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STATUTORY INSTRUMENTS

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**2009 No. 386**

**The Wine Regulations 2009**

**PART 1**

**Introduction**

**Title, application and commencement**

1. These Regulations may be cited as the Wine Regulations 2009; they apply in England and come into force on 30th March 2009.

**Interpretation and revocation**

2. In these Regulations—

“the Agency” means the Food Standards Agency;

“analysis” includes microbiological assay and any technique for establishing the composition of food;

“authorised officer” means any person (whether or not an officer of an enforcement authority) who is authorised for the purposes of these Regulations by an enforcement authority or, in relation to any particular provision of these Regulations, any person who is authorised by an appropriate enforcement authority for the purposes of that provision;

“the Commissioners” means the Commissioners for Revenue and Customs;

“controlled wine-sector product” means any wine-sector product the movement of which is prohibited under regulation 8;

“enforcement authority” means—

(a) the Commissioners or the Agency;

(b) the Secretary of State;

(c) the local authority;

“examination” means microbiological examination;

“food analyst” and “food examiner” mean, a person who is a food analyst or a food examiner for the purposes of section 30 of the Food Safety Act 1990<sup>(1)</sup>;

“local authority” means an authority (other than the council of a non-metropolitan district) that is a food authority for the purposes of the Food Safety Act 1990;

“manufacturing” means using wine or other wine-sector products, for the purpose of a trade or business (other than a catering business), in the composition, manufacture or preparation of any product;

“quality wine psr” has the meaning assigned to it by Article 54 of Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine<sup>(2)</sup>;

“Regulation 2392/86” means Council Regulation (EEC) No 2392/86 establishing a Community vineyard register<sup>(3)</sup>;

“Regulation 2676/90” means Commission Regulation (EEC) No 2676/90 determining Community methods for the analysis of wines<sup>(4)</sup>;

“Regulation 1601/91” means Council Regulation (EEC) No 1601/91 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails<sup>(5)</sup>

“Regulation 1493/99” means Council Regulation (EC) No 1493/99 on the common organisation of the market in wine;

“Regulation 1607/2000” means Commission Regulation (EC) No. 1607/2000 laying down detailed rules for implementing Regulations (EC) No. 1493/1999 on the common organisation of the market in wine, in particular the Title relating to quality wine produced in specified regions<sup>(6)</sup>;

“Regulation 884/2001” means Commission Regulation (EC) No 884/2001 laying down detailed rules of application concerning the documents accompanying the carriage of wine products and the records to be kept in the wine sector<sup>(7)</sup>;

“Regulation 1282/2001” means Commission Regulation (EC) No 1282/2001 laying down detailed rules for the application of Council Regulation (EC) No 1493/1999 as regards the gathering of information to identify wine products and to monitor the wine market<sup>(8)</sup>;

“Regulation 753/2002” means Commission Regulation (EC) No 753/2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine-sector products<sup>(9)</sup>;

“Regulation 423/2008” means Commission Regulation (EC) No 423/2008 on laying down certain detailed rules for implementing Council Regulation (EC) No. 1493/1999 and establishing a Community code of oenological practices and processes<sup>(10)</sup>;

“Regulation 479/2008” means Council Regulation (EC) No 479/2008 on the common organisation of the market in wine<sup>(11)</sup>;

“relevant Community provision” means any Community provision referred to in column 1 of Schedule 1, the subject matter of which is described in column 2 of that Schedule;

“retail sale” means any sale to a person buying otherwise than for the purpose of resale but does not include a sale to a caterer in the course of a catering business or to a manufacturer in the course of a manufacturing business;

“wine-sector product” for the purposes of these Regulations, includes any aromatized wine.

