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FOOD

The Scotch Whisky Regulations 2008

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These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State(b) is a Minister designated(c) for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the description of, and other requirements relating to, spirit drinks.

There has been open and transparent public consultation during the preparation of the following Regulations as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council(d) laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

Accordingly, the Secretary of State makes the following Regulations:

Title, commencement and application

1.—(1) These Regulations may be cited as the Scotch Whisky Regulations 2008.

(2) These Regulations come into force on [to be completed] 2008.

(3) These Regulations, except for regulations 7 and 11, apply to—

(a) the manufacture of whisky distillates and whisky in Scotland; and

(b) the labelling, packaging, sale, advertising and promotion of whisky manufactured in Scotland.

(4) Regulation 7 applies to the labelling, packaging, sale, advertising and promotion of—

(a) whisky and other drinks manufactured in Scotland; and

(a) 1972 c.68.
(b) The functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of Community law related functions in respect of devolved matters, the function of the Secretary of State continues to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.
(c) S.I. 1989/1327, to which there are amendments not relevant to these Regulations,
(b) whisky and other drinks manufactured in the remainder of the United Kingdom.

(5) Regulation 11 applies to the labelling, packaging, sale, advertising and promotion of—
(a) whisky and whisky-based drinks manufactured in Scotland; and
(b) whisky and whisky-based drinks manufactured in the remainder of the United Kingdom.

(6) Regulations 8 to 13 do not apply to Scotch Whisky —
(a) that has been manufactured —
   (i) from a distillate produced as described in paragraphs (a) and (b) of article 3 of the
       Scotch Whisky Order 1990(a); and
   (ii) in a way that does not constitute an offence under regulation 4(1) of the Spirit Drinks
       Regulations 2008(b), as read with regulation 4(2) of those Regulations;
(b) that has been put in a container and labelled for retail sale before [state date 2 years after
    coming into force date]; and
(c) the sale of which does not—
   (i) constitute an offence under regulation 4(1) of the Spirit Drinks Regulations 2008, as
       read with regulation 4(2) of those Regulations; or
   (ii) contravene section 2(1) of the Scotch Whisky Act 1988(c), as read with article 3 of
       the Scotch Whisky Order 1990.

Repeal, revocation and savings

2.—(1) [The Scotch Whisky Act 1988 is repealed but continues to apply until [state date two
    years after the coming into force of these Regulations] for the purpose of regulation 1(6)(c)(ii)].

(2) [The Scotch Whisky Order 1990 is revoked but continues to apply until [state date two years
    after the coming into force of these Regulations] for the purpose of sub-paragraphs (a)(i) and
    (c)(ii) of regulation 1(6)].

Definition of “Scotch Whisky” and other basic expressions

3.—(1) In these Regulations “Scotch Whisky” means a whisky that has a minimum alcoholic
    strength by volume of 40% and has been manufactured from a distillate—
    (a) that has been manufactured at a distillery in Scotland from water and malted barley (to
        which only whole grains of other cereals may be added) all of which have been—
        (i) processed at that distillery into a mash;
        (ii) converted to a fermentable substrate only by endogenous enzyme systems; and
        (iii) fermented only by the addition of yeast;
    (b) that has been distilled at an alcoholic strength by volume of less than 94.8 per cent so that
        the distillate has an aroma and taste derived from the raw materials used in, and the
        method of, its production;
    (c) that has been matured for a period of not less than three years;
    (d) that has been matured in oak casks of a capacity not exceeding 700 litres;
    (e) that has been matured only in Scotland;
    (f) that has been matured only in a place of security approved under section 92(1) of the
        Customs and Excise Management Act 1979(d) or section 15(1) of the Alcoholic Liquor
        Duties Act 1979(e);

(a) S.I. 1990/998.
(b) S.I. 2008/to be completed.
(c) 1988 c. 22.
(d) 1979 c. 2, to which there are amendments not relevant to these Regulations.
(e) 1979 c. 4.
(g) that retains the colour, aroma and taste derived from the raw materials used in, and the
method of, its production and maturation; and
(h) to which no substance has been added other than—
   (i) water; and
   (ii) plain caramel colouring.

