

Subsidiary Legislation made under s.91.

**QUALITY ASSURANCE (INTELLECTUAL PROPERTY)
REGULATIONS 2019**

Revoked by LN.2019/207 as from 1.1.2021

(LN. 2019/060)

Commencement **25.3.2019**

Implementing EU –

Regulation (EC) 110/2008
Regulation (EU) 1151/2012
Regulation (EU) 716/2013
Regulation (EU) 1308/2013
Regulation (EU) 251/2014
Regulation (EU) 664/2014
Regulation (EU) 665/2014
Regulation (EU) 668/2014
Regulation (EU) 2017/670
Regulation (EU) 2019/33

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In exercise of the powers conferred on him by section 91 of the Fair Trading Act 2015 as read with section 23(g) of the Interpretation and General Clauses Act and for the purposes of implementing in the laws of Gibraltar (1) Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89, (2) Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs, (3) Commission Implementing Regulation (EU) No 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks, (4) Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products, (5) Regulation (EU) No 251/2014 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (6) Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules, (7) Commission Delegated Regulation (EU) No 665/2014 of 11 March 2014 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to conditions of use of the optional quality term 'mountain product', (8) Commission Implementing Regulation (EU) No 668/2014 laying down rules for the application of Regulation (EU) 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs, (9) Commission Delegated Regulation (EU) 2017/670 supplementing Regulation (EU) No 251/2014 of the European Parliament and of the Council as regards the authorised production processes for obtaining aromatised wine products, and (10) Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation, the Minister has made these Regulations-

PART 1 **GENERAL PROVISIONS**

Title.

**QUALITY ASSURANCE (INTELLECTUAL PROPERTY)
REGULATIONS 2019**

1. These Regulations may be cited as the Quality Assurance (Intellectual Property) Regulations 2019.

Commencement.

2. These Regulations come into operation on the day of publication.

Interpretation.

3. In these Regulations-

“Act” means the Fair Trading Act 2015;

“Consumer Protection Enforcer” and “CP enforcer” means a person appointed under section 34 of the Act;

“enforcement authorities” has the meaning given in regulation 14(2);

“EU Regulations” means-

Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89,

Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs,

Commission Implementing Regulation (EU) No 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks,

Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products,

Regulation (EU) No 251/2014 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products,

Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the

establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules,

Commission Delegated Regulation (EU) No 665/2014 of 11 March 2014 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to conditions of use of the optional quality term ‘mountain product’,

Commission Implementing Regulation (EU) No 668/2014 laying down rules for the application of Regulation (EU) 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs,

Commission Delegated Regulation (EU) 2017/670 supplementing Regulation (EU) No 251/2014 of the European Parliament and of the Council as regards the authorised production processes for obtaining aromatised wine products, and

Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation;

“Minister” means the Minister with responsibility for Commerce;

“premises” includes any establishment, place, vehicle, stall or movable structure and any ship or aircraft.

PART 2

AGRICULTURAL PRODUCTS AND FOODSTUFFS

Interpretation of Part.

4.(1) In this Part-

“PDO” means a protected designation of origin;

“PGI” means a protected geographical indication;

“Regulation 1151/2012” means Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for

agricultural products and foodstuffs, as the same may be amended from time to time;

“Regulation 664/2014” means Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules;

“Regulation 665/2014” means Commission Delegated Regulation (EU) No 665/2014 of 11 March 2014 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to conditions of use of the optional quality term ‘mountain product’;

“Regulation 668/2014” means Commission Implementing Regulation (EU) No 668/2014 laying down rules for the application of Regulation (EU) 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs, as the same may be amended from time to time;

“TSG” means a traditional speciality guaranteed.

(2) In this Part any reference to an Article, unless otherwise stated, is a reference to an Article of Regulation 1151/2012.

Compliance notice.

