

**EXPLANATORY MEMORANDUM TO
THE SCOTCH WHISKY REGULATIONS 2009**

2009 No. 2890

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. Purpose of the instrument

2.1 The Scotch Whisky Regulations 2009 (“*new Regulations*”) provide for the regulation of the manufacture, marketing, movement and labelling of Scotch Whisky.

2.2 The new Regulations will:

- (i) introduce and define 5 new categories of Scotch Whisky - Single Malt Scotch Whisky, Single Grain Scotch Whisky, Blended Malt Scotch Whisky, Blended Grain Scotch Whisky, and Blended Scotch Whisky
- (ii) Introduce rules on compulsory sales descriptions, use of distillery and distillers’ names, the use of traditional locality and regional names, use of maturation, age, and distillation statements
- (iii) Does not allow the use of ‘pure malt’ or derivations of this expression
- (iv) Allow transitional periods concerning packaging, advertising and promotion
- (v) Requires that the export of Single Malt Scotch Whisky must be bottled in Scotland, and other Scotch Whiskies must be wholly matured in Scotland first before export
- (vi) Provide for civil and criminal sanctions for infringement
- (vii) Repeal and replace the following existing national legislation:

The Scotch Whisky Act 1988

The Scotch Whisky (Northern Ireland) Order 1988.

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

3.1 The list of Scotch Whisky categories in regulation 3(2) is listed in conceptual order rather than alphabetical order.

4. Legislative Context

4.1 EC regulation No 110/2008 was adopted on 15 January 2008, came into force on 20 February 2008 and has applied from 20 May 2008. It replaces the two EC spirit drinks regulations, Council Regulation 1576/89 on the definition, description and presentation of spirit drinks, and Commission Regulation 1014/90 laying down detailed rules on the definition, description and presentation of spirit drinks.

4.2 The Spirit Drinks Regulations 2008 came into force on 16 January 2009 and put underpinning provisions in place to enforce the EC spirit drinks Regulation in the UK, which includes the protection of Scotch Whisky *per se*.

4.3 The new EC spirit drinks Regulation also allows Member States, in applying a quality policy, to lay down rules covering production, description, presentation and labelling which are stricter than those set out in the EC Regulation. This is exactly what the new Regulations do.

5. Territorial Extent and Application

5.1 United Kingdom.

6. European Convention on Human Rights

6.1 The instrument is subject to negative resolution procedure. It repeals primary legislation. In our view, the proposals are consistent with the Human Rights Act 1998.

7. Policy Background

- *What is being done and why?*

7.1 Scotch Whisky is a high value and quality product worth over £3bn per year in exports. The protection of its reputation is therefore very important for the UK economy, and also important for consumers who need to feel confident that the product they are buying is what it purports to be. The Scotch Whisky Regulations 2009, aim to protect consumers from deceptive practices, and encourage market transparency and fair competition. One of the problems facing the Scotch Whisky industry is where one category of Scotch Whisky is sold as another, for example a blended Scotch Whisky is sold as a Single Malt Scotch Whisky. Whilst existing EC and UK regulations protect Scotch Whisky *per se* they do not define the five different categories of Scotch Whisky, and therefore there are no bespoke legal requirements regulating how these different categories of Scotch Whisky should be made and marketed. This means that consumers cannot be sure how, for example, a Single Malt Scotch Whisky is made, since there is currently no legal definition for this Scotch Whisky category. The new Regulations will address this loophole and so ensure that consumers are not misled about the type of whisky they are buying. This situation can have a serious impact on the reputation of Scotch Whisky. The measures should thereby safeguard the reputation of the different Scotch Whisky categories, including by ensuring that traditional practices of production are set down in law.

7.2 The instrument is being made to ensure that:

- i) the objectives of the UK Scotch Whisky industry are met on enforcement and protect an important sector of the wider alcoholic drinks market by providing the option for both civil and criminal sanctions for breaches of the Regulations, which will be particularly important in relation to contraventions of a serious or persistent nature (details of these are set out in the Impact Assessment referred to in paragraph 10 below);
- ii) consumers are protected against fraudulently labelled products and so can be confident that what they are buying is what it says it is; and
- iii) we are providing for additional requirements that will apply to Scotch Whisky on top of the requirements of the EC spirit drinks Regulation (110/2008) as permitted by Article 6 of that Regulation. These requirements will be included in a technical file that the UK will submit in support of its application to permanently register Scotch Whisky as a protected geographical indication under EC Regulation 110/2008. This must be done by 20 May 2015.

- *Consolidation*

7.3 Not applicable.

8. Consultation Outcome

8.1 A consultation on these proposals was undertaken between 31 December 2007 and 25 March 2008. The consultation was posted on the Department's website. Devolved administrations, relevant trade associations, Local Authority Co-ordinators of Regulatory Services, private companies and individuals, consumer organisations and other government departments were all consulted. Copies were placed in the Department's library and also the libraries of both Houses of Parliament. A full

list of the organisations consulted, and a summary of responses, are attached as Annexes B and C. A paper explaining how the issues raised during the consultation have been dealt with is in preparation and will be made available to you as soon as possible.

9. Guidance

9. Guidance on the Scotch Whisky Regulations 2009 has been prepared and will be placed on the Defra website for the benefit of consumers and industry operators. The industry has been very closely involved in drawing up this Guidance throughout the drafting process, along with other interested parties such as HM Revenue and Customs, and the Local Authority Co-ordinators of Regulatory Services (LACORS).

10. Impact

10.1. An Impact Assessment is attached at Annex A.

11. Regulating small business

11.1 The legislation applies to small business. The Impact Assessment considered the effects on SMEs but it is not feasible to exempt them or apply different rules.

12. Monitoring and Review

12.1 The Regulations will be reviewed in three years.

13. Contact

13.1 Stuart Cooper at the Department for Environment, Food and Rural Affairs. Tel: 020 7238 3191 or email: stuart.cooper@defra.gsi.gov.uk can answer any queries you may have on this instrument.

SCOTCH WHISKY REGULATIONS 2009 IMPACT ASSESSMENT

Summary: Intervention & Options

Department /Agency: Defra	Title: The Scotch Whisky Regulations 2009	
Stage: Draft Final	Version: 9	Date: 3 June 2009
Related Publications: None		

Available to view or download at:

<http://www>

Contact for enquiries: Stuart Cooper or Anil Kanani

Telephone: 020 7238 3191/ 6569

What is the problem under consideration? Why is government intervention necessary?

Scotch Whisky is high value, high quality with strong branding, susceptible to imitation and counterfeiting. EC Spirit Drinks Regulation 110/2008 covering definition, description, presentation, labelling and protection of geographical indications ("GIs") which then benefit from World Trade Organisation's Trade Related Intellectual Property Rights (TRIPS) Agreement provisions, requiring each WTO Member to prevent misuse of GIs. The UK rules relating to the use of "Scotch Whisky" form the basis for its protection in overseas markets. The relevant market failure justifying action is asymmetric information. This occurs where consumers cannot distinguish between higher and lower quality products, resulting in the competitive erosion of higher quality products such as Scotch Whisky and incentives to fraudulent or deceptive market behaviour.

What are the policy objectives and the intended effects?

To secure the benefits of a tighter definition of different types of Scotch Whisky to improve consumer information and reduce the opportunity for imitation and fraud directly in the UK and indirectly in overseas markets.

What policy options have been considered? Please justify any preferred option.

1. Do nothing – i.e. maintain the *status quo*. This would allow existing rules on Scotch Whisky to form the basis of a geographical indication recognised at EU level, but would not secure the benefits of more detailed definitions.
2. Introduce more detailed legislation to define Scotch Whisky. This is the preferred option since it will achieve the policy objectives set out above and because it would provide stronger legal protection against imitation and fraud in both domestic and overseas

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

In 2012 and in 2013, once a number of the new rules have had time to bed down.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs

Signed by the responsible Minister:

Jim Fitzpatrick

..... Date: 26th October 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: UK legislation on enhancing the protection of Scotch Whisky

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Costs to industry mainly one-off, arising from labelling changes. Exporters of Single Malt Scotch Whisky in bulk for bottling abroad may incur additional annual costs by having to bottle in Scotland before export, but this is offset by the higher premium on such goods. Compulsory labelling costs unlikely until year 2 of new rules.
	One-off (Transition)	Yrs	
	£ 1 million	2	
	Average Annual Cost (excluding one-off)		
	£ Nil		Total Cost (PV) £ 1m
Other key non-monetised costs by 'main affected groups' There are unlikely to be any non-monetised costs.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Producers and consumers of Scotch Whisky. Key benefit: enhanced protection from measures to stop sale of counterfeit products, around 75m bottles per year. With dynamic benefits of strengthened legal definitions, benefits worth around £100m, but hard evidence so currently speculative sum.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£ 100m		Total Benefit (PV) £ 860m
Other key non-monetised benefits by 'main affected groups' (i) Enhanced reputation of Scotch Whisky worldwide, (ii) protection from unfair competition and (iii) consumers protected from misleading practices and counterfeit products. Industry, supported by Government, has sought specific definitions of Scotch Whisky in domestic legislation of other countries. Outside EU only a small number have such legislation (approx 20). Enforcement of more detailed Scotch Whisky rules through WTO, will achieve this UK policy objective.			

Key Assumptions/Sensitivities/Risks Evidence provided by Scotch Whisky Association (SWA) shows measures will impose minimal costs on industry and provide greater protection to consumers. There is uncertainty around value of benefits to producers and what constitutes a net benefit to the UK, since it's impossible to predict monetary value of (i) direct loss of sales, (ii) indirect loss of sales (damage to reputation), and (iii) damage to "Scotch Whisky" prevented by the measure. In its September 2008 issue, WIPO Magazine published a condensed version of research paper "Cost-Benefit Models of Stakeholders in the Global Counterfeiting Industry and Marketing Response Strategies". The original paper states "Although exact numbers are impossible to obtain, estimates of the extent of counterfeiting worldwide range from 5 to 10% of world trade."

