



SPIRIT DRINKS REGULATIONS 2020

Index

Regulation	Page
1 Title	3
2 Commencement	3
3 Interpretation.....	3
4 Compliance with EU provisions.....	4
5 Verification under Article 38 of Regulation (EU) 2019/787.....	6
6 Designation of competent authorities.....	7
7 Enforcement.....	7
8 Duty to give assistance and provide information.....	7
9 Powers of entry	7
10 Powers of an authorised officer	9
11 Procedure on seizure	11
12 Improvement notices.....	15
13 Appeals against improvement notices	15
14 Powers of a court of summary jurisdiction on appeal.....	15
15 Publication of notices	15
16 Obstruction	16
17 Criminal offences: punishment.....	16
18 Default of third person.....	16
19 Defences	17
20 Giving of penalty notice for penalty offence	17
21 Contents of penalty notice	18
22 Amount of penalty.....	18
23 Restriction on proceedings for penalty offence	18
24 Payment of penalty	18
25 Certificate of payment or non-payment of a penalty	19
26 Penalty receipts	19
27 Withdrawal of penalty notice	19
28 Giving of notices	19
 SCHEDULE 1	 21
COMMUNITY PROVISIONS CONTRAVENTION OF WHICH IS AN OFFENCE	21

SCHEDULE 2	27
PENALTY OFFENCES	27
SCHEDULE 3	29
FACTORS TO BE TAKEN INTO ACCOUNT IN DETERMINING THE AMOUNT OF A PENALTY	29
ENDNOTES	31
TABLE OF ENDNOTE REFERENCES	31

Statutory Document No. 2020/0096

*European Communities (Isle of Man) Act 1973***SPIRIT DRINKS REGULATIONS 2020¹***Laid before Tynwald:**17 March 2020**Coming into Operation: in accordance with regulation 2*

The Council of Ministers makes the following Regulations under section 2B and 2C of the European Communities (Isle of Man) Act 1973.

Editorial Note: This instrument, made under the European Communities (Isle of Man) Act 1973, is continued by virtue of section 6 of the European Union and Trade Act 2019.

1 Title

These Regulations are the Spirit Drinks Regulations 2020.

2 Commencement

These Regulations come into operation on the day after they are made.¹

3 Interpretation

(1) In these Regulations —

“**authorised officer**” means any person appointed by an enforcement authority for the purposes of enforcing these Regulations;

“**Customs and Excise**” means the Customs and Excise Division of Treasury;

“**Department**” means the Department of Environment, Food and Agriculture;

“**enforcement authority**” means an authority exercising a function conferred on it by regulation 7;

“**officer**” —

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body; and

¹ Section 2B(9) of the European Communities (Isle of Man) Act 1973 specifies that regulations made under that section shall be laid before Tynwald and if Tynwald at the sitting before which the regulations are laid or at the next following sitting resolves that the regulations shall be annulled, the regulations shall thereupon cease to have effect.

- (b) in relation to an unincorporated body, means any member of its governing body or a chief executive, manager or other similar officer of the body;

“**penalty**” means the amount specified in a penalty notice;

“**penalty notice**” means a notice offering the opportunity, by payment, in accordance with these Regulations, of a specified amount, to discharge any liability to be convicted of the penalty offence to which the notice relates;

“**penalty offence**” means an offence for which a penalty notice may be given under regulation 20;

“**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;

“**registered geographical indication**” means a geographical indication listed in the register drawn up in accordance with Article 33(1) of Regulation (EU) 2019/787;²

“**Regulation (EC) No 110/2008**” means Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89, as amended from time to time;

“**Regulation (EC) No 936/2009**” means Commission Regulation (EC) No 936/2009 applying the agreements between the European Union and third countries on the mutual recognition of certain spirit drinks^{2;3}

“**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; and

“**spirit drink**” has the meaning given in paragraph (1) of Article 2 of Regulation (EC) No 110/2008 as read with paragraphs (2) and (3) of that Article.

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

(3) Part 1 of Schedule 1 applies to the interpretation of Part 2 of that Schedule.

4 Compliance with EU provisions

(1) A person is guilty of an offence if they contravene or fail to comply with —

² OJ L 264, 8.10.2009, p. 5.