(2) In these Regulations—
“Blended Grain Scotch Whisky” means a blend of two or more Single Grain Scotch Whiskies
that have been distilled at more than one distillery;
“Blended Malt Scotch Whisky” means a blend of two or more Single Malt Scotch Whiskies
that have been distilled at more than one distillery;
“Blended Scotch Whisky” means a blend of one or more Single Malt Scotch Whisky with one
or more Single Grain Scotch Whisky;
“Single Grain Scotch Whisky” means a Scotch Whisky, other than a Single Malt Scotch
Whisky, distilled at a single distillery; and
“Single Malt Scotch Whisky” means a Scotch Whisky that has been distilled—
   (a) at a single distillery;
   (b) from water and malted barley without the addition of any other cereals; and
   (c) by batch distillation in pot stills.

General interpretation

4.—(1) In these Regulations—
“age” must be construed in accordance with the definition of “ageing” given in paragraph (8)
“authorised officer” means any person appointed by an enforcement authority under regulation 15;
“blending” has the meaning given in paragraph (7) of Annex I to Regulation (EC) No.
XXXX/2007;
“enforcement authority” means an authority exercising a function conferred on it by regulation 14;
“food authority”—
   (a) in relation to England, means—
      (i) a county council;
      (ii) a metropolitan district council;
      (iii) a non-metropolitan district council for an area for which there is no county council;
      (iv) a London borough council;
      (v) the Common Council of the City of London (in their capacity as a local authority); and
      (vi) the Council of the Isles of Scilly;
   (b) in relation to Northern Ireland, means a district council;
   (c) in relation to Scotland, means a council constituted under section 2 of the Local
Government etc. (Scotland) Act 1994(a); and
   (d) in relation to Wales, means a county council or a county borough council;
“manufacture” includes—
   (a) keeping for the purpose of maturation; and

(a) 1994 c. 39.
“maturation” has the meaning given in paragraph (8) of Annex I to Regulation (EC) No. XXXX/2007;
“packaging” has the meaning given in paragraph (17) of Annex I to Regulation (EC) No. XXXX/2007;
“penalty” means the amount specified in a penalty notice;
“penalty notice” means a notice offering the opportunity, by payment of a specified amount in accordance with these Regulations, to discharge any liability to be convicted of the penalty offence to which the notice relates;
“penalty offence” means an offence under regulation 25 as it applies in connection with a contravention, or failure to comply with, any provision mentioned in Schedule 1;
“port health authority” means—
(a) in relation to the London port health district (within the meaning given by section 7(1) of the Public Health (Control of Disease) Act 1984(a)), the Common Council of the City of London; and
(b) in relation to any port health district constituted by order under section 2(3) of that Act, the port health authority for that district constituted by order under section 2(4) of that Act;
“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;
“presentation” has the meaning given in paragraph (15) of Annex I to Regulation (EC) No. XXXX/2007;
“retail sale” means any sale other than a sale for use or resale in the course of a trade or business;
“sell” includes offer or expose for sale or have in possession for sale;
“whisky” has the meaning given in point 2 of Annex II to Regulation (EC) No. XXXX/2007;
“whisky-based drink” means a drink, other than whisky, that contains whisky; and
“whisky distillate” means whisky distillate as described in point 2(a)(i) and (ii) of Annex II to Regulation (EC) No. XXXX/2007.
(2) Other expressions used in these Regulations and Regulation (EC) No. XXXX/2007 have their meaning in Regulation (EC) No. XXXX/2007.
(3) In these Regulations “container” (except as used in the expression “shipping container”) has the same meaning as in paragraph (16) of Annex I to Regulation (EC) No. XXXX/2007, and includes any cap or other device by which the receptacle has been closed, any tag attached to the receptacle, and any sheathing covering its neck, and—
(a) any reference to a container of Scotch Whisky must be construed as a reference to a container into which Scotch Whisky has been put for the purpose of subsequent sale; and
(b) any reference to the front of a container includes a reference to any label firmly attached to it.
(4) In these Regulations any reference to the labelling of Scotch Whisky must be construed as a reference to the labelling of a container of Scotch Whisky for the purposes of subsequent sale (whether by attaching a label to the container, direct printing onto the container, moulding on the container or any other method by which information is included on a container).

(a) 1984 c. 22.
(b) [to be completed].
Manufacture

5.—(1) A person must not manufacture a whisky distillate in Scotland unless it is manufactured as described in regulation 3(a) and (b).

