

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND THE WINDSOR FRAMEWORK

PE-72-2023-REV-1

**REGULATION (EU) 2024/1143 OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL OF 11 APRIL 2024 ON GEOGRAPHICAL INDICATIONS FOR WINE,
SPIRIT DRINKS AND AGRICULTURAL PRODUCTS, AS WELL AS TRADITIONAL
SPECIALITIES GUARANTEED AND OPTIONAL QUALITY TERMS FOR
AGRICULTURAL PRODUCTS, AMENDING REGULATIONS (EU) NO 1308/2013,
(EU) 2019/787 AND (EU) 2019/1753 AND REPEALING REGULATION (EU) NO
1151/2012**

Submitted by Department for Environment, Food and Rural Affairs
14 May 2024

SUMMARY

1. The following explanatory memorandum relates to the EU's adoption of a new Regulation governing its geographical indications (GI) schemes. It also amends non-GI provisions in the EU spirit drinks Regulation relating to the categorisation of spirit drinks, adding three new categories, e.g. bread spirit. The Regulation will amend and replace legislation included in Annex 2 of the Windsor Framework ('the Framework') and will apply in Northern Ireland, subject to the democratic safeguards contained within the Framework.

SUBJECT MATTER

2. On 11 April 2024 the EU adopted Regulation 2024/1143 (the 'new Regulation') providing for a new, harmonised legislative framework governing agricultural GI schemes. The new Regulation repeals an existing agri-food GI regulation (Regulation 1151/2012) and amends provisions relating to wine GIs in Regulation 1308/2013 (the Common Market Organisation Regulation), 2019/787 (The Spirit Drinks Regulation), and 2019/1753 (on the Geneva Act of the Lisbon Agreement) to align existing provisions on wines and spirit drinks with the new Regulation. Some articles apply from 13 May 2024, with the others applying from 1 January 2025.
3. GIs are a form of intellectual property right used to indicate that a food or drink product has a specific geographical origin and possesses a certain reputation, qualities, or characteristics due to that place of origin. Registered GI status provides legal protection of a specific name, preventing misuse, imitation, and evocation by products which do not meet the requirements defined in the product specification for the GI.

4. The UK Government set up its own GI schemes for Great Britain after EU Exit. The EU GI schemes continue to apply in Northern Ireland under the Windsor Framework. The UK Government administers the EU schemes in Northern Ireland. Both systems continue to be largely comparable.
5. The new Regulation streamlines and harmonises most existing legislation governing the EU's agri-food, wines, and spirit drinks GI schemes into a single regulation (separate existing regulations for spirit drinks and wine will continue to apply, containing provisions that are bespoke to those product types). It also seeks to make some improvements to the current provisions including clarified protections for GI in domain names and when GI are used as an ingredient in prepacked food, measures empowering producer groups, additional labelling requirements aimed at promoting producer visibility, the ability to include sustainability standards in product specifications, and defined systems for proving authorisation to market a GI product.

SCRUTINY HISTORY

6. The Parliamentary scrutiny history relevant to this Explanatory Memorandum is contained in the attached Annex A.

MINISTERIAL RESPONSIBILITY

7. The Secretary of State for the Department for Environment, Food and Rural Affairs is responsible for GI policy.
8. The Secretary of State for the Department for Science, Innovation and Technology (DSIT) has an interest given the interaction between GI and other intellectual property rights, including specific provisions about trade marks.

INTEREST OF THE DEVOLVED GOVERNMENTS

9. GI policy is a reserved matter under the UK's devolution settlements. However, as the regulation will apply in Northern Ireland and all devolved administrations (DAs) have an interest in the registration and enforcement of protected food and drink names, they have been consulted in the preparation of this EM.
10. The regulation also makes amendments to non-GI provisions, including the introduction of new categories of spirit drinks in Regulation (EU) 2019/787. This is devolved policy and so falls within the competence of the Northern Ireland Executive.
11. Most of the measures in the Regulation do not fall under devolved competence, so responsibility for implementing the Regulation will largely rest with the UK Government. Defra and DAERA policy officials will work together in determining and aligning the domestic legislation that will need to be made to underpin the new Regulation.