Price Base Year 2007	Time Period Years Ten	Net Benefit Range (NPV) £ 0.5 bn - £2.4 bn	NET BENEFIT (NPV Best estimate) £859m
-------------------------	--------------------------	--	--

What is the geographic coverage of the policy/option?					UK
On what date will the policy be implemented?					November 2009
Which organisation(s) will enforce the policy?					Food Authorities
What is the total annual cost of enforcement for these organisations?					Yet to be determined
Does enforcement comply with Hampton principles?					Yes
Will implementation go beyond minimum EU requirements?					Yes – see evidence
What is the value of the proposed offsetting measure per year?					£ N/A
What is the value of changes in greenhouse gas emissions?					None
Will the proposal have a significant impact on competition?					No
Annual cost (£-£) per organisation (excluding one-off)		Micro [£]	Small [£]	Medium [£]	Large [£]
Are any of these organisations exempt?		No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£ NIL	Decrease of	£ NIL	Net Impact £ NIL

Key:

Annual costs and benefits: Constant Prices	(Net)
--	-------

BACKGROUND

1. Many spirit drinks made in Europe benefit from national legislation which defines the product and its characteristics, including materials and methods distinctive to the region of production. The EC Regulation provides an opportunity to revise and enhance the UK rules on Scotch Whisky to cover distinctive products and methods of production which have not previously been defined in legislation. Providing this strengthened legal basis will directly benefit domestic consumers. It will also indirectly benefit the marketing of Scotch whisky in overseas markets, so supporting an important UK export. The new UK legislation applies to Scotch Whisky which must be wholly distilled and matured in Scotland. The legislation goes beyond what is provided for in the (UK) Spirit Drinks Regulations 2008 which provide for the enforcement of EC spirit drinks Regulation No 110/2008 which covers spirit drinks at and above 15% alcohol by volume produced in the European Union (EU), spirit drinks sold within the EU but produced outside it, and spirit drinks exported from the EU.
2. The Scotch Whisky sector is important for consumers, producers and the agricultural sector in the UK. The measures set out in the Scotch Whisky Regulations are aimed at contributing to the attainment of a high level of consumer protection, the prevention of deceptive practices and the achievement of market transparency and fair competition.
3. By doing so, the measures are aimed at safeguarding the reputation which Scotch Whisky has built up both within the EU and overseas. This will be achieved by taking account of traditional practices used to produce Scotch Whisky and increased demand from industry and consumers for protection and information.
4. The majority view of the Scotch Whisky industry is that the approach we are adopting to implementing the extra provisions that they have requested is the right one, with most of the industry concerns addressed.
5. Scotch Whisky has over 30% of the UK market share of the spirit drinks sector, and is sold in over 180 countries worldwide.
6. Exports of Scotch Whisky were worth just over £3bn in 2008. Scotch Whisky's export performance (and that of the UK spirit drinks sector as a whole) is why the UK is the base for the world's largest spirits producer - **Diageo** (owner of **Johnnie Walker Red Label** whisky, and **Bell's** whisky) and why **Pernod Ricard** of France (owner of **Ballantine's** whisky and **Chivas Regal** whisky), also has a strong UK presence.
7. Broadly speaking, producers in the industry fall into two main groups namely (1) distillers of Scotch Whisky, the majority of whom are also brand owners engaged in the wholesale trade, and (2) non-distillers engaged in the wholesale trade, producing brands from Scotch Whisky distilled by companies in group (1). Whilst there are in the region of 90 producers in these two groups, the industry is highly concentrated, with the top 6 companies accounting for 87% of distilling capacity and worldwide case sales. **Diageo** is the industry leader, with a world market share of approximately 34% and 29 distilleries. **Pernod Ricard** is the second largest with a world market share of approximately 23% and 15 distilleries. According to research for the Scotch Whisky Association (SWA), over 7,000 people are directly employed in the industry and over £90 million worth of Scottish-grown cereals are used.

Relationship to existing EC Regulation

8. EC Regulation 110/2008 provides for the protection of the geographical indication (GI) Scotch Whisky and the enforcement of this Regulation is provided for in the UK through the Spirit Drinks Regulations 2008 which came into force on 16 January 2009. However, those laws do not define the different categories of Scotch Whisky, do not protect the regional names for Scotch Whisky, do not lay down specific labelling rules for Scotch Whisky, and do not address the risks to the GI involved in exporting Scotch Whisky in bulk. These are all matters which the industry wishes to see covered by legislation, and EC Regulation 110/2008 allows the United Kingdom to lay down national rules on these matters.

Rationale for Government intervention

9. One of the key principles of better regulation is that Government should only intervene where market forces either fail to operate efficiently (“market failure”) or cause significant adverse social or ethical effects. Market failure can provide a rationale for government intervention to correct or strengthen market mechanisms *cost-effectively* with potential gains in economic welfare.
10. One theoretical cause of market failure relevant to the sale of Scotch Whisky on domestic and export markets is asymmetric information between producers and consumers. If consumers cannot differentiate between the characteristics of high and low quality products, high quality producers will be unable to obtain a higher price for their products, and lower quality products will tend to proliferate. This problem is often corrected through the use of branding as a *signal* of quality and reputation. However this may not be possible where the quality is not specific to an individual producer, and where competitors can appropriate the branding. High quality products will therefore struggle to compete, even though consumers, if fully informed, would have been willing to pay for them.
11. This forms the legal and economic basis for geographical indications (“GI”) which increase product information, and prevent imitation and misuse. However, in the case of Scotch Whisky, current GI protection is insufficient to provide the safeguards against counterfeiting and fraud that the industry is calling for. The industry has demonstrated that it is necessary for government to introduce the proposals set out in this Impact Assessment since the industry’s own conventions cannot be enforced because they have no legal base. As a consequence, the different descriptors provided for the various categories of Scotch Whisky at present are confusing because they are applied inconsistently by the industry. This does not help the reputation of the industry. Furthermore, consumers are left confused about the products that they buy because of this inconsistent labelling approach by the industry.
12. The ability of producers to export Scotch Whisky, including high-quality Single Malt Whiskies which command a high retail value, in wooden casks which can lead to a deterioration in the product at various stages of its maturation and bottling process, or at worst adulteration, does not do anything to maintain the high reputation of a brand worth over £2.5 billion in exports.
13. Like most successful products, Scotch Whisky has many imitators. Where those imitators seek to trade unfairly on the reputation of Scotch Whisky, it is essential that the industry is protected against them. If that is not achieved, the industry risks losing market share to imitation products. The industry currently spends over £1.5 million per year taking action around the world to protect Scotch Whisky from such imitation.
14. For each bottle of counterfeit “Scotch Whisky” sold, there is potentially a corresponding lost sale of genuine Scotch Whisky. The extent of lost sales will be determined by the proportion of consumers that bought the offending product in the belief it was a genuine Scotch Whisky. It is assumed that where the counterfeit product is specifically

described as Scotch Whisky, the majority of consumers will have been deceived. Counterfeit Scotch Whiskies tend to be sold in most markets for the same price as genuine Scotch Whisky and through similar retail outlets. However, in a limited number of markets, products 'passed off' as Scotch Whisky are frequently sold at much lower prices than genuine Scotch Whisky, and it cannot be assumed that the consumer would have been deceived and would necessarily have bought a genuine product.

15. The growth in exports of Scotch Whisky in 2008 was particularly marked for both Malt and Blended Scotch Whisky. Single Malt Scotch Whisky is often regarded by consumers as the '*crème de la crème*' of Scotch Whiskies and is one of the whiskies which the industry in particular wishes to see better protected by the measures set out in this IA.
16. One of the particular problems that Scotch Whisky faces is that caused by its reputation as a quality product and the fact that it is mainly exported. Imitation and counterfeiting are particular problems for Scotch Whisky which the proposals outlined in this IA address.
17. EC and UK legislation currently protects Scotch Whisky as a geographical indication, based on the Scotch Whisky Act 1988 (the Act), the Scotch Whisky Order 1990 (the Order) and the Scotch Whisky (Northern Ireland) Order 1988. However, both these pieces of legislation pre-date the 1994 World Trade Organisation's Agreement on Trade Related Aspects of International Property Rights ("TRIPS") which defined GIs and provides for their international protection. The Act and the Order are based on a definition of Scotch Whisky dating back to 1969 and neither piece of legislation is formulated to take full advantage of the protection now afforded by TRIPS. In particular, neither the Act nor the Order goes as far as the industry wishes to go because neither currently provides for the enhanced protection that the SWA is asking for as set out in this IA.
18. For example, it is one of the requirements of TRIPS that the GI be protected in its country of origin. Many foreign courts do not understand the legal protection afforded to Scotch Whisky, mainly because the industry, when challenged abroad, is not able to produce a piece of legislation which specifically provides for the range of protection they seek. This is largely because much of the protection in the UK has hitherto been based on Finance Act legislation, the common law or trades descriptions legislation..
19. For these reasons, the UK government supports the industry in seeking enhanced protection which, because this will be set out in a specific piece of legislation called the Scotch Whisky Regulations 2009, will, it is believed, in the considerable experience of the industry, bring sufficient clarity and recognition to the legal protection afforded to Scotch Whisky, and enable the industry to fight against counterfeiting and adulteration in foreign courts more effectively than is possible at present.