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- (2) OJ No L179, 14.7.1999, p. 1 as last amended by Council Regulation (EC) No 1332/2008 (OJ No L 354, 31.12.2008, p. 7).  
 (3) OJ No L208, 31.7.1986, p. 1 as last amended by Council Regulation (EC) No 1631/98 (OJ No L210, 28.7.1998, p. 14).  
 (4) OJ No L 272, 3.10.1990, p. 1 as last amended by Commission Regulation (EC) No 1293/2005 (OJ No L 205, 6.8.2005, p. 12).  
 (5) OJ No L149, 14.6.1991, p. 1 as last amended by the Regulation (EC) No 1334/2008 of the European Parliament and of the Council (OJ No L 354, 31.12.2008, p. 34).  
 (6) OJ No L 185, 25.7.2000, p. 17 as last amended by Commission Regulation (EC) No 2030/2006 (OJ No L 414, 30.12.2006, p. 40).  
 (7) OJ No L128, 10.5.2001, p. 32 as last amended by Commission Regulation (EC) No. 2016/2006 (OJ No L 384, 29.12.2006, p. 38)..  
 (8) OJ No L 176, 29.6.2001, p. 14 as last amended by .Commission Regulation (EC) No 23/2009 (OJ No L 10, 15.1.2009, p. 6).  
 (9) OJ No L118, 4.5.2002, p. 1 as last amended by Commission Regulation (EC) No. 1471/2007 (OJ No L329, 14.12.2007, p. 9).  
 (10) OJ No L127, 15.5.2008, p. 13 as last amended by Commission regulation (EC) No 1087/2008 (OJ No L 297, 6.11.2008, p. 11).  
 (11) OJ No L148, 6.6.2008, p. 1 as last amended by Council Regulation (EC) No 72/2009 (OJ No L 30, 31.1.2009, p. 1).

## PART 2

### General Provisions

#### **Official functions and enforcement**

- 3.—(1) The local authority must enforce these Regulations in so far as they relate to retail sale.
- (2) The Secretary of State, the Commissioners and the Agency must enforce these Regulations in so far as they relate to import and export.
- (3) Otherwise the Agency or the Secretary of State must enforce these Regulations.
- (4) Nothing in this regulation authorises the Commissioners to institute proceedings for an offence.
- (5) The Secretary of State is the competent authority for the Council and Commission Regulations enforced by these Regulations.

#### **Offences in Schedule 1**

4. Any person who breaches any provision set out in Schedule 1 is guilty of an offence.

#### **Table wines with a geographical indication and quality wines psr**

5. Schedule 2 makes provision for table wines with a geographical indication, and Schedule 3 makes provision for quality wines psr.

#### **Accreditation as an organiser of an organoleptic assessment panel**

- 6.—(1) Any application for accreditation as an organiser of an organoleptic assessment panel must be made to the Secretary of State and must specify—
- (a) the criteria the applicant will use in selecting panel members;
  - (b) the method of organoleptic assessment that the panel will use to determine whether wine submitted to it is of a satisfactory standard for regional wine; and
  - (c) the basis on which that determination will be made.
- (2) The Secretary of State must grant accreditation on being satisfied that—
- (a) the applicant is a fit and proper person to appoint such a panel;
  - (b) the criteria that the applicant will use in selecting panel members will result in persons with a wide variety of interests in wine and the wine industry (which may include consumers of wine) being selected as members of the panel;
  - (c) the method of organoleptic assessment is satisfactory; and
  - (d) the basis on which a determination will be made by a panel as to whether the wine is of a satisfactory organoleptic standard for a regional wine is a satisfactory basis for making such a determination.
- (3) The Secretary of State must notify the applicant within fourteen days of reaching the decision to accept or refuse the application.
- (4) Where the application is refused, the notification must include the reason.
- (5) The accreditation may be time-limited.
- (6) An accredited organiser must select panel members in accordance with the criteria specified in the application and must require any panel to use the methods specified in the application.

(7) The Secretary of State may cancel the accreditation of an organiser of an organoleptic assessment panel if that person ceases to be a fit and proper person to organise a panel or has failed to comply with the requirements of paragraph (6).

(8) When an accreditation is cancelled the Secretary of State must serve on the organiser concerned notice of—

- (a) the decision;
- (b) the reason for the decision; and
- (c) the date when the cancellation takes effect.

(9) An accredited organiser may resign at any time.

(10) If an accreditation is cancelled, or an accredited organiser resigns, the panel appointed by that person is dissolved from the date of cancellation or resignation.

### **Powers of authorised officers**

7.—(1) An authorised officer may, on producing a duly authenticated authorisation if required, at any reasonable time enter any land or vehicle (other than any land or a vehicle used solely as a dwelling), for the purpose of enforcing these Regulations or ascertaining whether there has been a breach of any relevant Community provision.