- (a) any provision of Regulation (EC) No 110/2008 mentioned in column 1 of Part 2 of Schedule 1; or
- (b) any provision of Regulation (EU) 2019/787 mentioned in column 1 of Part 3 of Schedule 1,

as read with any provision mentioned in any corresponding entry in column 2 of that Part of that Schedule.

- (2) A person is guilty of an offence if they –
 - (a) directly or indirectly make commercial use of a registered geographical indication in a way mentioned in Article 21(2)(a) of Regulation (EU) 2019/787;
 - (b) misuse, imitate or evoke a registered geographical indication, even if the true origin of the product is indicated or the geographical indication is used in translation or accompanied by an expression such as “like”, “type”, “style”, “made”, “flavour” or any other similar term;
 - (c) use any other false or misleading indication as to the provenance, origin, nature or essential qualities on the description, presentation or labelling of a product that is liable to convey a false impression that the product is a registered geographical indication; or
 - (d) use any other practice that is liable to mislead the consumer into thinking that the product is a registered geographical indication.
- (3) But paragraphs (1) and (2) do not apply –
 - (a) to the production of a spirit drink that was produced on or before 19th May 2009 in accordance with the requirements of –
 - (i) Council Regulation (EEC) No 1576/89³ laying down general rules on the definition, description and presentation of spirit drinks; and
 - (ii) Commission Regulation (EEC) No 1014/90⁴ laying down detailed implementing rules on the definition, description and presentation of spirit drinks;
 - (b) 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

³ OJ L 160, 12.6.1989, p 1, last amended by the Act of Accession of 2005 (OJ 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.

⁴ OJ L 105, 25.4.1990, p 9, last amended by Commission Regulation (EC) No 2140/98 (OJ 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.

2009 and marketed in accordance with the requirements of those Regulations;

- (c) as regards the description, presentation or labelling of a spirit drink that is labelled before 8th June 2019 if that description, presentation or labelling complies with Articles 16 and 23 of Regulation (EC) No 110/2008.
- (4) A person is guilty of an offence if they contravene Article 1 of Regulation (EC) No 936/2009.⁴

5 Verification under Article 38 of Regulation (EU) 2019/787

- (1) Subject to paragraph (2), Customs and Excise is designated as the authority responsible for verifying that a relevant spirit drink that is to be placed on the market in the Island using a registered geographical indication complies with the specifications in the IM or GB product specification relating to that geographical indication before it is placed on the market in the Island.⁵
- (2) If a relevant spirit drink has been verified by the Commissioners of Her Majesty's Revenue and Customs in the United Kingdom under paragraph 5 of the Spirits Drinks Regulations 2008 (of Parliament)⁵, it is deemed to be verified for the purposes of paragraph (1).
- (3) A spirit drink is a relevant spirit drink if –
 - (a) it is a spirit drink produced in the United Kingdom that uses a registered geographical indication to identify the drink as originating in the territory of a country, region or locality in the United Kingdom;
 - (b) it is a whisky produced in Northern Ireland that uses the geographical indication “Irish Whiskey”, “Uisce Beatha Eireannach” or “Irish Whisky”;
 - (c) it is a liqueur produced in Northern Ireland that uses the geographical indication “Irish Cream”;
 - (d) it is a spirit drink produced in Northern Ireland that uses the geographical indication “Irish Poteen” or “Irish Poitín”.
- (4) In this regulation, “the GB product specification” means the product specification referred to in Article 22(1) of Regulation (EU) 2019/787 for the registered geographical indication and includes a technical file for a registered geographical indication that is deemed to be a product specification under that Article by virtue of Article 22(2) of that Regulation as it forms part of the law of England by virtue of section 3 of the European Union (Withdrawal) Act 2018 (of Parliament) as amended from time to time by that law.⁶

⁵ SI 2008/3206.

6 Designation of competent authorities

The Department is designated as the competent authority for the purpose of —

- (a) Regulation (EC) No 110/2008 for the control of spirit drinks; and⁷
- (b) Articles 39(1) and (2) of Regulation (EU) 2019/787 for surveillance and enforcement of the use of registered geographical indications; and
- (c) controls in respect of the enforcement of Article 1 of Regulation (EC) No 936/2009.⁸

7 Enforcement

- (1) The Department must enforce the provisions of these Regulations except to the extent that these Regulations fall to be enforced by Customs and Excise.
- (2) Customs and Excise must enforce the provisions of these Regulations in respect of drinks being imported into or exported from the Island.

