



Jersey

# **EU LEGISLATION (GEOGRAPHICAL INDICATIONS – WINES AND SPIRITS) (JERSEY) ORDER 2016<sup>1</sup>**

## **Official Consolidated Version**

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## EU LEGISLATION (GEOGRAPHICAL INDICATIONS – WINES AND SPIRITS) (JERSEY) ORDER 2016

**THE MINISTER FOR EXTERNAL RELATIONS**, in pursuance of Article 2(1)(a) and (c) of the [European Union Legislation \(Implementation\) \(Jersey\) Law 2014](#), orders as follows –

Commencement [[see endnotes](#)]

### 1 Interpretation

(1) In this Order –

“2008 Regulation” means Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16), as amended<sup>2</sup> from time to time;

“2013 Regulation” means Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671), as amended<sup>3</sup> from time to time;

“EU Regulations” means the following provisions designed to prevent use of geographical indications being applied to wines and spirits that originate elsewhere –

(a) Articles 92 to 108 of the 2013 Regulation; and

(b) Chapter III of, and Annex III to, the 2008 Regulation;

“Minister” means the Minister for Home Affairs;

“spirits” means any spirit drink within the meaning of Article 2 of the 2008 Regulation;

“wines” means the grapevine products listed in points (1), (3) to (6), (8), (9), (11), (15) and (16) of Part II of Annex VII to the 2013 Regulation.

(2) Subject to paragraph (1), words or phrases used in this Order have the same respective meanings as in the [Customs and Excise \(Jersey\) Law 1999](#).

## **2 Enforcement of EU Regulations and disclosure of information**

- (1) It is the duty of officers to secure execution and enforcement of the EU Regulations.
- (2) The Agent of the Impôts may require any person concerned with the production of, or movement in or out of Jersey of, wines or spirits –
  - (a) to furnish, in such form as the Agent may require, such information as is, in the Agent's opinion, necessary to enable compliance with the EU Regulations; and
  - (b) to produce any books of account or other documents of whatever nature relating to the production or movement of those wines or spirits.
- (3) Without limiting any other powers of disclosure, officers may disclose any information in their possession to any person for the purposes of –
  - (a) the EU Regulations or this Order; or
  - (b) assisting equivalent law enforcement functions in any other jurisdiction.

## **3 Powers to search premises**

- (1) An officer may, following the production of evidence of his or her authority if requested, at any reasonable time enter any premises (other than those used wholly or mainly as a private dwelling) for the purposes of executing or enforcing the EU Regulations or this Order.
- (2) Without limiting paragraph (1), if the Bailiff or a Jurat is satisfied by information on oath by an officer that there are reasonable grounds to suspect that any wines or spirits liable to forfeiture under this Order are kept or concealed in any premises, the Bailiff or Jurat may grant a warrant authorizing any officer, any police officer or any other person named in the warrant to enter and search any premises so named within one month of the date on which the warrant was granted.
- (3) An officer who has entered premises under paragraph (1) or under the authority of a warrant granted under paragraph (2) may –
  - (a) inspect any materials or articles;
  - (b) require access to, and inspect and copy any documents or records (in whatever form they are held), and remove them to enable them to be copied;
  - (c) require access to, inspect and check the operation of any computer and any associated apparatus used in connection with the records, and may require any person to afford such assistance as may reasonably be required (including the provision of passwords), and may require any computer records to be produced in a form in which they may be taken away;
  - (d) seize and retain anything required as evidence in proceedings under this Order;
  - (e) undertake an inventory of wines and spirits and of anything that may be used in their preparation; and
  - (f) purchase or take samples of any wines or spirits and of anything that may be used in their preparation.
- (4) An officer who has procured a sample of any wines or spirits, or of anything that may be used in their preparation, may analyse or examine that sample or have that sample analysed or examined.

- (5) An authorized officer entering any premises by virtue of this Article may be accompanied by such other person as the officer considers necessary.

#### **4 Power to search vehicles or vessels**

Where there are reasonable grounds to suspect that any vehicle or vessel is or may be carrying any wines or spirits that contravene the EU Regulations, any officer or police officer may stop and search that vehicle or vessel.

#### **5 Power of arrest**

Any person who has committed, or whom there are reasonable grounds to suspect of having committed, any offence under this Order may be arrested by an officer.