LEGAL AND PROCEDURAL ISSUES

12. EU Legal Issue/Process:

- i. **EU Legal Base:** Article 43(2) (Common Agricultural Policy) and 118(1) (Intellectual Property) of the Treaty on the Functioning of the European Union.
- ii. **Voting Procedure:** The Ordinary Legislative Procedure applies.
- iii. **Timetable for adoption and implementation:** The Regulation has been adopted. Most provisions apply from 13 May 2024. Article 10(4) and (5) (on the national opposition procedure), Article 39(1) (on the keeping by Member States of a list of operators verified to conduct an activity connected to a product specification and related notifications), and Article 45 (on Attestations of Compliance) will apply from 1 January 2025.

13. The regulation repeals an act listed in Annex 2 to the Windsor Framework and amends/replaces certain provisions contained in acts that apply via Annex 2. To the extent that the regulation amends/replaces prior regulations that apply via Annex 2, within the meaning of Article 13(3), the regulation will apply in Northern Ireland subject to the democratic safeguards within the Windsor Framework. Further detail is set out in the policy and legal implications section on the applicable elements.

POLICY AND LEGAL IMPLICATIONS

Intent and focus

14. The new Regulation largely harmonises the legislative framework governing agricultural GI, placing most of the provisions for agri-food, wines, and spirit GI in a single regulation. The new Regulation also seeks to update the EU's GI schemes, including by:

- i. Giving interested parties the opportunity to submit a 'Notice of Comments' during the registration procedure, allowing the European Commission ('the Commission') to account for additional information outside the scope of formal opposition when deciding whether to register a GI.
- ii. Encouraging GI to contribute to sustainability initiatives (notably the European Green Deal) through the ability to include sustainable practice requirements within product specifications.
- iii. Clarifying protections for GI names when used as ingredients in pre-packed food.
- iv. Allowing producers to quickly and easily demonstrate their authorisation to use a GI name through 'Attestations of Compliance.'
- v. Specifying protections for GI names in internet domain names.

- vi. Clarifying the role of and empowering producer groups to enable a better distribution of value along the GI supply chain through provisions for 'recognised producer groups' to facilitate better collective management of GI.
 - vii. Increasing the visibility of GI producers through new labelling requirements for agri-food and spirits.
 - viii. Updating provisions for the Traditional Speciality Guaranteed (TSG) scheme to make it more understandable, operational, and attractive to producers.
15. These changes have no significant impact on the schemes themselves or how they are run. The Commission's original proposal sought to outsource several administrative burdens to the EU Intellectual Property Office (EUIPO). These measures have not been adopted. The role of EUIPO regarding the new Regulation is limited to maintaining the EU's online GI register, and managing an alert system for the registration of domain names that may infringe an EU GI.
16. Some non-GI amendments are also made, including the inclusion of new categories of Spirit Drinks in Regulation (EU) 2019/787.

Operational Changes

17. The Regulation will require Defra, as the competent authority for GI in Northern Ireland, to make certain operational changes. These include implementing a process for submitting 'Notices of Comments', accounting for sustainability requirements when assessing GI applications, and engaging with GI producers in Northern Ireland to establish producer groups. Similarly, enforcement officers in Northern Ireland may need additional training to enforce against violations of new protection provisions. None of these changes are anticipated to have significant administrative or financial implications.
18. Control bodies carry out checks to verify that a product due to be marketed with a GI name is made in accordance with the product specification (verification). The new Regulation provides that when a producer of an agri-food or spirit drink GI is verified, they can request proof of verification. Member States are given flexibility to implement this either by requiring control bodies to issue an 'Attestation of Compliance' (essentially a certificate) or including verified producers on an online register available to each approved operator. The Regulation does not set out detailed rules for either option but gives the Commission the ability to create detailed rules at a later date.
19. Further detail on the above verification methods will indicate to what degree existing UK processes are able to meet these new requirements already or require adaptation. We will engage with the Commission, through the relevant Windsor Framework structures, to understand the potential impact in Northern Ireland further.