(2) An authorised officer who has entered any land or vehicle may—

- (a) inspect any materials or articles;
- (b) have access to, and inspect and copy any documents or records (in whatever form they are held), and remove them to enable them to be copied;
- (c) have access to, inspect and check the operation of any computer and any associated apparatus used in connection with the records; and may require any person to afford such assistance as may reasonably be required, and may require any computer records to be produced in a form in which they may be taken away;
- (d) seize and retain anything required as evidence in proceedings under these Regulations;
- (e) undertake an inventory of wine-sector products and of anything which may be used in the preparation of products; and
- (f) purchase or take samples of any wine-sector product and of anything which may be used in its preparation.

(3) An authorised officer who has procured a sample of any wine-sector product may analyse or examine that sample or have that sample analysed or examined.

(4) An authorised officer entering any land or vehicle by virtue of this regulation may be accompanied by such other person as is considered necessary or by a representative of the European Commission.

### **Control on movement**

8.—(1) An authorised officer of the Agency who inspects any wine-sector product may prohibit its being moved if there is reason to believe—

- (a) there has been or may have been a breach of these Regulations in relation to that product; or
- (b) there is or may be a risk to public health in relation to that product.

(2) An officer who does so must, without delay, give to the person who appears to be in charge of the wine-sector product concerned notice in writing—

- (a) specifying the product concerned;

- (b) stating that the product may not be moved without the written consent of an authorised officer;
- (c) specifying the provision that has been or may have been breached; and
- (d) specifying whether it would be practicable for steps to be taken to demonstrate to the officer that there is no longer any reason for that belief and, if so, what those steps should be.

(3) Where such a notice is given that notice must also contain information of the recipient's right, conferred by regulation 10, to have the giving of that notice reviewed, and as to how that right may be exercised, and of the effect of exercising that right.

(4) If the person to whom the officer gives the notice does not appear to the officer to be the owner of the wine-sector product concerned or an agent, contractor or employee of the owner, the officer must use best endeavours to bring the contents of the notice to the attention of such a person as soon as possible.

(5) An authorised officer of the Agency may affix to any wine-sector product in relation to which the power conferred by paragraph (1) has been exercised, or to any container in which the wine-sector product is packed, labels warning of the exercise of the power.

(6) An authorised officer of the Agency who is satisfied that the steps specified in the notice under paragraph (2)(d) have been taken must immediately remove the prohibition on movement.

### **Consent to movement**

**9.—(1)** An authorised officer of the Agency may, at any time, give written consent to the movement of a controlled wine-sector product.

(2) An authorised officer of the Agency must, upon request, give written consent to the movement of a controlled wine-sector product if that officer, or another authorised officer of the Agency, has been given a written undertaking to the effect that the wine-sector product—

- (a) will be moved to a place approved by an authorised officer of the Agency; and
- (b) will not be moved from that place without the written consent of an authorised officer of the Agency.

(3) A consent given under this regulation must—

- (a) specify the wine-sector product to which it relates; and
- (b) state that the wine-sector product continues to be controlled.

(4) An officer who has been requested to give a consent under this regulation, and who refuses to do so, must communicate that refusal in writing together with written notice of the right, conferred by regulation 10, to have that refusal reviewed, and an explanation as to how that right may be exercised and the effect of exercising that right.

### **Review of prohibitions etc on movement of wine-sector products**

**10.—(1)** This regulation applies where an authorised officer of the Agency—

- (a) has given a notice under regulation 8(2); or
- (b) has refused to give consent to the movement of a controlled wine-sector product under regulation 9(4).

(2) A person to whom a notice has been given under regulation 8, or who has been refused consent under regulation 9, may request a review of the notice or the refusal.

(3) A request made by a person under paragraph (2) must be made to the Agency within 6 months of the receipt of the regulation 8 notice or regulation 9 refusal.

