Consultation on Scotch Whisky Regulations 2008

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Department for Environment, Food and Rural Affairs

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Background

1. Scotch Whisky has been defined in UK law since the Finance Act 1933 and has been recognised in European Community legislation since 1989. The current UK legislation for Scotch Whisky is the Scotch Whisky Act 1988 and the Scotch Whisky Order made under it in June 1990. The Scotch Whisky Act and Order regulate the production and sale of Scotch Whisky. Scotch Whisky is also recognised as a geographical indication at EU level under Council Regulation (EEC) No. 1576/89 (which governs the definition, description and presentation of spirit drinks above 15% alcohol by volume). This EEC Regulation will soon be replaced by a new EC Regulation.

2. The 1988 Act, and the 1990 Order describe how Scotch Whisky must be manufactured and set a minimum alcoholic strength of 40% (the same as under the current EC Regulation for whisky). The Act and Order also lay down the ingredients to be used, and that Scotch Whisky must be distilled and matured in Scotland, the minimum period for that maturation being three years. The legislation prohibits the manufacture of whisky in Scotland except Scotch Whisky. This protects consumers from being sold 'Scotch Whisky' products not complying with the legislation, and ensure Scotch Whisky's reputation is not undermined by the manufacture of whiskies in Scotland, which do not meet the legal criteria for Scotch Whisky. The 1988 Act provides civil remedies for its contravention as read with the 1990 Order. Such remedies allow courts to grant interdicts in Scotland and injunctions elsewhere in the UK to stop breaches of the law and allow for the spirits in question to be seized and disposed of by HM Customs and others.

3. This existing legislation gives civil protection to Scotch Whisky, and hence consumers. Also, the Spirit Drinks Regulations 1990 (as amended) provide for criminal remedies where the current EC Spirit Drinks Regulation is flouted, which provides another layer of protection to Scotch Whisky.

4. However, apart from the basic definition of Scotch Whisky in the 1990 Order, there are no statutory definitions for different categories of Scotch Whisky other than 'Blended Scotch Whisky' in the Finance Act 1969 [as amended] which is still extant, albeit it has been provisionally repealed.

5. Also there are no restrictions on the use of regional descriptions to be used for Scotch Whiskies from different parts of Scotland and no ban on Scotch Whisky exported in bulk for bottling abroad or exported in wooden barrels.

6. Exporting Scotch Whisky in bulk has, it is believed, led to a lot of adulteration and contamination when it is bottled abroad, which damages the reputation of Scotch Whisky and leaves consumers vulnerable.
7. So far, Scotch Whisky and its consumers have been protected largely by the industry following conventions and informal understandings it has itself laid down, but which have no legal force.

8. The Scotch Whisky industry therefore wants some current industry practices changed, and the UK Government and Devolved Administrations in Scotland, Wales and Northern Ireland agree.

9. Although all Scotch Whisky must be produced in Scotland, it is marketed and sold in the UK as a whole, hence the interest of all the administrations.

10. We are therefore putting forward new proposals for consultation, to enhance the protection of Scotch Whisky and protection of consumers. These proposals, which are set out in more detail in the rest of this consultation paper, briefly cover the following:

- Manufacture of Scotch Whisky (including maturation and blending),
- Categories of Scotch Whisky,
- Protection of locality and regional geographical indications,
- New labelling rules,
- Single Malt Scotch Whisky to be Bottled in Scotland,
- Ban on the export of all Scotch Whiskies in wooden casks, and
- Providing for civil liabilities for non-compliance

11. A first draft of the UK Scotch Whisky Regulations is at the Annex A. The paragraph references below are to the provisions of those draft Regulations.

**Definition and Manufacture of Scotch Whisky**

12. The Scotch Whisky Act 1988 and the Scotch Whisky Order 1990 will be repealed, and how Scotch Whisky is manufactured and defined in the future will be set out in these new regulations.

13. The Scotch Whisky definition, in the new Regulations, is broadly the same as that in the Scotch Whisky Order 1990, but includes a provision to prevent Scotch Whisky being matured anywhere but in Scotland (see below). The proposed new definition is as follows:

“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(a) or section 15(1) of the Alcoholic Liquor Duties Act 1979(b);

(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.

14. The proposed legislation will also include contraventions to do with the manufacture of whisky, maturation and keeping or using whisky in Scotland other than Scotch Whisky. These are similar contraventions to those in the 1988 Act. There will be contraventions covering the manufacture, maturation and blending of distillates i.e. spirits which would become whisky (other than Scotch Whisky) once matured for at least three years.

Question 1: Is the proposed Scotch Whisky definition appropriate?

Definition of Maturation

15. Scotch Whisky is manufactured by distillation, maturation and sometimes blending. The Scotch Whisky Order 1990 requires Scotch Whisky to be matured in an excise warehouse in Scotland in oak casks not exceeding 700 litres, with maturation for at least three years. Some think this requires only three years maturation in Scotland, allowing further maturation overseas. But “Scotch Whisky” is a geographical indication of whisky produced in Scotland. Maturation is part of its manufacture, and if some maturation takes place outside Scotland, the whisky is no longer wholly produced in Scotland and so cannot be called Scotch Whisky.

16. We therefore propose that the definition in the new Regulations makes it clear that Scotch Whisky must be wholly matured in Scotland (see regulation 3). This would stop Scotch Whisky being exported in oak casks preventing further maturation overseas.