20. His Majesty's Revenue & Customs' online Spirit Drinks Verification lookup service will fulfil the requirement to provide an online register for producers of spirit drinks GI in its current form. Should further rules be implemented the UK Government will reassess if changes to the service are required.
21. The need for control bodies (this includes local authorities, a commercial body, or the Food Standards Agency) to issue certificates or establish an online register for agri-food GI producers will incur additional costs and/or administrative burdens as the current process of verifying agri-food GI producers in Northern Ireland does not include issuing a certificate or including verified producers on an online register. The UK Government will need to determine the most effective way of meeting this requirement. Given that only five agri-food GIs currently originate from Northern Ireland, it is not anticipated that this will incur a major administrative or financial burden.

Online Protections

22. The new Regulation prevents misuse of an EU-registered GI name by any online domain name accessible in the EU. This means that domain names owned by people or organisations that are deemed to contravene an EU-registered GI may have access to their sites disabled in the EU or the registration of their domain name(s) cancelled (if they are registered within the territory of the EU or Northern Ireland). This will require further analysis, in conjunction with DSIT, as to its potential impact.

Producer Groups

23. The UK Government is, in Northern Ireland, given the flexibility to adopt several measures relating to producer groups, including placing restrictions on membership, setting rules on organisational structures and financial contributions, establishing a public register of producer groups, and the ability to set up a system for recognised producer groups. Recognised producer groups would be given the exclusive rights to exercise several functions related to the management and protection of the related GI.
24. A producer group may cover multiple jurisdictions. Should both the UK Government, on behalf of Northern Ireland, and Ireland decide to implement a recognised producer group system, they would need to determine a single recognised producer group for those GIs which can be produced across the island of Ireland, where such recognition is requested. Should one party decide not to implement such a system or if the UK and Ireland fail to reach agreement, no producer group will be recognised for these GIs. This would affect four GIs currently: Irish Whiskey, Irish Poitín, Irish Cream, and Irish Grass Fed Beef. We do not anticipate this will have any major impact.

Additional Labelling Requirements

25. Agri-food and spirit drink GI products registered under the EU schemes will be subject to additional labelling requirements under the terms of the Regulation. The name of the GI producer would need to be included in the same field of vision as the GI name wherever it is used on packaging. This will predominantly affect GI products sold under private labels (brands separate from those of the producer), for example supermarket own-brand versions of GI products or specific brands owned by large manufacturers. Further analysis and engagement is underway on the outworkings of this provision.
26. Meeting these labelling requirements may place additional costs on retailers, as the new Regulation requires product labels to be updated every time the producer supplying that private label changes.
27. The spirits industry have expressed concerns that this requirement will damage substantially the commercial viability of private label products bearing a GI in the EU Single Market due to resultant damage to the value of private label brands, the logistical burden of creating new labels preventing independent brand owners from changing suppliers quickly, and the violation of existing contractual obligations of some brand owners who cannot disclose the trademarked names of their suppliers. These concerns will affect all exports of EU Registered-GI products (excluding wines) to the EU Single Market from the UK.

