

2023 No. 107

AGRICULTURE

FOOD

**The Alcoholic Beverages, Fruit and Vegetables (Miscellaneous
Amendment) (Scotland) Regulations 2023**

Made - - - - *23rd March 2023*

Coming into force - - *23rd April 2023*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 16(1)(e) of the Food Safety Act 1990(a) (as read with section 16(3A) of that Act), section 9(1) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020(b) and all other powers enabling them to do so.

So far as these Regulations are made in exercise of powers under the Food Safety Act 1990, the Scottish Ministers have had regard to relevant advice given by Food Standards Scotland in accordance with section 48(4A) of that Act(c).

In accordance with section 9(5) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020, the Scottish Ministers have consulted such persons as they consider are representative of the interests of persons likely to be affected by the regulations as they consider appropriate.

There has been consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(d).

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- (a) 1990 c. 16. Section 16(1) was amended by paragraph 8 of schedule 5 of the Food Standards Act 1999 (c. 28) (“the 1999 Act”). Section 16(3A) was inserted by section 174(1) of the Health and Care Act 2022 (c. 31). Amendments made by schedule 5 of the 1999 Act which extend to Scotland are to be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c. 46) (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions conferred on the Secretary of State under sections 16(1)(e) of the 1990 Act, so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not so transferred, and in so far as relating to food (including drink) including the primary production of food, those functions were transferred to the Scottish Ministers by S.I. 2005/849.
- (b) 2020 asp 17.
- (c) Section 48 was amended by section 4 of the Food (Scotland) Act 2015 (asp 1) (“the 2015 Act”), to substitute references to the Food Standards Agency for Foods Standards Scotland. Section 48(6) was inserted by paragraph 3 of the schedule of the 2015 Act, in its application to Scotland, to read references to the Food Standards Agency as references to Food Standards Scotland. Subsection (4A) was inserted by paragraphs 7 and 21 of schedule 5 of the 1999 Act.
- (d) EUR 2002/178, was incorporated into domestic law on IP completion day by section 3 of the European Union (Withdrawal) Act 2018 (c. 16) and amended by S.I. 2019/641 and S.I. 2022/377. S.I. 2019/641 came into force on IP completion day by virtue of paragraph 1(1) of schedule 5 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) and was amended before it came into force by S.I. 2020/1504.

In accordance with section 48(3C) of the Food Safety Act 1990(a) and section 9(4) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Alcoholic Beverages, Fruit and Vegetables (Miscellaneous Amendment) (Scotland) Regulations 2023 and come into force on 23 April 2023.

(2) These Regulations extend to Scotland only.

Commission Implementing Regulation (EU) No 543/2011

2.—(1) Article 11(1) (conformity checks) of Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors(b) is amended as follows.

(2) For “Regulation (EC) 1308/2018” substitute “Regulation (EU) No 1308/2013(c)”.

(3) At the end insert as new paragraphs—

“The criteria to assess the risk shall include the existence of a conformity certificate referred to in Article 14 issued by a competent authority of a third country where the conformity checks have been approved pursuant to Article 15. The existence of such certificate shall be considered as a factor reducing the risk of non-conformity.

The criteria to assess the risk may also include:

- (a) the nature of the product, the period of production, the price of the product, the weather, the packing and handling operations, the storage conditions, the country of origin, the means of transport or the volume of the lot;
- (b) the size of the traders, their position in the marketing chain, the volume or value marketed by them, their product range, the delivery area or the type of business carried out such as storage, sorting, packing or sale;
- (c) findings made during previous checks including the number and type of defects found, the usual quality of products marketed, the level of technical equipment used;
- (d) the reliability of traders’ quality assurance systems or self-checking systems related to the conformity to marketing standards;
- (e) the place where the check is carried out, in particular if it is the point of first entry into Great Britain, or the place where the products are being packed or loaded;
- (f) any other information that might indicate a risk of non-compliance.”.

Regulation (EU) No 1169/2011 of the European Parliament and of the Council

3. In Annex 12 (alcoholic strength) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers(d), after the first paragraph insert—

“In relation to a beverage marketed in Scotland to which the first paragraph applies, the second sentence of that paragraph is to be read as if at the end there were inserted ‘, or the figure may be followed by ‘% alc/vol’.”.

(a) Section 48(3C) was inserted by section 174(2)(b) of the Health and Care Act 2022 (c. 31).
(b) EUR 2011/543, amended by S.I. 2019/822 and prospectively amended by S.S.I. 2022/361. There are other amendments not relevant to these Regulations.
(c) EUR 2013/1308, amended by S.I. 2019/821 and S.I. 2019/831 and prospectively amended by S.S.I. 2022/361. There are other amendments not relevant to these Regulations.
(d) EUR 2011/1169, to which there are amendments not relevant to these Regulations.

Commission Delegated Regulation (EU) 2019/33

4.—(1) Commission Delegated Regulation (EU) 2019/33 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^(a) is amended as follows.

(2) In Article 44 (actual alcoholic strength)—

(a) after the first paragraph insert—

“In relation to a product marketed in Scotland to which the first paragraph applies, that paragraph is to be read as if for ‘in percentage units or half units’ there were substituted ‘to not more than one decimal place’.”

(b) after the third paragraph (taking into account the paragraph inserted by sub-paragraph (a)) insert—

“In relation to a product marketed in Scotland to which the third paragraph applies, the first sentence of that paragraph is to be read as if at the end there were inserted ‘, or the figure may be followed by ‘% alc/vol’.”

(3) After Article 50(1) (name of wine grape variety) insert—

“1a. In relation to a grapevine product marketed in Scotland to which paragraph 1(a)(ii) applies, the first subparagraph of point (ii) is to be read as if, in the words before the first indent, for ‘100 %’ there were substituted ‘at least 95%’.”

St Andrew’s House,
Edinburgh
23rd March 2023

MAIRI GOUGEON
A member of the Scottish Government

(a) EUR 2019/33, amended by S.I. 2020/1637. There are other amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments in relation to the labelling of alcoholic beverages marketed in Scotland. They also correct minor errors in Article 11(1) of Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (EUR 2011/543).

Regulation 2 amends Article 11(1) of EUR 2011/543, to correct minor errors introduced by amendments contained in regulation 5(5) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022. Regulation 2 corrects a cross-reference and reinstates paragraphs of Article 11(1) which were omitted in error.

Regulation 3 amends Annex 12 to Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers (EUR 2011/1169) to enable an alternative indicator (“% alc/vol”) to be used (instead of one of the other specified indicators) with a figure indicating the actual alcoholic strength of a beverage to which that Annex applies.

Regulation 4(2) amends Article 44 of Commission Delegated Regulation (EU) 2019/33 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 (EUR 2019/33) (“Regulation (EU) 2019/33”)—

- (a) to require the actual alcoholic strength of wine and certain other wine sector products to be indicated to a figure of not more than one decimal point (instead of a requirement that the indication be given in percentage units or half units);
- (b) to enable an alternative indicator (“% alc/vol”) to be used (instead of one of the other specified indicators) with a figure indicating the actual alcoholic strength of wine and certain other wine sector products to which Article 44 applies.

Regulation 4(3) amends Article 50(1) of Regulation (EU) 2019/33 to enable wine and certain other wine sector products on the labels of which two or more wine grape varieties (or their synonyms) are named to be marketed in Scotland where at least 95% of the product (reduced from 100%) has been made from those varieties. This is subject to compliance with existing labelling requirements relating to the naming of those varieties in Article 50(1).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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