(a) 1979 c. 2, to which there are amendments not relevant to these Regulations.
(b) 1979 c. 4.
17. We also propose that Scotch Whisky should not be exported from Scotland in wooden containers unless these are lined with plastic or other inert material to prevent further maturation outside Scotland. (see regulation 7).

18. However, it will be possible to export Scotch Whisky (apart from Single Malt Scotch Whisky) in bulk in plastic drums or steel containers as these are inert.

19. The whole maturation process must be in an ‘approved place of security’.

Question 2: Do the provisions to require all Scotch Whisky to be wholly matured in Scotland, and the prohibition of exports in wooden containers unless they are lined with plastic or other inert material, adequately protect Scotch Whisky from being matured abroad?

Question 3: What will be the impact of requiring Scotch Whisky to be matured only in ‘a place of security’?

Definitions of Categories of Scotch Whisky

20. At present, only “Scotch Whisky” is defined under UK law. There are no definitions of Scotch Whisky categories - such as “Single Malt Scotch Whisky”. And there is no requirement to describe a Scotch Whisky using its appropriate category name, or even to describe it as ‘Scotch Whisky’. As a result, a very wide variety of descriptions have been used for Scotch Whiskies and, therefore, most consumers do not understand the different categories.

21. The labels of many well known Blended Scotch Whiskies do not state “Blended Scotch Whisky”, but use terms such as “Old Scotch Whisky”. The labels may state in smaller print that the contents are blended, but this fact is not always clear.

22. A wide variety of descriptions have also been used to describe Blended Malt Scotch Whisky, including “Vatted Malt Scotch Whisky” and “Pure Malt”. Some Single Malts have been described as “Pure Single Malt”.

23. Both Blended Malts and Single Malts have been described as e.g. “Pure Malt”. Therefore some consumers can be misled about what they are buying. This is damaging to Scotch Whisky.

24. We therefore propose to define Scotch Whisky categories and make them compulsory sales descriptions on every Scotch Whisky label. This will help the industry promote the new categories, and makes economic sense. The following categories are proposed:

- Single Malt Scotch Whisky
- Single Grain Scotch Whisky
The categories distinguish between single whiskies and blends, as blends are made up of a number of different single whiskies. We proposed to define each category as follows.

25. **Single Malt Scotch Whisky** - distilled at a single distillery by batch distillation in pot stills from water and malted barley, with no other cereals added.

26. **Single Grain Scotch Whisky** means a Scotch Whisky, other than a Single Malt Scotch Whisky, distilled at a single distillery.

27. The proposed definition of Single Grain Scotch Whisky requires some further explanation.

28. Under the proposals, Single Grain Scotch Whisky would need to bear a category description. It would not meet the requirements for a Single Malt Scotch Whisky, so it is proposed that they should be included in the Single Grain Scotch Whisky category. This means that a whisky distilled at a single distillery in a patented still from water and malted barley with no other cereals added, will be categorised as a Single Grain Scotch Whisky even though it is only made from malted barley. The definition of Single Grain Scotch Whisky will not affect in any way the current practice.

**Question 4:** Are you content with the scope of the definition of a Single Grain Scotch Whisky?

**Question 5:** If not please say why. How should the draft definition therefore be revised?

29. **Blended Malt Scotch Whisky** - a blend of Single Malt Scotch Whiskies distilled at more than one distillery.

30. Blended Malt Scotch Whisky is the term proposed for what has traditionally been known as Vatted Malt Scotch Whisky.

31. We understand that there has been much debate among producers about the description “Blended Malt Scotch Whisky” rather than “Vatted Malt Scotch Whisky”. Although the “Vatted” description is widely used in the trade, it is seldom used on labels, because producers think consumers may not understand the description.

32. We believe that “Blend” clearly indicates to consumers that more than one Malt Whisky is used. This description is compatible with EU law under which any combination of different Malt Whiskies is a “blend”.


33. **Blended Grain Scotch Whisky** - a blend of Single Grain Scotch Whiskies distilled at more than one distillery. This definition is in line with that for Blended Malt Scotch Whisky.

34. **Blended Scotch Whisky** - a blend of one or more Single Malt Scotch Whiskies with one or more Single Grain Scotch Whiskies. This proposed definition of Blended Scotch Whisky is in line with traditional practice, i.e. it must be a blend of at least one malt whisky with at least one grain whisky.

35. The proposed definition tightens the current legal requirement. At present any combination of Scotch Whiskies is technically “Blended Scotch Whisky”. We are proposing the restriction to reflect traditional practice. Also we propose that blends of malt whiskies and blends of grain whiskies should have their own separate descriptions.

36. We propose that each category description is restricted to products meeting the appropriate definition, and that the appropriate category description must be used as the sales description for every Scotch Whisky (see regulation 8).

**Question 6:** Do you agree that these categories should be defined in legislation?

**Question 7:** Are these categories and their definitions appropriate?

**Question 8:** Should there be other categories, if so, what should they be?

### Protection of Locality and Regional Geographical Indications

37. This proposal aims to protect the following traditional locality and regional names:

- Highland
- Lowland
- Speyside
- Campbeltown, and
- Islay

These have traditionally been used to describe Scotch Whiskies.

38. The definitions of these areas have been derived in consultation with the Scotch Whisky Association for the purpose of these regulations. They are defined as follows:

i) **Islay** - by the boundaries of the island in Argyll in Scotland.

ii) **Speyside** - by combining the current local authority area of Moray, and the Badenoch and Strathspey ward in the current Highland Council area.
iii) **Highland** – that part of Scotland north of the dividing line between the Highland and Lowland regions

iv) **Lowland** - that part of Scotland south of the dividing line between the Highland and Lowland regions.

v) **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.

