

Statutory Instruments.

S.I. No. 30 of 2004

EUROPEAN COMMUNITIES (ETHYL ALCOHOL) REGULATIONS 2004

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S. I. No 30 of 2004

European Communities (Ethyl Alcohol) Regulations 2004

I, Joe Walsh, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving full effect to Council Regulation (EC) No. 670/2003 of 8 April 2003¹ and Commission Regulation (EC) No. 2336/2003 of 30 December 2003², hereby make the following Regulations:

1.(1)These Regulations may be cited as the European Communities (Ethyl Alcohol) Regulations 2004.

(2) These Regulations come into operation on 27 January 2004.

2. (1) In these Regulations-

“ authorised officer ” means -

- (a) a person appointed under Regulation 5(1),
- (b) a member of the Garda Siochana, or
- (c) an officer of Customs and Excise;

“Commission Regulation” means Commission Regulation (EC) No. 2336/2003 of 30 December 2003;

“Council Regulation” means Council Regulation (EC) No. 670/2003 of 8 April 2003;

“ethyl alcohol” means the alcohol of agricultural origin referred to in Article 1 of the Council Regulation or the alcohol of non-agricultural origin referred to in Article 3(3) of the Council Regulation;

“European Regulations” means the Commission Regulation and the Council Regulation;

“Member State” means a state which is a member of the European Community;

¹ O.J. No. L 97, 15.4.2003, p. 6

² O.J. No. L 346, 31.12.2003, p. 19

“Minister” means Minister for Agriculture and Food;

“premises” includes any place, vehicle, ship or other vessel, aircraft, railway wagon or other means of transport or any container used to transport ethyl alcohol;

“relevant period” has the meaning prescribed to it in Article 3 of the Commission Regulation

“vehicle” means any form of transport conveyance including a trailer.

(2) A word or expression that is used in these Regulations and is also used in the European Regulations has, unless the contrary intention appears, the same meaning in these Regulations as it has in the European Regulations.

(3) In these Regulations –

(a) a reference to a Regulation is a reference to a Regulation in these Regulations unless it is indicated that reference to some other Regulation is intended, and

(b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph in the provision where the reference occurs unless it is indicated that reference to some other provision is intended.

3. (1) A person shall not import more than 100 hectolitres of the alcohol of agricultural origin referred to in Article 1 of the Council Regulation other than under and in accordance with a licence issued for the purposes of Article 4 of the Council Regulation.

(2) The Minister may issue a licence for the purposes of Article 4 of the Council Regulation.

4. (1) A person who produces or imports the alcohol of agricultural origin referred to in Article 1 of the Council Regulation shall, no later than the last working day of the first month following the end of each relevant period, furnish the Minister with the information prescribed at Article 3 (c), (d), (e) and (f) of the Commission Regulation.

- (2) A person who produces or imports the alcohol of non-agricultural origin referred to in Article 3(3) of the Council Regulation shall, no later than the last working day of the first month following the end of each relevant period furnish the Minister with the information prescribed at Article 4 (a), (b), (c), (d) and (e) of the Commission Regulation.
5. (1) The Minister may appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of these Regulations.
- (2) An authorised officer shall be issued with a warrant of his or her appointment.
- (3) When exercising a function conferred on him or her under these Regulations,
an authorised officer shall, if requested by any person affected, produce to that person for inspection-
- (a) the warrant issued under paragraph (2), or
 - (b) evidence that he or she is a member of the Garda Síochána or an officer of Customs and Excise.
- (4) The Minister may at any time terminate an appointment as an authorised officer, whether or not the appointment was for a fixed period.
- (5) An appointment as an authorised officer shall cease –
- (a) where the Minister terminates it under paragraph (4),
 - (b) where it was for a fixed period, on expiry of that period, or
 - (c) where the person appointed ceases to be employed by the Minister or ceases to be an officer of Customs and Excise or ceases to be a member of the Garda Síochána as the case may be.
- (6) Nothing in paragraph (5) shall be construed as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.

6. (1) Where an authorised officer has reasonable grounds to suspect that -

- (a) the manufacture, importation, preparation, handling, storage, transport, exportation, distribution, sale or supply of ethyl alcohol is taking place or has taken place on any land or premises,
- (b) on any land or premises, there is or was ethyl alcohol or any machinery, instrument or other thing used in the manufacture, preparation, handling, storage, transport, exportation, distribution, sale or supply of ethyl alcohol,

the authorised officer may enter any such land or premises, or land or premises used in connection with such land or premises, and there, or at any other place, and with such persons as the authorised officer considers appropriate-

- (i) search for and examine or inspect ethyl alcohol or any thing to which these Regulations apply,
- (ii) take, without payment of compensation, samples and carry out or cause to be carried out on the samples such tests, analyses, examinations, tests or inspections as he or she considers necessary or expedient,
- (iii) carry out or cause to be carried out, examinations, tests or inspections of the premises or any part thereof and any equipment, plant, machinery or other article, substance or liquid as he or she considers necessary or expedient,
- (iv) seize and detain any thing which he or she believes to be or to contain ethyl alcohol kept, used or intended to be used in contravention of these Regulations,
- (v) require any person to give his or her name and address and information or produce any book, certificate, document or other record as the authorised officer considers necessary or expedient,
- (vi) examine and take copies of, or extracts from any thing aforesaid,
- (vii) require any person, being the owner or person in charge of ethyl alcohol, or the owner or occupier of, or employed in or

on, lands or premises so entered to give assistance, to carry out such instructions and to give such information as may be reasonably necessary for the purposes of this Regulation, and