What the Scotch Whisky Regulations 2009 will do

20. The seven measures set out below were chosen to address specific issues explained above. The specific measures and their intended effect are:

- i) **Restrictions on maturation** – the definition of Scotch whisky will be amended to make it clear that Scotch Whisky must be wholly matured in an excise warehouse in Scotland. At present, the Scotch Whisky Order 1990 and the Scotch Whisky (Northern Ireland) Order 1988 require that maturation takes place in an excise warehouse in Scotland, "the period of maturation being not less than 3 years". This has been

misinterpreted by some as meaning that Scotch Whisky must only be matured in an excise warehouse in Scotland for three years, and can be matured anywhere else after that. This has resulted in some operators exporting bulk Scotch Whisky in wooden casks to another country, where it continues to mature. Since maturation confers on the whisky its final character and definitive qualities, maturation abroad means that the whisky is no longer wholly produced in Scotland. This practice therefore undermines Scotch Whisky's GI status.

ii) Prohibition on bulk exports in wooden casks –this provision is a logical consequence of the requirement that all maturation must take place in an excise warehouse in Scotland. Currently, Scotch Whisky can be exported in bulk in wooden casks. Even if it were possible to exclude the period of maturation in transit, and even if the customer indicated that he intended to bottle the casks immediately on receipt, experience has shown that once the whisky is no longer under UK control it may be months or even years before it is bottled. Since the climatic conditions under which whisky is matured have a considerable effect on the final product, the quality of the product may be affected. By ensuring that exports in wooden casks are prohibited, the regulations will ensure that this sort of problem is avoided and that the quality and reputation of Scotch Whisky is maintained.

iii) Requirement for Single Malt Scotch Whisky to be bottled in Scotland – again this is about maintaining the quality and value of a premium product. The name Single Malt Scotch Whisky guarantees that the whisky is the produce of a single distillery and that the characteristics of the product are determined solely by the distillation techniques employed at that distillery and the subsequent maturation of the spirit. It is not possible, however, to determine by analysis whether a product labelled as “Single Malt Scotch Whisky” is the produce of a single distillery, or of more than one distillery. This can only be verified by the UK authorities from the relevant records. Where Single Malt Scotch Whisky is exported in bulk and bottled abroad, however, UK authorities have no access to the bottlers records and the guarantee implicit in the name “Single Malt Scotch Whisky” cannot be verified. Moreover, Scotch Whisky exported in bulk and bottled abroad is frequently subject to bottling practices which change the character of the spirit. As noted above, an essential part of the premium quality of Single Malt Scotch Whisky is that its characteristics are determined by the distillery at which it was distilled and its subsequent maturation in Scotland. This can be contrasted with blended whiskies, the character of which is determined at the blending stage, which may take place abroad. Examples of common ways in which the character of Scotch Whisky can be adversely affected before or during bottling are:

- Contamination of the bottling line
- Deliberate addition of flavourings or sugar
- Adulteration with other spirit
- Inappropriate filtration
- Dilution below the minimum legal strength for Scotch Whisky, and
- Use of inappropriate water.

Requiring Single Malt Scotch Whisky to be bottled in Scotland is therefore essential both to guarantee that the product is “Single Malt” and to preserve its essential definitive qualities. There is a precedent for such a trade restriction, as set out in European Court of Justice (ECJ) Case 338/95 which concerned quality wines produced in a specified region, the use of the Rioja designations of origin and the obligation to bottle in the region of production. The ECJ found in favour of Rioja wine producers who wanted to protect the quality of Rioja by ensuring it was bottled in the region where it was produced and not exported in bulk. The position is similar for the proposed Single Malt Scotch Whisky measure.

iv) Scotch Whisky definitions and labelling – there are currently no legally binding definitions for different categories of Scotch Whisky except Blended Scotch Whisky, although Scotch Whisky itself is legally defined. (Note: the Finance Act 1969 (as amended) contains a definition of “Blended Scotch Whisky” which has been in force for many years but has now been prospectively repealed. That definition provides that “Blended Scotch Whisky” means a blend of a number of distillates, each of which separately is entitled to the description “Scotch Whisky”. Under this definition a mixture of a number of Single Malt Scotch Whiskies is a blend. The definitions of “Blended Scotch Whisky” and “Blended Malt Scotch Whisky” currently proposed are therefore consistent with the Finance Act definition). In the absence of more detailed definitions, the industry has relied on its own conventions and practices, but these have no force in law and are not readily enforceable in the UK, EC or in third countries. Despite the conventions used by the industry, the use of different descriptions has blurred the distinction between the various categories of Scotch Whisky, making them confusing to the average consumer. Providing clarity for Scotch Whisky category definitions in UK law will help ensure that terms currently used in different ways by the industry, finally have agreed meanings that consumers and enforcement authorities, both in the UK and abroad, can understand and be confident have legal force.

v) Protection of Regional names – the purpose of this is to protect traditional locality and regional names which the SWA has demonstrated to Defra, have been exploited by unscrupulous traders. Examples include “Highland Chief” (on an Indian product), “Lowlands” (on a Spanish product), “Speyside” (on a Spanish product), and “Islay Cream” (on an Italian product). This occurs because the following terms

- Highland
- Lowland
- Speyside
- Campbeltown, and
- Islay

do not have any legal protection under EC or UK law, but are recognised by consumers as being associated with Scotch Whisky. They are therefore used to provide spurious authenticity to spirits products which have nothing to do with the location in question or the Scotch Whisky characteristics of that location. The definition of these terms would also stop anyone in future using them to describe a Scotch Whisky finish (e.g. Islay Cask Finish) when the Scotch Whisky in question has not been distilled and matured on Islay. The proposed protection of the names would only apply to Scotch Whisky and Whisky-based drinks. Other producers could therefore continue to use these terms to describe their own products, e.g. the producer of lowland lamb. It is envisaged that the terms in question will be protected as locality and regional geographical indications. Where existing brands currently use these terms in good faith as part of a trade mark e.g. Highland Queen, they will be permitted to continue doing so, provided that this does not result in consumer deception.

vi) Prohibition on the use of the term ‘Pure Malt’ – this has been proposed because of the use of the word ‘pure’, which for consumers means something special or superior. All categories of Scotch Whisky must conform to the basic definition and could be described as “pure” Scotch Whisky. However, the expression “Pure Malt” has more often been used as a pseudo category in its own right. This has caused two types of consumer confusion; on the one hand an expectation that “Pure Malt” must be superior to “Single Malt”, and on the other hand a belief that a “Pure Malt” is a Single Malt. In fact, the expression is most often used on a Blended Malt Scotch Whisky.

vii) Controls on the use of Distillery and Distillers’ names – to protect consumers this proposal will prohibit misleading references to distilleries or distillers on Scotch Whisky

labels. It will be forbidden to use a current or future distillery name as a brand name, or as part of a brand name of a Scotch Whisky, or use it in a similar fashion in terms of its positioning or prominence, unless the whisky has been wholly distilled at that distillery. To ensure that these proposals are not undermined, the use of labelling, packaging or advertising which suggests that any Scotch whisky has been distilled at a distillery other than the true distillery will also be forbidden. The regulation will also forbid labelling, packaging and advertising which suggests that a Single Malt or Single Grain Scotch Whisky has been distilled by any person other than the actual distiller, owner or operator of the distillery where the brand was distilled.

viii The year of distillation and age –Older whiskies command a significant premium. Consumers can be misled as to the age of a Scotch Whisky if only the date of distillation is given. For example, a statement “Distilled 2000” is likely to suggest to a purchaser buying the product in 2009, that the brand has been matured for 9 years, whereas it may be a 4 year old whisky bottled in 2004. The proposal will require the date of bottling, or the actual age, to be stated in addition to the distillation date. It is customary to state the age of a whisky by the use of a prominent single figure in years. However, there is currently nothing to stop misleading statements of age in the form of a prominent single figure representing some other measure of age e.g. “12 maturation cycles”, where a maturation cycle is claimed to be 3 months. To prevent the use of spurious age claims on Scotch Whisky, the age will have to be shown in years.

Costs and benefits

21. Admin burdens will be de minimus, with estimated one-off costs of around £10,600 for an industry worth over £4bn. Therefore there are no real admin burdens on the industry arising out of these Regulations, which the industry supports. Although a few SMEs (representing less than 1% of the industry) expressed concern about one or two proposals, when pressed, they came up with little or no evidence for these concerns. Where their concerns were deemed to have some foundation, these have been addressed using transitional periods to allow operators to adjust to the new measures. Consumer organisations who were consulted as part of the 2008 consultation did not see any need to comment on behalf of their members, saying the proposals would be of little interest to them.

Sectors and groups affected

22. The sectors and groups affected by these proposals are the following:

- **Distillers** (of Scotch Whisky) – there are 32 companies engaged in the distillation of Scotch Whisky, comprising 11 large enterprises, 6 of which account for 87% of capacity. The remaining 21 distillers are Small or Medium-Size Enterprises (SMEs).
- **Wholesalers** - Almost all distillers are also wholesalers. In addition, there are approximately 59 companies in the UK who do not distil Scotch Whisky, but are brand owners engaged in the wholesale trade. These comprise 1 large enterprise and 58 SMEs
- **Bottlers** – approximately 25 enterprises in the above two categories also bottle Scotch Whisky. (11 out of the 12 are large enterprises, and 14 SMEs). In addition one SME functions as a contract bottler alone.

- **Warehouse keepers** - nearly 700 member companies of the UK Warehouse Association, operate around 100 million sq ft of warehouse and distribution centre space from some 2000 locations across the UK.
- **Retailers** - over 700 in the food and drink sector.
- **Consumers**, and
- **Ancillary businesses** in the supply chain. No data on individual businesses.

23. The most recent information available relates to a study in 2000 for the SWA by DTZ Pidea Consulting showing purchases from ancillary businesses in the supply chain as follows:

Sector	UK expenditure in 2000 (£million)
Cereals	118.59
Packaging	255.31
Bottles	149.40
Plant & Machinery	59.84
Energy	40.43
Transport & Distribution	82.53
Other services	312.76
TOTAL	£1,018.87m

Benefits

24. Overall, greater protection for producers and consumers, and a reduction in costs to the industry taking action to protect Scotch Whisky. These are specifically explained below.

National Benefits

25. At present, the description “Scotch whisky” is geographical. No whisky may be described as “Scotch whisky” which has not been wholly distilled and matured in Scotland. Whilst the industry itself takes vigorous action abroad to protect consumers from deception, it is hampered by the fact that practice within the trade is often the result of convention, and cannot be shown to be enshrined in UK law. By enshrining these matters in UK law, the industry will be much better placed to protect Scotch Whisky both in the UK, the EU and third countries, and maintain a situation in which consumers can and do rely on the geographical significance of the description “Scotch Whisky”.

26. The overall benefit to the UK of being able to demonstrate tight control of every aspect of Scotch Whisky production, cannot be over-emphasized. For example, if there are aspects of the production of Scotch Whisky which cannot be verified, protection at EU level would be lost.

