

EXPLANATORY MEMORANDUM TO
THE COMMON AGRICULTURAL POLICY (WINE) (ENGLAND AND NORTHERN
IRELAND) (AMENDMENT) REGULATIONS 2007

2007 No. 1943

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 This Statutory Instrument (SI) adds four vine varieties to the list of those authorised for the production of wine in England and Northern Ireland, makes amendments to the analytical criteria for both the Quality and Regional Wine Schemes and updates the list of Community Provisions applicable for wine by adding those that have come into force since the 2005 amending Statutory Instrument.

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

3.1 Proposals for reforming the CAP wine regime were published on 4 July 2007, and are planned to come into force on 1 August 2008. Implementation of the new wine regime in England and Northern Ireland will require the production of a completely new SI.

3.2 Taking into account the imminent changes to EU wine policy, and the fact that we have amended this SI on four previous occasions, we carefully considered the case for consolidating the legislation on this occasion, as would be the normal practice. However we feel in doing so, and thereby making two policy changes in quick succession, we would add unnecessarily to the administrative burden faced by the domestic wine industry (who are mostly SMEs). We also have a concern that such action may lead to increased confusion among enforcement bodies. Overall, therefore, we consider that given the minor and overall positive nature of the changes in this legislative amendment that we should further amend the current regulations as necessary until such time as we are ready to implement the new EU wine policy.

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, 2005 and 2006 amendment regulations. The Scottish Parliament and Welsh Assembly make parallel regulations. Responsibility for enforcement of the CAP Wine Rules in the UK falls to the Food Standards Agency, although local authorities and HM Revenue and Customs also have certain enforcement powers.

4.2 The CAP Wine Regulations also lay down the criteria of the UK Quality and Regional Wine Schemes. These Schemes were introduced to help market the best English and Welsh wines. Wines submitted to the Quality Wine Scheme must meet strict criteria covering demarcation of production areas, vine varieties, winemaking methods and maximum yields. They are also subject to an analytical test assessing physical and chemical components of the wine, as well as an organoleptic test (or ‘tasting’). English wines meeting these strict criteria can show the phrase on their label ‘English Vineyards Quality Wine psr’. In order to gain Regional Wine status, wines must meet certain analytical and organoleptic criteria, but the rules are less strict on use of vine varieties.

5. Territorial Extent and Application

5.1 This instrument applies to England and Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

7.1 Following a public consultation and discussions with the United Kingdom Vineyards Association (UKVA - the main trade association representing UK vineyards) and the Food Standards Agency, we are amending the 2001 Regulations to reflect advancements in the UK wine industry, both in terms of wine making techniques and new vine varieties. We are also taking the opportunity to update the Regulations to take account of changes in the underlying Community legislation. A summary of the amendments and the reason for each is below.

7.2 Update Schedule 3 on vine varieties authorised for the production of wine in England and Northern Ireland

Schedule 3 of the 2001 CAP Wine Regulations provides a list of vine varieties that may be used in wine production in England and Northern Ireland. Following producers’ practical experience of growing a number of experimental vine varieties, we are adding the varieties “Frühburgunder”, “Acolon”, “Cabernet Sauvignon” and “Merlot” to the list. The wine industry has provided us with data on the viability of these varieties being grown in the UK and their potential to produce commercially viable wine, with which we are content.

7.3 Deletion of the minimum analytical criterion covering the level of free sulphur dioxide for the UK Quality Wine Scheme

We are deleting the minimum free sulphur dioxide criterion contained in the analysis requirements for the UK Quality Wine Scheme (QWS). Although no minimum level is set by EU legislation, this criterion was included at the industry’s request when the QWS was set-up in order to help safeguard the long term stability of wines. However, the increase in skills and technological advancement within the industry means that this requirement is no longer considered relevant, particularly as many producers are seeking to minimise the use of sulphur dioxide because of the allergenic affects. Deleting the

minimum free sulphur dioxide criterion is a deregulatory measure, which would allow producers greater flexibility in deciding how they produce their product.

7.4 Deletion of the test covering the level of sugar free dry extract/total dry extract from the analysis requirements for the UK Quality and Regional Wine Schemes

We are deleting the test for sugar free dry extract/total dry extract from the analysis requirements for the UK Quality and Regional Wine Schemes. This was also introduced at the inception of the schemes, although no minimum is set at EU level. We agree with the UKVA that deregulatory action to remove the test should now be taken in view of the fact that this has no bearing on the quality of the product.

7.5 Updating Schedule 1 containing a list of Community Provisions applicable for wine by adding those that have come into force since the 2005 amending SI

This amendment includes minor changes which would update the Schedule containing a list of Community Provisions applicable for wine which have come into force since the Common Agricultural Policy (Wine) (England and Northern Ireland) (Amendment) Regulations 2005. Although these regulations are directly applicable in the UK, this would allow for their enforcement. The amendments are technical issues and have no adverse impact to the UK wine industry. They also include several trade agreements with third countries designed to facilitate improved wine trade conditions with these countries. This is a routine amendment which is normally carried out whenever the Regulations are being amended.