(2) A person must not manufacture any whisky in Scotland other than Scotch Whisky.

Marketing

6.—(1) A person must not label, package, sell, advertise or promote any drink as Scotch Whisky or Scotch if it is not Scotch Whisky.

(2) A person must not label, package, sell, advertise or promote a drink in any other way that creates a likelihood of confusion on the part of the public as to whether the drink is Scotch Whisky.

Export

7.—(1) A person must not export any Single Malt Scotch Whisky from Scotland to any other country otherwise than in a bottle or ceramic container that is labelled for retail sale.

(2) A person must not export any of the following whiskies from Scotland to another country in a wooden cask or other wooden holder—

(a) Single Grain Scotch Whisky;
(b) Blended Malt Scotch Whisky;
(c) Blended Grain Scotch Whisky; or
(d) Blended Scotch Whisky.

(3) But paragraph (2) shall not prevent a person exporting any Single Grain Scotch Whisky, Blended Malt Scotch Whisky, Blended Grain Scotch Whisky or Blended Scotch Whisky from Scotland to another country in a wooden cask or other wooden holder that is lined with plastic or another inert material.

Compulsory sales categories

8.—(1) The compulsory sales category into which a Scotch Whisky falls must be stated—

(a) on the front of a container of Scotch Whisky; and
(b) on any individual packaging used for the transportation of the container, or used for display purposes during the marketing of the whisky, unless the front of the container is clearly visible through that packaging.

(2) The compulsory sales categories are—

(a) Single Malt Scotch Whisky;
(b) Single Grain Scotch Whisky;
(c) Blended Malt Scotch Whisky;
(d) Blended Grain Scotch Whisky; and
(e) Blended Scotch Whisky.

(3) The compulsory sales category must be—

(a) printed in a conspicuous place in such a way as to be easily visible and legible to the naked eye and indelible so that it is clear that it is the sales description of the whisky;
(b) printed in a way that gives equal prominence to each word making up the name of the compulsory sales category; and
(c) as prominent as any other description of the whisky on the container or packaging, except for—
   (i) any separate use of the description “Scotch Whisky”; and
   (ii) any statement relating to the year in which the whisky was distilled, the year in which it was bottled, the period for which it was matured or the age of the whisky.

(4) The name of the compulsory sales category must not be—
   (a) overlaid or interrupted by other written or pictorial matter; or
   (b) used in conjunction with any other words.

(5) But paragraph (4)(b) shall not prevent the name of a Scottish locality or region from being included immediately before the name of the compulsory sales category so long as the use of that name does not contravene regulation 10.

(6) A person must not label, package or sell any Scotch Whisky in a way that does not comply with paragraph (1), (3) or (4).

(7) [A person must not label, package, sell, advertise or promote any Scotch Whisky as falling within a compulsory sales category if it does not fall into that category].

**Distillery and distillers etc. names**

9.—(1) The name of a distillery must not appear on any labelling or individual packaging of Single Malt Scotch Whisky or Single Grain Scotch Whisky, or be used in connection with any advertisement or promotion of that whisky, unless the whisky has been distilled in that distillery.

(2) But paragraph (1) does not apply—
   (a) to a brand of Single Malt Scotch Whisky or Single Grain Scotch Whisky mentioned in Part 1 of Schedule 2 if the distillery in which it was distilled is identified clearly on the front of the container; or
   (b) where the name of the distillery is the name of a Scottish locality and is mentioned as part of the postal address of the producer, bottler or seller of the whisky.

(3) The name of a distillery must not appear on any labelling or individual packaging of any Blended Malt, Blended Grain or Blended Scotch Whisky, or be used in connection with any advertisement or promotion of such whisky, unless —
   (a) the reference to the distillery only appears as part of a description of the whisky;
   (b) a Scotch Whisky that has been distilled at the named distillery has been included in the blend making up the final whisky; and
   (c) it is clear from the presentation of the product that not all of the whisky was distilled at that distillery.

(4) But paragraph (3) shall not prevent—
   (a) the use of the name of a distillery that is included in the name of a brand of Blended Malt, Blended Grain or Blended Scotch Whisky mentioned in Part 2 of Schedule 2 being used in relation to that brand; or
   (b) the use of that name as part of the postal address of the producer, bottler or seller of the whisky where the name of a distillery is the name of a Scottish locality.