5.(1) A CP enforcer may serve a notice in writing on any person if the CP enforcer has grounds for believing that the person-

- (a) has marketed, or is marketing or intending to market, a product under a registered PDO or PGI which has not been labelled in a way described in Article 12;
- (b) has made, or is making or intending to make, any direct or indirect commercial use of a registered PDO or PGI in a way described in Article 13(1)(a);
- (c) has misused, imitated or evoked, or is misusing, imitating or evoking or intending to misuse, imitate or evoke, a registered PDO or PGI in a way described in Article 13(1)(b);

- (d) has used, or is using or intending to use, any other false or misleading indication as to the provenance, origin, nature or essential qualities of a product in a way described in Article 13(1)(c);
- (e) has used, or is using or intending to use, any other practice that is liable to mislead the consumer as to the true origin of a product in a way described in Article 13(1)(d);
- (f) has misused, imitated or evoked, or is misusing, imitating or evoking or intending to misuse, imitate or evoke, a registered TSG in a way liable to mislead the consumer as described in Article 24(1) or has carried out, or is carrying out or intending to carry out any other practice liable to mislead the consumer in a way described there;
- (g) has used, or is using or intending to use, a sales description that causes confusion with a registered TSG in a way described in Article 24(2);
- (h) has marketed, or is marketing or intending to market, a product described with an optional quality term in contravention of Article 33(1);
- (i) has used, or is using or intending to use, an indication, abbreviation or symbol in contravention of Article 44(1), as read with Regulation 665/2014;
- (j) has marketed, or is marketing or intending to market, a product under a registered PDO, PGI or TSG which has not been labelled in a way described in Article 13(1) or (3) of Regulation 668/2014, as read with Article 2 of Regulation 664/2014.

(2) A notice served under subregulation (1) must contain the following-

- (a) the name and address of the person on whom the notice is served;
- (b) the grounds for service of the notice;
- (c) information on the steps the person must take to comply with the notice;
- (d) except to the extent that the steps are confined to refraining from doing something believed to be intended, the period

within which each step must be completed in order to comply with the notice, which must not expire before the period within which an appeal may be brought under regulation 18;

- (e) information as to-
 - (i) the rights of appeal;
 - (ii) the scope for suspension of a notice pending appeal;
 - (iii) the consequences of an appeal;
 - (iv) the consequences of a failure to comply with the notice.

(3) Subject to regulation 18, the person on whom the notice is served must comply with the notice.

(4) A notice served under this regulation is referred to in these Regulations as a compliance notice.

Right of appeal in connection with an application to register a PDO, PGI or TSG.

6.(1) Any person or group with a legitimate interest within the meaning of Article 49 who is aggrieved by a decision of the Registrar to-

- (a) accept an application in accordance with Article 49(4);
- (b) refuse an application on grounds that the application is not justified and does not meet the requirements of Regulation 1151/2012,

may, within three months of that decision being made public, appeal against it to a person appointed for that purpose by the Registrar.

(2) The appointed person must consider the appeal and any representations made by the Registrar and, within three months of the appeal being made, report in writing with a recommended course of action to the Registrar.

- (3) The Registrar must either-
 - (a) uphold the decision;
 - (b) reverse the decision and ensure that the reversal is made public.

(4) Applications covered by this regulation are applications for the registration of a PDO, PGI or TSG.

Transitional period.

7.(1) Where the Registrar makes a favourable decision in respect of an application, the transitional period afforded in Article 15(4), which is a period of 10 years, applies if the operators concerned-

- (a) have legally marketed the products in question, using the names concerned, continuously for a period of at least five years prior to the date on which the application to the Registrar is lodged, and
- (b) have made that point during the national opposition procedure.

(2) The transitional period referred to in this regulation applies from the date on which the an application dossier is lodged with the Commission.

(3) Applications covered by this regulation are applications for the registration of a PDO or PGI.

**PART 3
WINES**

Interpretation of Part.

8. In this Part-

“the European Regulations” means-

Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products,

Regulation (EU) No 251/2014 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, and

Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure,

restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation;

“Regulation 1308/2013” means Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products.

Compliance notice.

9.(1) A CP enforcer may serve a notice in writing on any person if the CP enforcer has grounds for believing that the person has contravened-

- (a) Article 103(2) of Regulation 1308/2013 (which provides protection for protected designations of origin and protected geographical indications and the wines using those protected names in conformity with the product specification);
- (b) the first sub-paragraph of Article 113(1) of Regulation 1308/2013 (which protects the use of traditional terms for products produced in accordance with Article 112).

(2) A notice served under subregulation (1) must contain the following-

- (a) the name and address of the person on whom the notice is served;
- (b) the grounds for service of the notice;
- (c) information on the steps the person must take to comply with the notice;
- (d) except to the extent that the steps are confined to refraining from doing something believed to be intended, the period within which each step must be completed in order to comply with the notice, which must not expire before the period within which an appeal may be brought under regulation 18;
- (e) information as to-
 - (i) the rights of appeal;
 - (ii) the scope for suspension of a notice pending appeal;
 - (iii) the consequences of an appeal;
 - (iv) the consequences of a failure to comply with the notice.