Producer benefits

27. In 2008 the industry exported over 1 billion bottles of whisky with a record sales value of just over £3 billion, giving an average of around £2.80 per bottle. The average value per bottle of domestic retail sales will be greater (because of the additional value added in the transport and retailing stages of the chain).¹

¹ According to HMRC figures, Scotch Whisky released for UK consumption in 2006 amounted to 28,259,200 LPA, equivalent to 101 million bottles. Mintel estimate UK 2005 sales at around £2.7 bn.

28. The SWA estimate that legal cases have shown that some 150m counterfeit bottles, purporting to be Scotch Whisky, have been sold worldwide over the most recent two-year period. At average values, this gives a very broad figure of over £200m p.a. worth of sales. This would not be the cost to the industry, for two reasons:

(i) many of these still represent sales by the producer, for example where genuine Scotch whisky is used as an ingredient, or is adulterated. On the other hand, there could be other misleading sales of Scotch Whisky that have not been picked up. However, the introduction of regulations to enforce existing definitions would not necessarily eliminate counterfeit sales. Very crudely, assuming that counterfeit sales would halve, we might speculate that legitimate Scotch Whisky sales might increase by up to £100m p.a.

(ii) sales are not the same as lost profit. According to the Grocer 150 index, the operating profit of the big whisky producers Diageo and the Edrington Group was over 20% in 2005, but other producers are known to have smaller margins. Applying a profit margin of 20% across all lost sales would yield additional benefits of around £20m (following on from the bullet above), but again this is speculative. A plausible range might be £10-30m.

29. By enabling the industry to uphold intellectual property definitions of Scotch whisky, the proposed regulations would substantially reduce the risk to the whole Scotch Whisky brand of being undermined both in established markets and in emerging markets. Industry focuses on future demand because Scotch Whisky needs to be matured for at least 3 years. Some focus on long periods, e.g. Chivas Regal is sold at 12, 18 and 25 years etc. Experience shows that loss of reputation, through exposition of illegal or consumer unfriendly practices can inflict grave damage on brands, sales and product investment. Again, estimating benefits is very speculative, but even if a loss of 2% of the world spirit drinks market was avoided, this would be worth £50m p.a. Avoiding a loss of 10% would be worth £250m p.a. These figures are only indicative, and they would relate to future benefits. They also show that potentially the dynamic benefits of action (or the risks of inaction) are likely to be particularly significant.

30. Of course, these “additional” sales figures are likely to be at the expense of other sales. However, a large proportion of such displaced sales could not be considered legitimate or would be lost to legitimate or illegitimate overseas suppliers and/or bottlers. **In this cost-benefit analysis we therefore assign a zero value to these losses.**

31. In the light of these calculations, as a working assumption, the benefits of the regulations to the industry could be as follows:

- Fewer counterfeit sales (around £10m-30m p.a.) + dynamic sales effects (£50m-£250m p.a.) = a total of £60m-£280m. Applying the 3.5% discount rate to these annual values over a 10 year **period to get a present value provides a range of approximately £0.5 bn - £ 2.4 bn.**
- For simplicity of presentation, we take a very conservative round “best” estimate of **£100m annual benefits** (weighing the static benefits more than the more distant dynamic benefits). This generates a present value over ten years of **£860m.**

Consumer benefits

32. Although most Scotch Whisky is exported, the UK consumer market is itself significant, with an estimated retail value of almost £2.8bn in 2008 according to Mintel. Retail

prices vary between brands and outlets. Malt whisky trades at a substantial premium (e.g. see retailers' price checkers for whisky products).

33. It is not just Scotch Whisky producers who lose out from other producers or wholesalers making illegitimate use of the Scotch Whisky description. Consumers would become confused about the nature of Scotch Whisky and this could eventually erode differentiation within the market. Consumer choice would suffer, average product quality could be diminished and consumer appreciation of the regional and cultural heritage of Scotch Whisky would become eroded. Quantifying such benefits of prevention in any meaningful way makes little sense, but the size of the market and the differentiation within the market suggest that consumers greatly value the quality of Scotch Whisky (and are prepared to pay for it), and that any counterfeiting would represent a material harm to consumers.

(i) Restrictions on Maturation

It is not possible to quantify the financial benefits of this measure for the industry. However, the Scotch Whisky Association (SWA) have evidence that this measure will benefit producers and wholesalers by preserving the geographical distinctiveness of Scotch Whisky and therefore support the market for the ageing of Scotch Whisky in Scotland. Maturation is part of the production process of Whisky. If Scotch Whisky is allowed to be taken abroad for maturation, it would have two effects: First, it would mean that Scotch Whisky need not be wholly produced in Scotland. It is vitally important that Scotch Whisky is wholly produced in Scotland and that the need for this, including the need for all maturation to take place in Scotland is put beyond any doubt, so that the UK retains tight control on the production of Scotch Whisky. This will bolster its international protection as a product wholly produced in Scotland. Secondly, it would cause confusion for consumers who would not be able to rely on the geographical significance of the term "Scotch Whisky". The geographical origin of whisky is of importance to consumers, but the exact provenance of a whisky produced partly in one country and partly in another would be in doubt. The SWA believes that this measure is of high importance, and the benefit of removing any doubts in this area is very high. In economic terms, investment in maturation in Scotland is significant. For example, in February 2007 Diageo announced an investment of £20 million in packaging and warehousing, and in July 2007 Bacardi announced that it was building a new maturation warehouse in South Lanarkshire. As at 31 December 2007, stocks of maturing Scotch Whisky stood at over 2.9 billion litres (most recent data available) of pure alcohol (LPA). A litre of pure alcohol is equivalent to 3.57 bottles.

(ii) Prohibition on Bulk Exports in Wooden Casks

Scotch whisky continues to mature for the entire period it is in cask. This measure is a logical consequence of the preceding measure and will preserve the geographical distinctiveness of Scotch Whisky and maintain the market for stocks of Scotch Whisky ageing in Scotland, thereby benefiting wholesalers. The measure will also benefit consumers by avoiding confusion between genuine Scotch Whisky and whisky only partly matured in Scotland. This provision will apply to all Scotch Whisky producers who export. See above for the levels of maturation in Scotland, and recent investments in this area.

(iii) Requirement for Single Malt Scotch Whisky to be bottled in Scotland

The proposal will enable the guarantee implicit in the name "Single Malt Scotch Whisky" to be verified, and will prevent the significant adulteration / contamination problems experienced by other categories of Scotch Whisky shipped in bulk being extended to Single Malt Scotch Whisky, the industry's premium product. The proposal also has

reputational benefits for Single Malt Scotch Whisky with “Bottled in Scotland” product commanding a premium. The current economic benefit to bottlers is relatively small, but is likely to increase significantly as the category expands. The benefit for small bottlers is likely to be more pronounced, due to the fact that specialist bottlings of Single Malt Scotch Whisky may be a significant part of their business. However, it is not possible to quantify the financial value of these benefits. The long term benefit, if the sector grows, is likely to be much more significant. (Exports of bottled Scotch Malt Whisky increased by 24% in 2006). The regulation may also benefit ancillary businesses in the supply chain because the quantity of dry goods required in the UK will increase.

(iv) Scotch Whisky Definitions / Labelling

The new regulations will also provide greater clarity and consistency of labelling for consumers. In the past, the use of varied descriptions has blurred the distinction between the categories of Scotch Whisky. These will now be compulsorily identified, making it easier to market each category in its own right

The provisions against misleading labelling will make it easier for the industry to challenge deceptive labelling by whisky producers suggesting that a product is Scotch Whisky when it is not. As an indication of the scale of malpractice, in a recent two year period the SWA estimated that in 50 per cent of legal cases where it was possible to recover sales data, over 100 million bottles of misleadingly labelled product had been sold worldwide. In the remaining cases, information on volumes sold was not available. It is assumed that the true scale of the problem is significantly greater than the legal challenges indicate, and may increase if not addressed.

Ancillary businesses in the supply chain that are engaged in the production of labels and containers would benefit marginally if label design changes are made earlier than would otherwise have been the case.

(v) Protection of Regional Names

The measure protects the traditional regional names for Scotch Whisky as Geographical Indications and will enable these names to be protected more easily. The value in terms of increased protection and reputational benefit is difficult to quantify but potentially significant in the medium to long term. The proposal will also provide consistency and clarity for consumers.

(vi) Prohibition on the Use of the Description “Pure Malt”

There is evidence of consumer confusion between “Single Malt” and “Pure Malt” and we believe that some brands of “Pure Malt” have been able to take advantage of this confusion in their marketing. The proposal will therefore provide clarity and consistency for the consumer. The financial value of this benefit cannot be readily quantified.

(vii) Controls on the Use of Distiller’s Names and Trade Marks on Single Scotch Whiskies

This measure will prevent a producer portraying itself as the distiller of Single Scotch Whisky when this is not the case, or using a trade mark which suggests distillation at a place other than the true distillery. The proposal will therefore, provide consistency and clarity for consumers.

The proposal also ensures that the integrity of indications of origin used on Scotch whisky is preserved.

Costs

Option 1 – No new costs.

34. Current protection maintains status quo, so no new costs, but risk of continued losses and reputational damage.

Option 2

35. This Option involves the introduction of more detailed legislation to define Scotch whisky. This is the preferred option because it would provide stronger legal protection against imitation and fraud in both domestic and overseas markets.

(i) Restrictions on Maturation

It is proposed that the definition of Scotch Whisky within the new Regulations will require it to be wholly matured in an excise warehouse in Scotland. The measure will bolster the existing maturation requirements in the Scotch Whisky Act 1988 and the Scotch Whisky Order 1990 and their NI equivalents by making it clear that the requirement for maturation to have taken place in an excise warehouse in Scotland applies to the entirety of the maturation period and not just the minimum 3 year maturation period. **There are no eligible costs to UK businesses associated with strengthening the definition as proposed.** However, the ambiguity about the extent to which incidental maturation is permitted when exporting Scotch Whisky from Scotland to another country for eventual bottling means that there will be some exporters who will, as a matter of fact, need to change their practices.