8 Duty to give assistance and provide information

- (1) An enforcement authority must give such assistance and information to the other enforcement authority as it may reasonably require for the purpose of its duties under these Regulations.
- (2) Customs and Excise may disclose any information in its possession to a competent or enforcement authority for the purposes of these Regulations.
- (3) No person, may disclose any information received from Customs and Excise under paragraph (2) if —
 - (a) the information relates to a person whose identity —
 - (i) is specified in the disclosure; or
 - (ii) can be deduced from the disclosure;
 - (b) the disclosure is for a purpose other than the purposes specified in paragraph (2); and
 - (c) Customs and Excise have not given its prior consent to the disclosure.
- (4) Any person who contravenes paragraph (3) is guilty of an offence.

9 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.
- (2) The authorised officer may be accompanied by such other persons as the authorised officer considers necessary.

- (3) An authorised officer must not exercise the powers under paragraph (1) or (2) except on the production, if so required, of a duly authenticated document showing their authority.
- (4) Admission to any premises used only as a private dwellinghouse may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier or the entry is in accordance with a warrant granted under this regulation.
- (5) If a justice of the peace, on sworn information in writing, is satisfied of the matters mentioned in paragraph (6), that justice may sign a warrant permitting an authorised officer to enter any premises, if needs be by reasonable force.
- (6) The matters are that —
 - (a) there are reasonable grounds for believing that Condition A or B is met; and
 - (b) Condition C, D or E is met.
- (7) Condition A is that on the premises there are items or products of the type mentioned in regulation 10(1)(a) or documents or records of the type mentioned in regulation 10(1)(e) and that their inspection is likely to disclose evidence of a contravention of, or failure to comply with, these Regulations.
- (8) Condition B is that a contravention of, or failure to comply with, these Regulations has occurred, is occurring or is about to occur on those premises.
- (9) Condition C is that admission to the premises has been, or is likely to be, refused, and that the occupier has been informed (whether orally or in writing) that a warrant may be applied for.
- (10) Condition D is that 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.
- (11) Condition E is that the premises are unoccupied or that the occupier is temporarily absent and it may defeat the object of the entry to await their return.
- (12) A warrant granted under paragraph (5) —
 - (a) is valid for one month, beginning with the day on which it is granted; and
 - (b) must be produced for inspection to the person (if there is one) who appears to the officer to be the occupier of the premises.
- (13) An authorised officer who enters any premises that are unoccupied or where the occupier is temporarily absent must leave the premises as effectively secured against unauthorised entry as when they found them.
- (14) [Revoked]⁹

10 Powers of an authorised officer

- (1) An authorised officer (“O”) entering premises under regulation 9 may —
- (a) inspect the premises, and any still and any other plant, machinery or equipment on those premises, and any of the following items found on those premises —
 - (i) any spirit drink partly or fully packaged ready for sale;
 - (ii) any product purporting to be a spirit drink partly or fully packaged ready for sale;
 - (iii) 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);
 - (iv) any raw material or ingredients that may be used to produce any distillate or drink, including colourings and flavourings;
 - (v) any mash;
 - (vi) any empty container;
 - (vii) any label;
 - (viii) any packaging;
 - (ix) any advertising or promotional materials relating to a drink, or other documentation relating to a distillate or to a drink;
 - (b) search the premises;
 - (c) take samples;
 - (d) carry out any inquiries, examinations or tests;
 - (e) have access to, and inspect and copy, any documents or records (in whatever form they are held) relating to matters covered by these Regulations, and remove them to enable them to be copied;
 - (f) have access to, and inspect and check the data on, and operation of, any computer, and any associated electronic storage device or apparatus (“computer equipment”) that is, or has been in use in connection with, the documents or records mentioned in sub-paragraph (e), including data relating to deleted files and activity logs; and for this purpose O may require any person having charge of, or otherwise concerned with the operation of, the computer equipment to afford to O such assistance (including the provision of passwords) as O may reasonably require, and, during the course of the checks, O may recover data held on the computer equipment; and
 - (g) where a document or record mentioned in sub-paragraph (e) is kept by means of a computer, require the record to be produced in a form in which it may be taken away.