39. The legislation would still allow the use of other Scottish regional or geographical names to appear along with the category description, e.g. “Orkney Single Malt Scotch Whisky”, as long as the Scotch Whisky has been distilled in the place identified.

40. We considered whether the protected names should extend to Orkney and the other islands where Scotch Whisky is distilled but some of those islands only have one distillery and at present, the reputation for Scotch Whisky rests with the particular distillery rather than the island.

41. We therefore propose that only the 5 traditionally accepted names should be regulated at this time. Should circumstances change we may consider adding other regional names to the list in regulation 10.

42. The proposal would also stop a recent practice of making reference to the protected names in relation to a “finish”.

43. For example, the description “Islay Cask Finish” could not in future be used for a whisky distilled elsewhere. Such a practice is confusing for consumers and would in time devalue the reputation of these Scotch Whisky regions.

44. The definitions set out in the proposed legislation would only apply to Scotch Whisky and whisky-based drinks, so as not to impact on other non-whisky products which may use these descriptions.

45. Producers of other products would **not** be restricted to using these locality descriptors in accordance with these definitions. Any producers of other products who have, until now, used the traditional Scotch Whisky localities as part of their own product descriptions will wish to satisfy themselves that these locality definitions continue to meet their needs.

**Question 9**: Do you agree that these locality descriptors should be protected in this way?

**Question 10**: Are the localities and regions proposed the correct ones?

**Question 11**: Should other localities and regions be included?
Question 12: Have the localities and regions been defined in the correct way?

Question 13: Do the definitions have implications for other non-whisky products?

46. The proposal would, however, allow for two types of exemption from the restriction on the use of Scottish regional geographical names (see regulation 10).

47. The first exemption is where the regional geographical name forms part of an existing registered trademark, and does not mislead consumers about where the Scotch Whisky was distilled. Some trade marks in use for many years, e.g. Highland Queen, incorporate one of the regional names when the whisky has not been wholly distilled in that region. It would have been better had such names not been adopted but it is believed that there was no deceptive intent or effect.

48. We therefore propose to exempt such trademarks registered before any new law comes into effect. But no new trademarks of this kind will be permitted once the legislation takes effect.

49. We propose a similar exemption for existing registered company names, e.g. Highland Distillers Limited.

50. We propose a second exemption for regional geographical names appearing as part of a truthful description of the place(s) of distillation of Scotch Whiskies in:

i) a Blended Scotch Whisky
ii) a Blended Malt Scotch Whisky or
iii) a Blended Grain Scotch Whisky

and which do not mislead consumers.

51. This exemption would allow descriptions such as “A blend of Highland and Islay Malts” on the packaging of a Blended Malt Scotch Whisky as long as that description was truthful.

Question 14: Do you agree with these proposed exemptions?

Question 15: Apart from the examples given in paragraphs 48, 50 and 52 above, are there any others which you consider should be exempt?

Question 16: Are there any which you think should not be exempt?

Labelling Rules
52. The legislation would make it unlawful to label or market as ‘Scotch Whisky’, ‘Scotch’ or a derivation of those expressions, a whisky or drink which is not Scotch Whisky.

53. It will also be unlawful to use words or pictures which might suggest that such a product is Scotch Whisky.

54. We propose that the category descriptions described above must appear on labels and packaging, and with the specified order of words, so consumers understand the different categories (see regulation 8).

55. We do not propose to stop other descriptions currently being used on labels, apart from “Pure Malt” (or derivations like “Pure Highland Malt”) which would be banned because consumers are likely to think “Pure Malt” a Scotch Whisky category when it isn’t (see regulation 11).

56. We propose to allow “pure” in other contexts (as long as it’s not combined with “malt”), as it is a positive for consumers – e.g. the use of ‘pure water’. Use of the word “pure” will, however, be subject to the same restrictions as other words, namely that it must be separate from the compulsory category description and cannot be more prominent.

57. Because we consider it essential to draw the attention of consumers to the category descriptions (listed in paragraph 24) so they recognise these as the official descriptions of the product, proposed rules for their use are that they:

- Must appear as the sales description
- Must not be used with other words except “Highland” etc, i.e. “Blended Scotch Whisky” – not “Finest Blended Scotch Whisky”
- Must be clearly visible, give equal emphasis and prominence to each word, and be as prominent as any other descriptions, of the drink except any separate use of the words “Scotch Whisky”, and any age-related statements relating to the product.

58. For age-related statements we propose that labels or other marketing devices which refer to the year of distillation must include either the year of bottling, the maturation period, or the product’s age. This provision should prevent consumers being misled that a bottle of Scotch Whisky has had a longer maturation period than it actually has.

59. The proposed legislation does not allow Gaelic equivalents of terms appearing in English being included on the label.

**Question 17: Do you agree with these proposed labelling rules?**

60. We propose (with one or two exceptions) to stop the use of a name of a distillery on any whisky not distilled at that distillery (see regulation 9).
61. The use of names similar to a distillery name, likely to mislead consumers, or the use of other words or pictures which indicate that the whisky had been distilled at a place or distillery other than the one at which it was distilled, would also be stopped.

62. The current use of names previously those of distilleries would throw up some difficulties.

63. For example, as well as Springbank Single Malt, Springbank Distillery produces two different styles of malt which it sells as Longrow and Hazelburn. These names were those of licensed distilleries in the 19th century and have been used by Springbank for years.

