

## 1990 No. 1179 FOOD

### The Spirit Drinks Regulations 1990

<i>Made</i>	<i>4th June 1990</i>
<i>Laid before Parliament</i>	<i>8th June 1990</i>
<i>Coming into force</i>	<i>29th June 1990</i>

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Health and the Secretary of State for Wales, acting jointly, in exercise of the powers conferred by section 119 of the Food Act 1984<sup>1</sup> and now vested in them<sup>2</sup> and, being Ministers designated<sup>3</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>4</sup> in relation to measures relating to the description of and other requirements relating to spirit drinks, acting jointly, in exercise of the powers conferred upon them by the said section 2(2), and of all other powers enabling them in that behalf, hereby make the following Regulations:—

#### **Title, extent and commencement**

1. These Regulations, which may be cited as the Spirit Drinks Regulations 1990, shall apply in England and Wales and shall come into force on 29th June 1990.

#### **Interpretation**

2.—

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

“the Act” means the Food Act 1984;

“the Council Regulation” means Council Regulation (EEC) No 1576/89 laying down general rules on the definition, description and presentation of spirit drinks<sup>5</sup>;

“the Minister” means, in relation to England, the Minister of Agriculture, Fisheries and Food and, in relation to Wales, the Secretary of State for Wales;

“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, insofar as the context admits, the same meanings as in the Council Regulation.

<sup>1</sup> 1984 c.30; section 132(1) contains a definition of “the Ministers” relevant to the exercise of the statutory powers under which these Regulations are made.

<sup>2</sup> In the case of the Secretary of State for Health by virtue of S.I. 1988/1843.

<sup>3</sup> S.I. 1989/1327.

<sup>4</sup> 1972 c.68; section 2 is subject to Schedule 2 to that Act and is to be read, as regards England and Wales, in relation to offences triable only summarily, with sections 37, 40 and 46 of the Criminal Justice Act 1982 (c.48) and with section 52(4) of the Criminal Justice Act 1988 (c.33), in relation to offences triable on indictment or summarily, with section 32 of the Magistrates Courts Act 1980 (c.43) and with section 51(5) of the Criminal Justice Act 1988, and in each case, with S.I. 1984/447.

<sup>5</sup> OJ No L160, 12.6.1989, p. 1.

## Enforcement

### 3.—

(1) Subject to paragraph (2) of this regulation, each food and drugs authority shall secure the enforcement and execution of the specified Community provisions in so far as they relate to the retail sale of spirit drinks within its area.

(2) Each port health authority shall secure the enforcement and execution of the specified Community provisions in its district insofar as they relate to the importation and exportation of spirit drinks to or from the United Kingdom.

(3) The Minister shall secure the enforcement and execution of the specified Community provisions insofar as they relate to any matter not mentioned in paragraph (1) or (2) of this regulation.

## Powers of authorised officers

### 4.—

(1) An authorised officer of a council, 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 council 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 Minister, 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 Minister 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<sup>6</sup> applies.

## Application of various provisions of the Act

### 6.—

(1) 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 95(5) and (6) (which relates to prosecutions);
- (b) section 97(1) and (3) (which relates to evidence of analysis);
- (c) section 99 (which relates to analysis by the Government Chemist);

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<sup>6</sup> OJ No L365, 15.12.89, p.48.

- (d) section 100 (which relates to a contravention due to another's fault);
- (e) section 102(2) (which relates to a warranty pleaded as a defence); and
- (f) section 103 (which relates to offences as to warranties and certificates of analysis).

(2) Section 99 of the Act shall apply for the purposes of these Regulations as if the reference therein to section 95(6) of the Act included a reference to that subsection as applied by paragraph (1) of this regulation.

## Repeal

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

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 18th May 1990.

*John Selwyn Gummer*  
Minister of Agriculture, Fisheries and Food

4th June 1990

*Stephen Dorrell*  
Under Secretary of State for Health

21st May 1990

*David Hunt*  
Secretary of State for Wales

Regulation 2

## SCHEDULE SPECIFIED COMMUNITY PROVISIONS

(1) <i>Provision of the Council Regulation</i>	(2) <i>Subject matter</i>
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



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(1) <i>Provision of the Council Regulation</i>	(2) <i>Subject matter</i>
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.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations 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 29th June 1990.

### The Regulations

- (a) designate authorities for the purposes of enforcement (regulation 3);
- (b) add a power to require the production of books and documents and to take copies of books and documents to those available to authorised officers of the enforcement authorities under Part VI of the Food Act 1984 (regulation 4);
- (c) prescribe offences and penalties (regulation 5(1));
- (d) apply various provisions of the Food Act 1984 for the purposes of enforcement (regulation 6);
- (e) repeal section 3(3) of the Food Act 1984 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)).