- (2) O may direct a person that the following must be left undisturbed for as long as is reasonably necessary for the purpose of any examination or investigation –
 - (a) any one or more of the items mentioned in paragraph (1)(a)(i) to (ix); and
 - (b) any premises on or in which any of those items are found.
- (3) A person (“P”) is guilty of an offence if P fails to comply with a direction given to P by O under paragraph (2).
- (4) 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.
- (5) O may seize as liable to destruction any product of the type mentioned in paragraph (1)(a)(i) or (ii) –
 - (a) that O reasonably believes contravenes any provision of Regulation (EC) No 110/2008 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;
 - (b) that O reasonably believes contravenes any provision of Regulation (EU) 2019/787 mentioned in column 1 of Part 3 of Schedule 1, as read with any provision mentioned in any corresponding entry in column 2 of that Part of that Schedule; or
 - (c) in respect of which O reasonably believes that an offence has been committed under regulation 4(2).
- (6) 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.
- (7) If O is not able to remove an item, product or computer equipment seized under paragraph (4), (5) or (6) immediately, they may –
 - (a) mark it in any way that they see fit; and
 - (b) give the person appearing to them to be in charge of the item, product or computer equipment a notice –
 - (i) identifying it; and
 - (ii) 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.

- (8) 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.
- (9) O must not exercise the powers under this regulation except on the production, if so required, of a duly authenticated document showing O's authority.

11 Procedure on seizure

- (1) An authorised officer ("O") must follow the procedures set out in this regulation if O seizes anything under regulation 10(4), (5) or (6).
- (2) O must give to the person appearing to O to be in charge of the premises from which the seized item, product or computer equipment is seized ("the premises") a notice that must state —
 - (a) what O has seized;
 - (b) when O seized it;
 - (c) the grounds for the seizure of the item, product or equipment; and
 - (d) the address to which, and the period during which, a claim may be made for the return of the item, product or equipment.
- (3) But where the premises are unoccupied, or no-one appears to O to be in charge of the premises, O must attach a notice to a conspicuous part of the premises, or to some conspicuous object on the premises, containing the information mentioned in sub-paragraphs (a) to (d) of paragraph (2).
- (4) A person having a proprietary interest in the seized item, product or computer equipment (including a 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.
- (5) The claim must be made within 28 days of the seizure, beginning on the day on which the seized item, product or computer equipment is seized, to the address specified in the seizure notice.
- (6) If a notification of a claim is not received within 28 days in respect of an item seized under regulation 10(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.
- (7) If a notification of a claim is received within 28 days in respect of an item seized under regulation 10(4), the enforcement authority must —
 - (a) return the seized item within 28 days, beginning with the day on which the claim is received; or
 - (b) retain the seized item or product for as long as necessary while it is being held for the purpose of any criminal investigation or

proceedings, or for use as evidence at a trial, but it must notify the claimant that the seized item is being retained, and of the reason why it is being retained within 28 days, beginning with the day on which the claim is received.

- (8) If a notification of a claim is not received within 28 days in respect of a product seized under regulation 10(5), the enforcement authority may —
- (a) if a decision is taken by the enforcement authority not to destroy the seized product but to retain it for the purpose of any criminal investigation or proceedings, or for use as evidence at a trial, retain the seized product for as long as necessary for one of those purposes, but the enforcement authority must —
 - (i) notify the relevant person that the seized product is being retained, and of the reason why it is being retained, within 28 days of the expiry of the claim period, beginning with the day after the claim period expires; or
 - (ii) where the enforcement authority does not know who the relevant person is, and this cannot be ascertained after reasonable enquiries have been made by the enforcement authority, attach a notice to a conspicuous part of the premises, or a conspicuous object on those premises, within 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
 - (b) 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 —
 - (i) 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
 - (ii) where the enforcement authority does not know who the relevant person is, and this cannot be ascertained after reasonable enquiries have been made by the enforcement authority, attach a notice to a conspicuous part of the premises, or to a conspicuous object on those premises, within 10 days of the destruction of the product, beginning with the day on which the 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.
- (9) In paragraph (8) the “**relevant person**” means —