64. Under the proposal, Springbank would not be able to use these distillery names on Single Malt Whiskies distilled at Springbank. However, since consumers are very unlikely to know that there were distilleries called Longrow and Hazelburn, they will not be misled by use of those names.

65. To deal with these issues, we propose limited exemptions to cover existing brands. Therefore, we will retain the provision that a list of existing brands will be allowed.

66. We propose that in the case of Single Malt Scotch Whiskies sold under the name of a defunct distillery under the exemption, the name of the distillery in which the whisky is distilled should also be on the label.

67. Lastly, we propose to stop the labelling and marketing of Single Malt and Single Grain Scotch Whiskies in a way which misleads consumers over the identity of the distiller, owner, or operator of the distillery. This can involve using brand names which are, or sound, like a Scottish geographical name.

68. Many Scotch Whisky distillery names consist of Scottish geographical names. An example of this might be the use of the name Glen Dornoch on a Single Malt Scotch Whisky. Consumers might think this product comes from a Glen Dornoch Distillery, which does not exist.

69. That outcome would be even more likely if on the packaging appeared the company name “The Glen Dornoch Distillery Ltd”. Even if the company named was Glen Dornoch Distillers Ltd that might, when taken together with the brand name Glen Dornoch, lead consumers to believe the whisky was distilled at a Glen Dornoch Distillery.

70. The industry’s reputation could be damaged if parts of it continue to adopt Scottish geographical names, or names which sound like these, to sell Single Malts when they are not being sold under the distillery name.

71. We therefore propose to prohibit any description, such as

- a company name
- business name
• trademark
• distillery name or
• anything else likely to suggest that:

i) a Single Malt or Single Grain Scotch Whisky was distilled at a place or distillery except the actual distillery, and

ii) that the Single Malt was distilled by a person who was not the actual distiller.

72. Under this proposal, each company would have to decide whether its own labels could be regarded as being misleading in this way.

73. Single Malts could continue to be sold under brand names other than the name of the distillery without breaching this provision if they are unlikely to be taken to be the name of a distillery. McCLELLAND’S Single Malt Scotch Whisky is an example. Also, if producers are concerned that their brand name may be perceived as the name of a distillery, then another way they can resolve the problem is to indicate the name of the true distillery on the label.

Question 18: Do you agree that use of distillery and distillers’ names should be restricted in this way?

Single Malt Scotch Whisky to be Bottled in Scotland (regulation 7)

74. As mentioned in paragraph 17 we are proposing that Scotch Whisky should not be exported in wooden containers unless they are lined with plastic or other inert material. However, in the case of Single Malt Scotch Whisky, it is proposed to go one step further and propose that all Single Malt Scotch Whisky is bottled in Scotland.

75. The main reason for this stricter regulation is to prevent the adulteration or contamination of Single Malt Scotch Whisky, and therefore damage to the reputation of this very important category.

76. While distilled spirits are not as vulnerable to damage during transport as e.g. wine (as a result of their higher alcoholic strength), there are serious dangers to the quality of Scotch Whisky as a result of contamination or mishandling if pre-bottling processes are not carried out by experts, and there is also a serious risk of deliberate adulteration where thorough controls are not in place.

77. Examples of ways in which the character of Scotch Whisky can be badly affected before or during bottling are:

(i) Contamination of the bottling line
(ii) Deliberate addition of flavourings, or sugar
(iii) Deliberate adulteration with other spirit
(iv) Inappropriate filtration  
(v) Dilution below the minimum strength for Scotch Whisky  
(vi) Use of inappropriate water.

78. Any of these could have potentially highly damaging impact to Scotch Whisky industry and result in consumers being both misled about the type of whisky they are buying and of buying whisky which has been adulterated, either deliberately or inadvertently.

79. It could be argued, therefore, that there would be good grounds for ensuring that all Scotch Whisky is bottled in Scotland, since all Scotch Whisky is susceptible to this adulteration.

80. However, it is recognised that Blended Scotch Whisky has been exported in bulk for local bottling for around 100 years and that bottlers in countries as diverse as the USA, Australia, Brazil and France have built up a considerable business in locally bottled Blended Scotch Whisky.

81. There is also an established trade in exports of Blended Malt Scotch Whisky in bulk.

82. However, Single Malt Scotch Whisky is presently bottled outside Scotland only very rarely, though demand for this category of Scotch Whisky is growing.

83. As demand grows and spreads to new markets, we anticipate that unless preventative steps are taken, there will be increased pressure to bottle Single Malt Scotch Whisky abroad.

84. We therefore propose that preventative steps are taken now to protect consumers of Single Malt Scotch Whisky in the future.

85. Furthermore, Single Malt Scotch Whiskies are considered by many consumers to be the highest quality Scotch Whiskies. The reputation of the Scotch Whisky industry generally is bolstered by the reputation enjoyed by Single Malt Scotch Whiskies.

86. We understand that the industry therefore believes that the maintenance of the integrity and quality of Single Malt Scotch Whisky is essential both to the trade in Single Malt Scotch Whisky per se, and to the wider reputation of Scotch Whisky as a whole.

87. In the event of Single Malt Scotch Whisky being adulterated by overseas bottling, the very high reputation enjoyed by Single Malt Scotch Whisky would be seriously damaged, with serious consequences for the Scotch Whisky industry as a whole and therefore for the Scottish economy.

