

NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

The Wine (Amendment) Regulations 2021

Is the notification Type 1 or Type 2

This is a Type 1 notification.

A brief overview of the SI (including reserved provision).

- The Wine (Amendment) Regulations 2021 (“the Regulations”) implement wine-related provisions from the Trade and Cooperation Agreement (“TCA”) which now sets out the basis for trade in wine between Great Britain and the European Union.
- The Regulations will ensure the UK meets its legal obligation to implement the provisions in Annex 15 to the TCA (“Annex 15”) dealing with the trade in wine. Specifically, the Regulations will amend rules concerning lot marking and import and export certification arrangements for wine products and put in place transitional marketing arrangements.
- The Regulations are made in exercise of the powers conferred by section 31(1)(a) and (b) of, and paragraph 27 of Schedule 5 to, the European Union (Future Relationship) Act 2020. They will amend the following domestic and retained direct EU legislation:
 - The Food (Lot Marking) Regulations 1996;
 - The Wine Regulations 2011;
 - The Food Information Regulations 2014;
 - Commission Delegated Regulation (EU) 2018/273;
 - Regulation (EU) No 1308/2013 of the European Parliament and of the Council.
- A summary of the amendments and the law being amended is set out below.

The Food (Lot Marking) Regulations 1996

The Food (Lot Marking) Regulations 1996 (“the 1996 Regulations”) extend to Scotland. They prohibit the sale of any food which forms part of a lot (defined as a batch of food produced under similar conditions) unless it is accompanied by a lot marking indication which is attached to the packaging of the food and which allows identification of the lot to which the food belongs.

The Regulations amend the 1996 Regulations to introduce a new exception from the lot marking requirements. The exception is for wine which has a lot marking indication which meets the requirements set out in Directive 2011/91/EU of the European Parliament and of the Council on indications or

marks identifying the lot to which a foodstuff belongs, as implemented in either the legislation of the EU country from which (a) it is exported or (b) in which it is labelled.

Directive 2011/91/EU and the 1996 regulations contain equivalent requirements at the time of writing. The amendment ensures that EU wine, labelled in accordance with EU lot marking requirements, can continue to be exported into the United Kingdom.

This implements Articles 4(3) and (4) of Annex 15.

The Scottish Government considers that these provisions are within devolved competence.

The Wine Regulations 2011

Article 5 of Annex 15 sets out transitional measures with the objective of ensuring that wine produced, described and labelled prior to the TCA coming into force, in accordance with the applicable laws and regulations, can continue to be placed on the market.

That is implemented by amendments to the Wine Regulations 2011 (“the Wine Regulations”). The Wine Regulations enforce various retained EU law relating to the description, categorisation, marketing and protection of designations of origin and geographical indications of wine.

The Wine Regulations are amended so that enforcement action cannot be taken in respect of wine (a) falling within the scope of the transitional measures in Annex 15 and (b) which is placed on the market in Great Britain by either (i) a wholesaler or producer during the period beginning on 1st January 2022 and expiring on 1st May 2023 or (ii) a retailer on or after 1st January 2022 until those stocks of wine are exhausted.

The amendment relates to enforcement action taken under the Wine Regulations. The Scottish Government considers that the Wine Regulations contains a complex mix of devolved and reserved provisions. The Scottish Government considers that where a provision has two or more purposes, one which relates to a reserved matter, then the provision is reserved. The Scottish Government therefore considers that the amendment to the Wine Regulations is reserved.

The Food Information Regulations 2014

The Regulations amend the Food Information Regulations 2014. The amendment extends to England only.

Commission Delegated Regulation (EU) 2018/273

Article 3 of Annex 15 sets out certification requirements for the import of wine. The only documentation required for wine produced in one of Great Britain or the EU and placed on the market in the other is the certificate set out at Appendix C of Annex 15.

Among other things, Regulation (EU) 2018/273 makes provision for recognised accompanying documents, certification and rules for imports of wine.

The Regulations amend Regulation (EU) 2018/273 so that Appendix C certificates are included within the permitted forms of export certification. In EU law, Regulation (EU) 2018/273 provides for imports of wine to be accompanied by a “VI-1 Certificate”. The Regulations omit the requirements in Regulation (EU) 2018/273 requiring VI-1 documents and make consequential amendments relating to the new certification requirements.

The Regulations also amend Regulation (EU) 2018/273 to designate Food Standards Scotland as the competent authority responsible for regulation of Scottish wine within the scope of Annex 15 and which may be exported to a member State. FSS is given powers to inspect wine to ensure (a) it complies with the product definition given in, and (b) it is produced in accordance with the oenological practices authorised under Article 2 of Annex 15. Equivalent functions are conferred upon the Food Standards Agency for wine produced in England and Wales.

The Regulations amend Regulation (EU) 2018/273 to designate the Scottish Ministers as the competent authority for checking that the information contained in an Appendix C certificate for wine is (a) within the scope of Annex 15 and (b) being exported from Scotland to a member State. Both the exporter and the competent authority for a Member State may request that the Scottish Ministers check the certificate. Equivalent provision is made for the Secretary of State as regards England and the Welsh Ministers as regards Wales.

The Scottish Government considers that these provisions are devolved.

Regulation (EU) No 1308/2013

The Regulations omit provision in Regulation (EU) No 1308/2013 relating to requirements for the certification of imports of wine.

The Scottish Government considers that these provisions are devolved.

- Wine is a complex mix of devolved and reserved content and regulations are not widely used in Scotland. Historically, matters have been dealt with by UKG SI using section 2(2) of the European Communities Act 1972 plus section 57(1) of the Scotland Act. The regulations to implement the wine-

related provisions from the TCA have therefore been drafted on a GB basis which is consistent with the approach taken with similar SIs where Scotland's interests are minimal.