(3) Subject to regulation 18, the person on whom the notice is served must comply with the notice.

(4) A notice served under this regulation is referred to in these Regulations as a compliance notice.

PART 4
SPIRIT DRINKS

Interpretation of Part.

10. In this Part and in the Schedule-

“registered Annex III geographical indication” means a geographical indication registered in Annex III to Regulation (EC) No 110/2008;

“Regulation 110/2008” means Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89, as amended from time to time;

“spirit drink” has the meaning given in paragraph (1) of Article 2 of Regulation (EC) No 110/2008 as read with paragraphs (2) and (3) of that Article.

(2) Other expressions used in this Part and Regulation 110/2008 have the meaning given in Regulation 110/2008.

(3) Part 1 of the Schedule applies to the interpretation of Part 2 of that Schedule.

Compliance notice.

11.(1) A CP enforcer may serve a notice in writing on any person if the CP enforcer has grounds for believing that the person has-

- (a) directly or indirectly made commercial use of a registered Annex III geographical indication in a way mentioned in Article 16(a) of Regulation (EC) No 110/2008;
- (b) misused, imitated or evoked a registered Annex III geographical indication, even if the true origin of the product is indicated or the geographical indication is used in translation or

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accompanied by an expression such as “like”, “type”, “style”, “made”, “flavour” or any other similar term;

- (c) used any other false or misleading indication as to the provenance, origin, nature or essential qualities on the description, presentation or labelling of a product that is liable to convey a false impression that the product is a registered Annex III product;
- (d) used any other practice that is liable to mislead the consumer into thinking that the product is a registered Annex III product; or
- (e) contravened any provision of Regulation 110/2008.

(2) In this regulation “registered Annex III product” means a spirit drink for which a registered Annex III geographical indication may be used in accordance with Regulation 110/2008.

(3) A notice served under subregulation (1) must contain the following-

- (a) the name and address of the person on whom the notice is served;
- (b) the grounds for service of the notice;
- (c) information on the steps the person must take to comply with the notice;
- (d) except to the extent that the steps are confined to refraining from doing something believed to be intended, the period within which each step must be completed in order to comply with the notice, which must not expire before the period within which an appeal may be brought under regulation 18;
- (e) information as to-
 - (i) the rights of appeal;
 - (ii) the scope for suspension of a notice pending appeal;
 - (iii) the consequences of an appeal;
 - (iv) the consequences of a failure to comply with the notice.

(4) Subject to regulation 18, the person on whom the notice is served must comply with the notice.

(5) A notice served under this regulation is referred to in these Regulations as a compliance notice.

Verification under Article 22 of Regulation 110/2008.

12. The Collector of Customs is designated as the authority responsible for verifying that a relevant spirit drink that is to be placed on the market using a geographical indication registered in Annex III to Regulation 110/2008 complies with the specifications in the technical file (if any) relating to that geographical indication before it is placed on the market.

**PART 5
COMMON PROVISIONS**

Competent authority.

13.(1) For the purposes of the EU Regulations the competent authority is the Minister, except in regulation 12.

(2) The Minister is responsible for exercising, in relation to Gibraltar, the functions of a Member State where required to do so under the EU Regulations.

Enforcement authorities.

14.(1) Enforcement authorities must, on behalf of the Minister, execute and enforce the provisions of the EU Regulations and these Regulations.

(2) A Consumer Protection Enforcer is an enforcement authority for the purposes of these Regulations.

Powers of entry.

15.(1) A CP enforcer may exercise the powers of entry under section 36 and 37 of the Act subject to the following-

- (a) the power of entry is in connection with a reasonable suspicion of a breach of these Regulations or the EU Regulations;
- (b) in section 36(1)(b)(ii), the reference to “an appropriate notice under section 24” were substituted for “if reasonable notice were given”;

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- (c) for the purposes of section 37 any act that is contrary to the provisions of these Regulations or the EU Regulations is deemed to constitute business practices carried on which significantly harm consumer interests.

(2) A CP enforcer may-

- (a) be accompanied by-
 - (i) such other persons as the CP enforcer considers necessary;
 - (ii) any representative of the European Commission;
- (b) bring on to the premises such equipment as the CP enforcer considers necessary.

(3) The powers of entry permitted under this regulation may be exercised at the request of a Member State or the European Commission.

Powers of CP enforcers on entry.