Question 19: Do you agree with the proposal that all Single Malt Scotch Whisky should be bottled in Scotland?
Enforcement and Sanctions

88. As paragraph 2 explains, the 1988 Act provides civil remedies for its contravention and of the regulations set out in the 1990 Order. These allow courts to grant interdicts in Scotland and injunctions elsewhere stopping such contravention and allowing forfeiture of the spirits in question.

89. Similarly, the current Spirit Drinks Regulations create criminal offences in the case of contravention of the EC Spirit Drinks Regulations.

90. We propose to create a series of contraventions which will be committed as a result of non-compliance with the new Regulations.

91. The proposed Regulations will provide mainly for civil remedies, but in two cases:

   i) of failing to comply with an improvement notice, and
   ii) obstruction and removing items that an officer has marked for seizure but hasn't yet seized

   criminal remedies are provided.

92. The overall aim is to allow producers of Scotch Whisky, or a representative body of Scotch Whisky producers, to take civil action for non-compliance (as provided for by the Scotch Whisky Act 1988) and for enforcement authorities to take criminal action where appropriate. However, the civil remedies provided in the proposed Regulations will cover the new restrictions made in these Regulations.

Question 20: Are you content with the civil and criminal remedies provided for in these draft Regulations?

93. The proposed Regulations would also provide a range of tools for enforcement authorities on non-compliance, which include:

   • improvement notices (regulation 20);
   • seizure notices (regulation 23); and
   • penalty notices (regulations 29 to 36).

94. These tools are consistent with Philip Hampton’s Report into reducing administrative burdens on businesses through effective inspection and enforcement.

95. The Report states that administrative penalties, which are quicker and simpler than court proceedings, could reduce the burden of time and worry placed on businesses under threat of prosecution, and allow regulators to

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*a* Reducing Administrative Burdens: Effective Inspection and Enforcement; Report of Philip Hampton to HM Treasury, March 2005
restrict prosecution to the most serious cases, where the stigma of a criminal prosecution is required.

96. The Report recommends that:

“The Better Regulation Executive should undertake a comprehensive review of regulators’ penalty regimes, with the aim of making them more consistent. Administrative penalties should be introduced as an extra tool for all regulators, with the right of appeal to magistrates’ courts unless appeals mechanisms to tribunals or similar bodies already exist. As part of that review penalty powers should be established in such a way that offenders can be deprived of all the economic benefits of long-term illegal activity.”

97. Since that time a review has been carried out and legislation is now being introduced to put administrative penalties in place as an addition to criminal sanctions. In the design of the proposed system the following factors were key:

- Any system must provide safeguards to ensure compliance with the Human Rights Act 1998.
- Offenders must be given the opportunity to maintain their innocence or to make representations in an ECHR compliant Court or Tribunal.
- The scheme should be applied as consistently as possible throughout the UK, taking into account the fact that there are different legal systems in different parts of the UK.

**Improvement notices**

98. We therefore propose that where an authorized officer believes that a person is not complying with the regulation, he/she may issue an improvement notice setting out the measures that must be taken to comply with the regulation.

99. The measures must be taken within the period specified in the notice (which will not be less than 14 days). Failure to do so will constitute an offence. The regulation provides for an appeal against an improvement notice which must be brought within 28 days or the period specified in the improvement notice whichever ends the earlier.

**Seizure notices**

100. The proposed regulation also provides powers of seizure for authorized officers covering any distillate, drink, label, container, packaging, advertising or promotional material that they do not think complies with the regulations.

101. Where such seizure takes place, the authorized officer must issue a seizure notice within 28 days setting out the grounds for the seizure and informing the offender of their rights and where to submit a claim.
102. If no notification is made, the seized item may be destroyed. The person on whom the notice is served is liable for the cost of destruction. Where a claim is made within 28 days, the authorized officer may either return the seized item or take legal proceedings for the destruction of the item.

**Fixed penalty notices**

103. Authorized officers may offer fixed financial administrative penalties (penalty notices) in appropriate circumstances as an alternative to criminal prosecution where they believe a penalty offence has occurred.

104. The administrative system will complement the existing criminal system and not replace it, as a person will be under no obligation to pay the penalty if they wish to have the matter dealt with in court in the usual way.

105. However, payment of the penalty will discharge the person’s liability to be convicted of the offence. Non-payment of the penalty will not constitute an offence. The issue of a penalty notice will have the following benefits:

- speed up procedures, freeing time for all concerned;
- reduce uncertainties over the levels of fines by having clearly published fixed penalties;
- provide a consistent approach for dealing with infringements; and
- reduce the administrative burden on the industry.

106. We propose that the power to issue a penalty notice will not exist in relation to offences for obstruction, failure to comply with requirements made by authorized officers, or assaults and threats to them. These will always be referred for prosecution.

107. To reduce re-offending and encourage compliance, we are proposing that no more than two penalty notices will be issued for a similar category of offence within a 2-year period. A further offence within the same category would lead to automatic referral for prosecution.

**Question 21:** Are these tools sufficient to deal with the contraventions and offences covered by this Regulation?

**Question 22:** If not what additional tools are required?

**Central competent authority**

108. The new EC Spirit Drinks Regulation requires each Member State to designate a competent authority responsible for official controls under this regulation. Defra is currently liaising with relevant departments, the Devolved Administrations and representatives of the spirit drinks industry, to establish how best to integrate the enforcement of the new EC Spirit Drinks Regulation with that of other legislation.
Application

109. It is intended that most of these regulations will come into force in June 2008. The exceptions to these are regulations 8 to 13 which deal with the labelling of Scotch Whisky as it relates to the use of:

i) the 5 new compulsory sales categories
ii) distillery and distillers’ names
iii) locality and regional geographical indications
iv) the ‘pure malt’ expression
v) year of distillation, and
vi) age and maturation statements.