- (a) if the enforcement authority knows the identity of a person with a proprietary interest in the seized product, that person or (where more they know the identity of more than one person with a proprietary interest in the seized property) each of those persons; or
 - (b) if the enforcement authority does not know the identity of a person with a proprietary interest in the seized product, the person appearing to them to be in charge of the premises.
- (10) In the case of any product destroyed under paragraph (8)(b), the enforcement authority may recover the following costs as a debt from any person who had a proprietary interest in the product immediately before its destruction (apart from a creditor who has a debt secured on the product) —
 - (a) the costs of the removal and transport of the product from the premises to the place at which it is stored;
 - (b) the costs of the storage of the product for up to 28 days;
 - (c) any costs for the removal and transport of the product if it is moved from one place of storage to another place of storage;
 - (d) the costs of the transport of the product from the place of storage to the place of destruction; and
 - (e) the costs of the destruction of the product.
- (11) If a notification of a claim is received within 28 days in respect of an item seized under regulation 10(5), the enforcement authority must —
 - (a) return the seized product within 28 days, beginning with the day on which the claim is received;
 - (b) if a decision is taken by the enforcement authority not to destroy the seized product but to retain it for the purpose of any criminal investigation or proceedings or for use as evidence at a trial, retain the product for as long as necessary for one of those purposes but the enforcement authority must notify the claimant that the seized product is being retained, and of the reason why it is being retained, within 28 days of the claim, beginning with the day on which the claim is received; or
 - (c) within 28 days of the claim, beginning with the day on which the claim is received, take proceedings (“paragraph (11)(c) proceedings”) in a court of summary jurisdiction for an order giving them authority to destroy the product.
- (12) In paragraph (11)(c) proceedings the court of summary jurisdiction may —
 - (a) authorise the enforcement authority to destroy the seized product;
 - (b) authorise the enforcement authority to retain the product for the purpose of any criminal investigation or proceedings, or for use as

- evidence at a trial, for as long as necessary for one of those purposes; or
- (c) require the enforcement authority to return the product to the claimant and impose a deadline by which this must be done.
- (13) If, in paragraph (11)(c) proceedings, the court of summary jurisdiction 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 –
- (a) the costs of the removal and transport of the product from the premises to the place at which it is stored;
- (b) the costs of the storage of the product for up to 28 days;
- (c) any costs for the removal and transport of the product if it is moved from one place of storage to another place of storage;
- (d) the costs of the transport of the product from the place of storage to the place of destruction; and
- (e) the costs of the destruction of the product.
- (14) If a notification of a claim is received within 28 days in the case of any computer equipment seized under regulation 10(6), the enforcement authority must –
- (a) 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 10(6); or
- (b) take proceedings in a court of summary jurisdiction 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 10(6), for an order authorising the enforcement authority to retain the seized computer equipment in accordance with the requirements laid down in regulation 10(6).
- (15) If, in the case of any computer equipment seized under regulation 10(6), the court of summary jurisdiction authorises the enforcement authority to retain the seized computer equipment, the court may impose conditions as to the basis on which the equipment may continue to be retained, including the imposition of a deadline by which the equipment must be returned that is shorter than the 28 day maximum period provided for in regulation 10(6).
- (16) The procedure in a court of summary jurisdiction under this regulation is by way of complaint and the Summary Jurisdiction Act 1989 applies to the proceedings.

12 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 –
 - (a) states O’s grounds for believing this;
 - (b) specifies the matter that constitutes the failure to comply with these Regulations;
 - (c) specifies what P must stop doing, or the measures that, in O’s opinion, P must take in order to comply with these Regulations;
 - (d) require P to stop doing the action specified in the notice, or take the measures specified in the notice, or measures at least equivalent to them, within the period (being not less than 14 days) specified in the notice;
 - (e) informs P of the right of appeal to a relevant court conferred by regulation 13; and
 - (f) informs P of the period within which such an appeal may be brought.
- (2) A person is guilty of an offence if they contravene or fail to comply with an improvement notice.

13 Appeals against improvement notices

- (1) Any person who is aggrieved about an improvement notice may appeal against that notice to a court of summary jurisdiction.
- (2) The procedure on an appeal to a court of summary jurisdiction under paragraph (1) is by way of complaint and the Summary Jurisdiction Act 1989 applies to the proceedings.
- (3) The period within which an appeal may be brought is 28 days, beginning with the day on which the improvement notice is given.
- (4) The court of summary jurisdiction may suspend an improvement notice pending an appeal.

14 Powers of a court of summary jurisdiction on appeal

On an appeal against an improvement notice a court of summary jurisdiction may either cancel the notice or confirm it, with or without modification.

