

EXPLANATORY MEMORANDUM TO
THE COMMON AGRICULTURAL POLICY (WINE) (ENGLAND AND
NORTHERN IRELAND) (AMENDMENT) REGULATIONS 2006

2006 No. 1499

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Statutory Instrument allows for the Food Standards Agency (FSA) to be designated as the competent authority for the enforcement of CAP wine rules.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 CAP wine rules are directly applicable in Member States. Provision for their enforcement in England and Northern Ireland is provided for in the CAP (Wine) (England and Northern Ireland) Regulations 2001 (the “principal regulations”), as amended by 2003, 2004 and 2005 wine amendment regulations. The Scottish Parliament and Welsh Assembly make parallel regulations.

4.2 Under the CAP wine rules Member States must appoint a competent authority to enforce the regulations. The Wine Standards Board (WSB) has been designated this role in the UK, although local authorities and HM Revenue and Customs also have certain enforcement powers too. It is a controlled NDPB, which prior to 1 April 2006 was funded by Defra (75%) and the Vintners’ Company (25%). However, from 1 April Vintners’ funding ceased meaning the WSB is now 100% Defra funded. It has a Board of 6 members (1 ex-officio from Defra, 1 ex-officio from the Vintners’ Company and 4 independent members including a Chairman).

5. Extent

5.1 This instrument applies to England and Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 In his report to the Chancellor, Philip Hampton recommended that the enforcement landscape should be simplified; in particular 31 enforcement bodies should be reduced to 7. As part of this the FSA should be expanded to include the work of the WSB. The Government responded in March 2005 accepting the report's recommendations. Since then we have been working with the FSA and WSB to implement the merger. A key step is to amend the wine SI to make FSA the competent authority instead of the WSB, which would cease to exist. Another key step is to align the existing appeals' procedures (which apply when a notice is issued prohibiting producers, traders or wholesalers from moving the wine as a result of a breach of the wine rules and when a request for consent to move such wine is refused) to bring it into line with those currently used by the FSA in its enforcement activities. Officials in the devolved administrations and the Food Standard Agency, have agreed the attached draft amending SI would achieve both of these aims. The WSB will be wound up and removed from the Register of Companies after its accounts have been finalised. Staff and any assets required by the FSA will be transferred by way of a Transfer Agreement to the FSA. Any surplus assets will be disposed of in accordance with Departmental guidelines. It is not anticipated that there will be any significant surplus assets.

7.2 The 2006 amendment regulations are being made under Section 2(2) of the European Communities Act 1972. As with the principal regulations, they will apply to both England and Northern Ireland but will be made by Lord Rooker as sole signatory in accordance with DARDNI's request. Negative resolution procedure applies. Scotland and Wales will be making their own Statutory Instruments using their devolved powers.

7.3 EU regulations oblige member states to publicly consult on proposed amendments to food law. As Defra result we undertook a 12-week public consultation on the draft SI and partial Regulatory Impact Assessment, in line with Government better regulation policy. The consultation period came to an end on 10 March. As a result we had four responses the most substantive of which was from the United Kingdom Vineyards Association (UKVA). The UKVA had concerns with the appeals procedure 'Review on Prohibitions etc' in regulation 10 - they felt it was more burdensome than the previous arrangement. Defra and the FSA met with the UKVA to discuss their concerns. As a result the 14 day time limit, contained in regulation 10(3), for within which a trader must request an appeal has been replaced with a 'long stop' period of 6 months, meaning that appeals must be brought as soon as possible but in any event not longer than 6 months. The UKVA is content with this amendment. The change has also been cleared with the other

affected trade association i.e. Wine and Spirits Trade Association, which submitted a nil return to the consultation.

7.4 The Regulatory Impact Assessment shows that the transfer of the WSB functions in the short term will not materially affect industry, although, in the long run the burden of enforcement activities should be reduced as inspections become fewer and there is greater emphasis on risk-based analysis. There should also be savings to Government, as the administrative overheads associated with enforcing wine law through a separate NDPB would be avoided. No comments were received in relation to the Regulatory Impact Assessment.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 There is no impact on the public sector.

9. Contact

Anil Kanani at the Department for Environment, Food and Rural Affairs Tel: 020 7238 6569 or e-mail: anil.kanani@defra.gsi.gov.uk can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT

1. TITLE OF PROPOSAL

Transfer of Wine Standards Board functions to the Food Standards Agency

2. PURPOSE AND INTENDED EFFECT

i. Objective

Amend the Common Agricultural Policy (Wine) (England and Northern Ireland) Regulations 2001 (SI) implementing the recommendation made by Philip Hampton in his report 'Reducing administrative burdens: effective inspection and enforcement', that the Food Standards Agency (FSA) should be expanded to include the functions of Wine Standards Board (WSB).

ii. Background

In 2004 Philip Hampton was asked to review the burden on business of regulatory inspection and enforcement, and to recommend how it could be reduced. The review consulted businesses, regulators and other stakeholders, and the final report was published at the time of the 2005 Budget.