(ii) New Prohibition on Bulk Exports in Wooden Casks

To ensure compliance with the requirement that Scotch Whisky be wholly matured in Scotland, it is proposed that the new regulations will also prohibit the export of Scotch Whisky in wooden casks. Exports of Scotch Whisky - excluding Single Malt Scotch Whisky - in steel tanks or food grade polydrums for the purposes of bottling overseas, will, however, be allowed under the new regulations. **There is a potential cost to wholesalers from the loss of bulk sales to customers seeking exports in wooden casks. However, although a very small minority of consultees (representing around 1% of the industry) do use wooden casks, it is considered to be rare for Scotch Whisky to be exported in this form due to the leakage of these casks and the resulting costs of this mode of transit.**

(iii) New Requirement for Single Malt Scotch Whisky to be bottled in Scotland

- a. In the case of Single Malt Scotch Whisky, it is proposed that regulations should stipulate that it should not only be matured but also bottled in Scotland. These stricter regulations are aimed at protecting the quality and reputation of Single Malt Scotch Whisky, the premium Scotch Whisky on the market, by preventing adulteration or contamination during the bottling process. It is important that regulations protect the quality and reputation of the industry's premium product by requiring that it is both matured and bottled in Scotland.
- b. **No significant impact is expected** as all brands of Single Malt Scotch Whisky sold by or on behalf of distillery owners (proprietary brands) are already bottled in Scotland. Currently, Single Malt Scotch Whisky is exported in bulk for bottling abroad as Single Malt Scotch Whisky by a very small number of producers representing less than 1% of distilling capacity.

- c. The vast majority of Malt Scotch Whisky is exported in bottle. In 2006, for example, exports of Malt Scotch whisky *in bottle* amounted to 21.37 million LPA, i.e. 7% of total Scotch Whisky exports, and were valued at £409,550,000, equivalent to £19 per litre. By contrast, *bulk* exports of Scotch Malt Whisky amounted to 7.2 million LPA, i.e. 2.4% of total Scotch Whisky exports, valued at £22,500,000, equivalent to £3.125 per litre. Statistics do not allow a breakdown between Single Malt Scotch Whisky and Blended Malt Scotch Whisky, but the majority of *bottled* Malt Scotch Whisky is likely to be Single Malt Scotch Whisky, and commands a premium price. The vast majority of Malt Scotch Whisky exported *in bulk* is sold for blending / admixture with foreign whiskies, and Blended Malt Scotch Whisky can be supplied to meet this requirement. The amount of Single Malt Scotch Whisky exported in bulk for bottling abroad as Single Malt Scotch Whisky is estimated to be in the region of 1% of the amount of Single Malt exported in bottle i.e. 0.2 million LPA.. At a cost of £3.125 per bulk litre, the trade affected by this measure is therefore estimated to be worth at least £625,000. (The actual cost may be higher given that bulk malt exported for bottling as Single Malt is likely to command a premium over bulk blended malt. The price will depend on distillery and age) . However, the industry believes that this measure will result in that trade being replaced by Single Malt Scotch Whisky in bottle.

(iv) New Scotch Whisky Definitions / Labelling

- a. It is estimated that around 90 per cent of Scotch Whisky brand owners (i.e. 98 per cent of Scotch Whisky companies) will be required to make changes to their labels to comply with the proposals.
- b. The industry has indicated that these measures are expected to have a negligible impact on large producers. Whilst design costs for large companies can amount to £20,000 per brand, design changes are undertaken on a frequent basis, both to incorporate changes in compulsory requirements and to maintain a fresh brand image. Labelling print runs for large brands may take place as often as every 4-6 weeks. As a result, changes to labels can be undertaken as part of frequent design changes. Stocks of the cartons or tubes sometimes used to package individual bottles, by contrast, may last a couple of years, and the same may apply to advertising, both in film and print. The latter can, however, often be digitally amended to reflect a new presentation, thus reducing costs.
- c. Small producers are expected to incur some costs as a result of this measure. Originating label changes for each brand are estimated to be between £1,000 and £2,000. Except where there is a change in other compulsory information required by Government, labels may only be updated at intervals of around ten years and stocks of cartons may last several years. It is estimated that there are approximately 480 brands produced by UK SMEs (including different expressions of the same brand), so total costs could range from between £500,000 to £1.million.
- d. The proposed two year derogation period from the date the legislation is enacted would assist in minimising costs to all businesses engaged in the production and sale of Scotch Whisky. The transition period would allow companies to use existing labels until the end of that period, with stocks in the hands of retailers being sold off until exhausted. The industry therefore believes the cost of the required changes can be absorbed as part of its normal business.
- e. Under South African (SA) legislation at present, blended whisky must contain at least 25% malt whisky. In the UK there is no minimum malt content for blended Scotch Whisky, and some blends contain less than 25% malt. Some producers of blended Scotch Whiskies whose brands contain less than 25% malt avoid the South African

requirement by describing their brands in South Africa as “Scotch Whisky” as opposed to “Blended Scotch Whisky”. However, in future, the Scotch Whisky Regulations will require that these products be labelled as ‘Blended Scotch Whisky’. That will in turn require the producer to increase the malt content of the blend to conform with South African legislation. However, only one company has expressed concern that its brands would be affected in this way. The vast bulk of the industry (over 99%) has not expressed any concern.

(v) New Protection for Regional Names

- a. The aim of this proposal is to protect the following regional or locality names which have traditionally been used to describe Scotch Whiskies:
 - Highland
 - Lowland
 - Speyside
 - Campbeltown
 - Islay
- b. The industry has indicated that this provision is expected to result in no significant costs for the industry. There are a number of established brands which have used a regional name as part of the brand name of a Blended Scotch Whisky without confusion. Where these are registered trademarks, they will be exempted from the restriction limiting the use of regional names to Scotch Whiskies from the regions in question. If the value of the brand is so low that it does not justify trademark protection, the cost of complying with the legislation is unlikely to be significant, and the brand can be replaced with another brand name. Brand names which the proprietor does not wish to incur the cost of protecting, are not uncommon in the trade, and are often regarded as “disposable”.
- c. Recognition of the regional names as Geographical Indications will, by virtue of the operation of the WTO TRIPS agreement, give these names international protection, thereby increasing the scope for legal action in the future. This could result in potential costs for the SWA which may have to prevent the names in question being adopted by producers abroad. However, current cases where the SWA is taking legal action to prevent the misuse of the traditional regional names on products produced abroad are relatively small in number and the misuse of the name is generally part of a package other of misleading elements, all of which would be challenged in any event. Any increase in costs is therefore likely to be very small, and is likely to be offset by savings arising from the fact that it is generally cheaper to defend a protected Geographical Indication than it is to defend an unprotected name.

(vi) New Prohibition on the Use of the Description “Pure Malt”

- a. The proposed measure will provide clarity for the consumer, and remove the pseudo category of “Pure Malt” from use which has reportedly caused confusion.
- b. The costs of label changes are as identified under the definitions/labelling measure.

(vii) New Controls on the Use of Distillers’ Names and Trade Marks on Single Malt Scotch Whiskies

- a. It is proposed to introduce controls on the use of distillery names.

- b. It will be forbidden to use a current or future distillery name as a brand name, or as part of a brand name of a Scotch Whisky, or use it in a similar fashion in terms of its positioning or prominence, unless the whisky has been wholly distilled at that distillery. It is not thought that this provision will affect any current brands.
- c. To ensure that these proposals are not undermined, the Regulations also prohibit Scotch Whisky being labelled, packaged, advertised or promoted in any other way that creates a likelihood that the public may think that it has been distilled at any distillery or place other than the distillery or place where it has been distilled. This, for example, may catch the use of names which appear to be a distillery name. This may require some brand owners to change their labels by making it clear, for example, where the whisky has been distilled.
- d. It is also proposed to introduce controls on the use of distiller's names on Single Malt and Single Grain Scotch Whisky.
- e. The regulation would forbid labelling, packaging and advertising which suggests that a Single Malt or Single Grain Scotch Whisky has been distilled by any person other than the actual distiller, owner or operator of the distillery where the brand was distilled. This provision may require some brand owners to change their labels. Blended Scotch Whiskies will not be affected by this provision as the name of the producer, who may or may not be a distiller, identifies the blender rather than the distiller or the place of distillation.
- f. Details of the costs of label changes are given in the definitions/ labelling section. The main affected groups likely to incur costs are the same as those identified under the definitions/ labelling provision. In addition, retailers of some "own label" Single Malt Scotch Whiskies may face costs if they identify the distillery at which their Single Malt Scotch Whisky was distilled. This could arise because the name of the distillery is added voluntarily to some brands where it is considered that the brand name or packaging may give rise to a risk that consumers may be misled as to the place of distillation. Where the supplier of these brands, and therefore the identity of the Single Malt Scotch Whisky in question, changes on a regular basis, there will be an additional compliance cost. This cannot be quantified, and may depend on the frequency with which a retailer changes supplier. Any additional cost could, moreover, be avoided by the adoption of an alternative name for the "own label" product, which would only involve a "one off" label change.

Specific Impact Tests

Competition Assessment

- 36. The proposals will have no impact on the number or range of suppliers. The proposals are aimed at ensuring the specifications in the technical file (required under EC Regulation 110/2008) can be verified before a product is placed on the market and that the terminology on labels is clear and does not mislead consumers.
- 37. It is in the nature of a protected Geographical Indication that all suppliers must obey the rules applicable to a particular GI. That is currently the position with the existing UK legislation, and it is illegal for any enterprise to seek a competitive advantage by not observing the rules. The introduction of new rules governing areas previously covered by custom and practice will ensure a more level playing field for all enterprises and help to encourage new entrants.

Small Firms Impact Test

38. There are 32 companies engaged in the distillation of Scotch Whisky, comprising 11 large enterprises, 6 of which account for 87% of capacity. The remaining 21 distillers are SMEs. Almost all distillers are also wholesalers. In addition there are in the UK approximately 59 companies who do not distil Scotch Whisky, but are brand owners engaged in the wholesale trade. These comprise 1 large enterprise and 58 SMEs. Approximately 25 enterprises in the foregoing two categories also bottle Scotch Whisky. (11 out of 12 of the large enterprises, and 14 SMEs). In addition one SME functions as a contract bottler alone. The impact of these proposals will fall most heavily on the six large enterprises which account for 87% of distilling capacity and worldwide case sales. These new requirements will not be more difficult for SMEs to meet, although it is recognised that they have fewer resources in terms of time and manpower.