Trademarks

28. The Regulation consolidates provisions which underpin the interaction between GIs and trade marks. The Intellectual Property Office (IPO), an executive agency of the Department for Science, Innovation and Technology, leads on trade mark policy and the administration of the UK's domestic trade mark scheme. Currently, a trade mark will not be registered where it conflicts with an earlier GI. A product name may be registered as a GI if, considering existing trade marks, it would not be liable to mislead consumers as to the true identity of the product. The provisions of Regulation (EU) 2024/1143 largely maintain the status quo.
29. As per the earlier EU Regulation, Regulation (EU) 2024/1143 sets out the relationship between GI and trade marks. The Regulation appears to extend the scope under which trade mark applications should be rejected on the basis of earlier GI, though this is to be subject to further analysis. Currently, the IPO may reject trade marks where there is an evocation of a GI even if the goods or services associated with the trade mark differ from the goods protected by the GI but may not do so in every case.
30. The Regulation prohibits the registration of the name of a cancelled GI as an intellectual property right, including as a trade mark, for one year after the cancellation of the GI. There is no such prohibition in UK trade mark law or in the earlier EU Regulations applicable in NI. However, based on public EU databases, relatively few EU GI appear to be cancelled per year.

Traditional Speciality Guaranteed

31. The TSG scheme remains largely unchanged. We do not foresee any significant impact either for businesses and communities in Northern Ireland or government administration of the scheme.

Additional Changes

32. The new Regulation makes amendments to non-GI provisions, including the introduction of new categories of spirit drinks in Regulation (EU) 2019/787. These new categories would apply to relevant spirit drink products produced in NI. However, these (non-GI) provisions would be disapplied under NIRMS and thus would not affect the movement of goods from GB to NI.

33. UK Government is unaware of any significant production of the new categories of Spirit Drinks in the UK and thus do not foresee any significant impact.

Wider Considerations

34. The new Regulation will see the EU GI schemes apply in Northern Ireland in largely the same way as they do currently, with indirect benefits for businesses and communities resulting from the rationalisation, and thus increased accessibility, of most existing GI provisions within a single piece of legislation. The impact on the day-to-day functioning of GI in Northern Ireland is judged to be minimal.

35. There are no plans presently to make further updates to the UK's GI legislation for Great Britain.

36. Defra will need to update our enforcement regulations to reflect the new Regulation.

CONSULTATION

37. The EU published an initial impact assessment on 28 October 2020. Subsequently, the Commission conducted a public consultation between January and April 2021, alongside targeted consultation with Member States and relevant organisations.

38. Defra engages with the UK alcoholic drinks sector on a regular basis, including on wine and spirit drink GI. We have considered feedback gathered during our regular stakeholder engagement. The UK spirits industry have specifically highlighted the likely negative impact of new EU labelling requirements on UK-EU trade.

FINANCIAL IMPLICATIONS

39. We assess that there may be costs borne by the UK Government in order to develop systems changes including to make attestations of compliance available to verified producers. There could be some financial implications for producers in Northern Ireland who use the current GI system should control bodies pass on the costs of updating verification processes via increased verification fees.

M Spencer

**THE RT. HON. MARK SPENCER MP.
MINISTER OF STATE FOR FOOD, FARMING AND FISHERIES
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

ANNEX A

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON GEOGRAPHICAL INDICATIONS FOR WINE, SPIRIT DRINKS AND AGRICULTURAL PRODUCTS, AS WELL AS TRADITIONAL SPECIALITIES GUARANTEED AND OPTIONAL QUALITY TERMS FOR AGRICULTURAL PRODUCTS, AMENDING REGULATIONS (EU) No 1308/2013, (EU) 2019/787 AND (EU) 2019/1753 AND REPEALING REGULATION (EU) No 1151/2012

EM 7639/22 + ADD 1-3, COM (2022) 134 FINAL + ANNEXES 1-3: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON EUROPEAN UNION GEOGRAPHICAL INDICATIONS FOR WINE, SPIRIT DRINKS AND AGRICULTURAL PRODUCTS, AND QUALITY SCHEMES FOR AGRICULTURAL PRODUCTS, AMENDING REGULATIONS (EU) NO 1308/2013, (EU) 2017/1001 AND (EU) 2019/787 AND REPEALING REGULATION (EU) NO 1151/2012

