

EXPLANATORY MEMORANDUM TO

THE WINE REGULATIONS 2009

2009 No. 386

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

1.1 This Memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Purpose of the instrument**

2.1 This Statutory Instrument (SI) puts underpinning provisions in place for the enforcement in England of the provisions as laid down in Council Regulation (EC) No 479/2008 on the Common Market Organisation (CMO) for wine, following the reform agreement adopted by the Agriculture Council on 29 April 2008. The SI designates the authorities that will enforce the CMO. It makes the contravention of the provisions of the CMO listed in Schedule I an offence. It also takes in a deregulatory change secured by the UK in the negotiation that exempts the UK, as a small wine producing country, from the requirement to maintain a national classification of grape varieties for the purposes of wine production.

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

3.1 This SI covers England only, whereas the current Regulations cover England and Northern Ireland jointly. As agriculture is a devolved activity, Northern Ireland (like Scotland and Wales) will be making its own national SI implementing this policy. Defra is liaising closely with each of the Devolved Governments on this.

- 4. Legislative Context**

4.1 The wine CMO establishes a single market for the production, labelling and trade in wine in the EU. The CMO is directly applicable in Member States. This SI "The Wine Regulations 2009" provides for their enforcement in England. The Scottish Parliament, Welsh Assembly Government and Northern Ireland Executive will make parallel regulations. The principle responsibility for enforcement of the CMO in England rests with the Food Standards Agency, although local authorities and HM Revenue and Customs also have certain enforcement responsibilities.

4.2 This SI also lays down the criteria for the UK Quality and Regional Wine Schemes, which were introduced to help promote the production, standards and marketing of English wines. These provisions are unchanged by the first phase of the reform of the wine CMO and have therefore been carried forward from the existing Regulations. The second phase of the reform will come into force on 1 August 2009.

- 5. Territorial Extent and Application**

5.1 This SI applies to England.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 The Agriculture Council reached political agreement on a reform of the CMO for wine on 19 December 2007 and adopted the agreement on 29 April 2008. The Regulation, Council Regulation (EC) No 479/2008, was published on 6 June 2008. The principle implementing regulation, Commission Regulation (EC) No 555/08, was published on 30 June 2008.

7.2 The new CMO will be implemented in two stages. The first phase from 1 August 2008 covers the removal of market intervention, the introduction of the national support programmes, provisions relating to production potential, enforcement and control, and new arrangements for trade with third countries. The second phase of the reform, effective from 1 August 2009, will cover the new EU quality policy for wines, arrangements concerning winemaking practices and methods of analysis, and the labelling of wines.

7.3 This SI covers the first phase of the reform. It updates the references to the underpinning EU regulations and makes minor amendments to the provisions for enforcement of the EU regulations in England. In addition, it provides for a deregulatory change secured in the wine reform agreement that removes the requirement for vines used for wine production in small wine producing countries to be listed in legislation.

7.4 *Removal of Schedule 3 listing vine varieties authorised for the production of wine in England*

The new wine CMO provides that in countries where wine production is below 50,000 hectolitres, based on a five year rolling average, those countries no longer have to provide a list of the vine varieties that are classified for wine production in its territory. Acceptability will instead be based on the simplified requirement that the grapes are either of the genus *vitis vinifera* or a cross between *vitis vinifera* and another variety of *vitis*. Current rules that permit quality wine to be made only from *vitis vinifera* will remain. In view of this change, the list of approved grape vine varieties that appeared in the 2001 Regulations is replaced in this SI by the simplified requirement relating to the grape vine species. This deregulatory change will allow producers greater commercial freedom to select and produce wine from different varieties of vine, and remove the burdensome process of amending legislation to list these varieties.

7.5 *Updating Schedule 1 containing a list of Community Provisions applicable for wine by adding those that have come into force since the 2007 amending SI*

This amendment includes changes which update the Schedule so that it includes a list of Community Provisions applicable to wine which have come into force since the Common Agricultural Policy (Wine) (England and Northern Ireland) (Amendment) Regulations 2007 were made, and refers to the replacement provisions now in Council

Regulation (EC) No 479/2008 and Commission Regulation (EC) No 555/08. The amendments are technical issues and have no adverse impact to the UK wine industry.

- **Consolidation**

7.6 For England The 2009 Wine Regulations consolidate The Common Agricultural Policy (Wine)(England and Northern Ireland) Regulations 2001. This principal regulation will differ from the previous regulations in that it will apply only to England with Northern Ireland, like Wales and Scotland, now making their own Statutory Instrument using their devolved powers.

8. Consultation outcome

8.1 With Ministerial agreement, a public consultation was held and resulted in only 3 responses, two from Regional Trading Standards Authorities and one raising similar issues from LACORS. A summary of these comments has been placed on the Defra website at: <http://www.defra.gov.uk/corporate/consult/capwinereg-amend/summary-responses.pdf>

8.2 The main issues raised by the respondents concerned the level of penalties for infringements and the time limit for investigating offences and mounting a prosecution. On the former, it was suggested that the penalty for certain offences, such as obstructing an officer, should be increased from Level 3 (ie a maximum fine of £1,000) to Level 5 (£5,000). On the latter, it was suggested that the current 6 month time limit for investigating and bringing offences should be extended to 12 months. It was agreed that both these points should be considered further, but as neither were addressed in this consultation, both would be considered as part of the arrangements for the SI implementing the second phase of the reform applicable from 1 August 2009.

8.3 The other issue raised concerns on enforcement of the wine regulations at the retail level. Both LACORS and East of England Trading Standards Association suggested that in view of the complex nature of the wine regulations, responsibility for retail enforcement activity should fall to the principal enforcement body ie. the Wine Standards Branch of the Food Standards Agency. However, a change of this nature would have significant implications not only for the normal pattern of enforcement of Regulations in England, but also in resource terms for the FSA. The FSA will therefore discuss this issue further with LACORS in advance of the SI for the second phase of the wine reform.

9. Guidance

9.1 No guidance has been issued as The Wine Regulations 2009 implement the first phase of the wine reform which is essentially deregulatory in nature. Also, all the relevant Government and industry stakeholders are closely involved in the development and implementation of the wine reforms of which these regulations are a part.

10. Impact

10.1 In addition to the consultation for this SI, Defra has carried out two public consultations on the EU wine reform, both of which were accompanied by Regulatory Impact Assessments. As the main purpose of this SI is to give effect to the first phase of the wine reform agreement, a new Regulatory Impact Assessment (RIA) has not been produced, as the RIA for the reform consultation process itself is still relevant.

10.2 There is no impact on the public sector.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people and UK vineyards as a whole, the new wine CMO provides that in countries where wine production is below 50,000 hectolitres based on a five year rolling average, those countries no longer have to provide a list of the vine varieties that are classified for wine production in its territory. In view of this change, the list of approved grape vine varieties that appeared in the 2001 Regulations is replaced in this SI by the simplified requirement relating to the grape vine species. This deregulatory change will allow producers greater commercial freedom to select and produce wine from different varieties of vine, and remove the burdensome process of amending legislation to list these varieties.

11.3 The majority of English wine producers are relatively small businesses. Their representative body the United Kingdom Vineyard Association (UKVA) have been closely involved in the development and implementation of the EU wine reforms in the UK.

12. Monitoring & review

12.1 This SI will be superseded by the SI implementing Phase II of the Wine reform later this year.

13. Contact

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