

STATES OF JERSEY



Jersey

DRAFT GEOGRAPHICAL INDICATIONS (JERSEY) REGULATIONS 202-

Lodged au Greffe on 30th October 2020
by the Minister for External Relations

STATES GREFFE

REPORT

The draft Geographical Indications (Jersey) Regulations 202-, if approved by the Assembly, would provide additional protection in Jersey Law to geographical indications (GI) for goods in the European Union and which the UK will continue to recognise after leaving the EU.

GIs are protections for products that must have a specific geographical origin and possess qualities or a reputation that are due to that origin. (e.g. Parma Ham, Champagne etc). Product names can be granted with a 'geographical indication' (GI) if they have a specific link to the place where they are made. The GI recognition enables consumers to trust and distinguish quality products while also helping producers to market their products better.

Products that are under consideration or have been granted GI recognition are listed in [quality product registers](#). The registers also include information on the geographical and production specifications for each product. Recognised as intellectual property, geographical indications play an increasingly important role in [trade negotiations between the EU and other countries](#) – and are a particular priority for the EU.

These draft Regulations, if approved, would replace the [EU Legislation \(Geographical Indications - Wines and Spirits\) \(Jersey\) Order 2016](#) which made provision for the enforcement of EU legislation, particularly in a TRIPS context, recognising geographical indications in respect of wines and spirits. This enhanced protection would better enable Jersey to participate in any trade agreement reached between the UK and EU, if Jersey chooses to so, by enabling Jersey to recognise and protect those GIs given protection across the EU in reference to the Withdrawal Agreement.

Financial and manpower implications

There would be no additional resource implications as a result of the adoption of these draft Regulations.

EXPLANATORY NOTE

These Regulations, if made, would provide for the enforcement in Jersey of certain provisions of 4 EU Regulations (the “EU Regulations”) that recognise geographical indications for goods in the European Union and which the United Kingdom will continue to recognise after it has left the European Union. They would also replace the EU Legislation (Geographical Indications – Wines and Spirits) (Jersey) Order 2016 which made provision for the enforcement of EU legislation recognising geographical indications in respect of wines and spirits.

Regulation 1 contains definitions, in particular defining which provisions of the EU Regulations have effect in Jersey.

Regulation 2 provides that the EU Regulations have effect in Jersey for the purpose of enforcing the recognition of geographical indications, designations of origin, the traditional speciality guaranteed or the traditional terms for wine protected by the EU Regulations.

Regulation 3 places a duty on customs officers to enforce the EU Regulations. It also allows the Agent of the Impôts to require persons moving goods in or out of Jersey to provide information necessary to ensure compliance with the EU Regulations and to produce documents. It also allows customs officers to disclose information for the purposes of EU Regulations or these Regulations.

Regulation 4 provides for customs officers to enter and search premises, including with a warrant, and sets out the powers customs officers have when entering and searching premises.

Regulation 5 makes provision for customs officers and police officers to stop and search vehicles.

Regulation 6 gives customs officers a power of arrest in relation to offences under these Regulations.

Regulation 7 makes provision for the forfeiture of goods that contravene the EU Regulations and allows their seizure and detention.

Regulation 8 introduces the Schedule which makes further provision in relation to forfeiture.

Regulation 9 prevents a successful plaintiff in proceedings relating to the seizure or detention of any goods under these Regulations from recovering damages or costs where the seizure or detention was reasonable. However, this does not affect the right of a person to the return of the goods seized or detained or to compensation for their destruction or any damage to them.

Regulations 10 and 11 provide for various offences.

Regulation 10 sets out offences. *Regulation 10(1)* makes it an offence to contravene certain Articles of the EU Regulations and *Regulation 10(3)* makes it an offence to disclose certain information. A person who commits an offence under those provisions is liable to an unlimited fine. *Regulation 10(2)* makes it an offence to obstruct an officer, fail to provide information or documents or provide false or misleading information. A person who commits such an offence is liable to imprisonment for up to 2 years, an unlimited fine, or both.

Regulation 11 contains provision for the liability of directors etc.

Regulation 12 repeals the EU Legislation (Geographical Indications – Wines and Spirits) (Jersey) Order 2016.

Regulation 13 provides the name by which these Regulations are known and that they come into force 7 days after they are made.