(5) Scotch Whisky must not be labelled, packaged, advertised or promoted in any other way that suggests that it has been distilled at any distillery other than the distillery where it was actually distilled.

(6) A name that is similar to the name of any distillery in Scotland (including any of the distilleries mentioned in Schedule 3 and any other past or present distillery) must not appear on any container or package of Single Malt Scotch Whisky or Single Grain Scotch Whisky, or be used in connection with any advertisement or promotion of those categories of whisky, if the use of that name creates a likelihood of confusion on the part of the public as to where the whisky was distilled.
(7) Single Malt Scotch Whisky and Single Grain Scotch Whisky must not be labelled, packaged, sold, advertised or promoted in any way that suggests that the whisky was distilled by any person other than the person who distilled it, or the owner or operator of the distillery where it was distilled, whether by an indication that that person is the distiller, the owner or operator of the distillery, or otherwise.

(8) A person must not label, package, advertise or promote any Scotch Whisky in a way that contravenes the requirements of paragraph (1), (3), (5), (6) or (7), or sell any Scotch Whisky that has been labelled or packaged in that way.

Localities and region geographical indications

10.—(1) Whisky and whisky-based drinks must not be labelled, packaged, advertised or promoted in a way that includes the name of either of the localities mentioned in paragraph (2), or any of the regions mentioned in paragraph (3), unless the only alcohol in the drink is Scotch Whisky that has been distilled in that named locality or region.

(2) The localities are—

(a) “Campbeltown”, comprising the South Kintyre ward of the Argyll and Bute Council as that ward is constituted in the Argyll and Bute (Electoral Arrangements) Order 2006(a); and

(b) “Islay”, comprising the Isle of Islay in Argyll in Scotland.

(3) The regions are—

(a) “Highland”, comprising that part of Scotland which is north of the line dividing the Highland region from the Lowland region;

(b) “Lowland”, comprising that part of Scotland which is south of the line dividing the Highland region from the Lowland region; and

(c) “Speyside”, comprising—

(i) the wards of Buckie, Elgin City North, Elgin City South, Fochabers Lhanbryde, Forres, Heldon and Laich, Keith and Cullen and Speyside Glenlivet of the Moray Council as those wards are constituted in the Moray (Electoral Arrangements) Order 2006(b); and

(ii) the Badenoch and Strathspey ward of the Highland Council as that ward is constituted in the Highland (Electoral Arrangements) Order 2006(c).

(4) But paragraph (1) does not apply in any of the circumstances mentioned in paragraph (5), (6) and (7).

(5) The circumstances referred to in paragraph (4) are where the name of either of the localities mentioned in paragraph (2), or any of the regions mentioned in paragraph (3), form part of a trade mark or company name registered before these Regulations came into force, and—

(a) the name of the locality or region is only included on the labelling or packaging of a Scotch Whisky, or a whisky-based drink, as part of that trade mark or company name; and

(b) it is unlikely that a purchaser would be misled by the use of the trade mark or company name in this way into thinking that the Scotch Whisky, or the whisky in the whisky-based drink, had been distilled in that locality or region.

(6) The circumstances referred to in paragraph (4) are, in relation to a Blended Malt Scotch Whisky, a Blended Grain Scotch Whisky or a Blended Scotch Whisky, where—

(a) the locality or region is only mentioned by a reference to the individual whiskies that have been blended together to make the whisky; and

(a) S.S.I. 2006/378.
(b) S.S.I. 2006/372.
(c) S.S.I. 2006/481.
(b) the individual whiskies that have been blended together to make the whisky were not
distilled anywhere else but in the specified locality or region.

(7) The circumstances referred to in paragraph (4) are where the name of either of the localities
mentioned in paragraph (2) is mentioned as part of the address of the distiller, producer, bottler or
seller of the whisky.

(8) Whisky and whisky-based drinks must not be labelled, packaged, advertised or promoted in
a way that includes any reference to a name that is similar to the name of either of the localities
mentioned in paragraph (2), or any of the regions mentioned in paragraph (3), if that reference
creates a likelihood of confusion on the part of the public as to where the drink was distilled.

(9) No other Scottish locality or regional name must appear immediately before the statement
required by regulation 8(1) (relating to the compulsory sales category) unless the Scotch Whisky
has been distilled only in the named locality or region.