Legal Aid

39. The Regulations will have a negligible effect on legal aid.

Carbon Impact Assessment and other environmental issues

40. The increased energy consumption attributable to the very small amount of Single Malt Scotch Whisky displaced from abroad to the UK for bottling will be infinitesimal compared to the overall energy consumption of the industry.

Health Impact Assessment

41. These proposals will not directly impact on health and wellbeing and will not result in health inequalities.

Race/Disability/Gender/Age

42. These proposals do not impose any restriction or contain any requirements which a person of a particular racial background, disability, gender, age, or sexual orientation would find more difficult to meet. Conditions apply equally to all individuals and businesses involved in the activities covered by the proposals.

Human Rights

43. These proposals are consistent with the Human Rights Act 1998.

Rural Proofing

44. These proposals will not have any different effect in rural areas. Rural employment would not be affected in an adverse way. In fact, the industry has a long history of ensuring that its association with the rural economy is maintained.

Unintended consequences

45. None are anticipated at this stage.

ENFORCEMENT AND SANCTIONS

Option 1: Do nothing

46. Existing powers and regulatory controls would be used. To date the industry has been able to rely on the protection afforded to "Scotch Whisky" at EU level (Regulation 110/2008) both in the UK and elsewhere in the EU, based on the definition of "Scotch Whisky" in the Scotch Whisky Act 1988 and the Scotch Whisky Order 1990 and their NI

equivalents. If we do nothing, i.e. if we do not make the Scotch Whisky Regulations, that will not result in a diminution of the protection currently afforded to Scotch Whisky. If nothing is done and we then submit a technical file to the Commission under the arrangements set out in the new EC Regulation based on the existing legislative requirements for Scotch Whisky, the current protection enjoyed by Scotch Whisky as a registered product under the new EC Regulation would become permanent. Therefore, if the UK was not to make the Scotch Whisky Regulations then Scotch Whisky *per se* would continue to be protected

Option 2: New enhanced legislation as the basis for protection in the UK and abroad.

47. The overall aim of the proposals is to bring greater clarity to the definition, description, presentation and labelling and protection of Scotch Whisky. Whilst the level of malpractice in the UK is low, there have been examples of misleading labelling which the regulatory authorities have found difficult to tackle because of the absence of clear rules. Whilst the industry is not aware of any products currently on the market which fall into that category, it is likely that there may be a small increase in the number of infringements reported to the UK authorities in the future. The proposals may, by their very nature, have the indirect result that the industry will take more frequent enforcement action against producers abroad. This cost will be met by the industry.

Sanctions

48. The draft Regulations provide for administrative remedies and criminal sanctions for non-compliance with the Regulations. They also extend the civil remedies provided for in the Scotch Whisky Act 1988, the Scotch Whisky Order 1990 and the NI equivalents to the full range of requirements in these Regulations. The cost of this is difficult to estimate as it is uncertain what the level of non-compliance is in the UK.

Monitoring

49. Regular contact with the enforcement authorities and the relevant trade associations as at present to ensure that proportionate monitoring, given the predicted high compliance, is carried out.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Structure of the Scotch Whisky Industry - Background

1. Scotch Whisky is one of the UK's most important export industries. In 2007, it was exported to 239 markets worldwide, these include countries, territories and dependencies. It is Scotland's second largest manufacturing export industry after office machinery² (excluding oil and gas), and accounts for around 20% of Scotland's manufactured exports.³
2. In accordance with National Accounting principles, total Scottish exports do not include any exports of oil and gas extracted from the UK continental shelf. This is consistent with the approach taken in all Scottish economic statistics in that, following **European System of Accounts** (ESA 95) conventions, the National Accounts determine that these cannot be allocated to any one region of the UK⁴.
3. According to the **Scotch Whisky Association** around 90% of all Scotch Whisky produced is exported⁵. In 2008 exports of Scotch Whisky were worth a record of just over £3.1 billion; and accounted for 73% of the total value of UK exports of alcoholic drinks. The value of Scotch Whisky exports increased by 8% in 2008; however, export volume (in litres of pure alcohol) declined by 5%.

Export Destinations by value £m in 2008

4. The USA was the largest export market by value (£371 million in 2008) and accounted for 12% of exports. It was followed by France with sales of £359 million; accounting for almost 12% of exports. Sales to EU countries (£1.2 billion in 2008) accounted for 40% of Scotch whisky sold overseas. In Scotch Whisky's main export markets, sales to France grew by 22% in value in 2008, exports to Germany grew by 14%, while exports to South Africa grew in value by 12%⁶.
5. By contrast, consumption of whisky in the UK has exhibited long-term decline, in favour of wine and white spirits. In 2008, 'Home-produced whisky' released for UK consumption was 289 thousand hectolitres; almost the same amount to what was released in 1998. In 2008, 'Home-produced whisky' represented 25% of the volume of spirits released for UK consumption, down from 39% in 1996⁷.

² Survey of Scottish Manufactured Exports 2005/06 - <http://www.scdi.org.uk/file.php?id=2576>

³ Scottish Export Statistics - <http://www.scotland.gov.uk/Topics/Statistics/Browse/Economy/Exports>

⁴ Scotland's Global Connections Survey 2005 (Notes 7) -

<http://www.scotland.gov.uk/Publications/2006/12/19161113/1>

⁵ A Scotch Whisky Manifesto (page 4) - <http://www.scotch-whisky.org.uk/swa/files/Manifesto%20March07.pdf>

⁶ HM Revenue & Customs & Defra; Scotch Whisky Association press release - <http://www.scotch-whisky.org.uk/swa/files/2006Exports.pdf>

⁷ Monthly Digest of Statistics (ONS) – Table 6.13 -

<http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=611&Pos=&ColRank=1&Rank=422>

6. Whisky production achieved a new peak of 5.06 million hectolitres in 2007. In 2008 its production increased to 5.88 million hectolitres. Whisky production accounts for 85% of spirit production in the UK⁸.
7. According to market research company, **Mintel**, retail sales of whisky in the UK were estimated to be worth just under £3.8 billion in 2008.⁹ Of this total, blended whisky accounted for 58% of sales, malt whisky for 18%, deluxe whisky for 4%, and imports for 20%.
8. The industry accounts for around 4% of all Scottish manufacturing jobs and the industry spends £1 billion a year buying goods and services from local suppliers.¹⁰ **Scottish Enterprise** and the **Scotch Whisky Association** claim that one million tourists each year visit around 40 distilleries in Scotland which are open to the public.¹¹
9. The companies which are the leading producers of Scotch Whisky are **Diageo** (the world's largest spirits producer), **Pernod Ricard** (the world's second largest spirits producer, which operates in Scotland through its **Chivas Brothers** subsidiary), **William Grant & Sons**, and **The Edrington Group**.
10. The leading brand of blended whisky sold in the UK in 2007 was **Bell's**, produced by **Diageo Plc**, with 11.6%, by volume, of the UK market¹². Diageo operates 27 malt distilleries and 2 grain distilleries across Scotland. In second place was **The Famous Grouse**, produced by **The Edrington Group**, with 11.5% of the market. The **Jack Daniel's** brand, owned by **Brown-Forman** of the US, was in third place with 7.3%, followed by the **Teacher's** brand, owned by **Pernod Ricard** of France in fourth place with 4.9%.
11. In February 2007, **Diageo** announced that was to invest £100m in building Scotland's first major malt distillery in more than 20 years (creating an estimated 200 jobs during the investment process over the next few years) as it expands its whisky operations following a huge surge in demand from emerging markets such as Russia, China, India, Mexico, and Brazil. Subject to planning consent, Diageo will build a malt whisky distillery in Roseisle, near the Moray Firth, where it already has a large maltings facility. It hopes to start production in 2009, with the first whisky becoming available in 2012¹³.
12. Brian Higgs, Diageo's malt distilling director has stated that the proposed Roseisle complex is expected to be Scotland's most environmentally advanced malt distillery¹⁴.

8 Monthly Digest of Statistics (ONS) – Table 6.13 - <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=611&Pos=&ColRank=1&Rank=422>

9 Mintel report: Whiskies (August 2008)

10 The Economic Impact of the Production of Scotch Whisky, Gin & Vodka in Scotland (Pages 7 and 8) - <http://www.scotch-whisky.org.uk/swa/files/Eclmpact%20Report.pdf>

11 The Scotch Whisky Association further states that distilleries represent a quarter of all Scotland's five-star tourist attractions, with sales at Scotch Whisky tourist attractions worth over £17 million a year to the Scottish economy
Scotch Whisky Association press release - <http://www.scotch-whisky.org.uk/swa/files/Distilleryguide07.pdf>

12 Mintel report: Whiskies (August 2008)

13 Diageo - <http://www.diageo.com/en-row/NewsAndMedia/PressReleases/2007/PressRelease15FebScotland.htm>

14 The Scotsman - <http://thescotzman.scotzman.com/index.cfm?id=1083282007>

13. Diageo's announcement was followed by **Bacardi** revealing in July 2007 that it would invest more than £120m in Scotland to increase production of its **Dewar's** Scotch Whisky brand¹⁵.
14. The majority of Scotland's 96 Scotch whisky distilleries currently produce around 1.8 million litres of spirit annually, with the smallest distillery, **Edradour**, producing around 90,000 litres of malt whisky each year. **Cameronbridge** (owned by Diageo) is the largest grain whisky distillery in the UK and is capable of producing around 70 million litres of grain whisky annually, while **Tomatin** (Japanese owned), is the largest malt whisky distillery, and can produce up to 12 million litres of malt whisky annually.
15. In November 2007, it was reported that the high demand for Scotch Whisky among India's increasingly affluent middle class, and the Indian government's withdrawal of additional customs duty on imported wines and spirits in July 2007, had led to a 45% increase in the export of Scotch whisky to India in 2007¹⁵.