Jersey

DRAFT GEOGRAPHICAL INDICATIONS (JERSEY) REGULATIONS 202-

Contents

Regulation

1	Interpretation.....	9
2	Protection of geographical indicators.....	10
3	Enforcement.....	10
4	Powers to search premises.....	11
5	Power to search vehicles or vessels.....	11
6	Power of arrest.....	11
7	Seizure or detention of goods.....	12
8	Forfeiture and condemnation.....	12
9	Protection of officers in relation to seizure and detention.....	12
10	Offences and penalties.....	13
11	Offences by bodies corporate, etc.....	13
12	EU Legislation (Geographical Indications – Wines and Spirits) (Jersey) Order 2016 repealed.....	14
13	Citation and commencement.....	14

SCHEDULE **15**

FORFEITURE		15
1	Notice of seizure.....	15
2	Notice of claim.....	15
3	Condemnation.....	15
4	Proceedings for condemnation by court.....	16
5	Provisions as to proof.....	16
6	Special provisions as to certain claimants.....	16
7	Power of Minister to restore property.....	17

ENDNOTES **18**

Table of Endnote References.....	18
----------------------------------	----



Jersey

DRAFT GEOGRAPHICAL INDICATIONS (JERSEY) REGULATIONS 202-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Article 2 of the European Union Legislation (Implementation) (Jersey) Law 2014¹ –

1 Interpretation

- (1) In these Regulations –
- “2012 Regulation” means Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1);
- “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 (OJ L 347, 20.12.2013, p. 671);
- “2014 Regulation” means Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and protection of geographical indications of aromatised wine products (OJ L 84, 20.3.2014, p. 14);
- “2019 Regulation” means Regulation 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages (OJ L 130, 17.5.2019, p. 1);
- “EU Regulations” means –
- (a) Articles 13(1), 14, 24(1), 36(3), 44(1) and 45(1)(b) of the 2012 Regulation;
 - (b) Articles 100(3), 101, 102, 103(2), 113(1) and (2) and 157(1)(c)(x) of the 2013 Regulation;
 - (c) Articles 19 and Article 20(2) of the 2014 Regulation;
 - (d) Articles 21(2) and 36 of the 2019 Regulation;
- “Minister” means the Minister for Home Affairs.

- (2) In these Regulations –
 - (a) terms that are used and defined in an EU Regulation have the same meaning as in that Regulation; and
 - (b) words or phrases used in these Regulations have the same respective meanings as in the Customs and Excise (Jersey) Law 1999².
- (3) For the purpose of applying the EU Regulations –
 - (a) in Article 14(2) of the 2012 Regulation, Article 19(2) of the 2014 Regulation and Article 36(2) of the 2019 Regulation –
 - (i) the reference to territory of the Union is to be read as including Jersey, and
 - (ii) the date is to be read as the later of the date of the submission of the application to the Commission and when the European Union (Jersey) Law 1973³ is repealed; and
 - (b) in Article 102(2) of the 2013 Regulation –
 - (i) the reference to territory of the Union is to be read as including Jersey, and
 - (ii) the reference to 1 January 1996 is to be read as a reference to when the European Union (Jersey) Law 1973 is repealed if later than the date of the protection of the designation of origin or geographical origin.

2 Protection of geographical indicators

The EU Regulations have effect in Jersey to protect the geographical indications, designations of origin, the traditional specialty guaranteed or the traditional terms for wine protected by those EU Regulations.

3 Enforcement

- (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, or movement in or out of Jersey, of goods –
 - (a) to furnish, in such form as the Agent may require, such information as, in the Agent's opinion, is 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 goods.
- (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 these Regulations; or
 - (b) assisting equivalent law enforcement functions in any other jurisdiction.

4 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 these Regulations.
- (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 goods liable to forfeiture under these Regulations are kept or concealed in any premises, the Bailiff or Jurat may grant a warrant authorising any officer, any police officer or any other person named in the warrant to enter and search the premises 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 these Regulations;
 - (e) undertake an inventory of goods and of anything that may be used in their preparation; and
 - (f) purchase or take samples of any goods and of anything that may be used in their preparation.
- (4) An officer who has procured a sample of any goods, 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 officer entering any premises by virtue of this Regulation may be accompanied by such other person as the officer considers necessary.

5 Power to search vehicles or vessels

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

6 Power of arrest

An officer may arrest any person who has committed, or whom there are reasonable grounds to suspect of having committed, any offence under these Regulations.

7 Seizure or detention of goods

- (1) Any goods that contravene the EU Regulations are liable to forfeiture under these Regulations and may be seized or detained by any officer or police officer.
- (2) Where any goods are seized or detained by a police officer under paragraph (1), the police 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 these Regulations, 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 goods 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 goods seized or detained; and
 - (b) permit any officer to examine them at any time while they remain in the custody of the police.