15 Publication of notices

- (1) An enforcement authority must publicise the destruction of any product seized under regulation 10(5) in such manner as it sees fit.

- (2) But an enforcement authority must not publicise the destruction of any item seized under regulation 10(5) where it considers that it would be inappropriate to do so.
- (3) An enforcement authority must publicise any improvement notice given by it under regulation 12 in such manner as it sees fit.
- (4) But an enforcement authority must not publicise an improvement notice given by it under regulation 12 –
 - (a) until the time for appealing against the imposition of the improvement notice has passed;
 - (b) during the period that any appeal against the imposition of the improvement notice is ongoing; or
 - (c) in any other case where the enforcement authority considers that it would be inappropriate to do so.

16 Obstruction

A person (“P”) is guilty of an offence if they –

- (a) obstruct any person (“O”) acting in the execution of these Regulations;
- (b) 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;
- (c) furnish any false or misleading information to O; or
- (d) fail to produce a record when required to do so by O.

17 Criminal offences: punishment

- (1) A person guilty of any offence under regulation 4(1), (2) or (4), 10(3) or (8), 12(2) or 16, is liable to the following maximum penalties –
 - (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
 - (b) on conviction on information, to a fine.¹⁰
- (2) A person guilty of an offence under regulation 8(4) is liable to the following maximum penalties –
 - (a) on summary conviction, to 3 months’ custody, a fine of level 5 on the standard scale or both; or
 - (b) on conviction on information, to 2 years’ custody, a fine or both.

18 Default of third person

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.

19 Defences

- (1) It is a defence for a person (“P”) charged with an offence under these Regulations to prove that P took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (2) A person (“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 another person (“B”) unless —
 - (a) at least 7 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 A’s possession; or
 - (b) the court grants A leave.
- (3) In proceedings for an offence under regulation 4(1) as read with the provisions of Regulation (EC) No 110/2008 mentioned in Part 2 of Schedule 1 insofar as they apply to the advertisement of spirit drinks, or an offence under regulation 4(2) committed by the way in which a spirit drink is advertised, it is a defence for the person charged with the offence to prove that —
 - (a) at the time of the alleged offence they were a person whose business it was to publish or arrange for the publication of advertisements;
 - (b) they received the advertisement for publication in the ordinary course of business; and
 - (c) they did not know, and had no reason to suspect, that publication of the advertisement would constitute an offence under these Regulations.
- (4) It is a defence for a person charged with an offence under regulation 8(4) to prove that that person reasonably believed —
 - (a) that it was lawful to disclose the information disclosed; or
 - (b) that the information disclosed had already and lawfully been made available to the public.

20 Giving of penalty notice for penalty offence

An enforcement authority may give a penalty notice to a person (“P”) where the authority has reason to believe that P has —

- (a) committed an offence under regulation 4(1) by contravening or failing to comply with a provision of Regulation (EC) No 110/2008 mentioned in Schedule 2;
- (b) committed an offence under regulation 4(2); or

- (c) committed an offence under regulation 4(5) by contravening Article 1 of Regulation (EU) No 936/2009.¹¹

21 Contents of penalty notice

A penalty notice given by an enforcement authority must —

- (a) give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence;
- (b) state the amount of the penalty;
- (c) state the period during which, by virtue of regulation 23, proceedings will not be taken for the offence;
- (d) state the person to whom, and the address at which, the penalty may be paid, and the ways in which the penalty may be paid; and
- (e) state that payment must not be made in cash.

22 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.
- (2) 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.

23 Restriction on proceedings for penalty offence

- (1) Where a person (“P”) is given a penalty notice —
 - (a) no proceedings may be brought against P for the penalty offence to which that notice relates before the end of the period of 28 days, beginning with the day on which P was given the notice; and
 - (b) P may not be convicted of the offence if the penalty is paid in accordance with regulation 24 before the end of that period.
- (2) Paragraph (1) does not apply if the penalty notice is withdrawn in accordance with regulation 27.

24 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.
- (2) Payment of any penalty may not be made in cash.

25 Certificate of payment or non-payment of a penalty

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.

26 Penalty receipts

Penalties paid to an enforcement authority must be paid into the General Revenue account.

27 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).
- (2) 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.
- (3) Where an enforcement authority withdraws a penalty notice it must repay any penalty paid under the penalty notice to the person named in the penalty notice within 28 days, beginning with the day on which the notice of the withdrawal of the penalty notice is given.