16.(1) A CP enforcer who has entered premises under sections 36 or 37 of the Act may, in addition to the provisions of those sections-

- (a) inspect and search the premises;
- (b) take photographs;
- (c) mark any item for identification purposes;
- (d) require the production of any label, document or record (in whatever form it is held);
- (e) inspect and take a copy of, or take a copy of an extract from, any label, document or record;
- (f) inspect and open any container, item or vending machine;
- (g) inspect any plant, machinery or equipment;
- (h) have access to, inspect and check the data on, and operation of, any computer and any associated apparatus used in connection with a label, document or record to which this regulation relates;

- (i) where a label, document or record is kept by means of a computer, require the label, document or record to be produced in a form in which it may be taken away;
- (j) seize and detain any computer equipment for the purpose of copying any data or for further inspection where adequate inspection has not been able to be carried out on the premises, if the CP enforcer has reason to believe that a person is in contravention of these Regulations or the EU Regulations and that the data may be relevant to the contravention;
- (k) seize and detain potential evidentiary material, that is to say, any label, document, record, equipment, container or item if the CP enforcer has reason to believe that a person is in contravention of these Regulations or the EU Regulations and that the potential evidentiary material may be relevant to the contravention.

(2) A CP enforcer may require any person to provide the CP enforcer with such assistance, information or facilities as the CP enforcer may reasonably require for the purposes of the execution or enforcement of these Regulations or the EU Regulations.

(3) If it is decided that anything seized and detained under subregulation (1) by a CP enforcer is no longer needed by an enforcement authority in connection with a possible contravention of these Regulations or the EU Regulations, the CP enforcer must return it as soon as reasonably practicable after that decision.

Penalty notice.

17.(1) Where a person-

- (a) fails to comply with a compliance notice,
- (b) has obstructed a CP enforcer acting pursuant to regulations 5, 9, 11 or 16, or
- (c) has failed to comply with a requirement of a CP enforcer acting pursuant to regulation 16(1)(d), (1)(i) or (2),

a CP enforcer may, by way of serving a written notice (a penalty notice) on the person, impose a requirement to pay such sum as the CP enforcer may specify in respect of that act or omission.

(2) The amount payable must not exceed £40,000.

(3) A penalty notice served under subregulation (1) must contain the following-

- (a) how and where the penalty must be paid;
- (b) the name and address of the person on whom the notice is served;
- (c) the grounds for serving the notice;
- (d) the amount of the penalty;
- (e) the period within which the penalty must be paid, which must not expire before the period within which an appeal may be brought under regulation 18;
- (f) whether any discount is offered for early payment, and if so-
 - (i) the amount of the discount;
 - (ii) the period within which the penalty must be paid to take advantage of the discount;
- (g) information as to-
 - (i) the rights of appeal;
 - (ii) the scope for suspension of a notice pending appeal;
 - (iii) the consequences of failing to comply with the notice.

(4) Subject to regulation 18, the person on whom the notice is served must comply with the notice.

(5) If the requirements of the compliance notice are met before the payment period set out in the non-compliance penalty notice expires, liability to pay the non-compliance penalty is discharged.

(6) A notice served under this regulation is referred to in these Regulations as a non-compliance penalty notice.

(7) Any money owed under a notice may be recovered as a civil debt owed to the Government of Gibraltar.

Appeals against notices.

18.(1) A person on whom a compliance notice or a penalty notice has been served may appeal to the Magistrates' Court.

(2) The effect of a compliance notice or a penalty notice served under these Regulations is not suspended pending the determination or withdrawal of an appeal unless the Magistrates' Court directs otherwise.

(3) On an appeal under this regulation the Magistrates' Court may either cancel or affirm the compliance notice or the penalty notice and, if the court affirms that notice, it may do so either in its original form or with such modifications as the court thinks fit.

Reports by enforcement authorities.

19.(1) Enforcement authorities must report to the Minister when a power is exercised under these Regulations to-

- (a) enter premises;
- (b) issue a compliance notice or a penalty notice.

(2) The report must cover the result of that exercise and must be submitted to the Minister within 28 days of that result.

Protection of officers acting in good faith.

20. A CP enforcer is not personally liable in respect of any act done-

- (a) in the execution or purported execution of functions under these Regulations or the EU Regulations, and
- (b) within the scope of the CP enforcer's employment,

if the CP enforcer acted in the honest belief that the duty under these Regulations or the EU Regulations required or entitled the officer to so act.