- (4) Where a request is made under paragraph (2) within the period specified in paragraph (3)—
- (a) the Agency must nominate a person from the list established under this regulation to determine whether the regulation 8 notice or regulation 9 refusal should stand;
  - (b) the person nominated must give the person and the Agency an opportunity to make representations on the matter; and
  - (c) the person nominated must, within 1 month of being nominated, decide whether the regulation 8 notice or regulation 9 refusal should stand and must notify the applicant and the Agency of the decision.
- (5) The Agency must establish and maintain a list of people who may be nominated for the purposes of conducting a review under this regulation and must consult those organisations appearing to it to represent the wine industry before including any person on the list.

### **Power to require analysis or examination**

**11.**—(1) The court before which any proceedings are brought for an offence under these Regulations may, if it thinks fit for the purposes of the proceedings, cause anything that is the subject of the proceedings, and, if it has already been analysed or examined, is capable of being further analysed or examined, to be sent to a food analyst or food examiner, who must make such analysis or examination as is appropriate and send to the court a certificate of the result, and the costs of the analysis or examination must be paid by the prosecutor or the person charged as the court may order.

(2) If in a case in which an appeal is brought no action has been taken under paragraph (1) as respects a particular article, the provisions of that paragraph apply as respects that article in relation to the court by which the appeal is heard.

(3) Any certificate of the results of an analysis or examination, which, in the course of proceedings is sent by a food analyst or food examiner under this regulation, must be signed by that food analyst or food examiner, but the analysis or examination may be made by any person acting under the direction of the person by whom the certificate is signed.

(4) In any proceedings under these Regulations, the sending to the court under this regulation or production by one of the parties—

- (a) of a document purporting to be a certificate given by a food analyst or food examiner, or
- (b) of a document supplied by the other party as being a copy of such a certificate,

is sufficient evidence of the facts stated in it unless any party to the proceedings requires that the person by whom the certificate is signed be called as a witness.

### **Movement of a controlled wine-sector product**

**12.**—(1) Any person who, knowing a wine-sector product to be a controlled wine-sector product—

- (a) moves it, or
- (b) causes it to be moved,

without the written consent of an authorised officer is guilty of an offence.

(2) Any person who, knowing a wine-sector product to be a controlled wine-sector product—

- (a) removes from it, or
- (b) causes to be removed from it,

a label which has been affixed under regulation 8(5) is guilty of an offence.

(3) Any person who fails to comply with an undertaking given for the purposes of regulation 9(2) is guilty of an offence.

## **Obstruction**

13. Any person who—

- (a) intentionally obstructs an authorised officer acting in the execution of these Regulations, or
- (b) fails to give to any such officer any assistance or information or to provide any facilities which that officer may reasonably require,

is guilty of an offence.

## **Offences and penalties**

14.—(1) Any person guilty of obstruction under regulation 13 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person guilty of an offence under a provision in Part 3 or 5 of Schedule 1 is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) Any person guilty of any other offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

## **Offences by officers of bodies corporate**

15.—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or a similar officer of the body corporate, or any person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) For the purposes of this regulation, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

## **Defence of due diligence**

16. In any proceedings for an offence under these Regulations it is a defence for the person charged to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence, either by that person or by someone under that person’s direction or control.

## **Revocations**

17. The following are revoked in England—

- (a) the Common Agricultural Policy (Wine) (England and Northern Ireland) Regulations 2001<sup>(12)</sup>;
- (b) the Common Agricultural Policy (Wine) (England and Northern Ireland) (Amendment) Regulations 2003<sup>(13)</sup>;
- (c) the Common Agricultural Policy (Wine) (England and Northern Ireland) (Amendment) Regulations 2004<sup>(14)</sup>;
- (d) the Common Agricultural Policy (Wine) (England and Northern Ireland) (Amendment) Regulations 2005<sup>(15)</sup>;

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<sup>(12)</sup> S. I. 2001/686.

<sup>(13)</sup> S. I. 2003/114.

<sup>(14)</sup> S. I. 2004/1046.

<sup>(15)</sup> S. I. 2005/2922.

- (e) the Common Agricultural Policy (Wine) (England and Northern Ireland) (Amendment) Regulations 2006<sup>(16)</sup>;
- (f) the Common Agricultural Policy (Wine) (England and Northern Ireland) (Amendment) Regulations 2007<sup>(17)</sup>.

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<sup>(16)</sup> S. I. 2006/1499.  
<sup>(17)</sup> S. I. 2007/1943.