#### **6 Seizure or detention of wines or spirits liable to forfeiture**

- (1) Any wines or spirits that contravene the EU Regulations are liable to forfeiture under this Order and may be seized or detained by any officer or police officer.
- (2) Where any wines or spirits are seized or detained by a police officer under paragraph (1), the officer must –
  - (a) where it is practicable to do so, deliver them to the Agent of the Impôts; or
  - (b) where they may be required for use in connection with any proceedings to be brought otherwise than under this Order, retain them in police custody until either those proceedings are completed or it is decided that no such proceedings will be brought.
- (3) Where any wines or spirits seized or detained by a police officer are not delivered to the Agent of the Impôts, a police officer must –
  - (a) give to the Agent of the Impôts notice in writing of the seizure or detention together with full particulars of the wines or spirits seized or detained; and
  - (b) permit any officer to examine them at any time while they remain in the custody of the police.

#### **7 Forfeiture and condemnation**

- (1) The Schedule has effect for the purpose of forfeitures, and of proceedings for the condemnation of any wines or spirits as being forfeited, under this Order.
- (2) Subject to Article 6 and the Schedule, any wines or spirits seized or detained under this Order must, pending the determination as to their forfeiture or disposal, be dealt with, and if condemned as forfeited, must be disposed of, in such manner as the Minister may direct.

#### **8 Protection of officers in relation to seizure and detention**

- (1) Where, in any proceedings for the condemnation of any wines or spirits seized as liable to forfeiture under this Order, judgment is given for the claimant, the court may, if it thinks fit, certify that there were reasonable grounds for the seizure.
- (2) Where any civil proceedings are brought against the Minister or any officer on account of a seizure or detention of any wines or spirits under this Order and

judgment is given for the plaintiff, the plaintiff is not entitled to recover any damages or costs in respect of the seizure or detention if –

- (a) a certificate relating to the seizure has been granted under paragraph (1); or
  - (b) the court is satisfied that there were reasonable grounds for the seizure or detention.
- (3) Nothing in paragraph (2) affects any right of a person to the return of the wines or spirits seized or detained or to compensation for their destruction or any damage to them, including the costs of pursuing that right.
- (4) Any certificate under paragraph (1) may be proved by the production of either the original certificate or a certified copy of it purporting to be signed by the Judicial Greffier.

## **9 Offences and penalties**

- (1) A person who contravenes Article 103(2) of the 2013 Regulation or Article 16 of the 2008 Regulation is guilty of an offence.
- (2) A person is guilty of an offence if the person –
- (a) intentionally obstructs an officer acting in the execution of this Order or of the EU Regulations;
  - (b) without reasonable cause, fails to give to an officer any assistance or information that the officer reasonably requires;
  - (c) furnishes to an officer any information knowing it to be false or misleading; or
  - (d) fails to produce a document, record or passport to an officer when required to do so.
- (3) It is an offence for any person to disclose any information received from an officer under Article 2(3) if –
- (a) the information relates to a person whose identity is specified in the disclosure or can be deduced from the disclosure;
  - (b) the disclosure is for a purpose other than that specified in Article 3; and
  - (c) the Agent of the Impôts has not give prior consent to the disclosure.
- (4) It is a defence for a person charged with an offence under paragraph (3) to prove that the person reasonably believed –
- (a) that the disclosure was lawful; or
  - (b) that the information had already and lawfully been made available to the public.
- (5) A person guilty of an offence under this Article is liable to a fine.

## **10 Offences by bodies corporate, etc.**

- (1) If an offence under this Law committed by a limited liability partnership or a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
- (a) a person who is partner of the partnership, or a director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,

the person is also guilty of the offence and liable to the penalty provided for that offence.

- (2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

## **11 Citation**

This Order may be cited as the EU Legislation (Geographical Indications – Wines and Spirits) (Jersey) Order 2016.

## **SCHEDULE**

(Article 7)

### **FORFEITURE**

#### **1 Notice of seizure**

- (1) The Minister or the Agent of the Impôts must give notice of the seizure of wines or spirits liable to forfeiture and of the grounds for that seizure to any person known to be their owner.
- (2) However, sub-paragraph (1) does not apply if the seizure was made in the presence –
  - (a) of the person whose offence or suspected offence occasioned the seizure;
  - (b) of the owner or any of the owners of wines or spirits seized or the owner's servant or agent; or
  - (c) in the case of any wines or spirits seized in any ship or aircraft, of the master or commander.
- (3) Notice under sub-paragraph (1) must be given in writing and is treated as being duly served on the person concerned –
  - (a) if delivered to the person personally;
  - (b) if addressed to the person and left or forwarded by post to the person at his or her usual or last known place of abode or business or, in the case of a body corporate, at their registered or principal office; or
  - (c) where the person has no address within Jersey, or the person's address is unknown, by publication of notice of seizure in the Jersey Gazette.