7.6 The 2007 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. Wales will be making their own Statutory Instrument. Scotland does not have a production industry and so plan to make these amendments as part of their consolidation exercise following the adoption of the reformed wine regime.

7.7 EU regulations oblige member states to publicly consult on proposed amendments to food law. As a result Defra undertook an 8 week public consultation on the draft Statutory Instrument and partial Regulatory Impact Assessment (RIA), in line with Government better regulation policy. This was a joint consultation exercise with the Welsh Assembly Government. The consultation period for this exercise was reduced from the standard 12 week period. The RIA shows that we do not expect the impact of these changes to be significant and that the amendments in relation to the analytical criteria for the Quality and Regional Wine Schemes are essentially deregulatory. In addition the change in analytical criteria, the additional vine varieties were requested by industry. As explained in the RIA in order to gain Regional or Quality wine status a wine has to pass set analytical criteria and also pass an organoleptic test. As these organoleptic tastings have already been set for 2007 the earlier these amendments come into force the more opportunity producers have to take advantage of them. It is for these reasons we secured Ministerial agreement to shorten the consultation period.

7.8 The consultation period came to an end on 24 May. As a result we had two responses, the most substantive of which was from the UKVA, which agreed with our

proposed amendments. No comments were received in relation to the RIA. A summary is available on the [Defra website](#).

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

Robin Manning at the Department for Environment, Food and Rural Affairs, tel 020 7238 1123 or email robin.manning@defra.gsi.gov.uk can answer any queries regarding this instrument.

Department for Environment, Food and Rural Affairs
Regulatory Impact Assessment: 2007 Amendment to the 2001 Cap Wine Regulations

1. Title of proposal

The Common Agricultural Policy (Wine) (England and Northern Ireland) (Amendment) Regulations 2007.

2. Purpose and intended effect

2.1 Objective

Amend the Regulations listed above to:

- Update Schedule 3 on vine varieties authorised for the production of wine in England and Northern Ireland;
- Delete the minimum analytical criterion covering the level of free sulphur dioxide for the UK Quality Wine Scheme;
- Delete the test covering the level of sugar free dry extract/total dry extract from the analysis requirements of the UK Quality and Regional Wine Schemes; and
- Update Schedule 1 containing a list of Community Provisions applicable for wine by adding those that have come into force since the 2005 amending SI for England and Northern Ireland.

2.2 Background

The rules in relation to the EU Common Agricultural Policy for wine (CAP) 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 Scottish Parliament and Welsh Assembly make parallel regulations.

The CAP Wine Regulations also lay down the criteria for the UK Quality and Regional Wine Schemes. These Schemes were introduced to help market the best English and Welsh wines. Wines submitted to the Quality Wine Scheme must meet strict criteria covering demarcation of production areas, vine varieties, winemaking methods and maximum yields. They are also subject to an analytical test assessing physical and chemical components of the wine, as well as an organoleptic test (or 'tasting'). English wines meeting these strict criteria can show the phrase on their label 'English Vineyards Quality Wine psr'. In order to gain Regional Wine status, wines must meet certain analytical and organoleptic criteria, but the rules are less strict on use of vine varieties.

Following discussions with the United Kingdom Vineyards Association (UKVA - the main trade association representing UK vineyards) and the Food Standards Agency, we propose to amend the 2001 Regulations to reflect advancements in the UK wine industry, both in terms of wine making techniques and new vine varieties. We are also taking the opportunity to update the Regulations to take account of changes in the

underlying Community legislation. A summary of the proposed amendments and the reason for each proposal is below.

Proposal 1: Update Schedule 3 on vine varieties authorised for the production of wine in England and Northern Ireland

Schedule 3 of the 2001 CAP Wine Regulations provides a list of vine varieties that may be used in wine production in England and Northern Ireland. Following producers' practical experience of growing a number of experimental vine varieties, we propose adding the varieties "Frühburgunder", "Acolon", "Cabernet Sauvignon" and "Merlot" to the list. The wine industry has provided us with data on the viability of these varieties being grown in the UK and their potential to produce commercially viable wine, with which we are content. One point to note in terms of the variety "Frühburgunder" is that this is a protected vine variety under Annex II of Commission Regulation (EC) No 753/2002 laying down the detailed wine labelling rules, as it contains a geographical indication (GI). What this means is that UK producers would not be able to use this name on wine labels, but could use the synonym "Pinot noir précoce".