(10) A person must not—

(a) label, package, advertise or promote any whisky in a way that contravenes paragraph (1),
(8) or (9), or sell any whisky that has been labelled or packaged in that way; or

(b) label, package, advertise or promote any whisky-based drink in a way that contravenes
paragraph (1) or (8), or sell any whisky-based drink that has been labelled or packaged in
that way.

(11) In this regulation—

“other Scottish locality or regional name” means the name of a locality or region other than
the localities and regions mentioned in paragraphs (2) and (3) respectively; and

“the line dividing the Highland region from the Lowland region” means the line beginning at
the North Channel and running along the southern foreshore of the Firth of Clyde to
Greenock, and from there to Cardross Station, then eastwards in a straight line to the summit
of Earl’s Seat in the Campsie Fells, and then eastwards in a straight line to the Wallace
Monument, and from there eastwards along the line of the B998 and A91 roads until the A91
meets the M90 road at Milnathort, and then along the M90 northwards until the Bridge of
Earn, and then along the southern foreshore of that river and the Firth of Tay until it comes to the North Sea.

Use of the words ‘pure’ and ‘malt’ and derivations

11. A person must not label, package, sell, advertise or promote any Scotch Whisky in a way
that includes—

(a) the phrase ‘pure malt’ or any derivation of that phrase; or

(b) the words ‘pure’ and ‘malt’, or any derivation of those words in a way that, although the
words are separated from each other (whether by text or otherwise), the word ‘pure’ (or
any derivation of it) is used adjectivally in connection with the word ‘malt’ (or any
derivation of it).

Year of distillation

12.—(1) A person must not label, package, sell, advertise or promote any Scotch Whisky in a
way that includes a reference to the year of distillation of the whisky.

(2) But paragraph (1) does not apply if—

(a) the presentation of the whisky also includes a reference to—

(i) the year of bottling of the whisky;

(ii) the period of maturation of the whisky; or

(iii) the age of the whisky; and

(b) the reference to the year of bottling, the period of maturation or age of the whisky appears
in the same field of vision as the reference to the year of distillation.
Age and maturation statements

13. A person must not label, package, sell, advertise or promote any Scotch Whisky in a way that includes a reference to the period of maturation or age of the whisky unless the period of maturation or age of the youngest whisky in the drink is expressed in years and consists of one number (which may be expressed either as a numeral or as a word).

Enforcement

14. [Under consideration]

Appointment of officers

15. [To be completed] appoint officers for the purposes of the enforcement of these Regulations.

Powers of entry

16.—(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) An authorised officer may take with him such other persons as the authorised officer considers necessary.

(3) Admission to any premises used only as a private dwellinghouse shall 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.

(4) If a justice of the peace, on sworn information in writing, is satisfied of the matters mentioned in paragraph (5), he may sign a warrant permitting an authorised officer to enter any premises, if needs be by reasonable force.

(5) The matters are that there are reasonable grounds for entry into the premises for the purposes of the enforcement of these Regulations, and —

(a) admission has been refused, or a refusal is expected, and (in either case) that the occupier has been informed (whether orally or in writing) that a warrant may be applied for;

(b) asking for admission, or informing the occupier that such a warrant may be applied for, would defeat the object of the entry;

(c) the case is one of urgency; or

(d) the premises are unoccupied or the occupier is temporarily absent.

(6) A warrant under this section is valid for one month.

(7) An authorised officer who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as he found them.

(8) In this regulation, a reference to a justice of the peace —

(a) in Scotland includes a reference to the sheriff or to a stipendary magistrate; and

(b) in Northern Ireland is a reference to a lay magistrate.

(9) An authorised officer must not exercise the powers under this regulation except on the production, if so required, of a duly authenticated document showing the officer’s authority.