- (viii) require any person, being the person in charge of or control of ethyl alcohol to refrain from moving it and to give assistance, to carry out such instructions and to give such information as may be reasonably necessary for the purposes of this Regulation.
- (2) An authorised officer shall not enter, other than with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under paragraph (3).
- (3) If a judge of the District Court is satisfied by information on oath of an authorised officer that there is reasonable cause for suspecting that there is or was or is intended to be on any land or in any premises ethyl alcohol in relation to which a contravention of these Regulations is being or has been or is intended to be committed and that such land or premises or any part thereof consists of a dwelling, the judge may issue a search warrant under this paragraph.
- (4) A search warrant issued under paragraph (3) shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers as the named authorised officer thinks necessary, at any time or times, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by force) the land or premises named in the warrant.
- (5) Where any land or premises is entered pursuant to a warrant issued under paragraph (3), an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under this Regulation.

7. A person shall not obstruct or impede an authorised officer in the due exercise of a function conferred or exercisable by the officer under these Regulations, fail to comply with a requirement under Regulation 6 (1)(v), (vii) or (viii) or give to an authorised officer information that is false or misleading.

8. (1) Where ethyl alcohol or some other thing in respect of which an offence is with reasonable cause suspected by an authorised officer of having been committed under these Regulations has come into the possession of an authorised officer, on the application before the appropriate court of the Minister, the appropriate court may, where it is satisfied that an offence has been committed (whether or not any person has been convicted of the offence), order the forfeiture of any ethyl alcohol or other thing, as the case may be.

(2) Any thing ordered by the appropriate court to be forfeited under this section shall be disposed of as the Minister thinks fit and any moneys arising from such disposal shall, without prejudice to it being taken into account (where appropriate) for the purposes of Regulation 9, be paid into or disposed of for the benefit of the Exchequer.

(3) (a) In this Regulation -

"appropriate court" means—

- (i) in case the estimated value of the ethyl alcohol or other thing to be forfeited does not exceed the jurisdiction of the District Court to hear and determine an action for wrongful detention, the District Court,
- (ii) in case the estimated value of the ethyl alcohol or other thing to be forfeited does not exceed the jurisdiction of the Circuit Court to hear and determine an action for wrongful detention, the Circuit Court,
- (iii) in any other case, the High Court;

"estimated value", in relation to the thing sought to be forfeited, means the estimated amount of money which, in the opinion of the court, a willing purchaser would pay to a willing seller when such a thing could be sold legally and after deduction for—

(i) the estimated costs incidental to such a sale, and
(ii) the estimated amount of any tax or duty owing to the State in respect of that thing, and when it cannot be sold legally then such estimated value, if any, as the court considers appropriate.

(b) (i) If, in relation to an application under this section to the District Court, that court becomes of opinion during the hearing of the application that—

(I) the estimated value aforesaid will exceed the jurisdiction of the District Court to hear and determine an action for wrongful detention, or

(II) that for any reason it should decline jurisdiction,

it may, if it so thinks fit, transfer the application to the Circuit Court or the High Court, whichever it considers appropriate having regard to the estimated value aforesaid or to such other matters that it considers appropriate.

(ii) If, in relation to an application under this section to the Circuit Court, that court becomes of opinion during the hearing of the application that—

(I) the estimated value aforesaid will exceed the jurisdiction of the Circuit Court to hear and determine an action for wrongful detention, or

(II) that for any reason it should decline jurisdiction,

it may, if it so thinks fit, by order transfer the application to the High Court.

(c) An application under this section shall be brought in a summary manner.

(4) (a) An order shall not be made by a court under this section unless the court is satisfied that in the circumstances all practicable steps have been taken to notify any person of the proceedings relating to the application for the order who, in the opinion of the court, should be given the opportunity of being heard by it on that application.

(b) The court concerned may make such order as to the costs of the parties to or heard by the court in proceedings relating to an application for an order under this section as it considers appropriate.

9. Where any thing which is seized from or forfeited by a person under Regulation 8 is duly disposed of by or on behalf of the State the costs of such disposal, less any moneys arising from such disposal, shall (except where such costs have been waived in writing) be recoverable from such person as a simple contract debt in any court of competent jurisdiction.
10. (1) A person who, by act or omission, contravenes Article 5 of the Commission Regulation or Regulation 3, 4, or 7 is guilty of an offence and is liable, on conviction, to a fine not exceeding €3,000.
- (2) An offence under these Regulations may be prosecuted by the Minister,
- (3) Where an offence under these Regulations has been committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the first-mentioned offence.
- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to the acts and defaults of a member in connection with the functions of management as if such a member were a director or manager of the body corporate.

L.S.

GIVEN under my Official Seal,

21st January 2004

Joe Walsh

Minister for Agriculture and Food

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

The principal effects of these Regulations are to provide for penalties for breaches of certain provisions of the European Regulations on ethyl alcohol and confer powers of entry on authorised officers.

These Regulations should be read in conjunction with the Council Regulations.

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