¹⁵ Bacardi to build new Scotch plant (just-drinks.com) - <http://www.just-drinks.com/article.aspx?ID=92134>

List of Consultees - Scotch Whisky consultation

Trade and other associations

Association of Convenience Stores
Association of Port Health Authorities

British Hospitality Association
British Retail Consortium

Chartered Institute of Environmental Health
Consumers In Europe Group
Consumers' Association (Which?)
Convention of Scottish Local Authorities

Gin & Vodka Association

Local Authority Co-ordinators Regulatory Services

National Consumer Council
National Consumer Federation
Northern Ireland Local Government Association

Scotch Whisky Association
Scottish Consumer Council
Society of Chief Officers of Environmental Health in Scotland
Society of Chief Officers of Trading Standards in Scotland
Welsh Consumer Council

Wine and Spirits Trade Association

Companies

Aberko Limited
A Dewar Rattray
Adelphi Distillery Ltd
Alchemist Beverage Co.
Alexander Dunn & Co (Whisky Blenders) Ltd
Alexander Muir & Company
Angus Dundee Distillers plc
Anstie Distillers Ltd
Associated Distillers Ltd

Balliol Limited
Beam Global Spirits & Wine Inc
Ben Nevis Distillery (Fort William) Ltd
Berry Bros & Rudd Ltd
Blackadder International Ltd
Blackwood Distillers
Bladnoch Distillery
Brands Development (Worldwide) Ltd

**Bruichladdich Distillery Co Ltd
Burn Stewart Distillers Ltd**

**Cadenheads
Campbell Meyer & Co Ltd
Celtic Spirit
Charles H Julian Ltd
Chivas Brothers Ltd
Chris Parker
Cock o' the North Liqueur Co
Cockburns of Leith (Wholesale) Ltd
Compass Box Delicious Whisky Ltd
Craigton Bottlers**

**Diageo Plc
Douglas Laing & Co Ltd
Dram House
Drumchork Lodge Hotel
Dunbar Vintners Ltd
Duncan Taylor & Co. Ltd**

**Edrington Group
English Whisky Co. Ltd**

**Glen Catrine Bonded Warehouse Ltd
Glenmorangie Company
Glen Grant Distillery Co Ltd
Glen Turner Distillery Ltd
Gordon & McPhail**

**Halewood International Ltd
Hart Brothers Ltd
Harvies of Edinburgh UK Ltd
Hayman Ltd
Hebridean Liqueurs**

**Ian Macleod Distillers Ltd
International Multibrands
International Whisky Company Ltd
Inverarity Vaults Ltd
Inver House Distillers Ltd
Isle of Arran Distillers Ltd**

**J & A Mitchell & Co Ltd
J & G Grant
James MacArthur & Co Ltd
John Dewar & Sons Ltd**

**Kilchoman Distillery Co Ltd
Kingsbury Wine & Spirits Co Ltd
Kingsland Wines & Spirits
Kinross Whisky Co Ltd
Kinstearly Ltd**

Kirklee Scotch Whisky Ltd

**Loch Ewe Distilleries
Loch Fyne Whiskies
Loch Lomond Distillery Co Ltd
Loch Ness Whisky Company Ltd
London & Scottish International Ltd**

**MacDuff International Ltd
Mackillop's Choice
Milroy's of Soho Ltd
Moncrieffe & Co Plc
Montrose Whisky Co Ltd
Morrison Bowmore Distillers Ltd
Morrison Fairlie Distillery
Murray McDavid**

North British Distillery Co Ltd

Old St Andrews Ltd

Praban Na Linne Ltd

**Raeburn Fine Wines
Richard Davies
Robyn Hoode Distilleries Ltd
Rosendale Blenders (International) Ltd
Royal Mile Whiskies
Rutherford & Co (Whisky Merchants) Ltd
Rutherglen Scotch Whisky Co Ltd (Edradour distillery)**

**Scotch Malt Whisky Society
Scottish Liqueur Centre
Scottish Retail Consortium
Signatory Vintage Scotch Whisky Co Ltd
Speyside Distillers Co Ltd**

**The Benriach Distillery Co Ltd
The Cabrach Whisky Company
The Drambuie Liqueur Co Ltd
The Red Lion Blending Co Ltd
The Scotch Whisky Heritage Centre
The Vintage Malt Whisky Company Ltd
The Whisky Exchange
The Whisky Shop
Tomatin Distillery Co Ltd
Tullibardine Distillery**

**Welsh Whisky Company
Wemyss Vintage Malts Limited
Whyte & Mackay Group Ltd
William Craig & Co Ltd
William Grant & Sons Ltd**

Department for Environment, Food and Rural Affairs**Summary of responses to the consultation on the Scotch Whisky Regulations 2009 held between 31 December 2007 and 25 March 2008****1. Introduction**

At the request of the Scotch whisky industry we are proposing to introduce provisions, through UK legislation to lay down more stringent rules to enhance the protection of 'Scotch whisky' (a registered geographical indication (GI) under Regulation (EC) No. 110/2008 of the European Parliament and of the Council and prevent consumers from being misled. Regulation 110/2008 regulates spirit drinks throughout the Community and includes protection for registered geographical indications. The stricter rules contained in the Scotch Whisky Regulations 2008 are permitted under the EC Regulation.

- **Background to proposal**

Scotch Whisky has been defined in UK law since the Finance Act 1933 and has been recognised as a GI in European Community legislation since 1989. The current UK legislation for Scotch Whisky is the Scotch Whisky Act 1988 and the Scotch Whisky Order made under it in June 1990. The Scotch Whisky Act and Order regulate the production and sale of Scotch Whisky, setting the minimum alcoholic strength of 40% (the same as under EC legislation), the ingredients to be used, and the minimum period of maturation of three years. The legislation prohibits the production of whisky in Scotland except Scotch Whisky. This aims to protect consumers from being sold 'Scotch Whisky' products not complying with the legislation, and ensure Scotch Whisky's reputation is not undermined by the production of whiskies in Scotland which do not meet the legal criteria for Scotch Whisky. The 1988 Scotch Whisky Act provides civil remedies for its contravention as read with the 1990 Scotch Whisky Order. Such remedies allow courts to grant interdicts in Scotland and injunctions elsewhere in the UK to stop breaches of the law and allow for the spirits in question to be seized and disposed of by e.g. HM Revenue and Customs.

This existing legislation gives civil protection to Scotch Whisky, and, because of this, indirectly benefits consumers. Also, the Spirit Drinks Regulations 1990 (as amended) provide for criminal remedies where the EC Spirit Drinks Regulation is flouted, which provides an overarching layer of protection for Scotch Whisky.

However, apart from the basic definition of Scotch Whisky in the 1990 Order, there are no statutory definitions for different categories of Scotch Whisky other than 'Blended Scotch Whisky' in the Finance Act 1969 [as amended] which is still extant, albeit it has been prospectively repealed.

Also, there are no restrictions on the use of regional descriptions for Scotch Whiskies from different parts of Scotland and no ban on Single Malt Scotch Whisky being exported in bulk for bottling abroad or on other categories of Scotch Whisky exported in wooden barrels.

The Scotch Whisky Association have provided evidence that exports of Scotch Whisky in bulk has led to adulteration and contamination when it is bottled abroad. This risks damaging the reputation of Scotch Whisky and leaves consumers vulnerable to counterfeit products which could also have public health implications.

So far, Scotch Whisky and its consumers have been protected largely by the industry following conventions and informal understandings it has itself laid down; however, these have no legal force and non-observance of those conventions by some in the industry discourages other operators from complying with them: a level playing field would provide for a consistent and global approach.

The Scotch Whisky industry has therefore requested that some current industry practices be given a legislative basis and for some to be changed, and the UK Government and Devolved Administrations in Scotland, Wales and Northern Ireland have agreed.

Although all Scotch Whisky must be produced in Scotland, it is marketed and sold in the UK as a whole (as well as the rest of the world), hence the interest of all the devolved administrations.

We therefore put forward new proposals for consultation covering the following:

- Production of Scotch Whisky (including maturation and blending),
- Categories of Scotch Whisky,
- Protection of locality and regional geographical indications,
- New labelling rules,
- Single Malt Scotch Whisky to be bottled in Scotland,
- Ban on the export of all Scotch Whiskies in wooden casks unless they are inert, and
- Providing for civil liabilities for non-compliance.

This consultation sought the views of a range of stakeholders, including consumers, spirit drinks producers and enforcement agencies on the provisions contained in the proposed Scotch Whisky Regulations 2008.

2. Summary of responses

- How many responses were received - **31**
- List of those who have responded to the consultation:

Beam Global Spirits and Wine Inc.
Blackadder International Ltd.
Bruichladdich Distillery Co. Ltd.
Cabrach Whisky Company
William Cadenhead Ltd.
Chivas Brothers Ltd. (Pernod Ricard)
Compass Box Delicious Whisky Ltd
Craigton Packaging Ltd
Diageo plc
Glen Turner Distillery Ltd.
Gordon & MacPhail
Hispaniola Brands Ltd.

Inver House Distillers
J & A Mitchell & Co Ltd
J & G Grant
J G Distillers Ltd
Private Individual
John Dewar & Sons Ltd.
Loch Lomond Distillery Co. Ltd.
London and Scottish International
Morrison Bowmore Distillers Ltd.
North British Distillery Co Ltd
Office of Fair Trading (OfT)
Scotch Whisky Association (SWA)
Scottish Council For Development & Industry (SCDI)
Thames Distillers Ltd.
The Edrington Group
Vintage Malt Whisky Co Ltd
Whyte and Mackay Ltd.
William Grant & Sons Ltd.
Wine and Spirit Trade Association (WSTA)

- **The main points that arose**

The following key issues have arisen as a result of the consultation:

Definition of Scotch Whisky

- Whether we need to be more specific about what we mean by processing in regulation 3 (1)(a)(i) of the UK Spirit Drinks Regulations.

The impact of the requirement that all maturation should take place in ‘a place of security’ will have for:

- bottling outside of customs area;
- duty-paid products matured outside a place of security;
- maturing casks held in distillery visitor centres; and
- any incidental maturation that may occur while casks are being moved between distilleries, blending sites and bottling halls.