Powers of an authorised officer

17.—(1) An authorised officer entering premises under the previous regulation may —

(a) inspect the premises, and any still and any other plant, machinery or equipment on those premises;

(b) search the premises;

(c) take samples;

(d) carry out any inquiries, examinations and tests;
(e) 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—
   (i) any liquid that the officer has reasonable grounds for believing is a distillate or drink (including any vessel in which the liquid is found);
   (ii) any cereals or other ingredients that may be used to manufacture any distillate or drink, including colourings and flavourings;
   (iii) any mash;
   (iv) any empty container;
   (v) any label;
   (vi) any packaging;
   (vii) any advertising or promotional materials, or other documentation relating to a drink; and
   (viii) any land, vehicle or trailer on or in which any of the items mentioned in paragraphs (i) to (vii) is found;
   (f) seize and detain any items of the type mentioned in sub-paragraph (e)(i) to (vii) that the officer has reason to believe may be in contravention of these Regulations or may be required as evidence in proceedings under these Regulations;
   (g) have access to, and inspect and copy, any documents or records (in whatever form they are held) relating to any distillate or drink, and remove them to enable them to be copied;
   (h) have access to, and inspect and check the operation of, any computer and any associated apparatus or material that is or has been in use in connection with the records; and for this purpose the officer may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford the officer such assistance as the officer may reasonably require;
   (i) where a record is kept by means of a computer, require the records to be produced in a form in which they may be taken away; and
   (j) seize any computer and associated equipment for the purpose of copying documents provided they are returned as soon as practicable and, in any event, within 28 days.

(2) Where an authorised officer exercises the power under paragraph (1)(j), the officer must notify the person in charge of the premises from which the equipment is seized of the right of appeal conferred by regulation 20 and the period within which an appeal may be brought.

(3) In relation to Wales, the notice mentioned in paragraph (2) must be in English and Welsh.

**Obstruction**

18. A person must not without reasonable excuse—
   (a) obstruct any person acting in the execution of these Regulations;
   (b) fail to give to any person acting in the execution of these Regulations any assistance or information that that person may reasonably require of him for the performance of his functions under these Regulations; or
   (c) fail to produce a record when required to do so to any person acting in the execution of these Regulations.

**Improvement notices**

19.—(1) If an authorised officer has reasonable grounds for believing that any person is failing to comply with these Regulations the officer may serve a notice (“an improvement notice”) on that person—
   (a) stating the officer’s grounds for believing this;
   (b) specifying the matters that constitute the failure to comply;
(c) specifying the measures that, in the officer's opinion, the person must take in order to secure compliance;
(d) requiring the person to take those measures, or measures at least equivalent to them, within the period (being not less than 14 days) specified in the notice;
(e) stating that the person has the right of appeal to a magistrates' court or to the sheriff conferred by regulation 20; and
(f) stating the period within which such an appeal may be brought.
(2) In relation to Wales, the improvement notice must be in English and Welsh.
(3) A person on whom an improvement notice has been served must comply with that notice.

Appeals

20. — (1) Any person who is aggrieved by an improvement notice, or a decision by an authorised officer to seize any computer or associated equipment under regulation 17(1)(j), may appeal against that notice or decision—
(a) in England, Northern Ireland and Wales, to a magistrates' court; or
(b) in Scotland, to the sheriff.
(2) The procedure on an appeal to a magistrates' court under paragraph (1) is by way of complaint, and—
(a) in England, Scotland and Wales, the Magistrates' Courts Act 1980(a) applies to the proceedings; and
(b) in Northern Ireland, the Magistrates' Courts (Northern Ireland) Order 1981(b) and the Magistrates' Courts Rules (Northern Ireland) 1984(c) apply to the proceedings.
(3) An appeal to the sheriff under paragraph (1) is by summary application.
(4) The period within which an appeal may be brought against an improvement notice is 28 days or the period specified in the notice, whichever ends the earlier.
(5) The period within which an appeal may be brought against a decision by an authorised officer to seize any computer or associated equipment under regulation 17(1)(j) is 28 days.
(6) A court may suspend an improvement notice pending an appeal.

Powers of a court on appeal

21. On an appeal against an improvement notice, or a decision by an authorised officer to seize any computer or associated equipment under regulation 17(1)(j), the court may either cancel the notice or overturn the decision, or confirm the notice or decision, with or without modification.

Seizure notices

22. — (1) An authorised officer must follow the procedures set out in this regulation if he seizes anything under regulation 17(1)(f).
(2) The officer must serve a notice (“a seizure notice”) on the person appearing to the officer to be in charge of the seized item—
(a) giving the grounds for seizing the item; and
(b) informing the person served of his rights under this regulation to make a claim, and the address for the service of the claim.
(3) In relation to Wales, the seizure notice must be in English and Welsh.

