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STATUTORY INSTRUMENTS

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**2020 No. 1636**

**EXITING THE EUROPEAN UNION  
AGRICULTURE  
FOOD**

**The Spirit Drinks, Wine and European Union  
Withdrawal (Consequential Modifications)  
(Amendment) (EU Exit) Regulations 2020**

*Made* - - - - *11.00 a.m. on 23rd  
December 2020*  
*Laid before Parliament* *2.00 p.m. on 23rd  
December 2020*  
*Coming into force in accordance with regulation 1(2)  
and (3)*

The Secretary of State makes these Regulations in exercise of the powers conferred—

- (a) in relation to regulations 2 and 3, and regulation 1 so far as it relates to regulations 2 and 3, by section 2(2) of the European Communities Act 1972(1);
- (b) otherwise, by section 6(1) of the Direct Payments to Farmers (Legislative Continuity) Act 2020(2).

As regards regulation 2, 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(3).

As regards regulation 3, the Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to—

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- (1) 1972 c. 68 (“the ECA 1972”). Section 2(2) of the ECA 1972 was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). The ECA 1972 is repealed on exit day by the European Union (Withdrawal) Act 2018 (c. 16), but continues to have effect until IP completion day pursuant to section 1A of the European Union (Withdrawal) Act 2018, inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1). For the meaning of “IP completion day” see section 39 of the European Union (Withdrawal Agreement) Act 2020. Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under EU law in respect of devolved matters, the function of the Secretary of State continues to be exercisable by the Secretary of State as regards Scotland for the purposes specified in section 2(2) of the ECA 1972. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions in relation to implementing any EU obligation in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Wales. The Secretary of State’s power, as a Minister so designated, to make regulations which extend to Northern Ireland is confirmed by article 3(2) of S.I. 2000/2812.
  - (2) 2020 c. 2.
  - (3) S.I. 1989/1327, to which there are amendments not relevant to these Regulations. 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) Regulations 2002 (S.I. 2002/794).

- (a) the common agricultural policy<sup>(4)</sup>;
- (b) food and drink intended for sale for human consumption, including the presentation, packaging, labelling, marketing and advertising of such food and drink<sup>(5)</sup>.

In accordance with section 6(5) of the Direct Payments to Farmers (Legislative Continuity) Act 2020, the Secretary of State has obtained the required consent from the Scottish Ministers, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland insofar as these Regulations are made under section 6(1) of that Act.

## PART 1

### Introductory

#### Citation and commencement

- 1.—(1) These Regulations may be cited as the Spirit Drinks, Wine and European Union Withdrawal (Consequential Modifications) (Amendment) (EU Exit) Regulations 2020.
- (2) This regulation and Part 2 come into force on 30th December 2020.
  - (3) Part 3 comes into force immediately before IP completion day.

## PART 2

### Amendments made under section 2(2) of the European Communities Act 1972

#### The Spirit Drinks Regulations 2008

- 2.—(1) The Spirit Drinks Regulations 2008<sup>(6)</sup> are amended as follows.
- (2) In regulation 3(1), after the definition of “Regulation (EC) No 110/2008” insert—
    - ““Regulation (EC) No 936/2009” means Commission Regulation (EC) No 936/2009 applying the agreements between the European Union and third countries on the mutual recognition of certain spirit drinks<sup>(7)</sup>”.
  - (3) In regulation 4 insert as paragraph (5)—
    - “(5) A person is guilty of an offence if they contravene Article 1 of Regulation (EC) No 936/2009.”.
  - (4) After regulation 6(4) insert—
    - “(5) Each food authority is designated as the competent authority responsible for controls in respect of the enforcement of Article 1 of Regulation (EC) No 936/2009 in its area except to the extent that a port health authority is designated as the competent authority within any part of that area under paragraph (6).
    - (6) Each port health authority is designated as the competent authority responsible for controls in respect of the enforcement of Article 1 of Regulation (EC) No 936/2009 in its district for drinks being imported into or exported from the United Kingdom.”.

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(4) S.I. 1972/1811, to which there are amendments not relevant to these Regulations.

(5) S.I. 2005/2766, to which there are amendments not relevant to these Regulations.

(6) S.I. 2008/3206, amended by S.I. 2011/1043 and 2019/1289.

(7) OJ No. L 264, 8.10.2009, p. 5.

(5) In regulation 18(1)(8), in the words before sub-paragraph (a), for “or (2)” substitute “, (2) or (5)”.

(6) In regulation 22—

(a) at the end of sub-paragraph (a) omit “or”;

(b) at the end of sub-paragraph (b) insert “; or”;

(c) after sub-paragraph (b) insert—

“(c) committed an offence under regulation 4(5) by contravening Article 1 of Regulation (EU) No 936/2009.”.

### **The Wine Regulations 2011**

3.—(1) The Wine Regulations 2011(9) are amended as follows.

(2) In regulation 2(2), before the definition of “the Agency” insert—

““the 1416/2006 prohibition” has the meaning given in regulation 6A(1);”.

(3) In regulation 3(1), in the words before sub-paragraph (a), after “Regulations” insert “and the 1416/2006 prohibition”.

