to clean and disinfect any premises, vessel, vehicle, equipment, or machinery or other thing used in connection with a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate in a manner as may be specified in the notice,

(i) require a person to undertake a specified type or level of sampling and analysis for a period specified in the compliance notice, or

(j) require a person to make such changes to a label or marketing material including re-labelling of a spirit drink, derived product or other thing as may be specified in the notice.

(4) A person to whom a compliance notice is served shall comply with it until the notice expires, is withdrawn under paragraph (6) or is annulled under Regulation 4E, and not cause or permit another person to contravene the terms of the notice.

(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 the owner, occupier, operator or person in charge of any premises, spirit drink, derived product, vehicle, vessel, machinery, equipment or other thing to which these Regulations or the Spirits Regulation relate, to choose between two or more of the requirements specified in the notice.

(8) A compliance notice shall include an address for service of an appeal under Regulation 4E.

(9) 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.

4E. (1) A person to whom a compliance notice is served may, within 7 days from the date of service of the notice, appeal the notice to the Judge of the District Court having jurisdiction in the District Court district—

(a) where a spirit drink, derived product, premises, vehicle, machinery, equipment, vessel or other thing to which these Regulations or the Spirits Regulation relate, which is 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 Spirits Regulation or these Regulations.

(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 and shall be served on the authorised officer who served the compliance notice at the address included on the notice in accordance with Regulation 4D(8) not later than 48 hours prior to the hearing of the appeal.

(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 notice.

(5) A person, including a person on whom a compliance notice has been served, shall not—

(a) pending the determination of an appeal, deal with a spirit drink, derived product, premises, vehicle, vessel, machinery, equipment or other thing to which the notice relates, other than in accordance with the terms of the compliance notice, or

(b) if the notice is confirmed or modified on appeal, deal with a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relates, any premises, vehicle, vessel, equipment, machinery or other thing to which the notice relates other than in accordance with the terms of the compliance notice as confirmed or modified.

(6) In this Regulation “appeal” means an appeal under paragraph (1).

4F. (1) Without prejudice to an appeal under Regulation 4E, if—

(a) a person in control of a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate, premises, vessel, vehicle, equipment, machinery or other thing used in connection with a spirit drink or derived product fails to comply with the terms of a compliance notice within the time specified,

(b) an authorised officer has reasonable grounds for believing that the terms of a compliance notice will not be complied with,

(c) a compliance notice has been confirmed with or without modification under Regulation 4E(4) and the notice has not been complied with,

(d) an authorised officer has reasonable grounds for believing that the terms of a compliance notice which has been confirmed with or without modification under Regulation 4E(4) will not be complied with,

an authorised officer may at any time seize the spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate, vessel, vehicle, equipment, machinery or other thing used in connection with a spirit drink or derived product.

(2) If a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate, vessel, vehicle, equipment, machinery or other thing used in connection with a spirit drink or derived product is seized in accordance with paragraph (1), an authorised officer may—

- (a) sell, destroy or dispose of the spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate or cause it to be sold, destroyed or be disposed of, or
- (b) take such other measures in relation to the spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate, vessel, vehicle, equipment, machinery or other thing used in connection with a spirit drink or derived product as the authorised officer considers appropriate in the circumstances.

(3) Any profits arising out of the sale, destruction or disposal of a spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate in accordance with paragraph (2) shall be paid to the owner of the spirit drink, derived product or other thing to which these Regulations or the Spirits Regulation relate less any expenses incurred in connection with the seizure, sale, destruction or disposal.

(4) The costs (including ancillary costs) of a measure taken under this Regulation are recoverable by the Minister—

- (a) as a simple contract debt in a court of competent jurisdiction from the person who was the owner of the spirit drink, derived product or other thing or means of transport at the time the measure was carried out, or
- (b) by deducting the costs from any sum due by the Minister to a person on whom a notice has been served.

4G. A person who—

- (a) obstructs, interferes with or impedes an authorised officer, or any 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 requirement of an authorised officer under Regulation 4D,
- (c) fails, without reasonable cause, to give assistance or requested information to an authorised officer in accordance with Regulation 4D, 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.”,

(c) substituting Regulation 5 for the following-

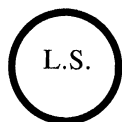
“5. A person who commits an offence under Regulation 3, 4, 4D or 4G is liable—

(a) on summary conviction to a Class A fine or a term of imprisonment not exceeding 6 months or both, or

(b) on conviction on indictment to a fine of not more than €100,000 or a term of imprisonment not exceeding 2 years or both.”, and

(d) substituting Regulation 6 for the following-

“6. The Minister, the Revenue Commissioners or the Health Services Executive may prosecute an offence under these Regulations in a summary manner.”.



GIVEN under my Official Seal,
28 March 2013.

SIMON COVENEY,
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 enhance the powers of authorised officers in the implementation of Regulation (EC) No. 110/2008 on the definition, description, labelling and protection of geographical indications of spirit drinks.

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