(a) 1980 c. 43.
(b) 1981 No. 1675 (N.I. 26).
(c) S.R. (NI) 1984 No. 225.
(4) If an authorised officer is not able to remove an item seized under regulation 17(1)(f) immediately, the officer may—
   (a) mark it in any way that he sees fit; and
   (b) serve a notice on the person in charge of the item—
      (i) identifying it; and
      (ii) prohibiting the removal of the item from the premises on which it was found until it is collected by an authorised officer.

(5) No person, other than an authorised officer, may remove any item identified under paragraph (4) from the premises on which it was found.

(6) The person on whom the seizure notice was served, or the owner of the seized item, may notify the enforcement authority of any claim that the seized item was not liable to seizure, setting out the grounds for the claim in full.

(7) The claim mentioned in paragraph (6) must be made within 28 days of the seizure to the address specified in the seizure notice.

(8) If a notification of a claim is not received within 28 days, the enforcement authority may destroy any seized item that he believes to be in contravention of these Regulations.

(9) If a notification of a claim is received within 28 days, the enforcement authority must either—
   (a) return the seized item; or
   (b) take proceedings in a magistrates' court or, in Scotland, the sheriff court for an order for the confirmation of the seizure notice, and, in the case of any seized item believed to be in contravention of these Regulations, the destruction of the item.

(10) If the court confirms the notice, it must order the destruction of any seized item believed to be in contravention of these Regulations.

(11) The procedure in a magistrates’ court under this regulation is by way of complaint, and—
   (a) in England, Scotland and Wales, the Magistrates' Courts Act 1980 applies to the proceedings; and
   (b) in Northern Ireland, the Magistrates' Courts (Northern Ireland) Order 1981 and the Magistrates' Courts Rules (Northern Ireland) 1984 apply to the proceedings.

(12) The procedure before the sheriff is by summary application.

(13) The person on whom the seizure notice was served is liable for the costs of transport, storage for up to 28 days, and the destruction of the seized item unless a claim is made to a court and the court otherwise directs.

Publication of notices

23. The enforcement authority may publicise improvement notices and seizure notices as it sees fit.

Duty to give assistance and provide information

24. Each enforcement authority must give such assistance and information to any other enforcement authority as it may reasonably require for the purpose of its duties under these Regulations.

Offences

25. A person is guilty of an offence if he contravenes, or fails to comply with regulation 18, 19(3) or 22(5).
Penalty

26. A person guilty of any offence under regulation 25 shall be liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum; and
   (b) on conviction on indictment, to a fine.

Civil liability

27.—(1) If the Court of Session is satisfied, on the application of a person mentioned in paragraph (3), that any person has contravened regulation 5, 6, 7(1) or (2), 8(6) or (7), 9(8), 10(10), 11, 12(1) or 13 in Scotland, the Court may grant an interdict prohibiting such contravention.

   (2) If the High Court is satisfied, on the application of a person mentioned in paragraph (3), that any person has contravened regulation 6, 8(6) or (7), 9(8), 10(10), 11, 12(1) or 13 in England, Northern Ireland or Wales, the Court may grant an injunction prohibiting such contravention.

   (3) The persons are—
   (a) any person carrying on the business of manufacturing Scotch Whisky; or
   (b) the Scotch Whisky Association or any other person appearing to the court to be representative of a group of persons carrying out the business of manufacturing Scotch Whisky.

Issue of penalty notice for penalty offence

28. An authorised officer who has reason to believe that a person has committed a penalty offence may issue that person with a penalty notice.

Restriction on proceedings for penalty offence

29.—(1) Where a person is issued with a penalty notice—
   (a) no proceedings may be brought against that person for the penalty offence to which that notice relates before the end of the period of 28 days beginning with the date on which the notice was issued; and
   (b) that person shall not be convicted of the offence if the penalty is paid in accordance with regulation 33 before the end of that period.

   (2) Paragraph (1) does not apply if the penalty notice is withdrawn in accordance with regulation 35.

Contents and form of penalty notice

30.—(1) A penalty notice must be completed by or under the direction of an authorised officer.

   (2) A penalty notice must be—
   (a) in the form prescribed in Schedule 4; or
   (b) in any other form provided that it gives such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence and states—
      (i) the period during which, by virtue of regulation 29, proceedings will not be taken for the offence;
      (ii) the amount of the penalty;
      (iii) the person to whom, and the address at which, the penalty may be paid; and
      (iv) that payment must not be made in cash.