Proposal 2: Deletion of the minimum analytical criterion covering the level of free sulphur dioxide for the UK Quality Wine Scheme

We propose deleting the minimum free sulphur dioxide criterion contained in the analysis requirements for the UK Quality Wine Scheme (QWS). Although no minimum level is set by EU legislation, this criterion was included at the industry's request when the QWS was set-up in order to help safeguard the long term stability of wines. However, the increase in skills and technological advancement within the industry means that this requirement is no longer considered relevant, particularly as many producers are seeking to minimise the use of sulphur dioxide because of the allergenic affects. Deleting the minimum free sulphur dioxide criterion is a deregulatory measure, which would allow producers greater flexibility in deciding how they produce their product.

Proposal 3: Deletion of the test covering the level of sugar free dry extract/total dry extract from the analysis requirements for the UK Quality and Regional Wine Schemes

We propose deleting the test for sugar free dry extract/total dry extract from the analysis requirements for the UK Quality and Regional Wine Schemes. As with proposal 2, this was introduced at the inception of the schemes, although no minimum is set at EU level. We agree with the UKVA that deregulatory action to remove the test should now be taken in view of the fact that this has no bearing on the quality of the product.

Proposal 4: Updating Schedule 1 containing a list of Community Provisions applicable for wine by adding those that have come into force since the 2005 amending SI

This amendment includes minor changes which would update the Schedule containing a list of Community Provisions applicable for wine which have come into force since the Common Agricultural Policy (Wine) (England and Northern Ireland) (Amendment) Regulations 2005. Although these regulations are directly applicable in the UK, this would allow for their enforcement. The amendments are technical issues and have no

adverse impact to the UK wine industry. They also include several trade agreements with third countries designed to facilitate improved wine trade conditions with these countries. This is a routine amendment which is normally carried out whenever the Regulations are being amended.

The amendments in proposals 1 to 3 would be applicable to applications under the Quality and Regional Wine Schemes after the coming into force date of the amending Statutory Instrument.

2.3 Rationale for government intervention

Defra supports these proposed amendments which are deregulatory and provide more flexibility within the analytical criteria under the UK Quality and Regional Wine Schemes, and within the list of vine varieties for which applications under the Schemes can be made. We are also required to add relevant community legislation to the list at Schedule 1 to allow for its enforcement in England and Northern Ireland. There will be no risk to the public from these proposed amendments and consumers will not be adversely affected.

3. Consultation

3.1 Within Government

As part of the consultation process Defra has consulted on the amending Statutory Instrument and the Regulatory Impact Assessment (RIA). The Government organisations consulted were the Food Standards Agency and the Devolved Administrations.

3.2 Public consultation

As part of the consultation process Defra has undertaken a joint public consultation with the Welsh Assembly Government on the amending Statutory Instrument and the RIA. The consultation period was reduced to 8 weeks with Ministerial agreement as we do not expect the impact of these changes to be significant and that the amendments in relation to the analytical criteria are essentially deregulatory. In addition the change in analytical criteria, the additional vine varieties were requested by the industry. Further to this, the organoleptic tastings under the Regional and Quality Wine Schemes have already been set for 2007 and so the earlier these amendments come into force the more opportunity producers have to take advantage of them.

The consultation period came to an end on 24 May. As a result we had two responses, the most substantive of which was from the UKVA, which agreed with our proposed amendments. No comments were received in relation to the RIA. A summary is available on the Defra website at <http://www.defra.gov.uk/corporate/consult/capwinereg-amend/summary-responses.pdf>.

4. Options

- **Option 1 – Do nothing**

This would lead to the status quo being maintained and would put those producers growing the additional experimental vine varieties at a disadvantage as they would not be able to apply for quality or regional wine status and if successful market their wines as such. This would also restrict those producers wishing to plant these varieties from doing so knowing they could not produce quality or regional wine from them. It would also limit the scope for producers to minimise use of sulphur dioxide in wine production, which adds to their costs whilst also increasing the allergenic properties of certain wines.

As noted in paragraph 2.3 we are required to add relevant legislation that has been agreed at EU level to the list at Schedule 1 in order to enforce these provisions in England and Northern Ireland. Were this not to be done, we would be in breach of Community obligations to apply and provide for the enforcement of EU wine law.

- **Option 2 – Make the amendments proposed**

By making these amendments, producers would be given greater flexibility to plant vine varieties of their choice, and maintain their right for entry into the quality and regional wine schemes. They would also have the flexibility to use lower levels of free sulphur dioxide, a known allergen. In addition by deleting the test for sugar free dry extract/total dry extract from both Schemes, which is not an indicator of quality, producers would not be risking failure under this specific analytical test.

As noted in para 2.3 we are required to add relevant legislation that has been agreed at EU level to the list at Schedule 1 in order to enforce these provisions in England and Northern Ireland.