110. In order to allow existing stocks of Scotch Whisky to be sold, and existing stocks of dry goods to be used, regulations 8 to 13 will not apply to Scotch Whisky which has been bottled and labelled for retail sale before two years after coming into force date of these Regulations as long as it complies with the new EC Spirit Drinks Regulation (EC) XXXX/2007 and the Scotch Whisky Act 1988 as read with the Scotch Whisky Order 1990.

111. At the end of the consultation period, in line with Defra's policy of openness, copies of the responses we receive may be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR. The information they contain may also be published in a summary of responses.

112. If you do not consent to this, you must clearly request that your response be treated confidentially.

113. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request.

114. You should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations.

115. The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or email requests (tel: 020 7238 6575, email: defra.library@defra.gsi.gov.uk). Wherever possible, personal callers should give the library at least 24 hours’ notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

116. Comments or complaints about the consultation process (as opposed to comments about the issue which is the subject of the consultation) should be addressed to:
Marjorie Addo  
Defra’s Consultation Co-ordinator  
Area 7C Nobel House  
17 Smith Square  
London SW1P 3JR  
Email: consultation.coordinator@defra.gsi.gov.uk  

117. Following the 12-week consultation period and evaluation of comments, a summary of responses will be published, and personalised replies will be sent to respondents.  

118. Following consultation, we propose to introduce the appropriate Statutory Instrument to come into force in June 2008.  

119. Please note that this document should be read in conjunction with the Impact Assessment on Scotch Whisky. A list of questions in this consultation document is given at Annex B for ease of reference. A list of consultees is attached at Annex C.
The Scotch Whisky Regulations 2008

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SCHEDULE 1 — PENALTY OFFENCES
SCHEDULE 2 — BRANDS OF SCOTCH WHISKY TO WHICH CERTAIN PROVISIONS OF REGULATION 9 DO NOT APPLY
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These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

The Secretary of State is a Minister designated 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 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
2. — o These Regulations may be cited as the Scotch Whisky Regulations 2008.
   (1) These Regulations come into force on [to be completed] 2008.
   (2) These Regulations, except for regulations 7 and 11, apply to—

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(*) 1972 c.68.
(‡) 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.
(§) S.I. 1989/1327, to which there are amendments not relevant to these Regulations,
(a) the manufacture of whisky distillates and whisky in Scotland; and
(b) the labelling, packaging, sale, advertising and promotion of whisky manufactured in Scotland.

(3) Regulation 7 applies to the labelling, packaging, sale, advertising and promotion of—
(a) whisky and other drinks manufactured in Scotland; and
(b) whisky and other drinks manufactured in the remainder of the United Kingdom.

(4) 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.

(5) Regulations 9 to 14 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 two 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

3.—o [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 2(5)(c)(ii)].

   (1) [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 2(5)].

Definition of “Scotch Whisky” and other basic expressions

4.—o 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;

(^a) S.I. 1990/998.
(^b) S.I. 2008/to be completed.
(^c) 1988 c. 22.
(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\(^{(a)}\) or section 15(1) of the Alcoholic Liquor Duties Act 1979\(^{(b)}\);
(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

5. In these Regulations—
“age” must be construed in accordance with the definition of “ageing” given in paragraph (8) of Annex I to Regulation (EC) No. XXXX/2007;
“authorised officer” means any person appointed by an enforcement authority under regulation 16;
“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 15;
“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;

\(^{(a)}\) 1979 c. 2, to which there are amendments not relevant to these Regulations.
\(^{(b)}\) 1979 c. 4.
(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

(b) keeping or using for the purpose of blending;

“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 26 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(^b)), 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

[^a]: 1994 c. 39.
[^b]: 1984 c. 22.
[^c]: [to be completed].
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).

(5) In these Regulations any reference to the packaging of Scotch Whisky must be construed as a reference to the packaging of a container of Scotch Whisky for the purposes of subsequent sale.

Manufacture

6. — A person must not manufacture a whisky distillate in Scotland unless it is manufactured as described in regulation 0(a) and (b).

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

Marketing

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

(1) 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

8. — 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.

(1) 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.

(2) But paragraph (1) 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

9. — 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 11.

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

10. — o 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.

(1) But paragraph o 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.

(2) 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.

(3) But paragraph (2) 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.

(4) 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.
(5) 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.

(6) 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.

(7) A person must not label, package, advertise or promote any Scotch Whisky in a way that contravenes the requirements of paragraph o, (2), (4), (5) or (6), or sell any Scotch Whisky that has been labelled or packaged in that way.

**Locality and region geographical indications**

11. — 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 (1), or any of the regions mentioned in paragraph (2), unless the only alcohol in the drink is Scotch Whisky that has been distilled in that named locality or region.

(1) 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.

(2) 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(\(^c\)).

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

(4) The circumstances referred to in paragraph (3) are where the name of either of the localities mentioned in paragraph (1), or any of the regions mentioned in paragraph (2), 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

\(^a\) S.S.I. 2006/378.

\(^b\) S.S.I. 2006/372.

\(^c\) S.S.I. 2006/481.
(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.

