

1990 No. 1196 (S.136)

FOOD

The Spirit Drinks (Scotland) Regulations 1990

<i>Made</i>	- - - -	<i>5th June 1990</i>
<i>Laid before Parliament</i>		<i>14th June 1990</i>
<i>Coming into force</i>		<i>5th July 1990</i>

The Secretary of State, in exercise of the powers conferred on him by section 2(2) of the European Communities Act 1972(a) (being one of the Ministers designated(b) for the purposes of that section in relation to measures relating to the description of and other requirements relating to spirit drinks), and by sections 26(3), 56 and 56A of the Food and Drugs (Scotland) Act 1956(c) and of all other powers enabling him in that behalf and after consultation in accordance with section 56(6) of the said Act of 1956 with such organisations as appear to him to be representative of interests substantially affected by the Regulations, hereby makes the following Regulations:

Title and commencement

1. These Regulations, which extend to Scotland only, may be cited as the Spirit Drinks (Scotland) Regulations 1990 and shall come into force on 5th July 1990.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Food and Drugs (Scotland) Act 1956;

“the Council Regulation” means Council Regulation (EEC) No. 1576/89 laying down general rules on the definition, description and presentation of spirit drinks(d);

“local authority” means an islands or districts council;

“specified Community provision” means a provision of the Council Regulation specified in column 1 of the Schedule to these Regulations, the subject matter of which is described in column 2 thereof.

(2) Other expressions used in these Regulations have, in so far as the context admits, the same meanings as in the Council Regulation.

Enforcement

3.—(1) Subject to paragraph (2) of this regulation, each local authority shall secure the enforcement and execution of the specified Community provisions within its area.

(a) 1972 c.68.

(b) S.I. 1989/1327.

(c) 1956 c.30; section 26(3) was amended by the Local Government (Scotland) Act 1973 (c.65), Schedule 27, Part II, paragraph 123(a) and by the Local Government and Planning (Scotland) Act 1982 (c.43), Schedule 4, Part I; section 56 was amended by the Weights and Measures Act 1963 (c.31), Schedule 9, Parts I and II, and by the Criminal Justice Act 1982 (c.48), Schedule 15, paragraph 8 and by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), section 41 and is to be read with section 289GA(2) of the Criminal Procedure (Scotland) Act 1975 (c.21) (inserted by section 66 of the Criminal Justice (Scotland) Act 1987 (c.41)); section 56A was added by the European Communities Act 1972 (c.68), Schedule 4, paragraph 3(2).

(d) OJ No. L160, 12.6.1989, p.1.

(2) Each local authority in its area shall secure the enforcement and execution of the specified Community provisions in so far as they relate to the importation and exportation of spirit drinks to or from Scotland.

(3) The Secretary of State shall secure the enforcement and execution of the specified Community provisions in so far as they relate to any matter not mentioned in paragraphs (1) or (2) of this regulation.

Powers of authorised officers

4.—(1) An authorised officer of a local authority, having reasonable cause to suspect that an offence under regulation 5 of these Regulations has been or is being committed in respect of a specified Community provision which the local authority is required or empowered to enforce, may at all reasonable hours and on producing, if so required, some duly authenticated document showing his authority, require any person carrying on, or employed in connection with, a trade or business to produce any books or documents relating to that trade or business, and may take copies of any such book or document, or of any entry in any such book or document.

(2) An authorised officer of the Secretary of State, having reasonable cause to suspect that an offence under regulation 5 of these Regulations has been or is being committed in respect of a specified Community provision which the Secretary of State is required or empowered to enforce, shall have like powers of requiring the production of books or documents and of the taking of copies of books or documents as are exercisable under paragraph (1) above.

Offences and penalties

5.—(1) Subject to paragraph (2) below, if any person contravenes, or fails to comply with, any specified Community provision he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.

(2) Paragraph (1) above shall not apply in any case to which Article 1 of Commission Regulation (EEC) No. 3773/89 laying down transitional measures relating to spirituous beverages^(a) applies.