8 Forfeiture and condemnation

- (1) The Schedule makes provision for the purpose of forfeitures, and of proceedings for the condemnation of any goods as being forfeited, under these Regulations.
- (2) Subject to Regulation 7 and the Schedule, any goods seized or detained under these Regulations 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.

9 Protection of officers in relation to seizure and detention

- (1) Where, in any proceedings for the condemnation of any goods seized as liable to forfeiture under these Regulations, 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 goods under these Regulations 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 goods 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 signed by the Judicial Greffier.

10 Offences and penalties

- (1) A person commits an offence and is liable to a fine if the person contravenes any of the following –
- (a) Article 13(1) of the 2012 Regulation;
 - (b) Article 24(1) of the 2012 Regulation;
 - (c) Article 103(2) of the 2013 Regulation;
 - (d) Article 113(2) of the 2013 Regulation;
 - (e) Article 20(2) of the 2014 Regulation;
 - (f) Article 21(2) of the 2019 Regulation.
- (2) A person commits an offence, and is liable to imprisonment for a term of 2 year and to a fine, if the person –
- (a) intentionally obstructs an officer acting in the execution of the EU Regulations or these 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) A person commits an offence and is liable to a fine if that person discloses any information received from an officer under Regulation 3(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 Regulation 3(3); and
 - (c) the Agent of the Impôts has not given 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.

11 Offences by bodies corporate, etc.

- (1) In this Regulation –
- “relevant offence” means an offence under these Regulations that is committed by a limited liability partnership, a separate limited partnership, an incorporated limited partnership or another body corporate;
- “relevant person” means –

- (a) if the relevant offence is committed by a limited liability partnership, a partner of the partnership;
 - (b) if the relevant offence is committed by a separate limited partnership or an incorporated limited partnership –
 - (i) a general partner, or
 - (ii) a limited partner who is participating in the management of the partnership;
 - (c) if the relevant offence is committed by a body corporate other than an incorporated limited partnership –
 - (i) a director, manager, secretary or other similar officer of the body corporate, and
 - (ii) if the affairs of the body corporate are managed by its members, a member who is acting in connection with the member's functions of management; and
 - (d) a person purporting to act in any capacity described in subparagraphs (a) to (c) in relation to the partnership or body that commits the relevant offence.
- (2) If a relevant offence is proved to have been committed with the consent or connivance of a relevant person, that relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (3) Paragraph (4) applies if a relevant offence –
- (a) is an offence that may be committed by neglect; and
 - (b) is proved to be attributable to any neglect on the part of a relevant person.
- (4) The relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

12 EU Legislation (Geographical Indications – Wines and Spirits) (Jersey) Order 2016 repealed

The EU Legislation (Geographical Indications – Wines and Spirits) (Jersey) Order 2016⁴ is repealed.

13 Citation and commencement

These Regulations may be cited as the Geographical Indications (Jersey) Regulations 202- and come into force 7 days after they are made.

SCHEDULE

(Regulation 8)

FORFEITURE

1 Notice of seizure

- (1) The Minister or the Agent of the Impôts must give notice of the seizure of goods 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 of –
 - (a) the person whose offence or suspected offence occasioned the seizure;
 - (b) the owner or any of the owners of goods seized or the owner's servant or agent; or
 - (c) in the case of any goods seized in any ship or aircraft, 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 goods 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 authorised 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 goods 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 goods 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 in –
 - (a) the Petty Debts Court where the value of the goods 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 goods 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.
- (3) Where any requirement of this sub-paragraph (2) is not complied with, the court must give judgment for the Minister.
- (4) 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 goods 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 goods 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

- (1) This paragraph applies in respect of any goods that are, at the time of seizure, the property of –
 - (a) a body corporate;

- (b) 2 or more persons who are in partnership; or
 - (c) 6 or more persons who are not in partnership.
- (2) Where this paragraph applies, 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 authorised by, the claimant or owner may be taken or done by, or by any other person authorised by –
- (a) where the owner is a body corporate, the secretary or some duly authorised 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

Subject to any conditions that the Minister considers appropriate, the Minister may, if the Minister thinks fit, restore any goods that have under this Law been –

- (a) seized; or
- (b) forfeited otherwise than by order of a court.

ENDNOTES

Table of Endnote References

<u>1</u>	<i>chapter 17.245</i>
<u>2</u>	<i>chapter 24.660</i>
<u>3</u>	<i>chapter 17.210</i>
<u>4</u>	<i>R&O.120/2016 (chapter 17.245.65)</i>