28 Giving of notices

Any notice required to be given under these Regulations must be served in accordance with Division 5 of Part 4 of the Interpretation Act 2015.

MADE13 FEBRUARY 2020

W GREENHOW
Chief Secretary

SCHEDULE 1

[Regulation 3(3), 4(1), 10(5) and 19(3)]

COMMUNITY 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 II to Regulation (EC) No 110/2008; and

“**categories 1 to 46**” means the categories of spirit drinks numbered 1 to 46 in Annex II to Regulation (EC) No 110/2008.

PART 2 – THE PROVISIONS OF REGULATION (EC)
NO 110/2008

Column 1	Column 2	Column 3
Relevant provision of Regulation (EC) No 110/2008	Provisions to be read with the provision of Regulation (EC) No 110/2008 mentioned in column 1	Subject matter
Article 3(1)	Annex I to the Treaty on the Functioning of the European Union	Agricultural origin of ethyl alcohol used in the production of spirit drinks and their components.
Article 3(2)	Annex I(1) to Regulation (EC) No 110/2008	Ethyl alcohol used in the production of spirit drinks: compliance with the definition in Annex I(1) to Regulation (EC) No 110/2008.
Article 3(3)		The dilution and dissolution of colourants, flavourings and other authorised additives.
Article 3(4)	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.
Article 5(1)	Paragraphs (3) and (5) of Annex I to Regulation (EC) No 110/2008	General requirements relating to the production, content and sweetening of spirit drinks falling within categories 1 to 14.

Column 1	Column 2	Column 3
Relevant provision of Regulation (EC) No 110/2008	Provisions to be read with the provision of Regulation (EC) No 110/2008 mentioned in column 1	Subject matter
Article 5(2)	Annex I to the Treaty on the Functioning of the European Union, paragraphs (3), (5) and (10) of Annex I to Regulation (EC) No 110/2008, and Article 1(2)(b)(i) and (ii) and 1(2)(c) of Council Directive 88/388/EEC on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production	General requirements relating to the production, content and sweetening of spirit drinks falling within the categories of spirit drinks numbered 15 to 46 in Annex II to Regulation (EC) No 110/2008.
Article 5(3)	Annex I to the Treaty on the Functioning of the European Union, paragraphs (3), (5) and (10) of Annex I to Regulation (EC) No 110/2008, and Article 1(2)(a) of Directive 88/388/EEC on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production	General requirements relating to the production, content and sweetening of spirit drinks other than those falling within categories 1 to 46.
Article 9(1)	Article 9(3) of Regulation (EC) No 110/2008	Sales denominations for spirit drinks falling within categories 1 to 46.
Article 9(2)	Articles 2 and 9(5) of, and categories 1 to 46 of Annex II to, Regulation (EC) No 110/2008	Use of the “spirit drink” sales denomination for spirit drinks that do not fall within any of the categories numbered 1 to 46.
Article 9(4)	Annex 2 to Regulation (EC) No 110/2008	Prohibition on the sales denominations for the spirit drinks falling within categories 1 to 46 being used for other drinks.
Article 9(5)	Chapter 3 of Regulation (EU) 2019/787	Restriction on the supplementation or replacement of a sales denomination with a geographical indication.
Article 9(6)	Articles 23(2) and 24(9) of	Restriction on the

Column 1	Column 2	Column 3
Relevant provision of Regulation (EC) No 110/2008	Provisions to be read with the provision of Regulation (EC) No 110/2008 mentioned in column 1	Subject matter
	Regulation (EU) 2019/787	supplementation of registered geographical indications.
Article 9(7)	Categories 1 to 46 of Annex II to Regulation (EC) No 110/2008 and Article 21(2)(b) of Regulation (EU) 2019/787	Prohibition on the use of associating words or phrases such as “like”, “type”, “style”, “made”, “flavour” and any other similar terms with any of the sales denominations laid down for spirit drinks falling within categories 1 to 46 and any of the registered geographical indications.
Article 9(8)		Prohibition on the substitution of the sales denomination for a spirit drink with a trade mark, brand name or fancy name.
Article 9(9)	Categories 1 to 46 of Annex II to Regulation (EC) No 110/2008 and Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs as last amended by Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes	Ingredients listing.
Article 10(1)	Article 10(3) and (4) of, and categories 1 to 46 of Annex II to, Regulation (EC) No 110/2008	Requirements relating to compound terms and allusions.
Article 10(2)		Prohibition on the use of a compound term including a sales denomination for a