- The SI is expected to be laid on 23 November and is due to come into effect on 1 January 2022. The notification is late because of confusion as to whether it met the criteria for a Type 2 notification.

Details of the provisions that Scottish Ministers are being asked to consent to.

The Scottish Ministers are being asked to consent to the amendments to:-

- The Food (Lot Marking) Regulations 1996;
- Commission Delegated Regulation (EU) 2018/273 (to the extent that they relate to Scotland);
- Regulation (EU) No 1308/2013 of the European Parliament and of the Council.

The Scottish Ministers are also being asked to consent to the conferral of functions on the Scottish Ministers and Food Standards Scotland by amendments being made to the Wine Regulations. The Scottish Government does not consider those provisions, which relate to import and export, to be within devolved competence.

Summary of the proposals

As set out above, the Regulations will amend rules concerning lot marking, introduce new import and export certification arrangements for wine products, and put in place transitional marketing arrangements to ensure that wine produced and labelled before Annex 15 came into force can continue to be placed on the market.

The Regulations do not confer any new powers to legislate on UK or Scottish Ministers.

Does the SI relate to a common framework or other scheme?

The SI does not relate to a common framework. These Regulations will ensure the UK meets its legal obligation to implement the provisions in Annex 15 to the Trade and Co-operation Agreement dealing with trade in wine.

Summary of stakeholder engagement/consultation

The UK Government undertook a three-week consultation on the legislative proposals. The consultation was posted on GOV.UK but it was also drawn to the

attention of key stakeholders in the wine trade, the Wine and Spirit Trade Association (WSTA) and WineGB and the Food Standard Agency (FSA) and Food Standards Scotland. UK Government liaised with the devolved Governments concerning scope and content.

Responses were overwhelmingly positive about the proposals, especially those concerning the removal of wine import certification (as set out above, the VI-1 certificates required by EU law for import of wine are replaced, in respect of wine imported from a member State to Great Britain or Great Britain to a Member State, by Appendix C certificates). The wine trade and especially the fine wine trade who imported in smaller quantities considered the removal of the VI-1 requirements would reduce costs and speed up trade.

Concerns were expressed that removal of import certification would reduce the cost of alcohol, leading to increased risk of harm, and that certification barriers still exist in respect of wine trade with EU Member States. Consultees wanted the Government to support moves to reduce or remove those barriers.

Few opinions were expressed on arrangements regarding lot marking of wines, with comments noting that it would not impact negatively on business.

Comments on the transition period arrangements focussed on the length of time for which this should be provided. Most agreed that a two-year transition period for wholesalers and producers would be sufficient time for businesses to adjust.

A note of other impact assessments (if available)

There is considered to be no, or no significant, impact on business, charities, voluntary bodies or the public sector.

A full Impact Assessment has not been prepared for this SI because it either maintains existing regulatory standards that were in place before the UK withdrawal from the EU or, in the case of wine import certification, it removes what could have become a barrier to trade.

The measures being implemented in this legislation represent the minimum necessary to implement the TCA. The Regulations remove barriers that apply to the import of wine to Great Britain and provide flexibility on the lot marking of wines. Transitional measures are as set out in the TCA. The consultation on the legislative plans revealed that the proposals would be welcomed by all parts of the industry, most of whom are small businesses.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The Regulations are required to implement the wine-related provisions from Annex 15 of the TCA, which the Scottish Ministers are required to comply with and implement within devolved areas.

The Regulations will amend existing rules concerning lot marking and import and export certification arrangements for wine products and put in place transitional marketing arrangements. The transitional provision will ensure that wines that have already been produced, and either not yet released to the market or already in the supply chain, can continue to be sold where they met the necessary requirements in force before the TCA was implemented.

Wine regulations are not widely used in Scotland. Historically, matters relating to wine have been dealt with by UKG SI using section 2(2) of the European Communities Act 1972 plus section 57(1) of the Scotland Act. The regulations to implement the wine-related provisions from the TCA have therefore been drafted on a GB basis which is consistent with the approach taken with similar SIs where Scotland's interests are minimal.

Intended laying date (if known) of instruments likely to arise

The intended laying date is 23 November 2021. The SI will follow the draft affirmative procedure.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

The planned for laying date does not give the Parliament 28 days to consider the notification. The reason was that there was some confusion at official level about whether this SI met the criteria for a Type 2 notification. We have asked Defra if it would be possible not to debate the SI until the Parliament has had a chance to consider the notification. The dates have not been confirmed but we understand the debates are expected to be between 7 December and 14 December.

Information about any time dependency associated with the proposal

The timetable for the SI is tight if it is to come into effect on 1 January 2022.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

There are no new governance arrangements.

Any significant financial implications?

The Regulations amend rules and do not have any significant financial implications.

SI NOTIFICATION: SUMMARY

Title of Instrument Wine (Amendment) Regulations 2021
Proposed laying date at Westminster 23 November 2021
Date by which Committee has been asked to respond The SI is likely to be debated between 7 and 14 December and so the Committee is asked to respond by Monday 6 December.
Power(s) under which SI is to be made This instrument is made in exercise of the powers conferred by section 31(1)(a) and (b) of, and paragraph 27 of Schedule 5 to, the European Union (Future Relationship) Act 2020.
Categorisation under SI Protocol Type 1
Purpose The Regulations implement wine-related provisions from the Trade and Cooperation Agreement (TCA) which now sets out the basis for trade in wine between Great Britain and the European Union. The Regulations will ensure the UK meets its legal obligation to implement the provisions in Annex 15 to the TCA dealing with the trade in wine. Specifically, the Regulations will amend rules concerning lot marking and import and export certification arrangements for wine products and put in place transitional marketing arrangements.
Other information N/A
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