   (3) In relation to Wales, the form must be in English and Welsh.
Amount of penalty

31.—(1) The amount of the penalty must be determined by an authorised officer.
(2) The amount of the penalty must not be less than £1,000 or more than £4,000.
(3) [To be completed] must publish guidance setting out the matters to be taken into account by an authorised officer in determining the amount of the penalty.
(4) An authorised officer must take into account that guidance in determining the amount of the penalty.

Issue of penalty notice

32. A penalty notice is issued at the time when it is sent by post or delivered by hand to the person to whom it relates.

Payment of penalty

33.—(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.

Certificate of payment or non-payment of penalty notice

34. 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.

Withdrawal of penalty notices

35.—(1) A penalty notice may be withdrawn by an authorised officer who has reason to believe that it ought not to have been issued (whether to the person named in the penalty notice or otherwise).
(2) A penalty notice may be withdrawn before or after payment of the penalty.
(3) Where a penalty notice is withdrawn any penalty paid must be repaid to the person who paid it.

Offences by bodies corporate etc.

36.—(1) If an offence under these Regulations committed by a body corporate is shown—
(a) to have been committed with the consent or connivance of an officer; or
(b) to be attributable to the neglect of an officer,
the officer, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly.
(2) If an offence under these Regulations committed by a Scottish partnership is shown—
(a) to have been committed with the consent or connivance of a partner; or
(b) to be attributable to the neglect of a partner,
the partner, as well as the partnership, commits the offence and is liable to be proceeded against and punished accordingly.
(3) In this regulation “officer”, 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, or a person purporting to act in any such capacity.
37. In proceedings for an offence under these Regulations it is a defence for a defendant to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

SCHEDULE 1

PENALTY OFFENCES

Regulation 19(3).

SCHEDULE 2

BRANDS OF SCOTCH WHISKY TO WHICH CERTAIN PROVISIONS OF REGULATION 9 DO NOT APPLY

PART 1

Existing brands of Single Malt and Single Grain Scotch Whiskies to which the provisions of regulation 9(1) do not apply

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PART 2

Existing brands of Blended Malt, Blended Grain and Blended Scotch Whiskies to which the provisions of regulation 9(3) do not apply

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Minister of State
2008
Department for Environment, Food and Rural Affairs

Department for Environment, Food and Rural Affairs
### SCHEDULE 3

**DISTILLERIES**

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Isle of Jura
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Jericho
John o’Groats
Junich
Kelso
Keltneyburn
Kenmore
Kennetpans
Kennyhill
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**SCHEDULE 4**

**Regulation 30(2)(a)**

**FORM OF PENALTY NOTICE**
NOTICE OF OPPORTUNITY TO PAY PENALTY

The Scotch Whisky Regulations 2008

Alleged Offender: ________________________________________________________________.

Address: ____________________________________________________________________.

I, _________________________________________________________________________,
an authorised officer of ___________________________________________________________,

have reason to believe that on ____________________________ (a) you committed the offence
of_____________________________________________________________________________
_____________________________________________________________________________,
contrary to______________________________________________________________________
_______________________________________________________________________________
______________________________________________________________________________
(b).

This Notice offers you the opportunity of discharging any liability to conviction for that offence
by payment of a penalty. The circumstances alleged to constitute the offence are as follows:
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
(c).

No proceedings will be taken for this offence before the expiration of 28 days following the date
of issue of this Notice. You will not be liable to conviction for the offence if you pay the penalty
during that period of 28 days.

The amount of the penalty is: ________________________________________________.

Payment may be made by posting a letter containing the amount of the penalty to
______________________________________________________________________________
______________________________________________________________________________
at______________________________________________________________________________
______________________________________________________________________________

Payment must not be made in cash.

Alternatively, payment may be made by____________________________________________
______________________________________________________________________________
______________________________________________________________________________
(d).

Date of Notice_____

(a) State date of offence.
(b) Specify the legislation containing the offence.
(c) Give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable
information about it.
(d) If an alternative method of payment is being offered, state how and to whom such payment can be made.
EXPLANATORY NOTE
(This note is not part of the Regulations)
[to be completed]