(4) In regulation 4(1), at the end insert “and the 1416/2006 prohibition”.

(5) In Part 3, before regulation 7 insert—

#### **“The 1416/2006 prohibition**

**6A.—**(1) In these Regulations, “the 1416/2006 prohibition” means the prohibition contained in the first sentence of Article 1 of Regulation (EC) No 1416/2006(10) (prohibiting the use of a US name of origin listed in the Annex to that Regulation for a wine unless it is used to designate a wine of the origin indicated by such name) as read with paragraph (2).

(2) The prohibition referred to in paragraph (1) does not apply in relation to the use of a US name of origin listed in the Annex to Regulation (EC) No 1416/2006 for a wine where—

(a) the name of origin used for the wine is homonymous with the US name of origin, the wine originates from the place with the homonymous name and the name is used in such a way that consumers will not be misled, or

(b) the name is used in the course of trade by the person under whose name the wine is produced and marketed and the US name of origin is the same as the name of that person or a predecessor of that person in business and is used in such a way that consumers will not be misled.

(3) In this regulation, “Regulation (EC) No 1416/2006” means Commission Regulation (EC) No 1416/2006 laying down specific rules on the implementation of Article 7(2) of the Agreement between the European Community and the United States of America on trade in wine concerning the protection of US names of origin in the Community.”.

(6) In regulation 8(1), after “European Regulations” insert “, the 1416/2006 prohibition”.

(7) In regulation 9(1)(a), after “European Regulations” insert “, the 1416/2006 prohibition”.

(8) In regulation 10—

(a) in paragraph (1), after “Regulations” insert “or the 1416/2006 prohibition”;

(8) Regulation 18(1) was amended, in relation to England and Wales, by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), section 85(1).

(9) S.I. 2011/2936, amended by S.I. 2012/2897 and 2019/524.

(10) OJ No. L 267, 27.9.2006, p. 22, as amended by Commission Implementing Regulation (EU) No 1212/2011 (OJ No. L 308, 24.11.2011, p. 18).

- (b) in paragraph (2)(a), at the end insert “or, if relevant, state that the officer believes that the 1416/2006 prohibition has been contravened”.
- (9) In regulation 11(2)—
  - (a) at the end of sub-paragraph (a) omit “or”;
  - (b) at the end of sub-paragraph (b) insert “; or”;
  - (c) after sub-paragraph (b) insert—
    - “(c) has contravened the 1416/2006 prohibition.”.
- (10) In regulation 12(2), after “Regulations” insert “or the 1416/2006 prohibition”.
- (11) In regulation 14—
  - (a) after paragraph (1) insert—
    - “(1A) Any person who contravenes the 1416/2006 prohibition is guilty of an offence.”;
  - (b) after paragraph (3)(a) insert—
    - “(aa) intentionally to obstruct an authorised officer acting in the enforcement of the 1416/2006 prohibition;”.

### PART 3

#### Amendments made under section 6(1) of the Direct Payments to Farmers (Legislative Continuity) Act 2020

#### **The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020**

**4.—**(1) The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020(**11**) are amended as follows.

- (2) In regulation 3(2)(d), in the inserted text, after paragraph 2A(6) insert—
  - “(6A) This paragraph does not apply to a reference in—
    - (a) the Direct Payments to Farmers (Legislative Continuity) Act 2020 or any subordinate legislation made under that Act, or
    - (b) any retained direct EU CAP legislation (within the meaning given by section 2(10) of that Act).”.

*Gardiner of Kimble*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

11 a.m. on 23rd December 2020

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## EXPLANATORY NOTE

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

These Regulations amend the Spirit Drinks Regulations 2008 ([S.I. 2008/3206](#)), the Wine Regulations 2011 ([S.I. 2011/2936](#)) and the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 ([S.I. 2020/1447](#)).

Regulation 2 makes amendments to the Spirit Drinks Regulations 2008 in relation to the enforcement of [Commission Regulation \(EC\) No 936/2009](#) applying the agreements between the European Union and third countries on the mutual recognition of certain spirit drinks (OJ No. L 264, 8.10.2009, p. 5). This includes an amendment making the contravention of Article 1 of [Commission Regulation \(EC\) No 936/2009](#) an offence (regulation [2\(3\)](#)).

Regulation 3 makes amendments to the Wine Regulations 2011 in relation to the enforcement of [Commission Regulation \(EC\) No 1416/2006](#) laying down specific rules on the implementation of Article 7(2) of the Agreement between the European Community and the United States of America on trade in wine concerning the protection of US names of origin in the Community (OJ No. L 267, 27.9.2006, p. 22). This includes an amendment making the contravention of the first sentence of Article 1 of [Commission Regulation \(EC\) No 1416/2006](#), as read with regulation 6A(2) of the Wine Regulations 2011 (inserted by regulation [3\(5\)](#)), an offence (regulation [3\(11\)\(a\)](#)).

Regulation 4 makes amendments to the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 to exclude non-ambulatory references in legislation which relates to direct payments from the interpretative provision in the new paragraph 2A of Schedule 8 to the European Union (Withdrawal) Act 2018 ([c. 16](#)). This maintains the existing position regarding such references.

An Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.