In the final Hampton Report 'Reducing administrative burdens: effective inspection and enforcement' Philip Hampton made number of recommendations on improving regulatory process, including use of risk-based inspections and reducing 31 small regulators into 7 larger bodies. One of his recommendations was that the Food Standards Agency (FSA) should be expanded to incorporate the work of the Wine Standards Board (WSB) in respect of the quality, labelling and standards of wine sold in the UK. The policy functions on industry support will remain with Defra.

The Government accepted in full all the recommendations in the Hampton Report. Defra, the WSB and FSA have been working to implement the recommendation in relation to the work of the WSB. As a result The Common Agricultural Policy (Wine) (England and Northern Ireland) Regulations 2001 will need to be amended, as these regulations make the WSB responsible (with others) for the enforcement for the wine rules. References to the Wine Standards Board will need to be replaced with those of the Food Standards Agency.

In addition there will also be a need to change regulation 10, in relation to 'Review of prohibitions on Movement Orders'. This regulation sets out the procedures for reviewing any movement prohibition notice issued as a result of a breach of the wine regulations, and any refusal to give consent to move a product which is subject to such a notice. The previous review arrangements

need to be adjusted to fit the larger organisation of the FSA and the way it deals with such reviews in other areas of enforcement for which it is responsible. Essentially where a movement order is issued, or a request to move a controlled product is refused, it will be possible to ask the FSA to review whether the notice or decision should stand. Such requests will be considered by an independent person nominated by the FSA within 1 month. The list of nominated persons will be established in consultation with organisations appearing to represent the wine industry.

iii. Rationale for government intervention

The aim of the transfer of the WSB functions to the FSA is to reduce in the long term the burden on business. To implement Philip Hampton's recommendation it is necessary to amend the SI referred to above.

3. CONSULTATION

i. Within government

As part of the consultation process Defra has consulted on the amendment to the above SI and also on this Regulatory Impact Assessment. The organisations consulted are: the Devolved Administrations, the FSA and the WSB.

ii. Public consultation

As part of the consultation process Defra is consulting on the amendment to the above SI and also on this Regulatory Impact Assessment. The organisations being consulted are listed at the **Annex** to this document.

4. OPTIONS

i. Do nothing

The key aim of Philip Hampton's recommendation is to reduce the burden on the industry by carrying out targeted and risk based inspections and to simplify the enforcement regimes by reducing 31 small regulators into 7 larger ones. So doing nothing is not a feasible option as this will not reduce the burden on industry envisaged by Philip Hampton.

ii. Comply with Philip Hampton's recommendation

In view of the aims of the Hampton Review recommendation and the fact that the Government has already accepted this Review's recommendations in full, the only option is to comply with the Review's recommendation to expand the FSA to incorporate the work of the WSB. This will reduce the burden on the industry through risk-based and targeted inspections.

5. COSTS AND BENEFITS

i. Sectors and groups affected

The wine sector will be affected by the amendment. This includes wine producers in England, vineyard owners and operators, wholesales and traders in wine.

ii. Benefits

The transfer of WSB functions to the FSA will have short-term and long-term benefits to the industry. They will be dealing with a single organisation for inspection and enforcement purposes and in the long term they should see fewer, more target and risk-based inspections. Also there will be some savings to government as the overheads associated with A NDPB will cease once the transfer takes place.

iii. Costs

The cost of the benefits cannot yet be quantified as this will depend on the number of visits the FSA will carry out once the functions of the WSB has bedded into the way the FSA operate.

6. SMALL FIRMS IMPACT TEST

The amendment affects the transfer of work from a NDPB to an executive agency so this test is not appropriate.

7. COMPETITION ASSESSMENT

There is no impact on competition.

8. ENFORCEMENT, SANCTIONS AND MONITORING

The work on enforcement carried out by the WSB will be carried out by the FSA. The proposal does not therefore include any additional sanctions. It merely changes the enforcement body that will enforce the wine regulations in England and Northern Ireland.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible minister

Jeff Rooker

Minister of State

Department for Environment, Food and Rural Affairs

06 June 2006

List of consultees

United Kingdom Vineyards Association
Wine and Spirits Trade Association
HMRC
LACORS
National Farmers Union
National Consumer Council
Trading Standards Institute
Consumers Association
Chartered Institute of Environmental Health
Association of Port Health Authorities
Food and Drink Federation