5. Costs and benefits

5.1 Sectors and groups affected

The amendments will affect the wine industry in England and Northern Ireland, with particular emphasis on providing more flexibility for wine producers (see section 4, option 2, for more details). Given the deregulatory nature of the proposals, Defra believes that the proposals will not give rise to any additional costs. We received no comments through the consultation in relation to this issue.

5.2 Benefits

The benefits will allow producers the flexibility to seek quality and regional wine status for wine made with the additional vine varieties, and producers would have the flexibility to achieve lower levels of free sulphur dioxide, which is a known allergenic. In addition by deleting the test for sugar free dry extract/total dry extract from both Schemes, which is not an indicator of quality, producers would not be risking failure under this specific analytical test.

5.3 Costs

We do not expect there to be any costs associated with the additional flexibility provided to producers. In fact there may well be some cost savings from these changes,

although these would not be possible to quantify. We received no comments during the consultation process in relation to costs.

6. Small Firms Impact Test

We do not believe that these amendments will have any negative impact on small businesses. The United Kingdom Vineyards Association (UKVA) has requested these amendments on behalf of their members which are all classed as SMEs. The wine trade are also largely made up of SMEs. We have consulted their trade body (Wine and Spirits Trade Association – WSTA) during the negotiation of the trade agreements added to Schedule 1. The WSTA's view is that traders will benefit from the improved transparency¹ brought about by the application of these agreements.

We welcome any comments from small businesses or representative organisations on these points if they feel that they or their representatives are likely to be adversely affected by these amendments.

7. Competition assessment

The competition filter test questions suggest that a simple competition assessment is sufficient, which suggests that the amending Statutory Instrument is likely to have little or no effect on competition.

The UK has a small domestic production industry concentrated in Southern England and Wales. There are currently 388 registered vineyards comprising 761 hectares, but only 295 (722 hectares) are in commercial production, with the remaining being mainly hobby vineyards. All vineyards in the UK can be considered as being small and medium sized enterprises (SMEs). The UKVA is the key representative for producers in the UK.

Although we are one of the smallest EU wine producers, the UK is the largest importer of wine in the EU. We are often considered to be the hub of the international trade in wine and as a result have a thriving industry connected to this stretching from the import and bottling of bulk wines through to being a world centre for the auctions of fine wines. It is estimated that there are many thousands of wine traders in total, ranging from large multinational businesses down to the single importer who works from home. Most of the UK's imports come from Europe, but in line with the current trend increasing imports from the so called "new world countries" such as Australia, Chile, New Zealand, South Africa and the US are eroding the EU's position. Australia has recently overtaken France as the major supplier to the UK market. English and Welsh wines account for less than 1% by volume of total wine sold in the UK.

The Wine and Spirits Trade Association (WSTA) is the main organisation representing the whole of the wine (and spirit) supply chain, which include producers (through its

¹ The UK is a large importer of third country wine. Given the backdrop of the current highly regulated and complex European wine regime, trade agreements with third countries are seen to be beneficial in facilitating improved trading conditions. The agreements can take many forms, from simply improving the tariff, to offering the mutual protection of GI or mutual acceptance of winemaking and marketing (labelling) practices.

affiliation to UKVA), importers, shippers, wholesalers, bottlers, warehouse keepers, freight forwarders, brand owners, licensed retailers and consultants.

8. Enforcement, sanctions and monitoring

The EU and UK wine rules require Member States to nominate specific bodies to be responsible for its enforcement. In the UK the primary body responsible for enforcing these rules at all levels except retail is the Food Standards Agency. At retail level, the rules are enforced by local authorities via Trading Standards arrangements.

This amending Statutory Instrument will not impose any additional sanctions.

9. Implementation and delivery plan

The proposed amendments would be implemented via an amending Statutory Instrument to come into force from 1 August 2007.

10. Post-implementation review

Defra will liaise with the Wine Standards Branch of the Food Standards Agency (main enforcement body) and with the United Kingdom Vineyards Association about the effectiveness of these changes as part of general stakeholder relations. In addition this will be reviewed in light of the consolidation exercise that will be needed post reform of the CAP wine regime.

11. Summary and recommendation

It is recommended that the proposed amendments are made (option 2). We do not expect there to be any costs associated with these amendments, and there may actually be some cost savings, although these would not be possible to quantify. We also do not expect there to be a negative impact on small businesses. The Department has consulted industry and other stakeholders and no concerns have been raised. Despite specifically requesting details in relation to costs and benefits no comments were received that added to our original assessment.

Summary costs and benefits table

| Option | Total benefit per annum: economic, environmental, social | Total cost per annum: - economic, environmental, social - policy and administrative |
|--------|--|--|
| 1 | No change | No change |
| 2 | As per 5.1 | As per 5.2 |
| 3 | | |
| 4 | | |

12. Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed ... Jeff Rooker.

Date: 5th July 2007

**Jeff Rooker
Minister of State (Lords)
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