(5) The circumstances referred to in paragraph (3) 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

(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.

(6) The circumstances referred to in paragraph (3) are where the name of either of the localities mentioned in paragraph (1) is mentioned as part of the address of the distiller, producer, bottler or seller of the whisky.

(7) 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 (1), or any of the regions mentioned in paragraph (2), if that reference creates a likelihood of confusion on the part of the public as to where the drink was distilled.

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

(9) A person must not—

(a) label, package, advertise or promote any whisky in a way that contravenes paragraph o, (7) or (8), 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 o or (7), or sell any whisky-based drink that has been labelled or packaged in that way.

(10) 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 (1) and (2) 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 Milmouth, and then along the M90 northwards until the Bridge of Earn, and then along the River Earn until its confluence with the River Tay, 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

12. 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 adjectively in connection with the word ‘malt’ (or any derivation of it).

Year of distillation

13.—o 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.

(1) 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

14. 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

15. [Under consideration]

Appointment of officers

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

Powers of entry

17.—o 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.

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

   (2) 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.

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

   (4) 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.

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

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

   (7) 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.

   (8) 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

18. 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 (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 21 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

19. 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

20.—o 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 21; 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

21.—o 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 18(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(*) applies to the proceedings; and
(b) in Northern Ireland, the Magistrates' Courts (Northern Ireland) Order 1981(²) and the Magistrates' Courts Rules (Northern Ireland) 1984(³) 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 18(j) is 28 days.

(6) A court may suspend an improvement notice pending an appeal.

Powers of a court on appeal

22. On an appeal against an improvement notice, or a decision by an authorised officer to seize any computer or associated equipment under regulation 18(j), the court may either cancel the notice or overturn the decision, or confirm the notice or decision, with or without modification.

Seizure notices

23.—o An authorised officer must follow the procedures set out in this regulation if he seizes anything under regulation 18(f).

(*) 1980 c. 43.
(²) 1981 No. 1675 (N.I. 26).
(³) S.R. (NI) 1984 No. 225.
(1) 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.

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

(3) If an authorised officer is not able to remove an item seized under regulation 18(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.

(4) No person, other than an authorised officer, may remove any item identified under paragraph (3) from the premises on which it was found.

(5) 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.

(6) The claim mentioned in paragraph (5) must be made within 28 days of the seizure to the address specified in the seizure notice.

(7) 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.

(8) 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.

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

(10) 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.

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

(12) 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

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

Duty to give assistance and provide information

25. 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

26. A person is guilty of an offence if he contravenes, or fails to comply with regulation 19, 20(3) or 23(4).

Penalty

27. A person guilty of any offence under regulation 26 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

28. If the Court of Session is satisfied, on the application of a person mentioned in paragraph (2), that any person has contravened regulation 6, 7, 8 or (1), 9(6) or (7), 10(7), 11(9), 12, o or 14 in Scotland, the Court may grant an interdict prohibiting such contravention.

   (1) If the High Court is satisfied, on the application of a person mentioned in paragraph (2), that any person has contravened regulation 7, 9(6) or (7), 10(7), 11(9), 12, o or 14 in England, Northern Ireland or Wales, the Court may grant an injunction prohibiting such contravention.

   (2) 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

29. 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

30. 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 34 before the end of that period.

   (2) Paragraph (1) does not apply if the penalty notice is withdrawn in accordance with regulation 36.

Contents and form of penalty notice

31. A penalty notice must be completed by or under the direction of an authorised officer.

   (1) 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 30, 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.

(2) In relation to Wales, the form must be in English and Welsh.

Amount of penalty

32.—o The amount of the penalty must be determined by an authorised officer.

(1) The amount of the penalty must not be less than [£1,000] or more than [£4,000].

(2) [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.

(3) An authorised officer must take into account that guidance in determining the amount of the penalty.

Issue of penalty notice

33. 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

34.—o 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.

(1) Payment of any penalty may not be made in cash.

Certificate of payment or non-payment of penalty notice

35. 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

36.—o 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).

(1) A penalty notice may be withdrawn before or after payment of the penalty.

(2) Where a penalty notice is withdrawn any penalty paid must be repaid to the person who paid it.

Offences by bodies corporate etc.

37.—o 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.

Defence

38. 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 20(3).

SCHEDULE 2

BRANDS OF SCOTCH WHISKY TO WHICH CERTAIN PROVISIONS OF REGULATION 10 DO NOT APPLY

PART 1

Existing brands of Single Malt and Single Grain Scotch Whiskies to which the provisions of regulation 10 do not apply

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<th>Brand owner</th>
<th>Description</th>
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PART 2

Existing brands of Blended Malt, Blended Grain and Blended Scotch Whiskies to which the provisions of regulation 10(2) do not apply

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SCHEDULE 4

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]
ANNEX B

List of Questions as set out in this Consultation Document

Question 1: Is the proposed Scotch Whisky definition appropriate?

Question 2: Do the provisions to require all Scotch Whisky to be wholly matured in Scotland, and the prohibition of exports in wooden containers unless they are lined with plastic or other inert material, adequately protect Scotch Whisky from being matured abroad?

Question 3: What will be the impact of requiring Scotch Whisky to be matured only in ‘a place of security’?

Question 4: Are you content with the scope of the definition of a Single Grain Scotch Whisky?

Question 5: If not please say why. How should the draft definition therefore be revised?

Question 6: Do you agree that these categories should be defined in legislation?

Question 7: Are these categories and their definitions appropriate?