Categories of Scotch Whisky

- The order in which the category names are listed.
- Objection to the category name ‘Single Malt Scotch Whisky’ only being available in relation to pot-stilled malt whiskies and not malt whiskies produced using a continuous still.
- What malts distilled in a continuous still should be called, as some believe that this is a traditional form of whisky and the fact that this form of whisky is in production.
- Objections to the use of the term “Blended Malt”. Consideration of whether another category name could be used to distinguish the product from single malts.

- The use of the ‘Blended Malt Scotch Whisky’ category will adversely affect less well-established businesses because the well-established brands sell on ‘brand recognition’ and category names will have less effect.
- Objection to the use of the term “Blended Grain”
- The name of the ‘Single Grain Scotch Whisky’ category including malts when Single Grain Scotch Whisky is traditionally distilled using a mixture of different grains such as wheat, corn, oats and barley (malting or otherwise).
- The recognition of pot stillled Single Grain Scotch Whiskies given that they are a traditional and important (albeit rare) form of whisky.
- The use of the term “Blended” which gives rise to the question of whether the category name ‘Blended Grain and Malt Scotch Whisky’ might be a better category name to make it clear to consumers what the blend contains, i.e. grain and malt whiskies.
- The compatibility of the proposed category names with the category names used for whisky in other countries e.g. in South Africa, and the impact the our Regulations may have on exports of Scotch Whisky to South Africa.

Export restrictions

- Objections to the prohibition on the export of Single Malt Scotch Whisky except in bottles.
- Objections to the prohibition on the export of other categories of Scotch Whisky in wooden containers.
- Objections to the prohibition on the export of Scotch Whisky except in bottles only applying to Single Malt Scotch Whisky, and support for this restriction to apply to ALL Scotch Whisky on the basis that the issues concerning adulteration and contamination apply equally to all categories of Scotch Whisky. This goes further than Defra proposals which would allow categories of Scotch Whisky other than Single Malt Scotch Whisky to be exported in certain types of bulk containers.
- Concern that the prohibition on the export of Blended Malt Scotch Whisky, Single Grain Scotch Whisky, Blended Grain Scotch Whisky and Blended Scotch Whisky other than in non-wooden containers will disproportionately disadvantage small and medium-sized enterprises (SMEs) who are much more likely to export in casks than the larger containers used by the bigger operators.
- Concern about the adequacy of the alternatives containers that may be used for the export of Scotch Whisky if export in cask is not allowed.

- The export prohibitions are unnecessary and there may be advantages in having some continued maturation (over and above the 3 year minimum in Scotland) following export.
- The export restrictions do not recognise that malpractice can occur in Scotland and that non-Scottish bottling need not be inferior: quality bottling can take place elsewhere.
- Concern about wooden casks lined with plastic, being permitted for export purposes when some plastics can 'taint' whisky.
- Allowing lined wooden containers to be used for export will cause downstream enforcement problems.
- The need for a transitional period before bringing in the export restrictions.
- The difficulty with getting Scottish bottlers to handle single casks of malt.
- The effect that the export restrictions will have on bottlers in other parts of the UK.

Use of distillery names

- Objection to the name of any distillery appearing on a Single Malt Scotch Whisky except the name of the distillery in which the whisky was distilled. Claims that anything else may be regarded as misleading if not dishonest.
- Objection to the use of any distillery names on blends.
- The deception problems that may arise from allowing the name of a distillery (at which one of the whiskies making up the blend has been distilled) to appear on the labelling of the blend when only a very small amount of whisky from that distillery (e.g. a teaspoon) may have been included in the blend.
- Whether regulation 9(6) (of the proposed UK Scotch Whisky Regulations 2008) should apply to all categories of Scotch Whisky and not just Single Malt Scotch Whisky and Single Grain Scotch Whisky.
- Supermarket own brand single malt whiskies which do not state on the label the distillery at which they have been distilled where there is a change in the supplying distilleries so that the product is different from that marketed previously under the same supermarket brand name.
- The naming of a new distillery with the name of a brand which will be distilled at that distillery, and the problem that occurs with the use of that brand name during the period when the produce of that distillery cannot be sold (because of the minimum 3 year maturation period required for Scotch Whisky).

- The use of defunct distillery names for new or renamed distilleries.
- The compulsory requirement to identify the distillery at which a Single Malt Scotch Whisky or Single Grain Scotch Whisky named in Part I of Schedule 2 (to the proposed UK Scotch Whisky Regulations 2008) has been distilled on the label of products sold using those brand names.
- The interrelationship between distillery and geographical names, e.g. West Highland.
- Whether it is right that there should be any exemptions from the distillery names provisions.
- The basis on which brands should be listed in Schedule 2 (to the proposed UK Scotch Whisky Regulations 2008), and, in particular, whether a brand should only be listed if it is in production.
- Whether there should be an exemption in regulation 9(6) (of the proposed UK Scotch Whisky Regulations 2008) for existing brands of Single Malt Scotch Whisky and Single Grain Scotch Whisky that are using names that are similar to distillery names, similar to the arrangements made under regulation 9(2)(a) and Part 1 of Schedule 2 (to the proposed UK Scotch Whisky Regulations 2008) in cases where proper distillery names are used.
- The removal of brand names from Schedule 2 to the proposed UK Scotch Whisky Regulations 2008.
- The subsequent sales of Schedule 2 brands to new brand owners and their entitlement to benefit from the exemption.

Geographical labelling

- Whether the dividing line between the Highland and Lowland regions should be more accurately defined.
- Whether some of the geographical regions and localities protected by regulation 10 of the proposed UK Scotch Whisky Regulations 2008 should be broken down further, e.g. Highland into Northern Highland, Western Highland, Eastern Highland.
- Whether it is fair that there should be exemptions for existing registered products but that future products will have to comply.
- Allowing cross-promotion labelling for a group or range of whiskies from different regions (described by many consultees as 'multi-packs').
- References to geographical locations in advertising and promotional communications that describe the different forms and origins of Scotch Whisky in broad terms to provide an overview and a context before focussing on a particular brand of whisky.

- The recognition and protection of other geographical regions and localities in the future.
- Whether a period of grace (e.g. one year) should be allowed during which operators are allowed to register brands.
- The northern limits of the Cambeltown locality.
- Whether it should be a requirement for a whisky using a regional GI name, e.g. Highlands, to have been matured within that named place on the basis that, as Scotch Whisky must be matured wholly in Scotland to be called 'Scotch Whisky', the same argument should be applied to the other regional geographic indicators for Scotch Whisky, otherwise consumers may be misled.
- Whether the exemption in regulation 10(5) of the proposed UK Scotch Whisky Regulations 2008 for inaccurate geographical names used in connection with existing brand names should apply to all existing brands, regardless of whether they are registered as a trade mark.
- Whether the exemptions that will apply for the 5 protected geographical names should apply in relation to the use of other geographical names.

Other labelling issues

- Whether it should be made compulsory to state on the labelling whether caramel colouring has been added to a whisky.
- Whether it should be made compulsory to state on the labelling that whisky has been subject to chill filtration.
- Whether descriptions such as 'double malt' and 'triple malt' should be prohibited.
- The use of words such as 'Special', 'Deluxe', 'Organic', etc.
- The use of descriptive words as part of a brand name.
- Objection to the prohibition against the use of the description 'pure malt'.
- The order of emphasis of the information relating to the brand range, distillery name and sales category on Scotch Whiskies marketed as part of a generic range.
- The use of the Gaelic language.

Enforcement tools and penalties

- The jurisdiction of the High Court in England to grant an injunction against an English company in respect of a contravention of the Regulations occurring in Scotland.

- Objections to the proposed balance between administrative and criminal sanctions.
- Objections to the maximum amount of financial penalty laid down in Regulation 31(2) of the proposed UK Scotch Whisky Regulations 2008.
- Objection in general terms to the inadequate nature of the enforcement tools provided when the contravention of similar provisions overseas can (and have) led to imprisonment.
- The use of funds collected following the serving of penalty notices.

Verification arrangements

- Industry desire for Her Majesty's Revenue and Customs (HMRC) to act as the verification authority required for the purposes of Article 22 of the EC Spirit Drinks Regulation 110/2008.

Transitional period

- Concern about sufficient time being given to enable changes to be made to advertising and promotional materials.

The form of the Regulations

- Concerns about the complexity of the proposed UK Scotch Whisky Regulations and the desire for simplification, including the desire not to lose the 'extent or depth of the content'.

Impact Assessment (IA)

- Questions to be considered re the IA, e.g. clarifying further the economic rationale and benefits of the proposed UK Scotch Whisky Regulations.

Consultation

- Concern that the consultation did not reach whisky consumer organisations, the wider drinks trade, consumer publication editors, specialist whisky writers and specialist whisky retailers.

General issues

- Concern that there is a risk that the new rules will restrict competition by allowing the major distillers to extend their control over the upstream market for distilling malt Scotch Whisky into the downstream market for bottling and marketing the product, resulting in restrictions on industry entry and the creation of new brands.
- The scope of the proposed UK Scotch Whisky Regulations and their applicability to imported products.

- The interrelation between the provisions of the Spirit Drinks Regulations and the Scotch Whisky Regulations, e.g. the requirements relating to age and maturation statements, and the scope to repeat provisions of directly applicable provisions of the EC Spirit Drinks Regulations in the UK Scotch Whisky Regulations.

Other issues that have arisen in connection with the draft UK Scotch Whisky Regulations otherwise than by consultees

- Need to repeal Northern Ireland Scotch Whisky legislation.

3. The Government's response

The Consultation closed on 25 March 2008. Responses are now being actively considered and evaluated.

4. The way forward

Defra is now considering and evaluating the responses received very carefully and will decide what action needs to be taken. A number of legal issues have been raised and these are being considered by Defra lawyers in consultation with other government departments, in particular the Ministry of Justice. Consideration will be given to any changes that may be necessary to the draft Scotch Whisky Regulations 2008 and the Impact Assessment sent out for consultation, as a result of the responses received. Decisions have yet to be made on a number of policy matters which the consultation has thrown up and these are now receiving active consideration with a view to how they are taken forward.

Published October 2009