Application of various provisions of the Act

6. Without prejudice to the provisions of the Act which specifically apply in respect of Regulations made thereunder and subject to paragraph (2) of this regulation, the following provisions of the Act shall apply for the purposes of enforcement and execution of the specified Community provisions as if references therein to proceedings, or a prosecution, under or taken or brought under the Act included references to proceedings, or a prosecution, as the case may be, taken or brought for an offence under these Regulations:—

- (a) section 41(2), (3) and (5) (which relates to proceedings);
- (b) section 42(1) and (3) (which relates to evidence of analysis);
- (c) section 44 (which relates to the power of a Court to require analysis by the Government Chemist);
- (d) section 45 (which relates to a contravention due to default by some other person);
- (e) section 46 (which relates to a warranty pleaded as a defence);
- (f) section 47 (which relates to offences as to warranties and certificates of analysis).

(2) Section 44 of the Act shall apply for the purposes of these Regulations as if the reference therein to section 41(5) of the Act included a reference to that subsection as applied by paragraph (1) of this regulation.

^(a) OJ No. L365, 15.12.89, p. 48.

Repeal of section 3(4) of the Food and Drugs (Scotland) Act 1956

7. Section 3(4) of the Act is hereby repealed.

St. Andrew's House, Edinburgh
5th June 1990

Sanderson of Bowden
Minister of State,
Scottish Office

SCHEDULE Regulations 2, 3 and 4
SPECIFIED COMMUNITY PROVISIONS

Column 1 Provision of the Council Regulation	Column 2 Subject matter
1. Article 2	Requirements relating to the marketing for human consumption of spirit drinks under specified designations
2. Article 3(1), read with Annex III	Minimum alcoholic strength by volume of spirit drinks to be released for human consumption in the Community
3. Article 4(1)	Restriction on the marketing under a reserved name of spirit drinks to which an unauthorised substance has been added
4. Article 4(5)	Requirements relating to the use of natural flavouring substances and preparations
5. Article 4(7)	Conditions as to the use of ethyl alcohol in the preparation of spirit drinks
6. Article 5(1)	Restriction on the use of reserved names
7. Article 5(2) and Article 5(3)(a) and (b)	Conditions as to the use of supplementary geographical indications and designations
8. Article 7(1) and (2)	Requirements relating to the labelling, presentation and advertising of spirit drinks
9. Article 7(4)	Requirement to give particulars in an official language of the Communities understood by the final consumer
10. Article 7(5)	Prohibition on the translation of specified designations
11. Article 8	Prohibition on the use of associating words or phrases to describe spirit drinks produced in the Community marketed for human consumption
12. Article 9	Prohibition of the use of reserved generic names for specified spirit drinks containing added ethyl alcohol of agricultural origin
13. Article 9(2)	Requirements relating to the compositional labelling and presentation of Rum - Verschnitt
14. Article 12(1)	Application of Community rules to spirit drinks intended for export.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Scotland only, make provision for the administration, execution and enforcement of directly applicable Community provisions relating to the definition, description and presentation of spirit drinks set out in Council Regulation (EEC) No. 1576/89 (OJ No. L160, 12.6.1989, p.1) (the "Council Regulation") and come into force on 5th July 1990.

The Regulations—

- (a) designate authorities for the purposes of enforcement (regulation 3);
- (b) provide a power to authorised officers to require the production of books and documents and to take copies of books and documents (regulation 4);
- (c) prescribe offences and penalties (regulation 5(1));
- (d) apply various provisions of the Food and Drugs (Scotland) Act 1956 for the purposes of enforcement (regulation 6);
- (e) repeal section 3(4) of the Food and Drugs (Scotland) Act 1956 which permitted a defence in proceedings in respect of diluted whisky, brandy, rum or gin (regulation 7).

Under the transitional provisions of Article 1 of Commission Regulation (EEC) No. 3773/89 (OJ No. L365, 15.12.89, p.48) the marketing of spirit drinks not conforming with the provisions of the Council Regulation is permitted for specified periods in the circumstances described in that Article (regulation 5(2)).

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