Question 8: Should there be other categories, if so, what should they be?

Question 9: Do you agree that these locality descriptors should be protected in this way?

Question 10: Are the localities and regions proposed the correct ones?

Question 11: Should other localities and regions be included?

Question 12: Have the localities and regions been defined in the correct way?

Question 13: Do the definitions have implications for other non-whisky products?

Question 14: Do you agree with these proposed exemptions?

Question 15: Apart from the examples given in paragraphs 48, 50 and 52 above, are there any others which you consider should be exempt?

Question 16: Are there any which you think should not be exempt?
Question 17: Do you agree with these proposed labelling rules?

Question 18: Do you agree that use of distillery and distillers’ names should be restricted in this way?

Question 19: Do you agree with the proposal that all Single Malt Scotch Whisky should be bottled in Scotland?

Question 20: Are you content with the civil and criminal remedies provided for in these draft Regulations?

Question 21: Are these tools sufficient to deal with the contraventions and offences covered by this Regulation?

Question 22: If not what additional tools are required?
ANNEX C

CONSULTEES – SCOTCH WHISKY CONSULTATION

Trade and other associations
Association of Convenience Stores
Association of Port Health Authorities

British Hospitality Association
British Retail Consortium

Chartered Institute of Environmental Health
Consumers In Europe Group
Consumers’ Association (Which?)
Convention of Scottish Local Authorities

Gin & Vodka Association

Local Authority Co-ordinators Regulatory Services

National Consumer Council
National Consumer Federation
Northern Ireland Local Government Association

Scotch Whisky Association
Scottish Consumer Council
Society of Chief Officers of Environmental Health in Scotland
Society of Chief Officers of Trading Standards in Scotland
Welsh Consumer Council

Wine and Spirits Trade Association

Companies
Aberko Limited
A Dewar Rattray
Adelphi Distillery Ltd
Alchemist Beverage Co.
Alexander Dunn & Co (Whisky Blenders) Ltd
Alexander Muir & Company
Angus Dundee Distillers plc
Anstie Distillers Ltd
Associated Distillers Ltd

Balliol Limited
Beam Global Spirits & Wine Inc
Ben Nevis Distillery (Fort William) Ltd
Berry Bros & Rudd Ltd
Blackadder International Ltd
Blackwood Distillers
Bladnoch Distillery
Brands Development (Worldwide) Ltd
Bruichladdich Distillery Co Ltd
Burn Stewart Distillers Ltd

Cadenheads
Campbell Meyer & Co Ltd
Celtic Spirit
Charles H Julian Ltd
Chivas Brothers Ltd
Chris Parker
Cock o’ the North Liqueur Co
Cockburns of Leith (Wholesale) Ltd
Compass Box Delicious Whisky Ltd
Craigton Bottlers

Diageo Plc
Douglas Laing & Co Ltd
Dram House
Drumchork Lodge Hotel
Dunbar Vintners Ltd
Duncan Taylor & Co. Ltd

Edrington Group
English Whisky Co. Ltd

Glen Catrine Bonded Warehouse Ltd
Glenmorangie Company
Glen Grant Distillery Co Ltd
Glen Turner Distillery Ltd
Gordon & McPhail

Halewood International Ltd
Hart Brothers Ltd
Harvies of Edinburgh UK Ltd
Hayman Ltd
Hebridean Liqueurs

Ian Macleod Distillers Ltd
International Multibrands
International Whisky Company Ltd
Inverarity Vaults Ltd
Inver House Distillers Ltd
Isle of Arran Distillers Ltd

J & A Mitchell & Co Ltd
J & G Grant
James MacArthur & Co Ltd
John Dewar & Sons Ltd
Kilchoman Distillery Co Ltd
Kingsbury Wine & Spirits Co Ltd
Kingsland Wines & Spirits
Kinross Whisky Co Ltd
Kinstreary Ltd
Kirklee Scotch Whisky Ltd
Loch Ewe Distilleries
Loch Fyne Whiskies
Loch Lomond Distillery Co Ltd
Loch Ness Whisky Company Ltd
London & Scottish International Ltd
MacDuff International Ltd
Mackillop’s Choice
Milroy’s of Soho Ltd
Moncrieffe & Co Plc
Montrose Whisky Co Ltd
Morrison Bowmore Distillers Ltd
Morrison Fairlie Distillery
Murray McDavid
North British Distillery Co Ltd
Old St Andrews Ltd
Praban Na Linne Ltd
Raeburn Fine Wines
Richard Davies
Robyn Hoode Distilleries Ltd
Rosendale Blenders (International) Ltd
Royal Mile Whiskies
Rutherford & Co (Whisky Merchants) Ltd
Rutherglen Scotch Whisky Co Ltd (Edradour distillery)
Scotch Malt Whisky Society
Scottish Liqueur Centre
Scottish Retail Consortium
Signatory Vintage Scotch Whisky Co Ltd
Speyside Distillers Co Ltd
The Benriach Distillery Co Ltd
The Cabrach Whisky Company
The Drambuie Liqueur Co Ltd
The Red Lion Blending Co Ltd
The Scotch Whisky Heritage Centre
The Vintage Malt Whisky Company Ltd
The Whisky Exchange
The Whisky Shop
Tomatin Distillery Co Ltd
Tullibardine Distillery

Welsh Whisky Company
Wemyss Vintage Malts Limited
Whyte & Mackay Group Ltd
William Craig & Co Ltd
William Grant & Sons Ltd