Column 1	Column 2	Column 3
Relevant provision of Regulation (EC) No 110/2008	Provisions to be read with the provision of Regulation (EC) No 110/2008 mentioned in column 1	Subject matter
		spirit drink falling within a category numbered 1 to 46, or a registered geographical indication, where a spirit drink has been diluted below the relevant alcoholic minimum strength for that drink.
Article 11(1)	Paragraph (5) of Annex I, and categories 1 to 14 of Annex II, to Regulation (EC) No 110/2008	Mixtures: prohibition against using a sales denomination for a spirit drink falling within a category numbered 1 to 14 where alcohol has been added to the drink.
Article 11(2)	Article 11(3) of, and categories 1 to 46 of Annex II to, Regulation (EC) No 110/2008	Mixtures: requirements relating to the use of the “spirit drinks” sales denomination.
Article 11(4)	Article 11(2) of, and Annex II to, Regulation (EC) No 110/2008	Mixtures: restrictions on the use of the sales denominations for spirit drinks falling within categories 1 to 46, and use of the term “mixed spirit drink”.
Article 11(5)	Article 11(2) and (4) of Regulation (EC) No 110/2008	Mixtures: listing of alcoholic ingredients.
Article 12(1)		Raw material indications.
Article 12(2)	Paragraph (7) of Annex I to Regulation (EC) No 110/2008	Restrictions on the use the supplemental terms “blend”, “blending” and “blended” in the description, presentation or labelling of a spirit drink.
Article 12(3)		Restrictions on the specification of the maturation period or age of a spirit drink.
Article 13		Prohibition on the covering of closing devices with lead-based capsules or foil.
Article 14(1)	Article 14(3) and (4) of Regulation (EC) No 110/2008	Language to be used in the description, presentation and labelling of spirit drinks.

Column 1	Column 2	Column 3
Relevant provision of Regulation (EC) No 110/2008	Provisions to be read with the provision of Regulation (EC) No 110/2008 mentioned in column 1	Subject matter
Article 14(2)	Annex 2 to Regulation (EC) No 110/2008	Prohibition on the translation of the terms in italics in Annex II to Regulation (EC) No 110/2008 and of registered geographical indications.

PART 3 – THE PROVISIONS OF REGULATION (EU) 2019/787

Column 1	Column 2	Column 3
Relevant provision of Regulation (EU) 2019/787	Provisions to be read with the provision of Regulation (EU) 2019/787 mentioned in column 1	Subject matter
Article 22(1)	Articles 23 and 38 of Regulation (EU) 2019/787 and Article 17(2) of, and Annex 3 to, Regulation (EC) 110/2008	Compliance with product specification for spirit drinks bearing a registered geographical indication

SCHEDULE 2

[Regulation 20]

PENALTY OFFENCES**Provisions of Regulation (EC) No 110/2008**

Provision of Regulation (EC) No 110/2008
Article 3(1)
Article 9(1)
Article 9(2)
Article 9(5)
Article 9(6)
Article 9(7)
Article 9(9)
Article 11(4)
Article 11(5)
Article 12(1)
Article 13
Article 14(1)

SCHEDULE 3

[Regulation 22(2)]

**FACTORS TO BE TAKEN INTO ACCOUNT IN DETERMINING THE AMOUNT
OF A PENALTY****PART 1 – AGGRAVATING FACTORS****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**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.

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.

² Definition of “registered geographical indication” amended by SD2020/0544 with effect from 31/12/2020 at 23:00.

³ Definition of “Regulation (EC) No 936/2009” inserted by SD2023/0284.

⁴ Para (4) inserted by SD2023/0284.

⁵ Para (1) amended by SD2020/0544 with effect from 31/12/2020 at 23:00.

⁶ Para (4) inserted by SD2023/0284.

⁷ Subpara (a) amended by SD2020/0544 with effect from 31/12/2020 at 23:00.

⁸ Subpara (c) inserted by SD2023/0284.

⁹ Para (14) revoked by SD2020/0544 with effect from 31/12/2020 at 23:00.

¹⁰ Para (1) amended by SD2023/0284.

¹¹ Subpara (c) inserted by SD2023/0284.