#### **2 Notice of claim**

- (1) Any person claiming that any wines or spirits seized as liable to forfeiture are not so liable must, within one month of the date of the notice of seizure or, where no notice under paragraph 1 has been served on the person, within one month of the date of the seizure, give notice of his or her claim in writing to the Minister or the Agent of the Impôts as the case may be.
- (2) Any notice under sub-paragraph (1) must specify the name and address of the claimant and the advocate or solicitor (if any) in Jersey authorized to accept service of process and to act on behalf of the claimant.
- (3) Service of process upon an advocate or solicitor so specified is taken to be proper service upon the claimant.

#### **3 Condemnation**

- (1) If on the expiration of the relevant notice period under paragraph 2, notice has not been given or does not comply with all the requirements of that paragraph, the wines or spirits in question are taken to have been duly condemned as forfeited.
- (2) Where notice is duly given in accordance with paragraph 2, the Minister or the Agent of the Impôts must take proceedings for the condemnation of the wines or



spirits in question and if the court is satisfied that they were liable to forfeiture at the time of seizure the court must condemn them as forfeited.

- (3) Forfeiture under this paragraph has effect as from the date when the liability to forfeiture arose.

#### **4 Proceedings for condemnation by court**

- (1) Proceedings for condemnation are civil proceedings and may be instituted –
- (a) in the Petty Debts Court where the value of the wines or spirits liable to forfeiture does not exceed the maximum amount of a debt recoverable in that court; or
  - (b) the Royal Court in any other case.
- (2) In any proceedings for condemnation –
- (a) the claimant or the claimant's advocate or solicitor must make oath that the wines or spirits seized was, or was to the best of the claimant's knowledge and belief, the property of the claimant at the time of the seizure;
  - (b) the claimant must, where such proceedings are instituted in the Royal Court, give such security for costs of the proceedings as that court may determine; and
  - (c) where any requirement of this sub-paragraph is not complied with, the court shall give judgment for the Minister.
- (3) An appeal by either party lies from a decision on a question of forfeiture under this paragraph of the Petty Debts Court to the Royal Court and any wines or spirits that are the subject of such an appeal must, pending the final determination of the matter, remain in the custody of the Minister or the Agent of the Impôts as the case may be.

#### **5 Provisions as to proof**

In any proceedings under this Schedule –

- (a) the fact, form and manner of the seizure is taken to have been as set out in the process without the need for any further evidence, unless the contrary is proved; and
- (b) the condemnation by a court of any wines or spirits forfeited may be proved by the production either of the order of condemnation or of a certified copy thereof signed by the Judicial Greffier.

#### **6 Special provisions as to certain claimants**

For the purposes of any claim to, or proceedings for the condemnation of, any wines or spirits that are, at the time of seizure the property of a body corporate, of 2 or more partners or of 6 or more persons, the oath required by paragraph 4(2)(a) to be taken and any other thing required by this Schedule or by any rules of the court to be done by, or by any person authorized by, the claimant or owner may be taken or done by, or by any other person authorized by –

- (a) where the owner is a body corporate, the secretary or some duly authorized officer of that body;
- (b) where the owners are in partnership, any one of those owners;

- (c) where the owners are 6 or more persons who are not in partnership, any 2 of those persons on behalf of themselves and their co-owners.

## **7 Power of Minister to restore property**

The Minister may, if he or she thinks fit, restore any wines or spirits that have under this Law been –

- (a) seized; or
  - (b) forfeited otherwise than by order of a court,
- subject to any conditions that the Minister considers appropriate.

## ENDNOTES

### Table of Legislation History

| Legislation   | Year and No                      | Commencement    |
|---|----------------------------------|-----------------|
| EU Legislation (Geographical Indications – Wines and Spirits) (Jersey) Order 2016 | <a href="#">R&amp;O.120/2016</a> | 5 December 2016 |

### Table of Endnote References

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<sup>1</sup> *This Order was repealed by the Geographical Indications (Jersey) Regulations 2020 on 10 December 2020*

<sup>2</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008R0110>

<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R1308>