DATE DEFRA EM SIGNED: 04/05/2022

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
SCRUTINY COMPLETED (OUTCOME AGENDA NO 3 25/5/22)	CLEARED BY HOL LETTER 21/7/2022. SIFTED FOR SCRUTINY TO THE PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE (AT CHAIR'S SIFT NO 18; 16/5/22)

EM 8793/21, C(2021) 2837 FINAL: COMMISSION DELEGATED REGULATION (EU) .../... OF 12.5.2021 SUPPLEMENTING REGULATION (EU) 2019/787 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL WITH RULES CONCERNING APPLICATIONS FOR REGISTRATION OF GEOGRAPHICAL INDICATIONS OF SPIRIT DRINKS, AMENDMENTS TO PRODUCT SPECIFICATIONS, CANCELLATION OF THE REGISTRATION AND THE REGISTER

DATE DEFRA EM SIGNED: 04/06/2021

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
SCRUTINY COMPLETED (OUTCOME AGENDA NO 7 23/06/2021)	CLEARED BY HOL LETTER 10/09/2021. SIFTED FOR SCRUTINY TO THE PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE (AT CHAIR'S SIFT NO 3; 10/06/2021)

13313/21+ADD 1 COMMISSION DELEGATED REGULATION (EU) .../... OF 27.10.2021 AMENDING DELEGATED REGULATION (EU) 2019/934 SUPPLEMENTING REGULATION (EU) NO 1308/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS AUTHORISED OENOLOGICAL PRACTICES

DATE DEFRA EM SIGNED: 05/01/2022

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
SCRUTINY COMPLETED (OUTCOME AGENDA NO 26 26/1/22)	DRAWN TO THE ATTENTION OF THE PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE (AT CHAIR'S SIFT NO 13; 25/1/22)

EM 15121/16: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE DEFINITION, PRESENTATION AND LABELLING OF SPIRIT DRINKS, THE USE OF THE NAMES OF SPIRIT DRINKS IN THE PRESENTATION AND LABELLING OF OTHER FOODSTUFFS AND THE PROTECTION OF GEOGRAPHICAL INDICATIONS FOR SPIRIT DRINKS

15121/16 ADD 1: ANNEXES TO THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE DEFINITION, PRESENTATION AND LABELLING OF SPIRIT DRINKS, THE USE OF THE NAMES OF SPIRIT DRINKS IN THE PRESENTATION AND LABELLING OF OTHER FOODSTUFFS AND THE PROTECTION OF GEOGRAPHICAL INDICATIONS FOR SPIRIT DRINKS

DATE DEFRA EM SIGNED: 15/12/2016

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED AS NOT IMPORTANT (REPORT 25;10/01/2017)	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1643- 12/01/2017

REGULATION 1308/2013 WAS SCRUTINISED AS PROPOSAL 15397/11. COM(11)626, PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS

(SINGLE CMO REGULATION)

DATE DEFRA EM SIGNED: 29/10/2011

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
THE COMMITTEE REPORTED ON 5 OCCASIONS LASTLY IN REPORT 12, 13/14 AND THE PROPOSAL WAS DEBATED IN EUROPEAN COMMITTEE A ON 18 JUNE 2013	THE PROPOSAL WAS EXAMINED IN THE THEN SUB-COMMITTEE D AND SCRUTINY WAS COMPLETED ON 22 MAY 2013

REGULATION 1151/2012 WAS SCRUTINISED AS 17672/10, COM(10)733, PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON AGRICULTURAL PRODUCT QUALITY SCHEMES.

DATE DEFRA EM SIGNED: 11/01/2011

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
COMPLETED SCRUTINY AS RAISING ISSUES OF POLITICAL IMPORTANCE IN REPORT 14, 10-12 ON 19 JANUARY 2011	THE PROPOSAL WAS EXAMINED BY THE THEN SUB-COMMITTEE D AND COMPLETED SCRUTINY ON 14 SEPTEMBER 2011